

Terms of Service

INTRODUCTION

Sum-Ware, Inc. d/b/a DeskKing (“DeskKing” or “we”) is providing users (“User”) with access to its telephone messaging services and web site, (the “DeskKing Service”), subject to the terms and conditions of this User Agreement (the “Terms of Service” or “User Agreement”). Any new features, changes, updates or improvements of the DeskKing Service, and the availability of the DeskKing Service, shall be subject to the terms of this Terms of Service.

1. YOUR ACCEPTANCE OF THIS USER AGREEMENT

Please read the User Agreement carefully before using or registering for the DeskKing Service. By using or registering for the DeskKing Service, you agree to be bound by the terms and conditions set forth. If you do not wish to be bound by these terms and conditions, you may not access or use the DeskKing Service.

2. MODIFICATION OF TERMS

We reserve the right to modify and restate the terms and conditions of the User Agreement, and modification(s) shall be effective immediately upon being posted at DeskKing.net.

Unless explicitly stated otherwise, any new features that augment or enhance the current DeskKing Service, shall be subject to the User Agreement. You understand and agree that the DeskKing Service is provided “AS-IS” and that DeskKing assumes no responsibility for the timeliness, deletion, mis-delivery or failure to store or deliver any User communications or personalized information.

You are responsible for reviewing these terms and conditions regularly. Your continued use of the DeskKing Service shall be deemed to be your conclusive acceptance of all modifications to the User Agreement.

3. PRIVACY POLICY

By using or registering for the DeskKing Service you acknowledge that you have read and accept the Privacy Policy. Before using or registering for the DeskKing Service, please carefully read the DeskKing Privacy Policy. A link to the DeskKing Privacy Policy is on the bottom of each page of DeskKing.net.

4. REGISTRATION INFORMATION

You agree, as a condition of your use of the DeskKing Service, to provide DeskKing with accurate and complete information when registering for or using the DeskKing Service, and to update and maintain such information. DeskKing has the right to suspend, restrict or terminate your use of the DeskKing Service and to refuse any future use of all or portions of the DeskKing Service if DeskKing has reason to believe that you have failed to comply with these requirements.

5. MINIMUM AGE

If you are under the age of eighteen, you are prohibited from using or registering for the DeskKing Service. By using or registering for the DeskKing Service, you warrant to DeskKing that you are above the age of eighteen.

6. ACCOUNT SECURITY

When you are registered, you will establish a password. You are responsible for protecting the confidentiality of your password, and you are fully responsible for all activities that occur under your password.

7. RESTRICTION AND MODIFICATION OF SERVICE

You agree that DeskKing may limit your use of the DeskKing Service, including without limitation the frequency and duration for which you may access the DeskKing Service, and that DeskKing has no responsibility or liability for any unavailability or limitation on use of the DeskKing Service. In addition, DeskKing reserves the right at any time to limit: access to, modify, change or discontinue the DeskKing Service, or any part thereof, with or without notice. You agree that DeskKing shall not be liable to you or to any third party for any modification, suspension or discontinuance of the DeskKing Service. You acknowledge and agree that DeskKing may establish general practices and limits, which may not be published, concerning the use of the DeskKing Service. You agree that DeskKing has no responsibility or liability for the deletion or failure to store any communications maintained or transmitted by the DeskKing Service. You acknowledge that DeskKing reserves the right to terminate any inactive or dormant account(s). You agree and DeskKing reserves the right to change these general practices and limits at any time, in our sole discretion, with or without notice.

8. YOUR CONDUCT

As a condition of your use of the DeskKing Service, you agree and warrant to DeskKing that you will not use the DeskKing Service for any purpose that is unlawful or prohibited by the User Agreement. You may not use the DeskKing Service in any manner that could damage, impair, disable or overburden the DeskKing Service, interfere in any way with DeskKing's rights, interfere in any way with any other user's use and enjoyment of the DeskKing Service, or otherwise infringe on any person's rights. Specifically, you agree and warrant to DeskKing that:

- You will not use, or attempt to use, the DeskKing Service to convey any information that may be considered unlawful, harassing, libelous, abusive, threatening, obscene, hateful, offensive, harmful, vulgar, distasteful, defamatory, indecent, objectionable, or invasive of another person's privacy or proprietary rights.
- You will follow the letter and spirit of the terms of the User Agreement and all applicable laws.
- You will not use, or attempt to use, the DeskKing Service in connection with any junk messages, spamming or messages that are duplicative or unsolicited in nature.
- You will not send, or attempt to send, messages to emergency lines, to any health care facility or similar establishment, to numbers assigned to radio common carrier services or to any service for which the called party is charged for the call.

