

TREASURE BAY CASINO AND HOTEL SMS TERMS AND CONDITIONS

Last Modified: March 9, 2018

PLEASE CAREFULLY REVIEW THE FOLLOWING TERMS AND CONDITIONS CAREFULLY BEFORE REGISTERING FOR AND USING THE _____ PROGRAM (the "SMS Service"). THESE TERMS CONTAIN AN ARBITRATION CLAUSE AND CLASS ACTION WAIVER, WHICH AFFECTS HOW DISPUTES WITH THE COMPANY ARE RESOLVED. BY ACCEPTING THESE TERMS AND CONDITIONS, YOU AGREE TO BE BOUND BY THIS ARBITRATION PROVISION.

BY REGISTERING FOR AND USING THE SMS SERVICE OR BY OTHERWISE INDICATING THAT YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU HAVE ENTERED INTO A LEGALLY BINDING AGREEMENT WITH TREASURE BAY, LLC, A MISSISSIPPI LIMITED LIABILITY COMPANY ("COMPANY" ALSO REFERRED TO HEREIN AS "WE," "OUR" AND/OR "US"), AND YOU REPRESENT AND WARRANT THAT YOU ARE OF LEGAL GAMBLING AGE AND RESIDE IN THE UNITED STATES. WE ARE WILLING TO PROVIDE YOU THE SMS SERVICE ONLY IF YOU AGREE TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS. AS A PLAYERS' CLUB MEMBER ("USER"), YOUR USE OF THE SMS SERVICE IS ALSO SUBJECT TO THE TERMS AND CONDITIONS OF TREASURE BAY PLAYERS CLUB WHICH IS INCORPORATED HEREIN BY REFERENCE. IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MUST NOT COMPLETE YOUR REGISTRATION FOR THE SMS SERVICE, AND/OR YOU MUST STOP USING THE SMS SERVICE.

By signing up for the SMS Service you expressly consent to receive non-marketing and marketing text messages from us and others texting on our behalf, including text messages made with an autodialer, at the telephone number(s) that you provide. You may opt-out of these communications at any time, and consent to receive marketing text messages is not required to purchase any goods or services or to be a member of the Players' Club.

The Federal Communications Commission defines an "automatic telephone dialing system" or "autodialer" as equipment that has the capacity to store or produce telephone numbers to be called and to call such numbers. 47 C.F.R. § 64.1200.

You also accept and agree to be bound by these SMS Terms and Conditions, the Website Terms of Use, our Global Privacy Policy, and any other applicable terms and agreements related to your use of Company's services.

A. Program Description

Company and its service providers may use an automatic telephone dialing system to deliver Company text messages to you. Company text messages are intended to provide you with information about upcoming deliveries and Company's goods and services (e.g., Company-sponsored events, recipes, coupons, promotions, product launches, sweepstakes, and contests). The SMS Service also allows Users who have successfully opted in to the SMS Service, and who have successfully verified their U.S. mobile number(s), to use SMS to conduct certain inquiries with respect to their Players' Club Account, such as, for example, to check their balance.

B. Message Frequency

The number of Company text messages that you receive will vary depending on how many of Company's text messaging programs for which you sign up to receive messages. You will receive a maximum of three messages per week per Company text messaging program. Our affiliated properties generally have separate text messaging programs, although you may receive information about their properties through the SMS Service.

C. Cost

Message and data rates may apply to each text message sent or received in connection with Company text messages, as provided in your mobile telephone service rate plan (please contact your mobile telephone carrier for pricing plans), in addition to any applicable roaming charges. Company does not impose a separate fee for sending Company text messages. You are also responsible for any fees associated with use of the wireless receiving equipment ("Equipment") through which you intend to access and use the SMS Service and you represent that you are the owner or authorized user of the Equipment that you use to sign up for and to use the SMS Service, and that you are authorized to approve any applicable charges.

