

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X		
CLUB TEXTING, INC. d/b/a	:	
EZ TEXTING, INC.,	:	
	:	
Plaintiff,	:	
	:	Case No. 10-CIV-7205 (PKC)
-- against --	:	
	:	
T-MOBILE USA, INC.,	:	
	:	
Defendant.	:	
	:	
-----X		

DECLARATION OF ALAN M. UNGER

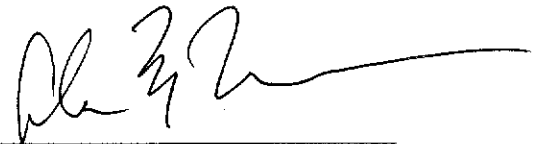
Pursuant to 28 U.S.C. § 1746, ALAN M. UNGER declares:

- I am an attorney duly admitted to practice before this Court, and I am a partner at the firm of Sidley Austin LLP, attorneys for Defendant T-Mobile USA, Inc. ("T-Mobile").
- I submit this declaration in support of T-Mobile's Memorandum of Law in Opposition to Plaintiff EZ Texting, Inc.'s Motion for Preliminary Injunction solely to present to the Court true and correct copies of the following documents in support thereof:

- EXHIBIT A:** Print out of website found at <http://www.eztexting.com/group-messaging-coverage.html> on September 21, 2010
- EXHIBIT B:** Print out of website found at <http://twitter.com/shaneneman> on September 21, 2010
- EXHIBIT C:** Print out of website found at <http://www.eztexting.com/tou.html> on September 21, 2010
- EXHIBIT D:** Print out of website found at <http://www.eztexting.com/dedicated-short-codes.html> on September 21, 2010

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed: September 22, 2010
New York, New York

A handwritten signature in black ink, appearing to read 'Alan M. Unger', written over a horizontal line.

Alan M. Unger

EXHIBIT

A



Username

LOGIN

Forgot Your Password? Or Username?
Don't Have An Account? Register Now

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Information

What Group Texting Is
Why Use Ez Texting
How Ez Texting Works
Who Uses Ez Texting

Case Studies
Client Testimonials
Mobile Marketing Guides
Video Tour - Getting Started

Learn About Group SMS
Sign Up For Our Webinar

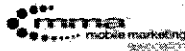
Advanced Features
Affiliate & Reseller Programs
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Carrier Coverage
Group SMS API
Group SMS Pricing
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Press

Anti-Spam Policy
Report Spam

Search Our Site

Certifications



Group Text Messaging Coverage For The United States & Canada

Ez Texting is certified to send SMS text messages to every cellular provider in the United States (including Alaska, & Hawaii) and Canada. If you don't see your carrier on this list, let us know, and we'll add them right away!

All carriers that support Express Delivery marked by *



United States

- Alltel*
- Boost*
- AT&T*
- MetroPCS*
- Nextel*
- Sprint*
- T-Mobile*
- US Cellular*
- Verizon Wireless*
- Virgin Mobile US*

Canada

- Aliant Mobility*
- Bell Mobility*
- Fido*
- MTS Mobility*
- NorthernTel Mobility*
- Rogers Wireless*
- SaskTel Mobility*
- Telebec Mobilité*
- TELUS Mobility*
- Virgin Mobile Canada*

- ACS Wireless*
- All West Wireless*
- AmeriLink Wireless
- Appalachian Wireless*
- Arch Wireless
- Bluegrass*
- Cambridge*
- Cellcom
- Cellular One*
- Cellular South*
- Centennial*
- Central Wireless
- Cincinnati Bell*
- Cricket*
- Dobson Cellular*
- ECIT*
- Edge Wireless
- FMTC*
- GCI Communications*
- Illinois Valley Cellular*
- Immix*
- Inland Cellular*
- Iowa Wireless
- Metrocall US
- Midwest Wireless*
- Next-Tech Wireless*
- NNTC Wireless*
- North Coast PCS
- Ntelos*
- Pacific Bell
- Qwest Wireless

Revol*
Rural Cell
Silver Star PCS*
Snake River PCS*
South Central*
Southwestern Bell
Suncom*
Syringa Wireless*
Triton PCS
UBET Wireless*
Unicel*
United*
West Central Wireless*
Western Wireless

[Anti-Spam Policy \(Report Spam\)](#) | [SMS API](#) | [Contact](#) | [Short Code Information](#) | [FAQ](#) | [Pricing](#) | [Privacy](#) | [Services](#) | [Terms](#) | [Press](#)
[Text Messaging Software by Club Texting](#) | [Info: Text Blasting Software](#) | [Carrier Lookup API](#) | [Group SMS For Ministries](#)
*Msg&data rates may apply in the US. Standard message and data rates apply in Canada.
To opt-out of any Ez Texting® services, send STOP to 313131 (393939 in Canada).

