Terms of Service Agreement

Welcome to TalkingPoints, the website and online service of TalkingPoints ("TalkingPoints," "we," or "us"). This page explains the terms by which you may use our online and/or mobile services, web site, and software provided on or in connection with the service (collectively the "Service"). By accessing or using the Service, you signify that you have read, understood, and agree to be bound by this Terms of Use Agreement ("Agreement") and to the collection and use of your information as set forth in the TalkingPoints Privacy Policy, which is incorporated herein by reference, whether or not you are a registered user of our Service. TalkingPoints reserves the right to make unilateral modifications to these terms and will provide notice of these changes as described below. This Agreement applies to all visitors, users, and others who access the Service ("Users"). Please note that any capitalized terms used but not defined herein may be defined in our Privacy Policy.

PLEASE READ THIS AGREEMENT CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION. THIS AGREEMENT CONTAINS A MANDATORY INDIVIDUAL ARBITRATION AND CLASS ACTION/JURY TRIAL WAIVER PROVISION THAT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS.

1. Use of Our Service

TalkingPoints offers an application that supports schools and teachers to meaningfully communicate with families through SMS messaging in their own languages and provides a tool by which teachers and schools can send and receive SMS messages with automatic translation, and also curated set of SMS messages that teachers can send to families.

A. Eligibility

This is a contract between you and TalkingPoints. You must read and agree to these terms before using the TalkingPoints Service. If you do not agree, you may not use the Service. You may use the Service only if you can form a binding contract with TalkingPoints, and only in compliance with this Agreement and all applicable local, state, national, and international laws, rules and regulations. Any use or access to the Service by anyone under 13 without consent from their legal guardian is strictly prohibited and in violation of this Agreement. The Service is not available to any Users previously removed from the Service by TalkingPoints.

B. TalkingPoints Service

Subject to the terms and conditions of this Agreement, you are hereby granted a non-exclusive, limited, non-transferable, freely revocable license to use the Service as permitted by the features of the Service. TalkingPoints reserves all rights not expressly granted herein in the Service and the TalkingPoints Content (as defined below). TalkingPoints may terminate this license at any time for any reason or no reason.

C. TalkingPoints Accounts

Your TalkingPoints account gives you access to the services and functionality that we may establish and maintain from time to time and in our sole discretion. We may maintain different types of accounts for different types of Users. If you open a TalkingPoints account on behalf of a school, organization, or other entity, then (a) "you" includes you and that entity, and (b) you represent and warrant that you are an authorized representative of the entity with the authority to bind the entity to this Agreement, and that you agree to this Agreement on the entity's behalf.] By connecting to TalkingPoints with a third-party service, you give us permission to access and use your information from that service as permitted by that service, and to store your log-in credentials for that service.

You may never use another User's account without permission. When creating your account, you must provide accurate and complete information, and you must keep this information up to date. You are solely responsible for the activity that occurs on your account, and you must keep your account password secure. We encourage you to use "strong" passwords (passwords that use a combination of upper and lower case letters, numbers and symbols) with your account. You must notify TalkingPoints immediately of any breach of security or unauthorized use of your account. TalkingPoints will not be liable for any losses caused by any unauthorized use of your account.

You may control your User profile and how you interact with the Service by changing the settings in your settings page. By providing TalkingPoints your email address you consent to our using the email address to send you Service-related notices, including any notices required by law, in lieu of communication by postal mail. We may also use your email address to send you other messages, such as changes to features of the Service and special offers. If you do not want to receive such email messages, you may opt out or change your preferences in your settings page. Opting out may prevent you from receiving email messages regarding updates, improvements, or offers.

D. **Service Rules**

You agree not to engage in any of the following prohibited activities: (i) copying, distributing, or disclosing any part of the Service in any medium, including without limitation by any automated or non-automated "scraping"; (ii) using any automated system, including without limitation "robots," "spiders," "offline readers," etc., to access the Service in a manner that sends more request messages to the TalkingPoints servers than a human can reasonably produce in the same period of time by using a conventional on-line web browser (except that TalkingPoints grants the operators of public search engines revocable permission to use spiders to copy publically available materials from our TalkingPoints Sites for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials); (iii) transmitting spam, chain letters, or other unsolicited email; (iv) attempting to interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running the Service; (v) taking any action that imposes, or may impose at our sole discretion an unreasonable or disproportionately large load on our infrastructure; (vi) uploading invalid data, viruses, worms, or other software agents through the Service; (vii) collecting or harvesting any personally identifiable information, including account names, from the Service; (viii) using the Service for any commercial solicitation purposes; (ix) impersonating another person or otherwise misrepresenting your affiliation with a person or entity, conducting fraud, hiding or attempting to hide your identity; (x) interfering with the

