

# **IMPORTANT- READ CAREFULLY:**

## **YOUR PURCHASE AND USE OF SERVICES PROVIDED IS CONDITIONED UPON YOUR COMPLIANCE WITH AND ACCEPTANCE OF THIS AGREEMENT.**

### **1. Introduction.**

This Service Agreement (the “Agreement”) governs the purchase and use of PatientlySpeaking LLC (“Provider”) services (as defined below) and purchase of one or the provided services (as defined below) (the Provider Services shall be referred to collectively herein as the “Services”). Services may be purchased by: (a) executing an order form, work order or statement of work (for purposes of this Agreement each shall be referred to as an “Order Form”); or (b) using the Services. The individual or legal entity executing an Order Form or opening an account for Services under this Agreement shall be referred to as “you,” “your” or “Client” “Subscriber” in this Agreement and the other party who executes the Order Form or provides the Services shall be referred to as “we,” “us” or “Provider” in this Agreement. Each Order Form shall govern and control in case of conflict with the Agreement, and in conjunction with this Agreement shall form a separate agreement between the parties that execute the applicable Order Form. Please read this Agreement carefully before executing an Order Form or installing, accessing, or otherwise using the Services. By executing an Order Form or installing, accessing, or otherwise using the Services you agree to be bound by this Agreement. Please maintain a copy for your records. If you do not agree with the terms of this Agreement, do not use the Services.

### **2. Service Description.**

This Agreement governs the purchase and use of Provider’s hosted or managed services (the “Provider Services”) set forth in the applicable Order Form between you and Provider or by you and a Provider Affiliate (as defined in Rule 405 of the Securities Act of 1933) (the “Services”), or used by you if no such Order Form has been executed. We may alter, expand, or reduce the features of the Services from time to time without notice to you. Client agrees to provide information reasonably required by Provider to perform Services, including as applicable, but not limited to: hiring profiles; scripts; message content, recipient contacting information and lists, program content and materials; Client or third party databases; forecasts; current process performance statistics; Client or third party software, hardware, systems, routing and network addresses and configurations; and key contacts for problem escalation (collectively the “Client Materials”). You agree that our obligation to provide Services is conditioned upon you providing all information and assistance reasonably required to perform the Services and your compliance with standards set forth by Provider regarding hardware compatibility and installation requirements and you hereby agree to timely provide all such information, assistance and compliance.

### **3. Subscriber Registration.**

Subscriber will provide all data requested by Provider both (a) upon signing up for the Services and (b) at subsequent times as requested by Provider. Subscriber represents and warrants that any and all information so provided will be true, accurate, current and complete.

Provider sends all new Subscribers a welcoming email to verify their email address. Subscribers will occasionally receive information on products, services, special offers, and a newsletter. Any emails containing information on special offers will contain unsubscribe information, and Subscriber may opt-out of all future special offer emails at any time. Notwithstanding anything in the foregoing which could be construed to the contrary, Subscriber’s opting out of special offer emails will not be deemed to prevent Provider’s delivery of emails related to the operation of this website, the provision of the Services, or changes to these Terms and Conditions.

Subscriber acknowledges that Provider may distribute registration data to third parties, but that Subscriber's name, address (home and email) and telephone number will not be so distributed. Notwithstanding any limitation contained in the foregoing, Subscriber acknowledges and agrees that Provider may make available to third parties any and all registration information (1) for the purposes of marketing Provider Services, (2) as may be required by law, (3) for the purpose of operational security or storage, or (4) in the event Subscriber grants Provider the right to provide that information.

Subscriber represents and warrants that Subscriber is at least 18 years in age and that the Subscriber has the legal authority to enter into this agreement.

Subscriber agrees to provide and maintain true, accurate, current and complete registration information, and to revise such information as necessary to comply with such requirement.

Subscriber is solely responsible for maintaining the confidentiality of Subscriber's UserName, Password, Mailbox Numbers and Personal Identification Number (PIN).