EXHIBIT

B

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- On a mobile phone? Check out m.twitter.com!
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- [Skip to sign in form](#)



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Username or email

Password

Remember me

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Get short, timely messages from Shane Neman.

Twitter is a rich source of instantly updated information. It's easy to stay updated on an incredibly wide variety of topics. Join today and follow [@shaneneman](#).

Get updates via SMS by texting **follow shaneneman** to **40404** in the United States
Codes for other countries



shaneneman

1. EZ Texting Responds To T-Mobile Statement Over SMS Lawsuit mobilemarketingwatch.com/ez-texting-res... via [@justinMMW](#) about 2 hours ago via [Tweet Button](#)
2. Today's Outrage: T-Mobile, Dude, Don't Bogart the Texts - TheStreet

- thestreet.com/story/10866524... via @TheStreet_News about 12 hours ago via Tweet Button
3. Ez Texting is looking for Customer Service Reps to start ASAP: Pls See <http://bit.ly/9NY0ps> 9:52 AM Sep 2nd via web
 4. Check out my article: <http://bit.ly/cOQNuJ> 7:14 AM Aug 27th via web
 5. Who Wants Mobile Ads? Parents, Apparently - <http://nyti.ms/9mtBwz> 7:45 AM Aug 16th via web
 6. Check Out My Video - Mobile Marketing Through SMS: Yes You Can...and Profitably - <http://bit.ly/dyMDzH> 8:28 AM Jul 29th via web
 7. SMS case study - Viking Cooking School - Mobile Marketer - Case studies <http://bit.ly/d5ycnr> 3:31 PM Jul 21st via TweetMeme
 8. Facebook shifting away from apps to mobile platform strategy: <http://bit.ly/a2s7wn> 11:01 AM Jul 14th via web
 9. What's the First Thing You Do Every Day? <http://bit.ly/b19s2p> 10:04 AM Jul 13th via web
 10. Reading Now: The Six Traits of a Successful Small Business Owner : <http://bit.ly/czju4G> 12:53 PM Jul 12th via web
 11. Reading Now: Groceries, dining top user interest in mobile marketing alerts: <http://bit.ly/agjtcQ> 1:27 PM Jul 6th via web
 12. Reading Now: Politicians find mobile apps are invaluable to campaigns <http://bit.ly/a3tyGn> 7:56 AM Jun 23rd via web
 13. Reading Now: Phone Software Takes the Taps Out of Typing <http://nyti.ms/aqCb5m> 1:08 PM Jun 21st via web
 14. Reading Now: Mobile coupons: Break through, break even or break the bank? <http://bit.ly/dBgdwF> 5:26 AM Jun 18th via web
 15. Reading Now: Will Foursquare scale or fail? <http://bit.ly/9UyOUi> 1:09 PM Jun 15th via web
 16. Reading Now: Is search where the big bucks will be in mobile? <http://bit.ly/9ARliJ> 9:59 AM Jun 11th via web
 17. Join me Fri 830am 4 12 Hrs of Tech at Microsoft Offices NYC: I'll b presenting Why TXTing Your Custs Is What They Want: <http://bit.ly/c2Hg2W> 8:32 AM Jun 9th via web
 18. Just added dozens of new code samples to our Bulk SMS API Developer Center in C#, Java, Perl, PHP, Python & Ruby! <http://bit.ly/cDhLrV> 3:57 PM Jun 7th via TweetDeck

- Name *Shane Neman*
- Location *New York*
- Web <http://www.eztext...>
- Bio *CEO of Ez Texting, the leading provider of SMS Marketing to small businesses and groups*

65 Following 62 Followers 3 Listed

- 49 Tweets
- Favorites

Following



[View all...](#)

[RSS feed of shaneneman's tweets](#) [RSS feed of shaneneman's favorites](#)