D. Supported Carriers

Supported carriers may change from time to time without notice, but currently include ACS/Alaska, Alltel, AT&T, Bluegrass Cellular, Boost, Cellcom, Cellone Nation, Cellular One of East Central Illinois, Cellular South, Centennial, Chariton Valley Cellular, Cincinnati Bell, Cox Communications, Cricket, EKN/Appalachian Wireless, Element Mobile, GCI, Golden State Cellular, Illinois Valley Cellular, Immix/Keystone Wireless, Inland Cellular, iWireless, Metro PCS, Nex-Tech Wireless, nTelos, Plateau Wireless, South Canaan, Sprint, T-Mobile, Thumb Cellular, United Wireless, US Cellular, Verizon Wireless, Viaero Wireless, Virgin, WCC. Additional carriers may be added without notice.

E. How to Opt-In

To opt-in to receive text messages from a Company text messaging program(s), please follow the instructions provided.

F. How to Opt-Out

To stop receiving text messages from a specific Company text messaging program, text STOP to the five digit short code for the text messaging program from which you no longer wish to receive message (i.e., the five digit number from which its text messages are being sent). You will then receive confirmation of your opt-out of that text messaging program. This will only opt you out of the specific text messaging program associated with that five digit short code. You will remain opted in to any other Company text messaging programs.

G. Your Mobile Telephone Number

You represent that you are the account holder for the mobile telephone number(s) that you provide. You are responsible for notifying Company immediately if you change your mobile telephone number. You may notify Company of a number change by submitting a “contact us” form on the Company website.

You agree to indemnify Company in full for all claims, expenses, and damages related to or caused in whole or in part by your failure to notify Company if you change your telephone number, including, but not limited to, all claims, expenses, and damages related to or arising under the Telephone Consumer Protection Act.

H. Privacy and Security

Any information provided to us by you in association with the SMS Service shall be governed by our Privacy Policy available at <https://www.treasurebay.com/wp-content/uploads/2015/04/GlobalPrivacyPolicy-TreasureBayCasinos.pdf>. We will endeavor to keep your messages private, subject to such Privacy Policy, viewable only by you (or the intended recipient of your messages, as designated by you, as applicable), us, your Wireless Service Provider and our technology providers. However, you acknowledge and agree that we shall not be liable for any messages you request or request be sent while using the SMS Service as they are delivered over facilities not under our control. Further, you acknowledge and agree that the parts of the SMS Service are provided via wireless systems which use radios (and other means) to transmit communications over complex networks. We do not guarantee that your use of the SMS Service will be private or secure, and we are not liable to you for any lack of privacy or security you may experience. You are fully responsible for taking precautions and providing security measures best suited for your situation and intended use of the SMS Service. We have the right to access the content of your Players' Club account and/or wireless account with your Wireless Service Provider for the purpose of identifying and resolving technical problems and/or service-related complaints.

You authorize our monitoring and recording of voice calls and text messages to us concerning your Players' Club account or the SMS Service and consent to our use of automatic dialing equipment to contact you. We have the right to intercept and disclose any messages over our facilities in order to protect our rights or property. We may need to look at your messages sent or received in connection with the SMS Service if we believe it is necessary to protect us or others from injury or damage. We reserve the right to take any appropriate action if we become aware of any use of the SMS Service we believe violates any law or is otherwise wrongful.

I. Passwords and Unauthorized Usage

If your Equipment is lost or stolen or if SMS Service is fraudulently used, you must immediately notify us. We have the right to interrupt or restrict SMS Service to your Equipment, without notice to you unless required by applicable law, if we suspect fraudulent or abusive activity, or for any other reason in our discretion. You agree to cooperate with us in any fraud investigation and to use any fraud prevention measures we prescribe. Failure to cooperate may result in your liability for all fraudulent usage.

J. Information

We are providing you with access to various types of information through the SMS Service which may include, without limitation, your account and other financial information (the "Information") solely for your own use and not for further redistribution. The Information is our property and is protected by applicable law. We reserve any rights not expressly granted herein. All Information is believed to be accurate and timely (subject to any delays), but we and the third party providers of the technology services necessary to operate the SMS Service do not warrant or guarantee such accuracy or timeliness.

