

## OD SURGE ALERT TERMS AND CONDITIONS

PLEASE READ CAREFULLY. THIS PAGE SETS FORTH THE LEGALLY BINDING TERMS AND CONDITIONS FOR YOUR ACCESS AND USE OF THE OD SURGE ALERT SERVICE

These Terms and Conditions govern your use of the OD SURGE ALERT services, site including both mobile and any online application (“OD SURGE ALERT™ platform”). Ascend Innovations, Inc. (“Ascend”) provides the OD SURGE ALERT platform for certain health related notification and messaging (“Texts”) that allows those wishing to send Texts through the OD SURGE ALERT platform” such as public health organizations (“Agencies”) to promptly alert members of their communities that opt to receive the Texts (Subscribers) about important health related events and developments like foodborne illness, accidental drug overdose increases or communicable disease outbreaks.

Agencies using the platform may customize the content and control the timing of the Texts sent to inform their Subscribers.

Agencies are solely responsible for the content of its Texts and shall have sole responsibility and liability for its messages and communications. Ascend merely provides a platform for facilitating the sending of the Agencies Texts.

Ascend does not initiate, send, or generate any Texts for the Agencies. Ascend does not warrant the information provided in any Text is complete, accurate, reliable, current, or error-free. Although Ascend does not assume the duty or obligation to monitor messages, Ascend reserves the absolute discretion, to monitor any and all Texts created or sent by an Agencies through OD SURGE ALERT platform” at any time without prior notice to ensure that they conform to any agreement(s) between Ascend and the applicable Agencies. All Texts are to be informational in nature and related to health and welfare of Subscribers. All messages will contain “STOP” or “unsubscribe” in order to allow recipients to “opt-out” of receiving future messages.

The Texts initiated by the Agencies using the OD SURGE ALERT platform shall be manually prepared and sent by the Agencies. Agencies shall not send any messages through random dialing nor generate random or sequential phone numbers for purposes of sending Texts. Agencies are solely responsible for complying with all applicable laws.

OD SURGE ALERT may NOT be used for sending any unsolicited messages to persons that have not opted in. OD SURGE ALERT is to be used only for sending Text to individuals over 13 and located within the United States.

Agencies utilizing the OD SURGE ALERT platform grant Ascend a limited, non-exclusive, non-transferable, (other than to sublicense to Ascend agents working on the Platform) worldwide, royalty-free license, during term of use, to use and distribute any and all messages, data, text, and all other materials and information which is submitted through the OD SURGE ALERT Platform including, but not limited to, the Texts and any Agencies trademarks, trade names and service marks as necessary for the proper operation of the OD SURGE ALERT platform.

Except as otherwise provided herein, Ascend will: use commercially reasonable efforts to make the Platform available twenty-four (24) hours a day, seven (7) days a week, except for planned downtime, or any unavailability caused by circumstances beyond Ascend's reasonable control, including but not limited to acts of God, epidemics, government regulations, natural disasters, civil unrest, acts of terror, strikes or other labor issues, internet availability or service, or any other similar causes.

Ascend reserves the right, but does not have the obligation, to suspend or terminate an account at any time, at Ascend's sole discretion, and without prior warning if it is reasonably believed to be in violation of any provision in these Terms and Conditions or applicable law, including but not limited to any anti-spam laws and regulations regardless of whether specifically described herein. Ascend also reserves the right to terminate access to the OD SURGE ALERT platform at any time and immediately for conduct that is deemed harmful to the interests of Ascend or any of its parent or subsidiary entities. Ascend shall not be liable to any Subscriber if an Agency's account is terminated.

Subject to these Terms and Conditions, Subscribers will receive Texts until such time as the Subscriber cancels the subscription or the applicable Agency no longer provides Texts through the OD SURGE ALERT platform, or Ascend discontinues providing services from the Agency or to Subscriber. Subscriber has the right and ability to cancel or change their subscription at any time upon using the link in the Texts. If a Subscriber is unable to connect through the link to cancel or stop Texts, the Subscriber may contact Ascend by email at [hello@ascend-innovations.com](mailto:hello@ascend-innovations.com).

Ascend's practices regarding the collection and use of personal information are set forth in the [Privacy Policy](#). By using OD SURGE ALERT platform, Agency and Subscriber Platform, not only agree to these Terms and Conditions but also acknowledge and accept said Privacy Policy and consent to the collection and use of data in accordance with the Privacy Policy.