Subscriber shall not give account information to third parties and shall at all times be responsible and liable for any transactions or activities that originate from Subscriber's account.

Subscriber shall immediately notify Provider if any unauthorized use of Subscriber's account has occurred or of any other breach of security.

By acceptance of this Agreement, Subscriber acknowledges and agrees that its information shall be treated in accordance with Providers Privacy Policy (located at [PatientlySpeaking Privacy Policy](#)) as the same may be amended by Provider from time to time.

Subscriber understands and agrees that Subscriber and, if applicable, Subscriber's company will assume all financial responsibilities for use of the Services originating from Subscriber's account by Subscriber or others.

Subscriber is solely responsible for any and all activity that occurs with respect to Subscribers account including but not limited to initiating inbound and or outbound prerecorded audio/voice/text messages, contact list data, and message content.

#### **4. Term.**

This Agreement will continue so long as the Services are installed, accessed, or otherwise used. Each Order Form may specify its duration (each an "Order Form Term") and/or each Order Form may further specify one or more subscriptions purchased under the Order Form (each a "Subscription"). Each Subscription will specify its duration (each a "Subscription Term"). All Subscriptions begin as set forth in the Order Form or if not addressed therein, the go live of the applicable Subscription Service. For the avoidance of doubt, Client agrees to pre-pay for all usage of Services prior to the start of the Subscription unless otherwise stated by the Provider.

#### **5. Renewal.**

All Order Forms and Subscriptions shall automatically renew for monthly periods unless the Order Form or Subscription has longer renewal periods incorporated within unless either party terminates the specific Order Form or Subscription in writing in accordance with the applicable Terms of the applicable Order Form or Subscription, which termination will be effective at the expiration of the applicable Order Form or Subscription.

## **6. Termination of Order Form or Subscription For Cause.**

Any Order Form or Subscription may be terminated immediately by the non breaching party upon a material breach by the other party of a material provision of this Agreement, the relevant Order Form or the relevant Subscription, and such breach is not cured within ten (10) days after written notice if the breach is a payment breach or sixty (60) days after written notice for any other material breach.

## **7. Effect of Termination.**

The termination of any Order Form or any Subscription shall not otherwise affect the Term of this Agreement or any other Order Form or Subscription. If you terminate any Order Form or Subscription for cause: (a) you will pay for all Services rendered up to the date of termination; (b) Provider will reimburse you for any amounts prepaid by you for Services not rendered; and (c) you shall be relieved of any future payments due under such Order Form or Subscription. Otherwise, upon any termination of this Agreement, any Order Form or any Subscription, as applicable, you agree to pay for: (a) all Services rendered up to the date of termination; and (b) any future amounts due under this Agreement, the Order Form or the Subscription for the entire Order Form Term or Subscription Term, as applicable, including the current renewal thereof, if applicable. The parties agree and acknowledge that Provider has made pricing concessions based on the provisions agreed to herein and that any shortfall payments due are a fair approximation of the damages that would be caused to Provider and do not constitute a penalty.

## **8. Payments and Charges.**

With respect to Provider Services, you agree to pay in accordance to stated terms for all Provider Services. Except as expressly provided herein, all prepaid amounts are non-refundable.

## **9. Invoicing.**

You agree to make payment of all invoices under this Agreement within ten (10) days from the date of invoice. Unpaid invoices will be subject to a monthly service charge which is the lesser of one and one-half percent (1½%) per month, or the highest rate allowed by law. You must notify Provider of any disputed charges within ten (10) days from the date of the invoice, otherwise you will be deemed to agree to such charges and waive all such claims and Provider will not be subject to making adjustments to charges or invoices. Rates for the Services are set forth in the Order Form or will be charged at Provider's standard rates which can be obtained through your sales or account representative. You agree that rates may be altered on ten (10) days prior notice to you.