- You will not transmit, or attempt to transmit, any material that may infringe the contractual, fiduciary, intellectual property rights, or other rights of third parties, including trademark, copyright or the right of publicity.
- You will not impersonate, or attempt to impersonate, any other person, falsify contact information, misrepresent a relationship with any person or entity, including misrepresenting a relationship with DeskKing, or otherwise attempt to mislead others as to the identity of the sender or the origin of a message.
- You will not resell, or attempt to resell, the use of the DeskKing Service without express, prior written consent/permission from DeskKing.
- You will not collect, or attempt to collect, or store information about the DeskKing Service or other users, including contact information, without their consent.
- You will not interfere, or attempt to interfere, with or disrupt connections to the DeskKing Service or violate the regulations, policies or procedures of such connections.
- You will not attempt to gain unauthorized access to the DeskKing Service, other accounts, computer systems or networks connected to the DeskKing Service.
- You agree and DeskKing retains the right, at its sole discretion, to determine whether or not User's conduct is consistent with the letter and spirit of the User Agreement. DeskKing may immediately terminate User's DeskKing account if User's conduct is found to be inconsistent with this User Agreement.

9. NO SPAM AND CONSENT TO DAMAGES

DeskKing will immediately terminate any account which it believes, in its sole discretion, is transmitting or is otherwise connected with any spam or other unsolicited messaging activities. Activities such as sending spam or other unsolicited messages can cause harm to DeskKing (and our customer base) in numerous ways including, but not limited to, damaging the DeskKing brand name, damaging our reputation for delivering relevant messages, damaging our reputation for privacy, damaging our ability to attract and retain customers, and damaging other consumer, customer and business goals, activities, or relationships. DeskKing retains sole responsibility and discretion for calculating losses; because these and other damages are often difficult to quantify, if actual damages cannot be reasonably calculated by DeskKing; then you agree to pay DeskKing liquidated damages of \$5.00 for each piece of spam or unsolicited message transmitted from or otherwise connected with your DeskKing account; otherwise, you agree to pay DeskKing's actual damages, to the extent such actual damages can be reasonably calculated by DeskKing.

10. TEXT MESSAGE COMPLIANCE WITH MOBILE MARKETING ASSOCIATION

User agrees that all marketing or sales related text messages will comply with policies and guidelines for the Mobile Marketing Association. More information can be found at <http://mmaglobal.com/policies>.

11. COMPLIANCE WITH FEDERAL AND STATE REGULATIONS

User agrees to comply with the anti-solicitation provisions of the Federal Telephone Consumer Protection Act of 1991, and any amendments thereto, at 47 U.S.C. § 227, the Federal

Communications Commission's implementing regulations, at 47 CFR § 64.1200 et seq., the Federal Trade Commission's Telemarketing Sales Rule including the August 2008 Amendment at 16 CFR Part 310, and any other similar laws. User agrees not to violate these, or any other applicable anti-solicitation laws, and represents and warrants that its use of the DeskKing Service will not cause DeskKing to violate these or other similar laws.

User agrees to comply with the anti-solicitation provisions of the Federal Telephone Consumer Protection Act of 1991, and any amendments thereto, at 47 U.S.C. § 227, the Federal Communications Commission's implementing regulations, at 47 CFR § 64.1200 et seq., and any other similar laws. User agrees not to violate these, or any other applicable anti-solicitation laws, and represents and warrants that its use of the DeskKing Service will not cause DeskKing to violate these or other similar laws.

User agrees that it is the sole responsibility of User to abide by any laws defined by the State or Federal Government in which DeskKing Services will be applicable. User understands and agrees that DeskKing will not be held responsible for damages to the User or any third party incurred due to User's failure to abide by State and/or Federal laws. Please refer to the Telephone Consumer Protection Act of 1991. You may visit the Federal Communications Commission Web site (fcc.gov) and the Federal Trade Commission Web site (ftc.gov). Please refer to the appropriate State Attorneys General office or other applicable offices for telemarketing rules and or regulations pertaining to your intended application and use of the DeskKing Service.