K. Access or Delivery to Mobile Network is Not Guaranteed

Delivery of information and content to a mobile device may fail due to a variety of circumstances or conditions. You understand and acknowledge that network services, including but not limited to mobile network services, are outside of Company's control, and Company is not responsible or liable for issues arising from them.

L. Use of SMS Service/Equipment

You agree not to use the SMS Service for any unlawful or abusive purpose or in any way, which damages our property or interferes with or disrupts the Players' Club, our computer networks (or those of any third party provider) or other users. You agree not to disrupt, overwhelm, attack, modify or interfere with the SMS Service or its associated software, hardware and/or servers in any way, and you agree not to impede or interfere with others' use of the SMS Service. You further agree not to alter or tamper with any information or materials on or associated with the SMS Service. You are responsible for ensuring that your Equipment is compatible with the SMS Service and related system and meets federal standards.

M. Changes to Terms and Conditions

Company may revise, modify, or amend these SMS Terms and Conditions at any time. Any such revision, modification, or amendment shall take effect when it is posted to Company's website. You agree to review these SMS Terms and Conditions periodically to ensure that you are aware of any changes. Your continued consent to receive Company text messages will indicate your acceptance of those changes.

N. Termination of Text Messaging

Company may suspend or terminate your receipt of Company text messages if Company believes you are in breach of these SMS Terms and Conditions. Your receipt of Company text messages is also subject to termination in the event that your mobile telephone service terminates or lapses. Company reserves the right to modify or discontinue, temporarily or permanently, all or any part of the SMS Service, with or without notice.

O. Communications and Consent to Electronic Notices

You may communicate with Company via postal mail, telephone, and our website. Company may issue notices via these various channels, including by sending e-mail to an address you provide. You agree that such notices shall have legal effect. You also agree that notices sent by e-mail satisfy any requirement that notices be provided in writing. If you do not agree, do not use Company products or services.

You may have the right to withdraw your consent to receive certain electronic communications, and, when required by law, Company will provide you with paper copies upon request. You may make such a request via any of the channels listed above. If you withdraw your consent, Company reserves the right to terminate your use of Company's products or services.

To receive, access, and retain the notices that Company sends via e-mail, you must have Internet access and a computer or device with a compatible web browser. You will also need software capable of viewing files in PDF format. Your device or computer must have the ability to print, or download and store, e-mails and PDF files. By accepting these terms, you confirm that you are able to receive, access, and retain the notices that Company may send. You may update your contact information through the "contact us" form our website.

P. No Amendment of Existing Terms and Conditions For Players' Club Accounts

THE TEXT MESSAGES (OTHERWISE KNOW AS SHORT MESSAGE SERVICE OR "SMS") THAT YOU SELECT TO BE PROVIDED TO YOU THROUGH THE SMS SERVICE ARE FOR CONVENIENCE PURPOSES ONLY AND DO NOT AMEND, SUPPLEMENT, CHANGE OR REPLACE ANY OTHER NOTICE OR INFORMATION THAT YOU MAY RECEIVE OR MAY HAVE RECEIVED IN CONNECTION WITH YOUR PLAYERS' CLUB ACCOUNT

Q. No Warranties/Limitation of Liability

1. No Warranties

WE SPECIFICALLY DISCLAIM ANY RESPONSIBILITY FOR ANY EQUIPMENT OR SOFTWARE PROVIDED BY YOU OR ANY THIRD PARTY AND IN NO WAY WARRANT THE CAPABILITIES OF ANY SUCH EQUIPMENT OR SOFTWARE USED IN CONJUNCTION WITH THE SMS SERVICE. YOU EXPRESSLY AGREE THAT USE OF THE SMS SERVICE AND ACCESS THERETO ARE AT YOUR