## **10. Unpaid Invoices.**

In the event an invoice is not paid in full, for any reason, within ten (10) days from the invoice date, Provider shall have the right to suspend all or any portion of the Services until such time as all invoices and applicable late fees have been paid. Following such payment, Provider may reinstate Services only upon satisfactory assurance of your ability to pay for Services, including modified payment terms such as prepayment. Such suspension shall not relieve you of any payment liability. You agree to reimburse Provider for any costs, expenses, or fees expended by Provider in connection with any collection efforts against you, including reasonable internal and outside attorneys' fees.

## **11. Taxes, Fees and Surcharges.**

In addition to the rates for the Services, you shall be responsible for any and all applicable fees, duties, tolls, administrative assessments, surcharges, or taxes now or hereafter attributable to the Services whether billed by the Provider now or assessed later by the Provider or a third party government agency.

## 12. License.

Subject to your compliance with the terms and conditions of this Agreement, Provider hereby grants you a non-exclusive, non-transferable license during the applicable Subscription Term to use the Services (“Licensed Materials”). Subject to your compliance with the terms and conditions of this Agreement, Provider hereby grants you a perpetual, non-exclusive, non-transferable license to use one copy of the software included in any Subscription or non-Subscription based service. Except as specifically set forth herein, Provider or its suppliers retain all right, title, and interest, including all intellectual property rights, relating to or embodied in the Services, including without limitation all technology, telephone numbers, web addresses, software, or systems relating to the Services. You agree not to reverse engineer, decompile, disassemble, translate, or attempt to learn the source code of any software related to the Services. The copyright notices and other proprietary legends shall not be removed from the Services.

No use of trademarks is granted under this Agreement and Subscriber is prohibited from using Providers trademarks in any capacity unless consented to in writing by Provider in its sole discretion. Subscriber may not grant any sub-license, leases or other rights in the Services to any third party.

All rights not expressly granted under this Agreement are retained by Provider.

## 13. Responsibility For Content, Transmitting Messages, and Accounts.

You are solely responsible for the information or content submitted, posted, transmitted or made available through your use of the Services (“Content”). You may use the Services to transmit Content or direct Provider to make contacts via any channel (in either case “Messages”) to, or with, recipients (the “Recipients”). You are responsible for maintaining the confidentiality of your accounts and owner numbers and necessary codes, passwords and personal identification numbers used in conjunction with the Services and for all uses of the Services in association with your accounts whether or not authorized by you including unintended usage due to holidays, daylight savings, computer clock errors or similar circumstances. You acknowledge and agree that Provider does not control nor monitor your Content nor guarantee the accuracy, integrity, security or quality of such Content. Use of recording or taping any use of the Services by you may subject you to laws or regulations and you are solely responsible for and obligated to provide any required notification to those being recorded or taped. You represent and warrant that: (a) you have the legal right to use all Content and send all Messages to the Recipients (including obtaining any required consents from the Recipients) and the content, timing and purpose of all Messages, campaigns and programs are in compliance with all applicable laws, rules and regulations; (b) you are the transmitter of all Content and Messages and Provider is merely acting at Client’s direction as a technology conduit for the transmission of the Content and the Messages; (c) Provider’s use of the Content shall not violate the rights of any third party or any law, rule or regulation; (d) the Message will not involve any contacts initiated to induce the purchase of goods or services or to solicit a charitable contribution; and (e) you will not transmit or allow to be transmitted any Content or Messages that: (i) you do not have a right to make available under any law or under contractual or fiduciary relationship; (ii) are false, inaccurate, misleading, unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another’s privacy, hateful, or racially, ethnically, or otherwise objectionable; harmful to minors in any way; (iii) infringe any patent, trademark, trade secret, copyright, or other proprietary rights or rights of publicity or privacy of any party; (iv) utilize any unsolicited or unauthorized advertising, promotional materials, “junk mail”, “spam”, or any other forms of solicitation; or (v) interfere with or disrupts the Services or servers or network operator networks. You represent and warrant that you have obtained prior express consent to contact each cell phone number delivered by you to Provider in connection with the provision of any Services delivering a prerecorded message or text (“Notification Services”) and that the intended contact recipient is the current subscriber to, or the non-subscriber customary user of, the wireless phone number. Where Provider reasonably believes that you may not have complied with all laws, rules and regulations applicable to the performance of Notification Services, Provider may, at its sole option (A)