proper working of the Service; (xi) accessing any content on the Service through any technology or means other than those provided or authorized by the Service; or (xii) bypassing the measures we may use to prevent or restrict access to the Service, including without limitation features that prevent or restrict use or copying of any content or enforce limitations on use of the Service or the content therein.

We may, without prior notice, change the Service; stop providing the Service or features of the Service, to you or to Users generally; or create usage limits for the Service. We may permanently or temporarily terminate or suspend your access to the Service without notice and liability for any reason, including if in our sole determination you violate any provision of this Agreement, or for no reason. Upon termination for any reason or no reason, you continue to be bound by this Agreement.

You are solely responsible for your interactions with other TalkingPoints Users. We reserve the right, but have no obligation, to monitor disputes between you and other Users. TalkingPoints shall have no liability for your interactions with other Users, or for any User's action or inaction.

2. User Content

Some areas of the Service allow Users to post, communicate or provide content such as profile information, comments, questions, and other content or information (any such materials a User submits, posts, displays, or otherwise makes available on the Service is referred to as "User Content"). We claim no ownership rights over User Content created by you. The User Content you create remains yours; however, by providing or sharing User Content through the Service, you agree to allow others to view, edit, and/or share your User Content in accordance with your settings and this Agreement. TalkingPoints has the right (but not the obligation) in its sole discretion to remove any User Content that is shared via the Service.

You agree not to post User Content that: (i) may create a risk of harm, loss, physical or mental injury, emotional distress, death, disability, disfigurement, or physical or mental illness to you, to any other person, or to any animal; (ii) may create a risk of any other loss or damage to any person or property; (iii) seeks to harm or exploit children by exposing them to inappropriate content, asking for personally identifiable details or otherwise; (iv) may constitute or contribute to a crime or tort; (v) contains any information or content that we deem to be unlawful, harmful, abusive, racially or ethnically offensive, defamatory, infringing, invasive of personal privacy or publicity rights, harassing, humiliating to other people (publicly or otherwise), libelous, threatening, profane, obscene, or otherwise objectionable; (vi) contains any information or content that is illegal (including, without limitation, the disclosure of insider information under securities law or of another party's trade secrets); (vii) contains any information or content that you do not have a right to make available under any law or under contractual or fiduciary relationships; (viii) contains any information or content that you know is not correct and current or (ix) violates any school or other applicable policy, including those related to cheating or ethics. You agree that any User Content that you post does not and will not violate third-party rights of any kind, including without limitation any Intellectual Property Rights (as defined below) or rights of privacy. To the extent that your User Content contains music, you hereby represent that you are the owner of all the copyright rights, including without limitation the performance, mechanical, and sound recordings rights, with respect to each and every musical

composition (including lyrics) and sound recording contained in such User Content and have the power to grant the license granted below. TalkingPoints reserves the right, but is not obligated, to reject and/or remove any User Content that TalkingPoints believes, in its sole discretion, violates any of these provisions. You understand that publishing your User Content on the Service is not a substitute for registering it with the U.S. Copyright Office, the Writer's Guild of America, or any other rights organization.

For the purposes of this Agreement, "Intellectual Property Rights" means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction.

In connection with your User Content, you affirm, represent and warrant the following:

A. You have the written consent of each and every identifiable natural person in the User Content, if any, to use such person's name or likeness in the manner contemplated by the Service and this Agreement, and each such person has released you from any liability that may arise in relation to such use.

B. You have obtained and are solely responsible for obtaining all consents as may be required by law to post any User Content relating to third parties.

C. Your User Content and TalkingPoints's use thereof as contemplated by this Agreement and the Service will not violate any law or infringe any rights of any third party, including but not limited to any Intellectual Property Rights and privacy rights.