19. Please join me this Fri at 12 Hrs of Tech NYC - I'll be presenting Why TXTing Your Custs Is What They Want at 9:30am: <http://bit.ly/c2Hg2W> 9:03 AM Jun 7th via web
20. Saddleback Church Uses Text Messaging To Interact With Audiences Around The World During Easter Services <http://bit.ly/dddjck> 12:04 PM Jun 2nd via TweetDeck

more

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Two-way (sending and receiving) short codes:

Country	Code	For customers of
Australia	• 0198089488	Telstra
Canada	• 21212 (any)	
United Kingdom	• 86444	Vodafone, Orange, 3, O2
Indonesia	• 89887	AXIS, 3, Telkomsel
Ireland	• 51210	O2
India	• 53000	Bharti Airtel, Videocon
Jordan	• 90903	Zain
New Zealand	• 8987	Vodafone, Telecom NZ
United States	• 40404 (any)	

loading... Sorry, this does not appear to be an active Twitter account

EXHIBIT

C



Username

LOGIN

Forgot Your Password? Or Username?
Don't Have An Account? Register Now

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Live Chat is Offline

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Certifications



TERMS OF USE OF EZ TEXTING, INC. ("Ez Texting")

Thank you for visiting our site at www.eztexting.com ("Website"). Use and access of this Website, and the text message and voice broadcast services described below (the "Service"), is subject to these terms and conditions of use (the "Terms") as well as our Privacy Policy.

**** IF YOU DO NOT AGREE WITH ANY OF THE TERMS LISTED ON THIS WEBSITE, PLEASE LEAVE THIS WEBSITE BY CLOSING YOUR INTERNET BROWSER WINDOW NOW. IF YOU DO NOT INTEND ON USING EZ TEXTING WITH THE "USAGE POLICY" TERMS DESCRIBED BELOW, DO NOT UTILIZE THE SERVICE PROVIDED BY EZ TEXTING. THANK YOU. ****

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Overview

Ez Texting's acceptance of your registration for the use of the Service is expressly conditioned upon your assent to these Terms, and your use of this Website, as well as registration for, and use of, the Service represents your implicit acceptance and consent to be bound by these Terms. Please read these Terms carefully. As noted below, Ez Texting reserves the right to modify and update these Terms, from time to time, by posting any such new or modified Terms to the Website.

Services described in the Website may or may not be available in all countries or regions of the world, may be available under different trademarks in different countries and, where applicable, may be approved or cleared by a government regulatory body for sale or use with different indications and restrictions in different countries.

The Service

The Service consists of one or more of the following: a web-based interface, access to incoming telephone number or keywords, messaging applications, voice broadcast applications, SMS gateway access, data encryption, data transmission, data access, data storage and, if applicable, synchronization software. We provide MT outbound messages through different routes, and the level of reliability and support for special features varies according to the route. You are responsible for obtaining and maintaining all computer hardware, software and communications equipment needed to access the Service, and for paying all access charges (e.g. ISP, telecommunications) incurred while using the Service.

Ez Texting only provides that the text messages and voice broadcasts you send through the Service are processed correctly and delivered to the applicable network. Ez Texting is not responsible for the final delivery of the message or broadcast, as this is out of our control

and is the responsibility of the cell telephone operator.

Ez Texting sends and receives text messages and voice broadcasts via major telecommunications companies and mobile network operators, and thus Ez Texting's influence over the timing of the transmission of your messages and broadcasts is within the technical constraints imposed upon Ez Texting. While Ez Texting shall use commercially reasonable efforts to deliver your messages and broadcasts to the applicable network for final delivery to your designated recipients as fast as possible, we cannot commit to, and do not guarantee, a specific maximum delivery time. Such times depend on various network and system-related factors among the various entities involved in the transportation of your messages and broadcasts across the GSM network. You should know that mobile network operators assign text messages and voice broadcasts with a default lifetime and any message or broadcast that cannot be delivered successfully within the lifetime assigned to it will be discarded by the mobile network operator without any notice. Ez Texting is not liable for any loss incurred by the failure of a message or broadcast to be delivered, and you acknowledge that damages for financial or other loss resulting from delivery failure cannot be claimed from Ez Texting for any such non-deliveries. Furthermore, you agree that message and broadcast contents are deemed to have zero value.

