



bandwidth

## **Bandwidth Texting**

### **Service Agreement - Terms and Conditions**

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“Bandwidth Texting” is a service provided by Bandwidth.com, Inc. ("Bandwidth", "we", "our", or "us").

**Your use of Bandwidth Texting must comply with our Acceptable Use Policy, which can be found at <http://www.bandwidth.com/acceptable-use-policy>. In addition, there are FCC, MMA, and CTIA policies, rules and laws regarding text messaging and/or spam that will be strictly enforced. You are solely responsible for reviewing and understanding all such policies, rules and laws.**

#### **1. Your Relationship With Bandwidth**

By using the website ("Website"), our mobile, desktop, tablet apps (our "Apps") and all related end clients, widgets, tools, applications, data, software, APIs and other services provided by Bandwidth pursuant to the License Agreement referencing these Terms of Service (the "Services"), you are agreeing to be bound by the following terms and conditions ("Terms of Service"). These Terms of Service, together with our Privacy Policy and Acceptable Use Policy, and any other terms specifically referred to in any of those documents, constitute a legally binding agreement (the "Agreement") between you and Bandwidth in relation to your use of the Website, Apps, and Services (together, the "Platform"). Our Privacy Policy can be found at <http://www.bandwidth.com/privacy-policy>; our Acceptable Use Policy can be found at <http://www.bandwidth.com/acceptable-use-policy>.

#### **2. Accepting the Agreement**

If Bandwidth makes material changes to the Agreement, including, without limitation, our Privacy Policy or our Acceptable Use Policy, we may or may not notify you by email or by posting a notice on our site before the changes are effective. Any new features that augment or enhance the current Platform, including the release of new tools or resources, shall be subject to the Agreement. Continued use of the Platform after any such changes shall constitute your consent to such changes.

You may not use the Service for any illegal or unauthorized purpose. You must not, in the use of the Service, violate any laws in your jurisdiction (including but not limited to copyright or trademark laws).

#### **3. Description of the Platform**

**The Platform only may be used in connection with Bandwidth’s Two-Way SIP Trunk service(s); for clarity, any TN utilized in connection with the Platform only may be used in connection with Bandwidth’s Two-Way SIP Trunk service(s).** The Platform is a text messaging cloud service. Registered users of the Platform can send, receive, and backup text messages and contacts ("Content"), which will be stored by Bandwidth and/or its licensors. Content created or uploaded to Bandwidth will be made available on end clients or Services associated with the Platform. Content available on Bandwidth can be shared with other registered users or non-registered users at your discretion.

#### **4. Payments, Refunds, Upgrading, and Downgrading Terms**

1. Services are in advance on a monthly basis and are non-refundable. There will be no refunds or credits for partial months of service, upgrade/downgrade refunds, or refunds for months unused with a valid or activated account.

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*Bandwidth Texting – Terms of Service - Updated September 23, 2015*

2. All fees are exclusive of all taxes, levies, or duties imposed by taxing authorities and you shall be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes.
3. For any upgrade or downgrade changes made to your account, you will automatically be charged the new rate on your next billing cycle.
4. Downgrading your Service may cause the loss of content, features, or capacity of your Account. Bandwidth does not accept any liability for such losses.
5. **Cancellation and Termination**
  1. You are solely responsible for properly canceling your Account. An email or phone request to cancel your Account is not considered a cancellation. You can cancel your Account at any time by signing into your Account on the Website. Account settings are available in the Settings Window located under the Bandwidth menu labeled "Settings." The account settings offers a hassle free no questions asked cancellation button.
  2. All of your Content will be immediately deleted from the Service upon cancellation. This information cannot be restored in the future if you choose to register for the Service in the future.
  3. If you cancel the Service before the end of your current paid up month, your cancellation will take effect immediately and will not be charged again.
  4. Bandwidth, in its sole discretion, has the right to suspend or terminate your Account and refuse any and all current or future use of the Service, or any other Bandwidth service, for any reason at any time. Such termination of the Service will result in the deactivation or deletion of your Account or your access to your Account, and the forfeiture and relinquishment of all Content in your Account. Bandwidth reserves the right to refuse service to anyone for any lawful reason at any time.
  5. Bandwidth shall not be liable to you or to any third party due to your Account being cancelled or terminated, including Accounts terminated by Bandwidth due to violation of the Agreement.
6. **Modifications to the Service and Prices**
  1. Bandwidth and its licensors reserve 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.
  2. Prices of all Services, including but not limited to monthly subscription plan fees to the Service, are subject to change upon 30 day notice. Such notice may be provided at any time by posting the changes to Bandwidth Site (Bandwidth.com), the Service itself, or through email.
  3. Bandwidth shall not be liable to you or to any third party for any modification, price change, suspension or discontinuance of the Service.
7. **Copyright and Content Ownership**
  1. "Bandwidth" is a registered trademark of Bandwidth, Inc.
  2. Unless you have agreed otherwise in writing with Bandwidth, you may not use any of Bandwidth's trade names, trademarks, service marks, logos, icons, images, domain names, and other distinctive brand features.
  3. The look and feel of the Service and the products that considered within the Bandwidth Platform are copyrighted by Bandwidth and/or its licensors. All rights reserved. You may not duplicate, copy, or reuse any portion of the HTML/CSS, JavaScript, or visual design elements or concepts without express written permission by Bandwidth.
  4. We claim no copyright or intellectual property rights over the Content uploaded or created by you within the Service.
8. **Account Level Security**
  1. You are responsible for maintaining the security of your account and password. Bandwidth cannot and will not be liable for any loss or damage from your failure to comply with security obligation.
  2. You agree and understand that you are responsible for maintaining the confidentiality of your Bandwidth passwords.
  3. You agree that you will be solely responsible to Bandwidth for all activities that occur under your account.