SOLE RISK. THE SMS SERVICE AND RELATED SYSTEMS ARE PROVIDED ON AN "AS IS" AND AN "AS AVAILABLE" BASIS. WE ARE NOT LIABLE FOR SMS SERVICE OR RELATED SYSTEM OUTAGES OF ANY DURATION. WE MAKE NO EXPRESS WARRANTY REGARDING THE SMS SERVICE, RELATED SYSTEM, OR THE EQUIPMENT AND DISCLAIM ANY IMPLIED WARRANTY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. WE DO NOT AUTHORIZE ANYONE TO MAKE ANY WARRANTIES ON OUR BEHALF AND YOU SHOULD NOT RELY ON ANY SUCH STATEMENT. WE ARE NOT THE MANUFACTURER OF THE EQUIPMENT AND ANY STATEMENT REGARDING IT SHOULD NOT BE INTERPRETED AS A WARRANTY. WE MAKE NO WARRANTY THAT THE SMS SERVICE OR RELATED SYSTEM WILL MEET YOUR REQUIREMENTS, OR THAT THE SMS SERVICE OR RELATED SYSTEM WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DO WE OR TECHNOLOGY PROVIDERS MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SMS SERVICE OR AS TO THE ACCURACY, COMPLETENESS OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SMS SERVICE. WE OR OUR TECHNOLOGY PROVIDERS MAY MAKE IMPROVEMENTS AND/OR CHANGES IN THE SMS SERVICE OR RELATED SYSTEM AT ANY TIME. YOU UNDERSTAND AND AGREE THAT ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SMS SERVICE AND RELATED SYSTEM IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR EQUIPMENT OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR DATA. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

2. Limitation of Liability for the SMS Service

The Company, and its parent companies, subsidiaries and affiliates, including their directors, officers and employees (collectively, "TBay Companies") shall not be liable for any loss, injury, claim, liability or damage of any kind resulting in any way from (i) your use of the SMS Service, (ii) access to the Player's Club account system (iii) your use of any Equipment in connection with the SMS Service or for Equipment failure or modification, (iv) the content of Information or other materials included with or accessed via use of the SMS Service, (v) the failure to deliver any SMS Service messages, or the delivery of SMS Service messages at times different than the times that you may have designated, (vi) any acts or omissions of any third technology providers or wireless service providers, (vii) for system failure or modification, or (viii) any "force majeure" (i.e., any flood, extraordinary weather conditions, earthquake or other act of god, fire, war, insurrection, riot, labor dispute, accident, action of government, communications or power failure, or equipment or software malfunction) or any other cause beyond the reasonable control of us or our technology providers. NEITHER THE TBAY COMPANIES NOR THE TECHNOLOGY PROVIDERS SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, RESULTING FROM THE USE OR THE INABILITY TO USE THE SMS SERVICE OR RELATED SYSTEM, OR FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES OR RESULTING FROM ANY MESSAGES RECEIVED (OR NOT RECEIVED) OR SENT (OR NOT SENT) THROUGH THE SMS SERVICE, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, USE, DATA OR OTHER INTANGIBLE, EVEN IF

WE AND/OR TECHNOLOGY PROVIDERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

3. Maximum Liability

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, OUR MAXIMUM LIABILITY FOR DAMAGES HEREUNDER SHALL NOT EXCEED \$100.00. IN STATES WHERE SUCH LIMITATIONS ON LIABILITY ARE NOT PERMITTED, OUR LIABILITY SHALL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

4. Survival

THIS PARAGRAPH Q SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

R. Indemnity

You agree to indemnify and hold the TBay Companies harmless from and against any claim or demand, including reasonable attorneys' fees, made by any third party resulting from or arising out of your use of the SMS Service or related system (or the SMS Service or related system by persons using your password, your account or your Equipment) or your violation of this Agreement. This Paragraph R shall survive termination of this Agreement.

S. Dispute Resolution

In the unlikely event that we are unable to resolve your concern or a complaint that you may have, we each agree to resolve any and all disputes regarding the SMS Service through binding arbitration or small claims court as set forth below.