scrub all numbers against any appropriate data base deemed necessary to remove all cell phone numbers or (B) suspend the Services. You shall indemnify, defend and hold Provider, its affiliates and their officers, directors, employees and agents harmless from and against any and all claims of loss, damages, liability, costs, and expenses (including reasonable attorneys' fees and expenses) arising out of or resulting from: (i) Provider following your instructions in sending the Messages or any breach of its obligations in this section; (ii) your failure to obtain the required consent to contact each of the cell phone numbers delivered by you to Provider in connection with the provision of Notification Services or the failure of such consent to comply with any law, rule or regulation; and/or (iii) your failure to comply with any third party rights or law, rules or regulations applicable to your systems, materials or programs relating to the Services.

Subscriber shall be fully and solely liable for any prerecorded audio, voice transmissions, and text messages sent through the Service and fully responsible for compliance with applicable law.

Subscriber acknowledges that Provider provides service enabling the Subscriber to facilitate lawful communication with appropriate individuals and that Provider does not provide telemarketing services. Subscriber shall be fully and solely responsible and liable for initiating any call using a prerecorded audio message and/or text message sent through the Service.

Subscriber is fully and solely responsible to be aware of, understand, and comply with all of the rules and regulations applicable to Subscriber's use of Provider Service including but not limited to Federal Trade Commission rules and regulations, Federal Communication Commission rules and regulations, National Do Not Call Registry rules and regulations and individual state Do Not Call rules and any applicable individual state or local regulations, CAN-SPAM, the Controlling the Assault of Non-Solicited Pornography and Marketing Act, along with any other federal, state, or local laws that may be applicable to Subscribers use of Provider Service. Subscriber agrees not to violate these, or any other federal, state, or local law and represents and warrants that Subscribers use of Services will not cause Provider to violate these or other similar laws.

Subscriber shall at all times comply with all applicable laws, statutes, regulations, rules, ordinances, codes, and standards, including but not limited to the Telephone Consumer Protection Act of 1991 and any amendments thereto, at 47 U.S.C. § 227, the Federal Communications Commission implementing regulations, at 47 CFR § 64.1200 et seq., the Federal Trade Commission's Telemarketing Sales Rule at 16 CFR Part 310 and any amendments and any similar laws, CAN-SPAM, the Controlling the Assault of Non-Solicited Pornography and Marketing Act, federal and state laws proscribing unfair or deceptive acts and practices, federal and state telemarketing laws, and laws governing wages, hours, desegregation, employment discrimination, employment of minors, health, safety and personal information and any other similar laws. Subscriber agrees not to violate these, or any other federal, state, or local law and represents and warrants that Subscribers use of Services will not cause Provider to violate these or other similar laws.

Subscriber understands that the Federal Trade Commission Telemarketing Sales Rule prohibits the transmission of pre-recorded phone calls that are part of a plan, program or campaign which is conducted to induce the purchase of goods or services or charitable contributions. The Federal Trade Commission Telemarketing Sales Rule provides that calls may be permissible provided calls are placed only to consumers who have provided their prior expressed signed written consent to receive such calls. Use of Provider's Service for the delivery or transmission of pre-recorded phone calls that are part of a plan, program or campaign which is conducted to induce the purchase of goods or services or charitable contributions not in compliance with applicable law is strictly prohibited. Notwithstanding the language contained in this paragraph calls initiated and placed by the Subscriber specifically to consumers who have provided the Subscriber with their prior expressed signed written consent to receive such calls as provided by the Federal Trade Commission Telemarketing Sales Rule at 16 CFR Part 310 and any amendments thereof shall not be deemed prohibited. Subscriber understands that compliance with federal, state and local law is solely the responsibility of the Subscriber.