Usage Policy

You represent and warrant that the owners of the phone numbers you provide to Ez Texting, to which outbound messages and broadcasts are sent through the Service, have consented or otherwise opted-in to the receipt of such messages and broadcasts. You acknowledge and agree that you will send messages and broadcasts only to individuals who have given you their express permission to be contacted and you will update your contacts list immediately in order to remove any phone number that has opted-out from receiving messages or broadcasts from the Service.

You agree to abide by all applicable local, state, national and international laws and regulations and are solely responsible for all acts or omissions that occur under your account, including without limitation the content of the messages and broadcasts transmitted through Ez Texting. Without limiting the foregoing, you agree to familiarize yourself with the legalities of any messages, broadcasts and campaigns transmitted through Ez Texting by visiting the following websites:

- Federal Trade Commission, <http://www.ftc.gov>
- Federal Communications Commission, <http://www.fcc.gov>
- DoNotCall Registry Info, <http://www.donotcall.gov>

The Telephone Consumer Protection Act (TCPA) (<http://www.fcc.gov>), the Federal Trade Commission (<http://www.ftc.gov>), the Federal Communications Commission (<http://www.fcc.gov>), DNC list registry rules (<http://www.donotcall.gov>) and various state laws, rules and regulations place restrictions on certain types of phone calls.

EzTexting is in no way attempting to interpret the TCPA of 1991 or any other laws, rules or regulations. This information is provided merely as a courtesy and is not intended to replace your responsibility to familiarize yourself with and abide by the legal requirements pertaining to your messages, broadcasts and campaigns prior to using the Website or Service. You are ultimately responsible to make your own informed decisions regarding your messages, broadcasts and campaigns.

You further agree that any individual requesting "Do-Not-Call" ("DNC") status shall immediately be placed on your DNC accounts list and removed from your list of approved contacts used with the Services and the Website. You shall schedule campaigns responsibly and in a manner that is courteous to the recipients pursuant to local, state, national and international calling time rules and regulations. You are solely responsible for obtaining any rights or licenses to any data, including without limitation sound files, for inclusion in any outbound messages, broadcasts and campaigns. If you are unfamiliar or unclear on the legalities of any message, broadcast or campaign, you must consult with your attorney prior to your use of the Website or Service.

As part of the registration process you will select a unique username and password. You shall provide Ez Texting with accurate, complete, and regularly updated member profile

information. You agree to notify Ez Texting of any known or suspected unauthorized use(s) of your user account, or any known or suspected breach of security, including loss, theft, or unauthorized disclosure of your username or password. You shall be responsible for maintaining the confidentiality of your password. Any fraudulent, abusive, or otherwise illegal activity may be grounds for termination of your user account, at Ez Texting's sole discretion, and you may be reported to appropriate law-enforcement agencies.

You accept that the Service is provided for professional use only, and you agree that your use of the Website or Service shall **not** include:

- Sending unsolicited marketing messages or broadcasts (i.e. spam):

Sending any calls to life-line services, such as hospitals, fire, police, 911 or utility-related

- telephone numbers;

Using strings of numbers as it is unlawful to engage two or more lines of a multi-line

- business;

- Harvesting, or otherwise collecting information about others, without their consent:

Misleading others as to the identity of the sender of your messages or broadcasts, by creating a false identity, impersonating the identity of someone/something else or by

- providing contact details that do not belong to you;

Transmitting, associating or publishing any unlawful, racist, harassing, libelous, abusive, threatening, demeaning, libelous, immoral, harmful, vulgar, obscene, pornographic or

- otherwise objectionable material of any kind;

Transmitting any material that may infringe upon the intellectual property rights of third

- parties including trademarks, copyrights or other rights of publicity;

Transmitting any material that contains viruses, trojan horses, worm, time bombs, cancel-

- bots or any other harmful/deleterious programs;

Interfering with, or disrupting, networks connected to the Service or violating the regulations,

- policies or procedures of such networks;

Attempting to gain unauthorized access to the Service, other accounts, computer systems or

- networks connected to the Service, through password mining or any other means;

- Interfering with another's use and enjoyment of the Service or Website; or

Engaging in any other activity that Ez Texting believes could subject it to criminal liability or

- civil penalty/judgment.

You agree that Ez Texting is, under no circumstances, responsible for the contents and/or accuracy of your messages or broadcasts and Ez Texting will only transmit them on a basis of good faith that you use the Service in accordance with these Terms. Ez Texting will not be liable for any misuse of the Service by you. Ez Texting is not responsible for the views and opinions contained in any of your messages or broadcasts.