Mandatory, Bilateral Arbitration. Please read this carefully. It affects your rights. YOU AND THE COMPANY AGREE THAT ANY DISPUTE, CONTROVERSY OR CLAIM ARISING OUT OF, OR RELATING TO, THIS AGREEMENT OR THE SMS SERVICE SHALL BE RESOLVED ONLY BY FINAL AND BINDING, BILATERAL ARBITRATION OR SMALL CLAIMS COURT. This agreement to arbitrate is intended to be broadly interpreted, and expressly includes claims brought under the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., or any other statute, regulation, or legal or equitable theory. You and the provider hereby agree that the Federal Arbitration Act, 9 U.S.C. 1, et seq. ("FAA") applies to this agreement to arbitrate, and governs all questions of whether a dispute is subject to arbitration. Unless you and we agree otherwise in writing, arbitration shall be administered by the American Arbitration Association's Consumer Arbitration Rules in effect at the time of filing of the arbitration (the "AAA's Rules"). However, just as a court would, the arbitrator or arbitrators must honor the terms and limitations in this Agreement, and can award damages and relief (including any attorneys' fees) authorized by law and/or the AAA's Rules. The arbitration decision and award is final and binding, with some exceptions under the FAA, and judgment on the award may be entered in any court of

competent jurisdiction. **YOU AGREE THAT, BY ENTERING INTO THIS AGREEMENT, YOU AND THE COMPANY ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY AND THE RIGHT TO PARTICIPATE IN ANY CLASS, REPRESENTATIVE, OR COLLECTIVE PROCEEDING.**

THIS AGREEMENT DOES NOT ALLOW FOR CLASS ARBITRATIONS EVEN IF THE PROCEDURES OR RULES OF THE AAA WOULD. RATHER, YOU AND WE ARE ONLY ENTITLED TO PURSUE ARBITRATION ON AN INDIVIDUAL, BILATERAL BASIS. FURTHER, AND UNLESS YOU AND THE COMPANY AGREE OTHERWISE IN WRITING, THE ARBITRATOR(S) MAY NOT CONSOLIDATE MORE THAN ONE INDIVIDUAL PARTY'S CLAIMS WITH ANY OTHER PARTY'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR COLLECTIVE PROCEEDING.

You and the Company are each responsible for our respective costs relating to counsel, experts, and witnesses, as well as any other costs relating to the arbitration. The Company, however, will pay for the arbitration administrative or filing fees, including the arbitrator and/or other AAA case management fees, for any claim seeking \$75,000 or less, unless the claim is determined by the arbitrator to be frivolous. Otherwise, the AAA's Rules regarding costs and payment apply. Unless you and the Company agree otherwise in writing, the arbitration will take place in the county of your home address.

Notwithstanding the foregoing, either party may bring an individual action in a small claims court for disputes or claims within the scope of such court's jurisdiction. This agreement to arbitrate does not preclude you from bringing issues to the attention of federal, state, or local agencies. Such agencies can, if the law allows, seek relief against us on your behalf.

T. Assignment

We may assign all or part of our rights or duties under this Agreement without such assignment being considered a change to the Agreement, and without notice to you. We are then released from all liability. You may not assign this Agreement without our prior written consent.

U. Entire Agreement

This Agreement, including all agreements referenced herein, represents the entire agreement between you and us with respect to the subject matter hereof, which may only be amended as described in this Agreement. If any part of this Agreement is found invalid, the balance of the Agreement remains enforceable.

V. Governing Laws

This Agreement, and any claim, dispute or controversy arising from or relating to this Agreement, is governed by and construed in accordance with the laws of the State of Mississippi (without regard to its conflict of laws rules) and applicable federal law. The legality, enforceability, and interpretation of this Agreement and the amounts contracted for, charged, and received under this Agreement will be governed by such laws. This Agreement is entered into between you and us in Mississippi.



W. Support/Help

To request more information, text HELP to the five digit short code for the text messaging program about which you have questions (i.e., the five digit number from which its text messages are being sent). You may also receive help by emailing us at marketing@treasurebay.com.

X. Contact Us

If you have questions regarding these SMS Terms and Conditions, please reach out to us by email at marketing@treasurebay.com.