Subscriber agrees that it is the sole responsibility of the Subscriber to abide by any laws defined by the State or Federal Government in which Services will be applicable. Subscriber understands and agrees that Provider will not be held responsible for damages to the Subscriber or any third party incurred due to Subscriber's failure to abide by state and/or federal laws and will seek indemnification from Subscriber for damages it sustains from Subscriber's breach of this provision as per Section 9. of this document. Please refer to the Telephone Consumer Protection Act of 1991, the Telemarketing Sales Rule, the Controlling the Assault of Non-Solicited Pornography and Marketing Act. Subscriber may visit the Federal Communications Commission website at <http://www.fcc.gov> and the Federal Trade Commission website at <http://www.ftc.gov> and the National Do Not Call Registry website <http://www.donotcall.gov> or refer to the appropriate State Attorney General's office or other applicable offices for rules and/or regulations pertaining to Subscriber's intended application and use of the Service.

#### **14. Privacy and Data Use.**

The information we hold about you will be used to provide the Services requested and for identification, account administration, analysis and fraud/loss prevention purposes. More details about how that information is used are in our privacy policy which governs your visit to Provider's Website and use of the Services. Copies are also available from us by post, by contacting customer service. The parties acknowledge and agree that: (a) Provider may have access to personal data of Client under applicable personal data protection and privacy laws (the "Data Protection Laws") and will: (i) use it solely for the purpose of providing the Services; (ii) process it only in accordance with Client's instructions; and (iii) take appropriate technical and organizational measures to prevent unauthorized or unlawful processing, accidental loss, destruction or damage to it; (b) personal data may be processed by Provider and its affiliates and contractors throughout the world; and (c) Client is the data controller and retains full responsibility for the data processed on its behalf by Provider acting as data processor.

#### **15. Health Insurance Portability and Accountability Act of 1996 ("HIPAA").**

If Client is a Covered Entity (as defined by HIPAA) and provides individually identifiable health information or PHI (each as defined by HIPAA) to Provider as a Business Associate (as defined by HIPAA), then the Business Associate Agreement set forth at [PatientlySpeaking LLC Business Associate Agreement](#) is incorporated by reference herein.

#### **16. Export and Import Control Laws and Regulations.**

You acknowledge that the laws and regulations of the United States restrict the export and re-export of commodities and technical data of United States origin, including the Services and any related software. Without limiting the foregoing, you acknowledge that the Services and any related software are or may be an "encryption item" subject to controls under the Export Administration Regulations promulgated by the U.S. Department of Commerce. You agree not to export or re-export the Services or any related software in any form in violation of the export laws of the United States or any foreign jurisdiction.

#### **17. Compliance.**

Upon request, you agree to provide reasonable proof of compliance with the provisions set forth in this Agreement. You agree to immediately notify us of any actual or potential breach of this Agreement by you. You acknowledge and agree that: (a) Provider does not provide content and Client shall be solely responsible for all content and Messages and for providing any list of names, numbers or addresses for Client to utilize in sending Messages; and (b) Provider has not and is not expected to provide Client with any analysis, interpretation or advice regarding the compliance of any aspect of Client's Messages, Client's content, campaigns or programs with any third party rights or laws, rules, or regulations. Client agrees that

Provider may in its sole discretion suspend or terminate provision of any or all of the Services without liability or penalty at any time in the event that: (a) Provider is obliged to comply with an order, instruction, directive or request of a governmental body or network operator which necessitates that it do so; (b) Provider discovers an actual or potential breach or where Provider believes that Client has not so complied with its obligations hereunder; or (c) one or more of the network operators upon which the provision of Services hereunder is dependent suspends its provision of those services to Provider. You agree that all use by you of the Services shall comply with applicable laws.