We may have copyrights, trademarks, patents, trade secrets, or other intellectual property rights covering subject matter in the Service, including the web pages that are part of the Service and the Website. Except as expressly provided in these Terms, the availability of the Service and such web pages to you does not give you any license to these patents, trademarks, copyrights, or other intellectual property. All copyrights, trademarks, patents, trade secrets and other intellectual proprietary rights contained in the Website are the sole property of Ez Texting or its licensors, each of whom reserves all rights with regard to such materials. You acknowledge and agree that you may not modify, alter, create any derivative works, reverse engineer, decompile or disassemble any portion of the Service or Website, including any proprietary communications protocol used by the Service or Website.

Data Protection & Privacy

In order to ensure your compliance with these Terms and to ensure that Ez Texting complies with national and international laws, we may, from time to time, randomly check the

messages and broadcasts that you send. Nonetheless, we are committed to maintaining the privacy of your information, pursuant to our Privacy Policy provided on the Website. Except as otherwise required for your use of the Service as contemplated herein, Ez Texting does not want you to, and you should not, send any confidential or proprietary information to Ez Texting via the Website or the email addresses referenced on the Website. You agree that any information or materials that you or individuals acting on your behalf provide to Ez Texting (other than information required for your use of the Service as contemplated herein) will not be considered confidential or proprietary. By providing any such information or materials to Ez Texting (other than information required for your use of the Service as contemplated herein), you grant to Ez Texting an unrestricted, irrevocable, worldwide, royalty-free, perpetual license to use, reproduce, display, publicly perform, transmit, make derivative works and distribute such information and materials, and you further agree that Ez Texting is free to use any ideas, concepts or know-how that you or individuals acting on your behalf provide to Ez Texting. You further recognize that Ez Texting does not want you to, and you warrant that you shall not, provide any information or materials to Ez Texting that is defamatory, threatening, obscene, harassing, or otherwise unlawful, or that incorporates the proprietary material of another.

Credits

Credits are paperless vouchers that you purchase and which facilitate the sending of SMS messages or voice broadcasts. The chosen route as well as the destination of a message or broadcast causes the amount of credits required to either increase or decrease but, in either case, will always be made known beforehand through the Message Pricing page of our Website. The submission of a seemingly-valid message or broadcast will cause an associated quantity of credits to be debited from your account and you can obtain the real-time status of your account at any time through the online interface.

Credit Expiration

Credits purchased as a part of a package or monthly plan, and not used within the month of purchase, expire at the end of the month, unless the plan explicitly provides for roll-over of credits. Individual anytime credits purchased through your account do not expire, unless otherwise stated at the time of purchase. Additionally, the value of credits may change over time (as noted below in the Price Adjustments section), and thus you acknowledge that the number of credits needed to send a text-message or voice broadcast may change correspondingly.

Purchase of Credits; Payments

Your payment for credits shall be deemed completed when Ez Texting receives the full amount. Thereafter, your account will be credited within 24 hours of Ez Texting verifying receipt of your payment. If you have elected to make a payment by credit card and we do not receive payment from the credit card issuer, you agree to pay all amounts due immediately upon demand by Ez Texting.

Price Adjustment

As we are dependent on other entities for the delivery of our messages and broadcasts, our price per credit may require adjustment in order to account for costs that are not in our control. Accordingly, we may adjust our prices from time to time without prior notice.

No Warranty; Limitation of Liability

You acknowledge that text messages and voice broadcasts are transmitted unencrypted and that eavesdropping of cell phone communications, including SMS delivery, by third parties is possible. Ez Texting recommends that you ensure sensitive and valuable information is communicated by a protected and/or encrypted method.