D. TalkingPoints may exercise the rights to your User Content granted under this Agreement without liability for payment of any guild fees, residuals, payments, fees, or royalties payable under any collective bargaining agreement or otherwise.

TalkingPoints takes no responsibility and assumes no liability for any User Content that you or any other User or third party posts, sends, or otherwise makes available over the Service. You shall be solely responsible for your User Content and the consequences of posting, publishing it, sharing it, or otherwise making it available on the Service, and you agree that we are only acting as a passive conduit for your online distribution and publication of your User Content. You understand and agree that you may be exposed to User Content that is inaccurate, objectionable, inappropriate for children, or otherwise unsuited to your purpose, and you agree that TalkingPoints shall not be liable for any damages you allege to incur as a result of or relating to any User Content.

3. User Content License Grant

By posting or otherwise making available any User Content on or through the Service, you expressly grant, and you represent and warrant that you have all rights necessary to grant, to TalkingPoints a royalty-free, sublicensable, transferable, perpetual, irrevocable, non-exclusive, worldwide license to use, reproduce, modify, publish, list information regarding, edit, translate,

distribute, syndicate, publicly perform, publicly display, and make derivative works of all such User Content and your name, voice, and/or likeness as contained in your User Content, in whole or in part, and in any form, media or technology, whether now known or hereafter developed, for use in connection with the Service and TalkingPoints's (and its successors' and affiliates') business, including without limitation for promoting and redistributing part or all of the Service (and derivative works thereof) in any media formats and through any media channels.

4. Mobile Software

A. **Mobile Software**. We may make available software to access the Service via a mobile device ("Mobile Software"). To use the Mobile Software you must have a mobile device that is compatible with the Mobile Software. TalkingPoints does not warrant that the Mobile Software will be compatible with your mobile device. You may use mobile data in connection with the Mobile Software and may incur additional charges from your wireless provider for these services. You agree that you are solely responsible for any such charges. TalkingPoints hereby grants you a non-exclusive, non-transferable, revocable license to use a compiled code copy of the Mobile Software for one TalkingPoints account on one mobile device owned or leased solely by you, for your personal use. You may not: (i) modify, disassemble, decompile or reverse engineer the Mobile Software, except to the extent that such restriction is expressly prohibited by law; (ii) rent, lease, loan, resell, sublicense, distribute or otherwise transfer the Mobile Software to any third party or use the Mobile Software to provide time sharing or similar services for any third party; (iii) make any copies of the Mobile Software; (iv) remove, circumvent, disable, damage or otherwise interfere with security-related features of the Mobile Software, features that prevent or restrict use or copying of any content accessible through the Mobile Software, or features that enforce limitations on use of the Mobile Software; or (v) delete the copyright and other proprietary rights notices on the Mobile Software. You acknowledge that TalkingPoints may from time to time issue upgraded versions of the Mobile Software, and may automatically electronically upgrade the version of the Mobile Software that you are using on your mobile device. You consent to such automatic upgrading on your mobile device, and agree that the terms and conditions of this Agreement will apply to all such upgrades. Any third-party code that may be incorporated in the Mobile Software is covered by the applicable open source or third-party license EULA, if any, authorizing use of such code. The foregoing license grant is not a sale of the Mobile Software or any copy thereof, and TalkingPoints or its third-party partners or suppliers retain all right, title, and interest in the Mobile Software (and any copy thereof). Any attempt by you to transfer any of the rights, duties or obligations hereunder, except as expressly provided for in this Agreement, is void. TalkingPoints reserves all rights not expressly granted under this Agreement. If the Mobile Software is being acquired on behalf of the United States Government, then the following provision applies. The Mobile Software will be deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, reproduction, release, performance, display or disclosure of the Service and any accompanying documentation by the U.S. Government will be governed solely by these Terms of Service and is prohibited except to the extent expressly permitted by these Terms of Service. The Mobile Software originates in the United States, and is subject to United States export laws and regulations. The Mobile Software may not be exported or re-exported to certain countries or those persons or entities prohibited from receiving exports from the United States. In addition, the Mobile Software may be subject to the import and export laws of other countries. You agree

to comply with all United States and foreign laws related to use of the Mobile Software and the TalkingPoints Service.