4. If you become aware of any unauthorized use of your password or of your account, you agree to notify Bandwidth immediately at support@Bandwidth.com or via the Support Window on the website.

**9. Privacy Policy and Your Personal Information**

Bandwidth greatly respects your desire for privacy. Our Privacy Policy is written with your interests in mind. For more information on how we handle and protect your data please read a copy of the policy at <http://www.bandwidth.com/privacy-policy>. By using Bandwidth services you are consenting to the terms of our Privacy Policy and to the provision of your data to Bandwidth's licensor Zipwhip Incorporated. The use of your data by Bandwidth's licensor Zipwhip Incorporated will be governed by the privacy policy of Zipwhip Incorporated, which can be found at <https://www.zipwhip.com/legal#privacy-policy>.

**10. Exclusion of Warranties**

1. YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK AND THAT THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." WITHOUT WARRANTY OF ANY KIND AND BANDWIDTH HEREBY DISCLAIMS ALL WARRANTIES EITHER EXPRESSED OR IMPLIED.
2. BANDWIDTH DOESN'T REPRESENT OR WARRANT TO YOU THAT (A) YOUR USE OF THE SERVICES WILL MEET YOUR REQUIREMENTS, (B) YOUR USE OF THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, AND (C) ANY INFORMATION OBTAINED BY YOU AS A RESULT OF YOUR USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE.

**11. Limitation of Liability**

1. BANDWIDTH MAY TERMINATE OR MAKE CHANGES TO ALL OR ANY PORTION OF THE SERVICES AT ANY TIME AND WITHOUT NOTICE OR LIABILITY.
2. BANDWIDTH SHALL NOT BE LIABLE TO YOU FOR:
  1. ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL CONSEQUENTIAL OR EXEMPLARY DAMAGES WHICH MAY BE INCURRED BY YOU, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY. THIS SHALL INCLUDE, BUT NOT BE LIMITED TO, ANY LOSS OF PROFIT (WHETHER INCURRED DIRECTLY OR INDIRECTLY), ANY LOSS OF GOODWILL OR BUSINESS REPUTATION, ANY LOSS OF DATA SUFFERED, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR OTHER INTANGIBLE LOSS;
  2. THE DELETION OF, CORRUPTION OF, OR FAILURE TO STORE, ANY COMMUNICATIONS DATA MAINTAINED OR TRANSMITTED BY OR THROUGH YOUR USE OF THE SERVICES;
  3. YOUR FAILURE TO PROVIDE BANDWIDTH WITH ACCURATE ACCOUNT INFORMATION;
  4. YOUR FAILURE TO KEEP YOUR PASSWORD OR ACCOUNT DETAILS SECURE AND CONFIDENTIAL;

**12. General Conditions**

Bandwidth continuously makes changes to the Platform in order to provide the best possible experience for its users. You accept and agree that the form and nature of the Services which Bandwidth provides may change without prior notice. Continued use of the Platform after any such changes shall constitute your consent to such changes.

1. As part of this constant innovation Bandwidth may stop providing the Services (or any features within the Services) to you or to users at Bandwidth's sole discretion, without prior notice to you. You may stop using the Services at any time.

