

Employee Services LLC SMS/MMS Texting Terms and Conditions

Effective Date: [September 28, 2023]

These SMS/MMS Texting Terms and Conditions (“Terms and Conditions”) apply to all persons (“you” or “your”) who provide prior express consent to receive text messages (including but not limited to SMS and MMS messages) from Employee Services LLC or our affiliates, subsidiaries or agents. (collectively, “Employee Services LLC”, “we”, “our”, or “us”). Please read these Terms and Conditions carefully, as they contain important information. **THESE TERMS AND CONDITIONS INCLUDE A MANDATORY ARBITRATION OF DISPUTES PROVISION REQUIRING THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES RATHER THAN JURY TRIALS OR CLASS ACTIONS.**

Text Messages

By opting-in to our texting program for a specific phone number, you are granting us express consent to send you text messages, regardless whether the phone number otherwise appears on a federal or state Do Not Call List. Once you opt-in to our texting program, the text messages sent to your mobile phone number may be sent via an automatic dialing system.

Eligibility

Participation in our texting program is wholly optional and is not a condition of our service agreement. You must provide consent to receive text messages, and such consent must be for a telephone number with an area code designated for one of the 50 United States or the District of Columbia. You must be at least 18 years old to participate in our texting services.

Fees and Availability

Although Employee Services LLC does not impose a separate charge for text alerts, your mobile carrier’s message and data rates may apply. Employee Services LLC shall not be held responsible for any charges related to the use of our text messaging service. Text messaging may not be available through all wireless carriers.

Opting Out

At any time, you may revoke your consent and opt-out of Employee Services LLC’s text messages by texting “STOP” in reply to one of our texts or calling our Provider Relations team at 800-821-5040. **Note:** By opting out, you will no longer receive any text messages from us unless you re-enroll into our texting program.

After opting out, you will receive a one-time confirmation text message acknowledging that you have opted out of receiving further text messages from us.

If you no longer want to receive texts from us, the sole and exclusive remedy is to revoke consent by opting out.

Security and Indemnification

By providing your mobile phone number to us, you agree that the mobile phone number is yours and that you have permission to use that mobile phone number.

It is your responsibility to notify us immediately of the following events:

- You change your mobile phone number;
- You cancel your service plan;
- You lose your phone;
- You transfer your phone number to another party; or
- You no longer have permission to use your mobile phone number.

Employee Services LLC is not responsible for any text messages sent to a wrong phone number or received by an unauthorized individual which occurs because you did not timely notify us of any of the events listed above. **YOU AGREE TO INDEMNIFY Employee Services LLC IN FULL FOR ALL CLAIMS, EXPENSES, DAMAGES, ATTORNEYS' FEES AND COSTS (INCLUDING, BUT NOT LIMITED TO ANY RELATED TO OR ARISING UNDER THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227, ET SEQ.) RELATED TO OR CAUSED IN WHOLE OR IN PART BY YOUR FAILURE TO NOTIFY Employee Services LLC OF ANY OF THE EVENTS LISTED ABOVE, BY YOU ACCIDENTALLY OR INTENTIONALLY PROVIDING Employee Services LLC WITH ANY FALSE OR ERRONEOUS INFORMATION, AND BY ANY USE, NON-USE, OR MISUSE OF ANY TEXTS WE SEND TO YOU.**

Privacy

Text messages may include references to a Member's condition, health insurance and availability. Texts will not include Member names or personal health information, protected by the Health Insurance Portability & Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health Act of 2009 and accompanying regulations (collectively, "HIPAA"). Since text messaging is unencrypted, there is a risk that this information, including any HIPAA information, could be intercepted or viewed by unauthorized third parties, including anyone who accesses your device. We recommend protecting your mobile device with a password. When you choose to receive text messages from us, you do so at your own risk.

To learn more about how Medical Mutual uses and discloses your personal health information, please review our privacy policy. <https://www.theeap.com/privacy-security>

Disclaimer of Warranties

Our text messaging programs are offered on an "as-is" basis. No action or inaction by **Employee Services LLC** shall be deemed to create any warranty of any kind, and **Employee Services LLC**

expressly disclaims all warranties. Texting services may not be available in all areas at all times and we do not guarantee successful delivery or timely delivery of text messages by your wireless carrier, which is outside of our control.