B. **Mobile Software from iTunes**. The following applies to any Mobile Software you acquire from the iTunes Store ("iTunes-Sourced Software"): You acknowledge and agree that this Agreement is solely between you and TalkingPoints, not Apple, and that Apple has no responsibility for the iTunes-Sourced Software or content thereof. Your use of the iTunes-Sourced Software must comply with the App Store Terms of Service. You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the iTunes-Sourced Software. In the event of any failure of the iTunes-Sourced Software to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the iTunes-Sourced Software to you; to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the iTunes-Sourced Software, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be solely governed by this Agreement and any law applicable to TalkingPoints as provider of the software. You acknowledge that Apple is not responsible for addressing any claims of you or any third party relating to the iTunes-Sourced Software or your possession and/or use of the iTunes-Sourced Software, including, but not limited to: (i) product liability claims; (ii) any claim that the iTunes-Sourced Software fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation; and all such claims are governed solely by this Agreement and any law applicable to TalkingPoints as provider of the software. You acknowledge that, in the event of any third-party claim that the iTunes-Sourced Software or your possession and use of that iTunes-Sourced Software infringes that third party's intellectual property rights, TalkingPoints, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by this Agreement. You and TalkingPoints acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of this Agreement as relates to your license of the iTunes-Sourced Software, and that, upon your acceptance of the terms and conditions of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement as relates to your license of the iTunes-Sourced Software against you as a third-party beneficiary thereof.

C. **Mobile Software from Google**. The following applies to any Mobile Software you acquire from the Google Play Store ("Google-Sourced Software"): (i) you acknowledge that the Agreement is between you and TalkingPoints only, and not with Google, Inc. ("Google"); (ii) your use of Google-Sourced Software must comply with Google's then-current Google Play Store Terms of Service; (iii) Google is only a provider of the Google Play Store where you obtained the Google-Sourced Software; (iv) TalkingPoints, and not Google, is solely responsible for its Google-Sourced Software; (v) Google has no obligation or liability to you with respect to Google-Sourced Software or the Agreement; and (vi) you acknowledge and agree that Google is a third-party beneficiary to the Agreement as it relates to TalkingPoints' Google-Sourced Software.

5. <u>Our Proprietary Rights</u>

Except for your User Content, the Service and all materials therein or transferred thereby, including, without limitation, software, images, text, graphics, illustrations, logos, patents, trademarks, service marks, copyrights, photographs, audio, videos, music, and User Content belonging to other Users (the "TalkingPoints Content"), and all Intellectual Property Rights related thereto, are the exclusive property of TalkingPoints and its licensors (including other Users who post User Content to the Service). Except as explicitly provided herein, nothing in this Agreement shall be deemed to create a license in or under any such Intellectual Property Rights, and you agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit or create derivative works from any TalkingPoints Content. Use of the TalkingPoints Content for any purpose not expressly permitted by this Agreement is strictly prohibited.

You may choose to or we may invite you to submit comments or ideas about the Service, including without limitation about how to improve the Service or our products ("Ideas"). By submitting any Idea, you agree that your disclosure is gratuitous, unsolicited and without restriction and will not place TalkingPoints under any fiduciary or other obligation, and that we are free to use the Idea without any additional compensation to you, and/or to disclose the Idea on a non-confidential basis or otherwise to anyone. You further acknowledge that, by acceptance of your submission, TalkingPoints does not waive any rights to use similar or related ideas previously known to TalkingPoints, or developed by its employees, or obtained from sources other than you.