Ez Texting shall use commercially reasonable efforts to make access to the Service available through the required access protocols, but makes no warranty or guarantee that (i) the Service will be available at any particular time; or (ii) you will be able to access the Service at any particular time or from any particular location. Ez Texting will not be liable for any act or omission of any other company or companies furnishing a portion of the Service (including, without limitation wireless carriers), or from any act or omission of a third party, including those vendors participating in Ez Texting offerings made to you, or for equipment that it does not furnish, or for damages that result from the operation of customer-provided systems, equipment, facilities or services that are interconnected with the Service.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, THE WEBSITE AND SERVICE ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITHOUT ANY

WARRANTIES OR CONDITIONS WHATSOEVER, EXPRESSED OR IMPLIED. NOTWITHSTANDING THE FOREGOING OR ANY STATEMENT TO THE CONTRARY CONTAINED IN THESE TERMS, EZ TEXTING DOES NOT WARRANT THAT THE USE OF THE WEBSITE OR SERVICE WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICE OR THAT THE WEBSITE OR SERVICE WILL MEET ANY OF YOUR SPECIFIC REQUIREMENTS. OTHER THAN AS MAY BE EXPRESSLY SET FORTH IN THESE TERMS. EZ TEXTING MAKES NO REPRESENTATIONS OR WARRANTIES AND HEREBY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND, WHETHER EXPRESS, STATUTORY OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SERVICE, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, RELIABILITY, COMPLETENESS, OR TIMELINESS OF THE MATERIAL, SERVICE, SOFTWARE, TEXT, GRAPHICS OR LINKS, AND ALL WARRANTIES IMPLIED FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

EZ TEXTING SHALL NOT BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY DAMAGES ARISING FROM LOSS OF USE OR LOST BUSINESS, LOSS OF OPPORTUNITY, LOSS OF REVENUE, LOSS OF ACTUAL OR ANTICIPATED PROFITS, LOSS OF DAMAGE TO OR CORRUPTION OF DATA OR LOSS OF GOODWILL), OR FOR ANY COST OF PROCUREMENT OF SUBSTITUTE SERVICES ARISING IN CONNECTION WITH THESE TERMS, WHETHER IN AN ACTION IN CONTRACT, TORT, STRICT LIABILITY OR NEGLIGENCE, OR OTHER ACTIONS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IF YOUR USE OF THE WEBSITE OR THE SERVICE RESULTS IN THE NEED FOR SERVICING OR REPLACING EQUIPMENT, SOFTWARE OR DATA, EZ TEXTING IS NOT RESPONSIBLE FOR THOSE COSTS. EZ TEXTING'S TOTAL LIABILITY ARISING OUT OF YOUR USE OF THE WEBSITE OR SERVICE FOR DIRECT DAMAGES SHALL NOT, IN THE AGGREGATE, EXCEED AN AMOUNT EQUAL TO THE MONTHLY TRANSACTION FEE PAID BY YOU IN THE MONTHLY PERIOD GIVING RISE TO THE FIRST CLAIM MADE.

User Warranties; Indemnification

You warrant and represent to Ez Texting that you are and shall at all times remain in full compliance with all applicable laws, rules and regulations with regard to your use of the Website and Service, including without limitation the Telephone Consumer Protection Act, the Telemarketing Sales Rule, the CAN-SPAM Act (Controlling the Assault of Non-Solicited Pornography and Marketing Act) of 2003, and all other laws and regulations concerning privacy, telemarketing and internet marketing.

You agree to indemnify, hold harmless, and defend Ez Texting and its affiliates and each of their respective officers, directors, shareholders, employees, agents, representatives, content providers and service providers, against any and all claims, liabilities, damages, costs and expenses (including, but not limited to, consequential damages, incidental damages, special damages, attorneys' fees and disbursements) arising from or relating to any actual or threatened claim, suit, action or proceeding based upon or arising out of: (i) your breach of the above warranties; or (ii) any use by you, or an account or computer owned by you, of the Website or Service. You agree to cooperate as fully as reasonably required in the defense of any claim and we reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you. You acknowledge and agree to be held liable for any and all damages caused to Ez Texting by you as a direct result of a violation of local, state, national or international laws and regulations.

Modification of Terms

We frequently update, modify and otherwise continually seek to improve the Service and such changes often require an update or revision to these Terms. Accordingly, we reserve the right to change or discontinue any aspect or feature of the Service, as well as modify, change and/or update these Terms, from time to time, as we deem appropriate. Any updates to these Terms shall be posted on this Website, from time to time. You acknowledge your responsibility to review these Terms from time to time and to be aware of any such changes and, should you request, we will be happy to keep you informed if/when such changes take place. If you do not agree with any such changes, your use of the Service may be cancelled in accordance with the procedures for cancellation set forth herein.