## **18. Enforcement Of The Agreement.**

All users of the Services must adhere to the terms of this Agreement. We have the right, but are not obligated, to strictly enforce this Agreement through self-help, active investigation, litigation and prosecution. We may also access and disclose any information (including transactional information) related to your access and use of our Website or Network for any lawful reason, including but not limited to: (1) responding to emergencies; (2) complying with law, rule or regulation (e.g., a lawful subpoena); (3) protecting our rights or property and those of our customers; or (4) protecting users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services.

## **19. Limited Warranty.**

ALL SERVICES ARE PROVIDED "AS IS" AND "WITH ALL FAULTS" AND WITHOUT ANY WARRANTY. YOU UNDERSTAND AND AGREE THAT PROVIDER'S SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE". PROVIDER AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. PROVIDER MAKES NO WARRANTY OR REPRESENTATION REGARDING ANY INFORMATION, MATERIALS, GOODS OR SERVICES OBTAINED THROUGH PROVIDER OR THE SERVICES, OR THAT THE SERVICES WILL MEET ANY OF YOUR REQUIREMENTS, OR BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE. USE OF PROVIDER'S SERVICES ARE AT YOUR SOLE RISK. PROVIDER IS NOT LIABLE FOR ACTS OR OMISSIONS OF OTHER SERVICE PROVIDERS, FOR INFORMATION OR CONTENT OF COMMUNICATIONS, THIRD PARTY SERVICES, EQUIPMENT FAILURE OR MODIFICATION, OR CAUSES BEYOND PROVIDER'S REASONABLE CONTROL.

## **20. Limitation of Liability.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL PROVIDER, OR ITS SUPPLIERS OR AFFILIATES, BE LIABLE FOR INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION, DAMAGE FOR LOSS OF PROFITS OR DATA, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, COST OF COVER OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF, OR RESULTING FROM THE SERVICES OR THIS AGREEMENT WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY OR PRODUCT LIABILITY), CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR DAMAGES THAT MAY NOT BE EXCLUDED BY LAW, YOU AGREE THAT ALL DAMAGES ARE EXCLUDED EXCEPT FOR THE DIRECT DAMAGES THAT ARE ACTUALLY INCURRED BY YOU IN REASONABLE RELIANCE, UP TO THE GREATER OF THE AMOUNT OF A REFUND OF THE PRICE THAT YOU ACTUALLY PAID FOR THE SERVICES DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE FILING OF SUCH CLAIM REGARDLESS OF THE FORM OF ACTION OR CLAIM (E.G., CONTRACT, WARRANTY, TORT, STRICT LIABILITY, NEGLIGENCE, FRAUD, OR OTHER LEGAL THEORY) OR ONE THOUSAND DOLLARS (US\$1,000).

## 21. Indemnification.

You shall indemnify, defend and hold Provider and its Affiliates and their officers, directors and employees harmless from any and all third-party claims, actions, suits, proceedings, costs, expenses, liabilities, and damages (including punitive, treble and enhanced damages and reasonable attorneys' fees) arising out of, connected with or resulting from: (i) a breach by You of any term of this Agreement; (ii) the Client Materials; or (iii) a claim by any customer of Yours or any party called on Your or your customer's behalf relating to any defect in any product or service offered by You or any of its clients. (iii) any actual or alleged infringement or violation by you (including without limitation, any person accessing the Services using your accounts) of any intellectual property, privacy or other right of any person or entity or (iv) information or content that you submit, post, transmit or make available through the Services. Provider shall indemnify, defend and hold You and its officers, directors and employees harmless from any and all third-party claims, actions, suits, proceedings, costs, expenses, liabilities, and damages (including punitive, treble and enhanced damages and reasonable attorneys' fees) which arise out of or result from a breach by Provider of any term of this Agreement.