6. TalkingPoints Property

The Service contains data, information, and other content not owned by you, such as reputational or status indicators ("TalkingPoints Property"). You understand and agree that regardless of terminology used, TalkingPoints Property represents a limited license right governed solely by the terms of this Agreement and available for distribution at TalkingPoints's sole discretion. TalkingPoints Property is not redeemable for any sum of money or monetary value from TalkingPoints at any time. You acknowledge that you do not own the account you use to access the Service, nor do you possess any rights of access or rights to data stored by or on behalf of TalkingPoints on TalkingPoints servers, including without limitation any data representing or embodying any or all of your TalkingPoints Property. You agree that TalkingPoints has the absolute right to manage, regulate, control, modify and/or eliminate TalkingPoints Property as it sees fit in its sole discretion, in any general or specific case, and that TalkingPoints will have no liability to you based on its exercise of such right. All data on TalkingPoints's servers are subject to deletion, alteration or transfer. NOTWITHSTANDING ANY VALUE ATTRIBUTED TO SUCH DATA BY YOU OR ANY THIRD PARTY, YOU UNDERSTAND AND AGREE THAT ANY DATA, ACCOUNT HISTORY AND ACCOUNT CONTENT RESIDING ON TALKINGPOINTS'S SERVERS, MAY BE DELETED, ALTERED, MOVED OR TRANSFERRED AT ANY TIME FOR ANY REASON IN TALKINGPOINTS'S SOLE DISCRETION, WITH OR WITHOUT NOTICE AND WITH NO LIABILITY OF ANY KIND. TALKINGPOINTS DOES NOT PROVIDE OR GUARANTEE, AND EXPRESSLY DISCLAIMS, ANY VALUE, CASH OR OTHERWISE, ATTRIBUTED TO ANY DATA RESIDING ON TALKINGPOINTS'S SERVERS.

7. No Professional Advice

If the Service provides professional information (for example, medical, legal, or financial), such information is for informational purposes only and should not be construed as professional advice. No action should be taken based upon any information contained in the Service. You should seek independent professional advice from a person who is licensed and/or qualified in the applicable area.]

8. Text Messaging

A. **Consent to Send Text Messages.** The Services helps schools communicate with parents by text message. You may only send text messages to parents or schools that have consented to receive such test messages from you. You are not permitted to send text messages to any user with whom you do not have a relationship and from whom you have not received explicit consent to send such messages. If you add anyone to your TalkingPoints account and send a text message through the Service, YOU REPRESENT AND WARRANT TO US THAT EACH PERSON YOU MESSAGE HAS CONSENTED TO RECEIVE TEXT MESSAGES FROM YOU AND TO RECEIVE MESSAGES FROM TALKINGPOINTS, OTHER MEMBERS OF YOUR CLASS OR SCHOOL. You further warrant and agree that you will promptly honor any opt-out requests you receive.

B. **Consent to Receive Messages.** From time to time, a coach or other user may wish to send you a text message. By signing up for TalkingPoints and providing your mobile number, you agree to receive text messages from members of the service.

You may incur additional charges from your wireless provider for these services. You agree that you are solely responsible for any such charges.

9. Privacy

We care about the privacy of our Users. You understand that by using the Services you consent to the collection, use and disclosure of your personally identifiable information and aggregate data as set forth in our Privacy Policy, and to have your personally identifiable information collected, used, transferred to and processed in the United States.

10. Security

[TalkingPoints cares about the integrity and security of your personal information. However, we cannot guarantee that unauthorized third parties will never be able to defeat our security measures or use your personal information for improper purposes. You acknowledge that you provide your personal information at your own risk.

11. Third-Party Links and Information

The Service may contain links to third-party materials that are not owned or controlled by TalkingPoints. TalkingPoints does not endorse or assume any responsibility for any such third-party sites, information, materials, products, or services. If you access a third-party website or service from the Service or share your User Content on or through any third-party website or

service, you do so at your own risk, and you understand that this Agreement and TalkingPoints's Privacy Policy do not apply to your use of such sites. You expressly relieve TalkingPoints from any and all liability arising from your use of any third-party website, service, or content, including without limitation User Content submitted by other Users. Additionally, your dealings with or participation in promotions of advertisers found on the Service, including payment and delivery of goods, and any other terms (such as warranties) are solely between you and such advertisers. You agree that TalkingPoints shall not be responsible for any loss or damage of any sort relating to your dealings with such advertisers.

12. Indemnity

You agree to defend, indemnify and hold harmless TalkingPoints and its subsidiaries, agents, licensors, managers, and other affiliated companies, and their employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the Service, including any data or content transmitted or received by you; (ii) your violation of any term of this Agreement, including without limitation your breach of any of the representations and warranties above; (iii) your violation of any third-party right, including without limitation any right of privacy or Intellectual Property Rights; (iv) your violation of any applicable law, rule or regulation; (v) User Content or any content that is submitted via your account including without limitation misleading, false, or inaccurate information; (vi) your willful misconduct; or (vii) any other party's access and use of the Service with your unique username, password or other appropriate security code.