Termination, Cancellation and/or Suspension by Ez Texting

If at anytime you breach these Terms, we may elect to suspend, terminate and/or cancel your use of the Service and/or recover any damages from you arising from the event(s) giving rise to the suspension, termination or cancellation. We reserve the right to suspend your Service at any stage for any reason we may deem necessary to continue to provide our Service in a way that may be hindered by your status as being our client, your financial status or the content of the messages or broadcasts originating from you.

Upon any such termination, cancellation and/or suspension, you are still responsible for any obligations then accrued. Your obligation to pay all amounts accrued and owed by you shall continue even after any suspension or cancellation of your access to the Service (in whole or in part). Upon termination, for any reason, you agree to immediately cease using the Service and Ez Texting shall have no obligation to you after any termination or cancellation of these Terms.

Should such a termination take place when you still have credits in your account, you shall receive back, at our discretion, a fair monetary value of such credits, save any expenses that may be incurred by Ez Texting, including, without limitation, for payment of transfer duties, legal costs, third-party costs, or penalties.

The provisions regarding ownership, payments, warranties and indemnifications will survive any suspension, termination or cancellation of your use of the Services or Website.

Termination by the User

You are free to terminate or cancel your use of the Service at any time, and for any reason, provided that you notify us, in writing, of any such termination. Notwithstanding the foregoing, unless due to a breach solely by Ez Texting that it fails to cure within thirty (30) days of its receipt of your written notice, in no event shall Ez Texting be obligated to refund to you the reasonable value of any unused credits previously purchased by you.

Links to other Websites

The Website may contain links to third party websites. These links are provided solely as a convenience to you and not as an endorsement by Ez Texting of the contents on such third-party websites. Ez Texting is not responsible for the content of linked third-party websites and does not make any representations regarding the content or accuracy of materials on such third-party websites. If you decide to access linked third-party websites, you do so at your own risk.

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You are prohibited from violating or attempting to violate the security of the Website and Service and from using the Website and Service to violate the security of other websites by any method, including, without limitation: (a) accessing data not intended for you or logging

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Force Majeure

Ez Texting shall not be liable for any failure or delay in performing its obligations hereunder, which such failure or delay is caused by fire, flood, earthquake, elements of nature or acts of God, acts of war, insurrection, terrorism, strike, failure or downtime of any telecommunications line and/or unavailability of any telecommunications facilities, power failure, governmental restrictions, any court order, compliance with any law, regulation, or order of any governmental authority, or any other cause beyond the reasonable control of Ez Texting. In addition, Ez Texting shall be so excused in the event it is unable to acquire from its usual sources, and on terms it deems to be reasonable, any material necessary for the performance of the Service.

Miscellaneous

The failure of either party to exercise in any respect any right provided for herein will not be deemed a waiver of any further rights hereunder. If any provision of these Terms is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that these Terms will otherwise remain in full force and effect and enforceable.

No agency, partnership, joint venture, or employment is created as a result of these Terms and you do not have any authority of any kind to bind Ez Texting in any respect whatsoever. In any action or proceeding to enforce rights under these Terms, the prevailing party will be entitled to recover costs and attorneys' fees.

All notices required hereunder shall be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. Ez Texting may give notice to you by means of a general notice on the Website or Service, electronic mail to your e-mail address on record in Ez Texting's account information, or by written communication sent by personal delivery, fax, overnight courier, or certified or registered mail to your address on record in Ez Texting's account information.

You hereby grant Ez Texting the right to use your name and/or logo within a publicly viewable list of clients or in press releases applicable to Ez Texting, the Website or the Service.

These Terms shall be governed by and construed in accordance with the laws of the State of New York notwithstanding its laws governing conflicts of laws. The parties agree that any action or proceeding brought to defend the rights or enforce the obligations of a party hereto shall be brought in the courts of the State of New York.

The terms and conditions of Service are only those stated herein, which shall constitute the complete agreement between the parties. No terms and conditions stated in or attached to your communications to Texting are applicable to these Terms in any way and are not to be considered your exceptions to the provisions of these Terms.

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Last updated February 2009.

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Text Messaging Software by Club Texting | [Info](#) | [Text Blasting Software](#) | [Carrier Lookup API](#) | [Group SMS For Ministries](#)
*Msg&data rates may apply in the US. Standard message and data rates apply in Canada
To opt-out of any Ez Texting[®] services, send STOP to 313131 (393939 in Canada).