Disclaimer and Limitation of Liability

Employee Services LLC OR ANY INDIVIDUAL OR ENTITY ASSOCIATED WITH Employee Services LLC SHALL NOT BE LIABLE IN ANY WAY TO YOU OR TO ANY OTHER INDIVIDUAL OR ENTITY FOR ANY ACTION OR INACTION TAKEN BY YOU IN RELIANCE UPON INFORMATION PROVIDED THROUGH THE TEXTING SERVICES. NEITHER Employee Services LLC NOR ANY INDIVIDUAL OR ENTITY ASSOCIATED WITH Employee Services LLC SHALL BE LIABLE IN ANY EVENT TO YOU OR TO ANY OTHER INDIVIDUAL OR ENTITY FOR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES THAT RESULT FROM OR RELATE IN ANY MANNER WHATSOEVER TO (i) YOUR USE OF THE TEXTING SERVICES OR RELIANCE ON THE CONTENT OR SERVICES, OR (ii) ERRORS, INACCURACIES, OMISSIONS, DEFECTS, UNTIMELINESS, SECURITY BREACHES, OR ANY OTHER FAILURE TO PERFORM BY MEDICAL MUTUAL OR ITS CONTENT PROVIDERS. THE FOREGOING EXCLUSION SHALL APPLY REGARDLESS OF WHETHER Employee Services LLC HAS BEEN ADVISED OR WAS AWARE OR UNAWARE IN ADVANCE OF THE POSSIBILITY OF SUCH RISKS OF LOSS OR DAMAGES. Some jurisdictions do not permit the exclusion of certain types of damages. Therefore, only if required by applicable law, some or all of the exclusions above may not apply to you. You may have other rights from jurisdiction to jurisdiction.

Governing Law and Dispute Resolution

These Terms of Use are governed by Ohio law, unless a written contract between you and **Employee Services LLC** contains a choice of law provision requiring application of any other law.

BY USING OUR TEXTING SERVICES, YOU AGREE THAT ANY DISPUTE, CONTROVERSY OR CLAIM (WHETHER CONTRACTUAL, STATUTORY, TORT, EQUITABLE, OR OTHERWISE) ARISING OUT OF, RELATING TO IN ANY WAY, OR IN CONNECTION WITH THESE TERMS AND CONDITIONS (INCLUDING, BUT NOT LIMITED TO ANY RELATED TO OR ARISING UNDER THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227, et seq.) SHALL BE EXCLUSIVELY AND FINALLY RESOLVED BY BINDING ARBITRATION, WHICH INCLUDES YOUR EXPRESS WAIVER OF A JURY TRIAL BY USING OUR TEXTING SERVICES. BY USING OUR TEXTING SERVICES, YOU AGREE TO ARBITRATE SOLELY ON AN INDIVIDUAL BASIS AND EXPRESSLY WAIVE CLASS ARBITRATION OR ANY CLAIMS BROUGHT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ARBITRATION PROCEEDING. The arbitration will be administered by the American Arbitration Association (“AAA”) under its Consumer Arbitration Rules. The arbitral tribunal may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. The arbitral tribunal shall have the power to rule on any challenge to its own jurisdiction or to the validity or enforceability of any portion of

the agreement to arbitrate. **THE FOREGOING ARBITRATION PROVISION SHALL SURVIVE ANY OPT-OUT REVOCATION OF CONSENT BY YOU, AS WELL AS ANY TERMINATION OR MODIFICATION OF THESE TERMS AND CONDITIONS.**

In the event the foregoing arbitration provision were to be deemed unenforceable *in part* by then-controlling governing law, then the remaining terms of the arbitration provision would remain in force. In the event the foregoing arbitration provision were to be deemed unenforceable *in whole* by then-controlling governing law, then by using our texting services, you irrevocably and unconditionally submit to the exclusive jurisdiction of any Ohio state court or United States federal court sitting in Cuyahoga County, Ohio, and any court having appellate jurisdiction therefrom, in any dispute, controversy or claim arising out of, relating to in any way, or in connection with these terms and conditions and you hereby irrevocably and unconditionally agree that all claims in respect of any such action or proceeding may be heard and determined in any such Ohio state court or, to the extent permitted by law, in such federal court. By using our texting services, you irrevocably and unconditionally agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Modifications

Employee Services LLC reserves the right to modify these Terms and Conditions at any time without prior notice. Any revised Terms and Conditions will be posted to Medical Mutual's website, effective upon posting. You agree to review these Terms and Conditions periodically to stay informed of any changes. Your continued use of our texting services subsequent to **Employee Services LLC** modification of these Terms and Conditions shall constitute your acceptance of the modified terms.