13. No Warranty

THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. USE OF THE SERVICE IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE IS PROVIDED WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM TALKINGPOINTS OR THROUGH THE SERVICE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN. WITHOUT LIMITING THE FOREGOING, TALKINGPOINTS, ITS SUBSIDIARIES, ITS AFFILIATES, AND ITS LICENSORS DO NOT WARRANT THAT THE CONTENT IS ACCURATE, RELIABLE OR CORRECT; THAT THE SERVICE WILL MEET YOUR REQUIREMENTS; THAT THE SERVICE WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE SERVICE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DOWNLOADED AT YOUR OWN RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR MOBILE DEVICE OR LOSS OF DATA THAT RESULTS FROM SUCH DOWNLOAD OR YOUR USE OF THE SERVICE.

TALKINGPOINTS DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE TALKINGPOINTS SERVICE OR ANY HYPERLINKED WEBSITE OR SERVICE, AND TALKINGPOINTS WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES.

FEDERAL LAW, SOME STATES, PROVINCES AND OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION AND LIMITATIONS OF CERTAIN IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. THIS AGREEMENT GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE. THE DISCLAIMERS AND EXCLUSIONS UNDER THIS AGREEMENT WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

14. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL TALKINGPOINTS, ITS AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES, SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, ARISING OUT OF OR RELATING TO THE USE OF, OR INABILITY TO USE, THIS SERVICE. UNDER NO CIRCUMSTANCES WILL TALKINGPOINTS BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICE OR YOUR ACCOUNT OR THE INFORMATION CONTAINED THEREIN.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TALKINGPOINTS ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT; (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO OR USE OF OUR SERVICE; (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION STORED THEREIN; (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICE; (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE THAT MAY BE TRANSMITTED TO OR THROUGH OUR SERVICE BY ANY THIRD PARTY; (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH THE SERVICE; AND/OR (VII) USER CONTENT OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY. IN NO EVENT SHALL TALKINGPOINTS, ITS AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES, SUPPLIERS, OR LICENSORS BE LIABLE TO YOU FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS,

DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING THE AMOUNT YOU PAID TO TALKINGPOINTS HEREUNDER OR $100.00, WHICHEVER IS GREATER.

THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF TALKINGPOINTS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. THIS AGREEMENT GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE. THE DISCLAIMERS, EXCLUSIONS, AND LIMITATIONS OF LIABILITY UNDER THIS AGREEMENT WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

The Service is controlled and operated from facilities in the United States. TalkingPoints makes no representations that the Service is appropriate or available for use in other locations. Those who access or use the Service from other jurisdictions do so at their own volition and are entirely responsible for compliance with all applicable United States and local laws and regulations, including but not limited to export and import regulations. You may not use the Service if you are a resident of a country embargoed by the United States, or are a foreign person or entity blocked or denied by the United States government. Unless otherwise explicitly stated, all materials found on the Service are solely directed to individuals, companies, or other entities located in the United States.

15. Governing Law, Arbitration, and Class Action/Jury Trial Waiver

A. **Governing Law.** You agree that: (i) the Service shall be deemed solely based in California; and (ii) the Service shall be deemed a passive one that does not give rise to personal jurisdiction over us, either specific or general, in jurisdictions other than California. This Agreement shall be governed by the internal substantive laws of the State of California, without respect to its conflict of laws principles. The parties acknowledge that this Agreement evidences a transaction involving interstate commerce. Notwithstanding the preceding sentences with respect to the substantive law, any arbitration conducted pursuant to the terms of this Agreement shall be governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16). The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. You agree to submit to the personal jurisdiction of the federal and state courts located in Santa Clara County, California for any actions for which we retain the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of our copyrights, trademarks, trade secrets, patents, or other intellectual property or proprietary rights, as set forth in the Arbitration provision below, including any provisional relief required to prevent irreparable harm. You agree that Santa Clara County, California is the proper forum for any appeals of an arbitration award or for trial court proceedings in the event that the arbitration provision below is found to be unenforceable.