The only personal information that Ascend may collect for a Subscriber is the mobile number or email and zip code. Ascend may collect information relating to Agency from such Agency. Subscriber and Agency grant Ascend the right to process, store, access, use, transmit, copy, display, disclose or modify such data, as reasonably necessary for Ascend to operate the OD SURGE ALERT platform. Subscriber is solely responsible for the accuracy of the Subscriber Data. Subscriber acknowledges that Ascend reserves the right, share Subscriber Data with applicable Agency and vice versa and that Ascend and/or Agency may review and utilize Subscriber Data for public health purpose including but not limited to compiling aggregate statistics relating to Ascend's or Agency's purposes. Subscriber agrees that Ascend and Agency may obtain and aggregate technical and other data about Subscriber's use of the Services that is non-personally identifiable to Subscriber to analyze, improve, support and operate the OD SURGE ALERT platform.

Subscribers are responsible for obtaining and maintaining any mobile phone or other device(s) and other equipment and software and all internet/Wi Fi/mobile service, needed for access to and use of the OD SURGE ALERT platform and for all charges related to them.

Standard messaging, data, and other fees may be charged by your carrier to participate in OD SURGE ALERT services. Fees and charges may appear on a User's wireless bill or be deducted from Subscriber's pre-paid balance. Subscriber's carrier may prohibit or restrict certain wireless features or they may be incompatible with User's carrier or wireless Device.

To the extent that the OD SURGE ALERT platform contains items from Ascend and from its licensors and other third parties, including but not limited to software, applications, source codes, object codes, layouts, data files, scripts, images, designs and graphics, URLs, technology, interactive features and certain copyrighted material, trademarks, trade names, and service marks and other forms of intellectual property, all such content are owned by or licensed to Ascend or its licensors or third parties. All right, title, and interest in and to these item are vested in Ascend or its licensors, or otherwise used with permission of the third parties, and is protected by applicable copyright, trademark, patent, or other intellectual property rights and laws to the fullest extent.

All Subscribers and Agencies agree that they will not: (i) reverse engineer, decompile, disassemble, reverse assemble, modify any source code or object code or any software or other products on the platform, or attempt to gain access to any restricted portion of the Platform (ii) engage in any unlawful, offensive, obscene, lewd, lascivious, threatening, harassing, or abusive activities that violate any right of any third party, or that are deemed inappropriate by Ascend in connection with the use of the OD SURGE ALERT platform; (iii) engage in any activity that interferes with another Subscriber's, Agencies, or Ascend's access to or use of the OD SURGE ALERT platform or the proper operation of the OD SURGE ALERT platform, including but not limited to engaging in password mining or similar activity; (iv) interfere with or disrupt the integrity or performance of the OD SURGE ALERT platform including any licensor or third-party items or data contained therein; (v) violate any state or federal anti-spamming or similar polices; or (vi) otherwise violate these Terms or any Additional Terms.

It is understood that the OD SURGE ALERT may be used to notify subscribers of certain conditions associated with illegal drugs. Such use is not to condone the use of such drugs but rather for purposes of public health and welfare. Nothing in any text by any Agencies or Ascend or others through the OD SURGE ALERT platform sanction or promote the use of illegal drugs and drug contraband or otherwise act to violate the prohibition against promoting Illegal drugs and drug contraband or any other material that is or may be unlawful under any applicable local, state or federal law, statutes, and regulations including but not limited to the Telephone Consumer Protection Act.

The OD SURGE ALERT platform may contain links to third parties ("Third-Party Links"). Ascend may have no control over the content, operations, policies, terms, or other elements of Third-Party Links. Ascend does not assume any obligation to review any Third-Party Links and does not endorse, approve, or sponsor any Third Party Links, or any third-party content. Ascend is not responsible for the quality or delivery of services, products or information available from Third Party Links. Ascend will under no circumstances be liable for any direct, indirect, incidental or special loss or other damage, whether arising from negligence, breach of contract, defamation, infringement of copyright or other intellectual property rights, relating to Third Party Links. Ascend may cease making any Third Party Links available at any time.

OD SURGE ALERT platform is available 24 hours a day, seven days a week however, timely delivery of notice from this server through the Internet is not guaranteed. Agencies and Subscribers assume the entire risk related to its use of information from OD SURGE ALERT platform. All information is relayed "as is," and Ascend Parties disclaim any and all warranties, whether express or implied, including (without limitation) any implied warranties of merchantability or fitness for a particular purpose. In no event will Ascend be liable to you or to any third party for any direct, indirect, incidental, consequential, special or exemplary damages or lost profit resulting from any use or misuse of this data.

Ascend neither controls nor guarantees the accuracy, relevance, timeliness or completeness of Texts.

OD SURGE ALERT may host and store Subscriber mobile numbers and zip codes and/or certain Agencies' information, but such data is not guaranteed to be accurate by Ascend. Ascend Parties shall not be liable for any intentional or unintentional deletion of such data, nor liable for any damages, losses, or other consequences that may incur as a result.