2. In order to access certain Services or use them on an ongoing basis, you may be required to provide information about yourself (such as mobile number or contact details) as part of the registration process for the Service, or as part of your continued use of the Platform. You agree that any registration information you give to Bandwidth will always be accurate, correct and up to date. Failure to provide the correct information shall result in account deactivation.
3. You accept and agree that for any reason Bandwidth may disable your account and prevent you from accessing the Platform, your account details or any data (i.e., messages, etc.) contained or associated with your account.
4. You agree not to access (or attempt to access) any of the Services by any means other than through the interface that is provided by Bandwidth, unless you have been specifically allowed to do so in a separate agreement with Bandwidth. You specifically agree not to access (or attempt to access) any of the Services through any automated means (including use of any scripts, web crawlers, spiders, robots, site/search retrieval application) especially for the creation of user accounts.
5. Messaging is not limited for inbound and outbound messages. Message flow, inbound and outbound, are limited as defined as described in the Service Order Form between Bandwidth and You. In addition, message ratio must be no more than three outbound messages to one inbound message. You accept and agree that limits may be set at any time, at Bandwidth's discretion. There is an enforced Acceptable Use Policy, which can be found at <http://www.bandwidth.com/acceptable-use-policy>, that you accept and must adhere to by agreeing to the Terms of Service. There are FCC, MMA, and CTIA policies, rules and laws regarding text messaging and/or spam that will be strictly enforced. You are solely responsible for reviewing and understanding all such policies, rules and laws. **You indemnify Bandwidth and its licensors for any and all claims, damages or losses arising due to any failure by you or anyone utilizing your account in violation of any such FCC, MMA, and CTIA policies, rules and laws regarding text messaging and/or spam.**
6. Messages shall be deemed to have been delivered when Bandwidth delivers the messages to the immediate destination, including mobile telephone networks, or any other intermediary server/API that is designated as the point of delivery for the message. Bandwidth does not guarantee delivery on behalf of mobile carriers.
7. Although Bandwidth provides extensive text messaging coverage including all major U.S. mobile carriers, Bandwidth makes no guarantees to its network coverage.
8. Your use of the Service is at your sole risk. The Service is provided on an "as is" and "as available" basis.
9. Support for Bandwidth services is only available in English.
10. You agree that you will not engage in any activity that interferes with, disrupts, damages, impairs, or disables the Services (or the servers and networks which are connected to the Services).
11. You understand that Bandwidth uses third party vendors and hosting partners to provide the necessary hardware, software, networking, storage, and related technology required to run the Service.
12. In addition to your obligations pursuant to the FCC, MMA, and CTIA policies, rules and laws regarding text messaging and/or spam as described above, You agree (a) not to harass or advocate harassment of another person or entity; (b) never to impersonate any person or entity or misrepresent in any way your affiliation with a person or entity; and (c) never to send text messages to unknown mobile numbers or to mass text unsolicited persons.
13. Verbal, physical, written or other abuse (including threats of abuse or retribution) of any Bandwidth customer, employee, or member will result in immediate account termination.
14. You understand that the technical processing and transmission of the Service, including your Content, may be transferred unencrypted and involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices.

15. You understand that the Services act only as a Platform for users to send text messages to a contact(s) mobile phone and that Bandwidth does not itself verify the content of messages sent by users or messages received by users. Bandwidth cannot and does not assume responsibility for the accuracy, completeness, safety, reliability, timeliness, innocuousness, legality or applicability of any text message sent to a mobile number or received by any user. Text message at your own risk.
16. Unless you have been specifically permitted to do so in a separate agreement with Bandwidth, you agree that you will not modify, adapt, reverse engineer, reproduce, duplicate, copy, sell, trade or resell the Services for any purpose.
17. You expressly understand and agree that Bandwidth shall not be liable 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 Bandwidth has been advised of the possibility of such damages), resulting from: (i) the use or the inability to use the service; (ii) 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; (iii) unauthorized access to or alteration of your transmissions or data; (iv) statements or conduct of any third party on the service; (v) or any other matter relating to the service.
18. You agree that you are solely responsible for (and that Bandwidth has no responsibility to you or to any third party for) any breach of your obligations under the Terms and for the consequences (including any loss or damage which Bandwidth may suffer) of any such breach.
19. If any court of law, having the jurisdiction to decide on this matter, rules that any provision of these Terms is invalid, then that provision will be removed from the Terms without affecting the rest of the Terms. The remaining provisions of the Terms will continue to be valid and enforceable.
20. The failure of Bandwidth to exercise or enforce any right or provision of the Terms of Service shall not constitute a waiver of such right or provision. The Agreement constitutes the entire agreement between you and Bandwidth and governs your use of the Service, superseding any prior agreements between you and Bandwidth (including, but not limited to, any prior versions of the Terms of Service, Privacy Policy, or Acceptable Use Policy). You agree that these Terms of Service and Your use of the Service are governed under Washington State law.
21. Your relationship with Bandwidth under the Terms, shall be governed by the laws of the State of North Carolina. You and Bandwidth agree to submit to the exclusive jurisdiction of the courts located within Wake County, North Carolina to resolve any legal matter arising from the Terms. You agree that Bandwidth shall still be allowed to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.
22. You shall defend Bandwidth against any claim, demand, suit or proceedings made or brought on against Bandwidth by a third party alleging that Your Content or Your use of the Service in violation of this Agreement, infringes or violates applicable law, and shall indemnify Bandwidth of any damages finally awarded against and for the reasonable attorney's fees incurred by, Bandwidth in connection with any such claim, demand, suit or proceeding; provided, that Bandwidth (a) promptly gives You written notice of the claim, demand, suit or proceeding; (b) gives You sole control of the defense and settlement of the claim, demand, suit or proceeding (provided that You may not settle any claim, demand, suit or proceeding unless the settlement unconditionally releases Bandwidth of all liability); and (c) provide to You all reasonable assistance, at Your expense.