EXHIBIT

D



Username

LOGIN

Forgot Your Password? Or Username?
Don't Have An Account? Register Now

CONTACT WHAT HOW WHO FEATURES PRICING FAQ SERVICES

Live Sales & Support



Live Chat is Offline

(Monday to Friday, 9am - 7pm EST)

Information

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Advanced Features
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Group SMS API
Group SMS Pricing
SMS Services
Partners

Contact
FAQ
Join Our Newsletter
Mobile Marketing Blog
Press

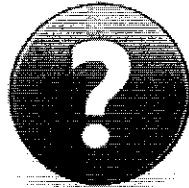
Anti-Spam Policy
Report Spam

Search Our Site

Certifications



Dedicated Short Code Solutions



At Ez Texting we believe that launching a mobile marketing campaign should be easy.

We've created this straightforward white paper to explain the in's and out's of dedicated short codes.

Read Our Dedicated Short Code Guide (PDF)

Getting Started With Your Own Dedicated Short Code:

At Ez Texting, we are more than just a vendor - we are an experienced partner who will walk you through the process of obtaining your own short code every step of the way, from start to finish. To begin, a dedicated specialist will speak with you. Our specialists will answer all of your questions, and, if you are interested, offer you mobile marketing advice and insights

A dedicated short code is a powerful marketing tool, but it is also a major financial commitment. We want to make sure that a dedicated short code is right for your business or organization. Our goal is to make mobile marketing as easy as possible. so we have broken this process down to six simple steps.

Pick A Partner – Unless you have the expertise to go it alone you will rely on a firm like Ez Texting, often in this context called a Mobile Application Service Provider (MASP). You are going to have an ongoing relationship with this firm. At first they will assist you with your application. Once you are approved they will also provide you with the appropriate software to connect to their aggregator, who will deliver your messages to the cellular networks. The cellular networks then deliver your message to their subscribers. By working with a partner like Ez Texting you do not need to worry about all of these intermediary parties.

1. **Decide Whether You Want A Vanity Short Code** – If you want a vanity short code you will want to make sure that no one has already leased that short code. You can do this yourself, at www.usshortcodes.com, or your MASP can check for you. Remember, a vanity short code costs \$1000 dollars per month, whereas a random code only costs \$500 dollars per month.

2. **Lease Your Short Code** – Leasing a short code with Neustar, Inc. is a relatively short and simple process. You can do this yourself, though most businesses and organizations prefer to have their MASP submit this information. As soon as Neustar approves your lease application (typically two business days) you must pay for the first three months of your lease.

Complete Your Service Approval Form – This is the most important step to obtain your own short code. Your Service Approval Form (SAF), also called a Program Brief, is submitted to each of the wireless carriers. They all reserve the right to deny your application. Because of this it is important to work with an experienced MASP like Ez Texting who will make sure that all aspects of your SAF are compliant with the carriers' regulations.

Your Service Approval Form includes a detailed description of your plans for implementing your short code. Prior to submitting this form, your website must be active and include links for customer support and terms & conditions.

3. **Carriers typically take three to four weeks to review and approve your program. If any of the carriers do not approve your SAF they will provide comments and information that you will rely upon to revise your application. In the case that an program is denied it is typically because it did not conform to Mobile Marketing Association guidelines.**
4. **Provisioning & Testing** – After accepting your program, each carrier will provision the short code on their network for testing. At this point your application should be ready to test, with all test keywords and compliant message flows in place. Ez Texting will submit requests to each carrier when you are ready to test on their network. Testing typically take up to two weeks to complete, though some carriers take as long as six weeks to finish testing.

6.

Carrier Approval & Launch – Following a successful campaign test, each carrier will approve and certify your short code on their network and you may take your campaign live. This is typically within a few days of successful testing, but can take up to two weeks.

This process can be overwhelming, and that is why firms like Ez Texting are here to help. We have guided many companies through the do's and don'ts that make for a successful, compliant application; our efforts ensure that approval and provisioning time is kept to a minimum. And because you must continue to pay for your short code lease while you wait for certification, our expertise will save you time and money.

Ready To Turbo-charge Your Mobile Marketing Campaign With Your Own Dedicated Short Code?

Give Us A Call Today And Ask To Speak To A Dedicated Short Code Specialist

(Monday to Friday, 9am - 6pm)

Tel: (212) 255-4663

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