ACCESS TO AND USE OF THE OD SURGE ALERT PLATFORM IS AT THE USER'S SOLE RISK. THE OD SURGE ALERT PLATFORM IS PROVIDED ON AN "AS IS", "AS AVAILABLE", AND "WITH ALL FAULTS" BASIS.

To the fullest extent permitted by law, Ascend and its subsidiaries and each of their respective employees, directors, members, managers, shareholders, agents, vendors, licensors, licensees, contractors, Subscribers, successors, and assigns (collectively, "Ascend Parties") hereby disclaim and make no representations, warranties, endorsements, or promises, express or implied, as to:

- (a) the Site, its data, or any content set forth from Agencies using the Site;
- (b) the availability of the site at any particular time or in any particular location;
- (c) the content of any messages;
- (d) security associated with the data maintained on the Site, including data breach or any illicit content from third parties such as viruses, trojan horses, that may be harmful to devices;
- (e) whether Ascend or Agencies use of OD SURGE ALERT platform constitute an automatic telephone dialing system, "advertising," "telemarketing," or "solicitations," as such terms are used and defined in the Telephone Consumer Protection Act or other applicable regulations or law;
- (iii) the functions, features, terms, or any other elements on, or made accessible through, the Site (including but not limited to SMS/MMS Codes);

ASCEND PARTIES HEREBY FURTHER DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, TITLE, CUSTOM, TRADE, QUIET ENJOYMENT, SYSTEM INTEGRATION, AND FREEDOM FROM COMPUTER VIRUS.

Some jurisdictions limit or do not allow the disclaimer of implied or other warranties so the above disclaimers may not apply to the extent such jurisdictions' laws are applicable.

UNDER NO CIRCUMSTANCES WILL ANY ASCEND PARTIES BE RESPONSIBLE OR LIABLE FOR ANY LOSS OR DAMAGES OF ANY KIND, including personal injury or death or for any direct, indirect, economic, exemplary, special, punitive, incidental, or consequential losses or damages that are directly or indirectly related to the use of OD SURGE ALERT including but not limited to those relating to (i) any mobile alerts made available through the OD SURGE ALERT platform; (ii) the delivery and/or deliverability rates of any text/SMS/MMS messages that might be sent using the OD SURGE ALERT platform; (iii) any errors or omissions in the sites operation, including delivery of messages.

The foregoing limitations of liability will apply even if any of the events or circumstances were foreseeable and even if the Ascend Parties were advised of or should have known of the possibility of such losses or damages, regardless of the nature of the claim. To the extent that the applicable law in an Agencies or Subscriber's jurisdiction does not allow the exclusion or limitation of incidental or consequential damages the above limitation or exclusion may not apply.

By using the OD SURGE ALERT platform, Agencies and Subscribers (and any other parties utilizing the platform) agree to defend, indemnify, and hold Ascend Parties harmless from and against any and all claims, damages, losses, costs, investigations, liabilities, judgments, fines, penalties, settlements, interest,

and expenses (including attorneys' fees) that directly or indirectly arise from or are related to any claim, suit, action, demand, or proceeding made or brought against any Ascend Party arising from:

- (a) The use or misuse of the OD SURGE ALERT platform and its services
- (b) Agencies/Subscriber/user violation or alleged violation of any laws, rules, regulations
- (c) Agencies/Subscriber/user violation or alleged violation of these Terms and Conditions
- (d) Material transmitted through OD SURGE ALERT by Agencies/Subscriber/user that (i) infringes, violates, or misappropriates any copyright, trademark, or other right of any person or entity (ii) is Incorrect; (iii) is a misrepresentation; or (iv) is actionable by third parties (such as liable or defamatory material)
- (e) Violation of any privacy or spam policy by Agencies/Subscriber/user
- (f) Ascend Parties' storage, use and distribution of the information and data (including mobile numbers).

Ascend reserves the right, at the indemnifier's cost, to assume the exclusive defense and control of any matter in which Ascend will be indemnified by Agencies/Subscriber/user. Ascend must provide prior written consent for any settlement of claims brought under items a-f above.

These Terms and any new or additional terms will be governed by and construed in accordance with, and any dispute will be resolved in accordance with, the laws of the State of Ohio, without regard to its conflicts of law provisions.

THESE TERMS MAY BE MODIFIED FROM TIME TO TIME. Ascend may change or add to these Terms and Conditions at any time. Changes will be posted within this policy as appropriate. Prior notice of changes in terms and conditions may not be possible. Any changes will become effective when posted on the Site. Use of the Site following these changes shall be deemed as acceptance the revised Terms and Conditions. If you do not agree with these terms and conditions, do not use the OD SURGE ALERT platform