12. NO RESPONSIBILITY FOR CONTENT

As part of the DeskKing Service, DeskKing may offer User access to communications, media and commerce services. DeskKing does not guarantee the accuracy, integrity, quality or appropriateness of any messages, communications, information, data, text, music, sound, or other materials ("Content"), whether publicly posted or privately transmitted through the DeskKing Service. You acknowledge that the DeskKing Service simply acts as a passive conduit for the distribution and transmission of information. You acknowledge that DeskKing has no obligation to screen, preview, or monitor such Content. By using the DeskKing Service, you agree that it is solely YOUR RESPONSIBILITY to evaluate the accuracy, usefulness, completeness, or appropriateness of any Content that you send, receive, access, post, or otherwise transmit through the DeskKing Service, including Content that may be offensive, indecent or objectionable. Under no circumstances will DeskKing be liable in any way for any Content, including, but not limited to, for any errors or omissions in any Content, or for any loss or damage of any kind incurred as a result of the use of any Content sent, accessed, posted or otherwise transmitted via the DeskKing Service.

13. SERVICE FEES AND CHARGES

The basic account fees ("Service Fees") shall be provided at the rates set out in the DeskKing pricing plan at the time of subscription, plus applicable taxes, fees, and surcharges. DeskKing may modify subscription Service Fees at renewal periods.

14. SUBSCRIPTION BILLING

Service Fees for subscription users of the DeskKing Service will be billed each month. You will receive the bill on or about the 10th day of the month and payment is due upon receipt.

If for any reason payment is not received, DeskKing will assess a late payment charge of 1.5% per month, or 18% annually (or the highest amount allowed by law, whichever is lower) on the amount due. The total amount of the late payment, and the late charge, shall be due and payable immediately. User is responsible for any fees, including attorney and collection fees that DeskKing may incur in its efforts to collect any Service Fees, surcharges and late payment charges owing from the User. Additionally, DeskKing reserves the right to immediately and without notice terminate the account of any User with a past due balance.

DeskKing reserves the right to change the billing process upon providing 30 days notice in writing or via email.

15. TERM AND TERMINATION

DeskKing Service subscriptions shall automatically renew on a monthly basis at the rate indicated on the pricing plans page of DeskKing.net. You may terminate the DeskKing Service at anytime upon providing DeskKing 30 days written notice.

16. LIABILITY DISCLAIMER

YOU AGREE THAT:

- A. IF YOU USE THE DESKKING SERVICE, YOU DO SO AT YOUR OWN AND SOLE RISK. THE DESKKING SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. DESKKING EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. IN THE EVENT OF A CRITICAL EMERGENCY, REGULAR DESKKING.NET MESSAGING SERVICES MAY TEMPORARILY BE PRE-EMPTED TO PROVIDE SERVICE TO CLIENTS WITH EMERGENCY-RELATED NEEDS.
- B. DESKKING DOES NOT WARRANT THAT (i) THE DESKKING SERVICE WILL MEET YOUR REQUIREMENTS, (ii) THE DESKKING SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE DESKKING SERVICE WILL BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE DESKKING SERVICE WILL MEET YOUR EXPECTATIONS, (v) ANY INFORMATION YOU PROVIDE OR DESKKING COLLECTS WILL NOT BE DISCLOSED, OR (vi) ANY ERRORS IN ANY DATA OR SOFTWARE WILL BE CORRECTED. YOU ARE ESPECIALLY ADVISED NOT TO USE OR RELY ON THE DESKKING SERVICE AND INFORMATION OR ANY OTHER PROGRAM, INFORMATION OR SERVICE WHATSOEVER RELATED THERETO FOR "CONTENT SENSITIVE" OR "MISSION CRITICAL" APPLICATIONS AND USE. "CONTENT SENSITIVE" SHALL MEAN ANY INFORMATION OR DATA YOU DO NOT WISH TO BE ACCESSIBLE TO OTHER USERS. "MISSION CRITICAL" APPLICATIONS AND USE SHALL MEAN APPLICATIONS AND USE THAT MAY RESULT IN DAMAGE.