The party claiming indemnification shall: (i) provide prompt written notice to the indemnifying party of any claim in respect of which the indemnity may apply; (ii) relinquish control of the defense of the claim to the indemnifying party; and (iii) provide the indemnifying party with all assistance reasonably requested in defense of the claim. The indemnifying party shall be entitled to settle any claim without the written consent of the indemnified party so long as such settlement only involves the payment of money by the indemnifying party and in no way affects any rights of the indemnified party.

In order to be indemnified to the extent stated, You must operate within the instructions and technical limits provided or approved by Provider. Provider shall have no indemnity obligation for (1) Provider-furnished licensed materials that have been used with or in combination with hardware or software not furnished by Provider; and (2) any claim or any portion of any claim that arises from Your reckless, wanton, wrongful, or otherwise negligent acts.

Provider makes no representations, provides no warranties, and assumes no responsibilities for the use, sale, placement, or other disposition by You of products incorporating the Licensed Materials under this Agreement. Provider's liability to You will not extend to infringement caused by use of the Licensed Materials as an element of a patented product or process. You will hold Provider, its affiliates and their officers, directors, employees, and agents harmless against all liabilities, demands, damages, expenses, or losses arising out of or resulting from any misuse of the Licensed Materials.

## 22. Confidentiality.

We agree to hold all Confidential Information of the other party in strict confidence. Confidential Information shall mean information that derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use and marked as Confidential ("Confidential Information"). The parties agree that all Confidential Information shall be disclosed only to those employees or representatives on a need-to-know basis and who agree to be bound by these confidentiality restrictions. This confidentiality obligation shall not apply to any information (i) independently developed by a party, (ii) generally available to the public other than by a party's breach of this Agreement, (iii) already known by a party at time of disclosure to that party, or (iv) rightfully received from a third party without restriction on disclosure or an obligation of confidentiality running directly or indirectly to the other party. Nothing shall prevent or prohibit the receiving party from providing access to Confidential Information as may be required by law, rule or regulation, provided that the receiving party gives as much notice as is reasonably practical and provides reasonable assistance to the disclosing party in challenging or modifying the disclosure so required. Neither party shall have any rights in the other party's Confidential Information and shall return or destroy all such Confidential Information upon the termination of the applicable Order Form or the request of the discloser. Notwithstanding the foregoing, the parties acknowledge that recipient shall



not be required to return to discloser or destroy those copies of Information residing on recipient's backup, disaster recovery or business continuity systems and the obligations hereunder with respect to such Confidential Information shall survive until such Information is destroyed.

### **23. Third Party Services.**

All access and use of any third party Services is governed by the terms and conditions set forth from time to time by such third party provider and such terms and conditions are incorporated herein by reference.

### **24. Enforceability/Waiver.**

If any part of this Agreement is determined to be invalid or unenforceable, then such invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the allocation of risks, and the remainder of the Agreement will continue in effect. If any provision(s) is found to be contrary to law, then such provision(s) will be construed, as nearly as possible, to reflect the intentions of the parties with the other provisions remaining in full force and effect. Provider's failure to exercise or enforce any right or provision of this Agreement will not constitute a waiver of such right or provision unless agreed to by Provider in a non-electronic writing manually signed by a duly authorized representative of Provider.

### **25. Miscellaneous.**

Except as otherwise expressly provided herein, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity, or otherwise. You and Provider are independent contractors, and no agency, partnership, joint venture, employee-employer or franchisor-franchisee relationship is intended or created by this Agreement. The parties confirm that they wish to have this Agreement written in English only. You authorize Provider's monitoring including recording of calls for the purposes of quality assurance and you further consent to Provider's use of automatic dialing equipment, email and/or SMS to contact you. Provider's performance of the Services is subject to existing laws and legal process, and nothing contained in this Agreement is in derogation of Provider's right to comply with governmental, court and law enforcement requests or requirements relating to your use of Provider's Website, the Services or information provided to or gathered by Provider with respect to such use. You may not assign this Agreement to any other person or entity without Provider's prior written approval, but nothing restricts Provider's ability to assign this Agreement or subcontract the Services hereunder.