B. **Arbitration.** READ THIS SECTION CAREFULLY BECAUSE IT REQUIRES THE PARTIES TO ARBITRATE THEIR DISPUTES AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM TALKINGPOINTS. For any dispute with TalkingPoints, you agree to first contact us at hello@talkingpts.org and attempt to resolve the dispute with us informally. In the unlikely event that TalkingPoints has not been able to resolve a dispute it has with you after sixty (60) days, we each agree to resolve any claim, dispute, or controversy (excluding any claims for injunctive or other equitable relief as provided below) arising out of or in connection with or relating to this Agreement, or the breach or alleged breach thereof (collectively, "Claims"), by binding arbitration by JAMS, under the Optional Expedited Arbitration Procedures then in effect for JAMS, except as provided herein. JAMS may be contacted at www.jamsadr.com. The arbitration will be conducted in Santa Clara County, California, unless you and TalkingPoints agree otherwise. If you are using the Service for commercial purposes, each party will be responsible for paying any JAMS filing, administrative and arbitrator fees in accordance with JAMS rules, and the award rendered by the arbitrator shall include costs of arbitration, reasonable attorneys' fees and reasonable costs for expert and other witnesses. If you are an individual using the Service for non-commercial purposes: (i) JAMS may require you to pay a fee for the initiation of your case, unless you apply for and successfully obtain a fee waiver from JAMS; (ii) the award rendered by the arbitrator may include your costs of arbitration, your reasonable attorney's fees, and your reasonable costs for expert and other witnesses; and (iii) you may sue in a small claims court of competent jurisdiction without first engaging in arbitration, but this does not absolve you of your commitment to engage in the informal dispute resolution process. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Nothing in this Section shall be deemed as preventing TalkingPoints from seeking injunctive or other equitable relief from the courts as necessary to prevent the actual or threatened infringement, misappropriation, or violation of our data security, Intellectual Property Rights or other proprietary rights.

C. **Class Action/Jury Trial Waiver.** WITH RESPECT TO ALL PERSONS AND ENTITIES, REGARDLESS OF WHETHER THEY HAVE OBTAINED OR USED THE SERVICE FOR PERSONAL, COMMERCIAL OR OTHER PURPOSES, ALL CLAIMS MUST BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION, COLLECTIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION OR OTHER REPRESENTATIVE PROCEEDING. THIS WAIVER APPLIES TO CLASS ARBITRATION, AND, UNLESS WE AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS. YOU AGREE THAT, BY ENTERING INTO THIS AGREEMENT, YOU AND TALKINGPOINTS ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION, COLLECTIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION, OR OTHER REPRESENTATIVE PROCEEDING OF ANY KIND.

16. General

A. **Assignment.** This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by TalkingPoints without restriction. Any attempted transfer or assignment in violation hereof shall be null and void.

B. **California Residents.** The provider of services is TalkingPoints, 509 Webster Street, San Francisco, CA 94117. f you are a California resident, in accordance with Cal. Civ. Code §1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 1625 North Market Blvd., Suite N 112 Sacramento, CA 95834, or by telephone at (800) 952-5210 or (916) 445-1254.

C. **Notification Procedures and Changes to the Agreement**. TalkingPoints may provide notifications, whether such notifications are required by law or are for marketing or other business related purposes, to you via email notice, written or hard copy notice, or through posting of such notice on our website, as determined by TalkingPoints in our sole discretion. TalkingPoints reserves the right to determine the form and means of providing notifications to our Users, provided that you may opt out of certain means of notification as described in this Agreement. TalkingPoints is not responsible for any automatic filtering you or your network provider may apply to email notifications we send to the email address you provide us. TalkingPoints may, in its sole discretion, modify or update this Agreement from time to time, and so you should review this page periodically. When we change the Agreement in a material manner, we will update the 'last modified' date at the bottom of this page. Your continued use of the Service after any such change constitutes your acceptance of the new Terms of Use. If you do not agree to any of these terms or any future Terms of Use, do not use or access (or continue to access) the Service.

D. **Entire Agreement/Severability**. This Agreement, together with any amendments and any additional agreements you may enter into with TalkingPoints in connection with the Service, shall constitute the entire agreement between you and TalkingPoints concerning the Service. If any provision of this Agreement is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect, except that in the event of unenforceability of the universal Class Action/Jury Trial Waiver, the entire arbitration agreement shall be unenforceable.

E. **No Waiver**. No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term, and TalkingPoints's failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision.

F. **Contact.** Please contact us at hello@talkingpts.org with any questions regarding this Agreement.

This Agreement was last modified on February 20th, 2017.