- C. IF YOU ACCESS OR TRANSMIT ANY CONTENT THROUGH THE USE OF THE DESKING SERVICE, YOU DO SO AT YOUR OWN DISCRETION AND YOUR SOLE RISK. YOU ARE SOLELY RESPONSIBLE FOR ANY LOSS OR DAMAGE TO YOU IN CONNECTION WITH SUCH ACTIONS.
- D. NO DATA, INFORMATION OR ADVICE OBTAINED BY YOU IN ORAL OR WRITTEN FORM FROM DESKING OR THROUGH OR FROM THE DESKING SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN.

17. LIMITATION OF LIABILITY

YOU EXPRESSLY AGREE THAT DESKING SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (EVEN IF DESKING HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (i) THE USE OR INABILITY TO USE THE DESKING SERVICE; (ii) THE COST OF ANY SUBSTITUTE GOODS AND SERVICES PURCHASED TO REPLACE ANY GOODS OR SERVICES PURCHASED OR OBTAINED AS A RESULT OF ANY INFORMATION OBTAINED FROM OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE DESKING SERVICE; (iii) DISCLOSURE OF, UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR INFORMATION OR MESSAGES; (iv) STATEMENTS OR CONDUCT OF ANY SERVICE PROVIDERS OR OTHER THIRD PARTY ON THE DESKING SERVICE; OR (v) ANY OTHER MATTER RELATING TO THE DESKING SERVICE.

18. INDEMNIFICATION

You agree to indemnify, defend and hold harmless DeskKing, its officers, directors, owners, employees, agents, other Service Providers, vendors or customers from and against all losses, liabilities, expenses, damages and costs, including reasonable attorneys' fees resulting from any violation of the User Agreement by you or any harm you may cause to anyone. You agree and we reserve the right, at your expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you.

19. PROPRIETARY RIGHTS

You acknowledge and agree that the DeskKing Service and any necessary software used in connection with the DeskKing Service and Service Providers contain proprietary and confidential information that are protected by applicable intellectual property and other laws. You further acknowledge and agree that Content contained in sponsor advertisements or information presented to you through the DeskKing Service or other users is protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. You may not, and agree not to, modify, reformat, copy, display, distribute, transmit, publish, license, create derivative works from, transfer or sell any information, products or services obtained from the DeskKing Service, except as set forth herein. DeskKing, the DeskKing logo and other DeskKing logos, product and service names may be trademarks, service marks or other intellectual property of DeskKing (the "DeskKing Marks"). You agree not to display or use the DeskKing Marks in any manner without the prior, express written permission of DeskKing.

20. NOTICE

You agree that DeskKing may communicate any notices to you, including notices of changes to the User Agreement, through email, regular mail or by posting of those notices on DeskKing.net or through the DeskKing Service.

21. ENTIRE AGREEMENT

The User Agreement governs your use of the DeskKing Service. This User Agreement, your pricing plan, and your payment agreement constitute the entire agreement between you and DeskKing. They supersede any prior agreements between you and DeskKing. Additional terms and conditions may apply when you use the services of Service Providers and others. These additional terms will not reduce, diminish, or eliminate any rights DeskKing possesses with respect to this User Agreement.

22. GOVERNING LAW AND ARBITRATION

The User Agreement and the relationship between you and DeskKing shall be governed by the laws of the State of Nevada without regard to its conflict of law provisions. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the DeskKing Service or to the terms of this User Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred. You agree to submit any dispute with DeskKing exclusively to final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The location of any arbitration shall be in Carson City, Nevada. You agree any arbitrator shall not have the authority to award punitive damages. You agree to be bound by any ruling in such arbitration proceeding and that such ruling shall be enforceable in any court of competent jurisdiction.

23. MISCELLANEOUS

Any failure by DeskKing to exercise any rights or enforce any of the terms of this User Agreement shall not constitute a waiver of such rights or terms. If any portion of the User Agreement is found by an arbitrator or a court of competent jurisdiction to be invalid, the arbitrator or court should nevertheless give effect to the parties' intentions expressed herein. All other provisions of the User Agreement remain in full force and effect.

Last Updated January 8, 2014