### **26. Identification, Advertising & Publicity.**

Client agrees that it will not identify Provider as the provider of the Services to the media or any governmental, regulatory, or other official without prior notice to Provider and Provider's prior consent, unless required by legal process, law, rule or regulation, in which case Client shall still notify Provider of such requirement. Except for materials already made public, neither party will distribute any news releases, articles, brochures, speeches, or advertisements concerning this Agreement or Order Forms, nor use the other party's name or trademarks (or any variation thereof), without the other party's prior written consent. Notwithstanding the foregoing, Provider may use Client's name and trademarks in a list of customers, or in connection with written sales or promotional materials.

### **27. Governing Law; Exclusive Forum; Jurisdiction.**

The Provider Services are only offered in the United States and you represent that you are a resident of the United States and that your use of these services is solely within the USA. You further consent to the exclusive jurisdiction and venue of the courts sitting in Ventura County, California, USA with respect to

any dispute, controversy or claim arising out of or relating to this Agreement or any services provided by Provider. This Agreement and all causes of action related to this Agreement or the Services will be governed by and construed in accordance with the laws of the state of California, USA, without giving effect to the conflict-of-laws principles thereof that would require application of the laws of a different state or jurisdiction. You agree to service of process by mail or email directed to your billing address and/or supplied email address. You waive all defenses including but not limited to sovereign immunity, lack of personal jurisdiction and forum non conveniens and expressly waive any right to bring suit or have any action heard in your local courts. You agree that any claim or cause of action arising out of or related to this Agreement must be commenced by you within one (1) year after the cause of action arose.

## **28. Force Majeure.**

Provider will not be responsible or liable for delays and/or defaults in its performance due to causes beyond its reasonable control, including, but without limiting the generality of the foregoing: acts of god or of the public enemy; fire or explosion; flood; stability or availability of the Internet; the elements; telecommunication system failure; war; technology attacks, epidemic; acts of terrorism; riots; embargoes; quarantine; viruses; strikes; lockouts; disputes with workmen or their labor disturbances; total or partial failure of transportation, utilities, delivery facilities, or supplies; acts or requests of any governmental authority; or any other cause beyond its reasonable control, whether or not similar to the foregoing.

## **29. Entire Agreement.**

This Agreement, in conjunction with any applicable Order Form or Subscription constitutes the entire agreement between the parties to such Order Form or Subscription with respect to the subject matter of this Agreement and the applicable Order Form and supersedes all prior agreements, discussions, proposals, representations or warranties, whether written or oral. You agree that any terms or conditions contained in any document, including but not limited to a purchase order, acknowledgement, email, or other document that you may now or later provide to Provider, will have no effect and that this Agreement is the only contract between Provider and you regarding the Services and may only be amended as set forth herein. A printed version of this Agreement and of any notice given to you in electronic form will be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. Order Forms may be executed by fax, and/or in any number of counterparts, all of which shall together be considered an original and may be evidenced by a fax or scanned electronic (e.g. .pdf, .tif) copy.

## **30. Modification.**

Provider may, at any time, amend the provisions of this Agreement. Any amendment proposed by you may only be accepted by Provider in a non-electronic writing manually signed by authorized representatives of the parties. Notwithstanding anything in this Section to the contrary, if Provider posts amended terms on its Website, such terms will automatically become effective ten (10) days after they are posted on the Website. By using the Services after such revised terms are posted, you agree to be bound by any such amended provisions. Therefore, you agree to periodically visit the Website to examine the then-current Agreement.

*Revised March 18, 2017.*