

## TERMS OF SERVICE

This Agreement governs the acquisition and use of software and services of the provider ("Provider") by your business organization ("Customer" or "You"). BY COMPLETING OUR ORDER FORM AND PROVIDING THE NECESSARY INFORMATION FOR USE OF THE SERVICES PROVIDED THROUGH OUR WEBSITE (THE "SERVICE"), WHICH FORMS REFERENCE THESE TERMS AND CONDITIONS AS A PRECONDITION TO USE OF THE SERVICE, CUSTOMER AGREES TO BE BOUND BY THE TERMS AND CONDITIONS SET FORTH HEREIN.

**THE TERMS AND CONDITIONS SET FORTH HEREIN APPLY TO CUSTOMER AND ANY USERS ACCESSING THE SERVICES THROUGH CUSTOMER'S ACCOUNT (EACH A "USER", COLLECTIVELY "USERS"). BY REGISTERING FOR AN ACCOUNT OR ISSUING A PURCHASE ORDER, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND CUSTOMER TO THE TERMS AND CONDITIONS SET FORTH HEREIN. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS SET FORTH HEREIN, DO NOT ATTEMPT USE OR ACCESS THE SERVICE OR THE PROVIDER'S WEBSITE.**

### 1. Definitions.

1.1 "Account" means the account (a) under which Customer and Users use the Service, whether registered to User individually or Customer for use by its designated Users.

1.2 "Agreement" means this document defining the terms of service to which Customer agrees to adhere by Your use of the Service and website.

1.3 Other relevant terms, including Customer, User, and Service shall have the meaning ascribed to them in the preamble to this Agreement.

### 2. User Accounts

2.1 **AUTHORIZED USERS.** You may use the Service only while You are a Customer or one of its authorized Users. Customer acknowledges Provider has the right to terminate the Account, suspend the Service, or cancel or revoke the hibernate status as provided in this Agreement or for any other reason as it reasonably feels is appropriate pursuant to any other agreement or policy.

2.2 **REQUIRED INFORMATION.** During registration, Customer must submit and maintain current and accurate Account and contact information, including a working e-mail address, telephone number, and an email for invoices (as applicable), and any inaccuracy therein shall be grounds for Account termination.

2.3 **NOTICE.** Customer is responsible to assure that any Users of the Service through Customer's Account are notified of any change to these term and conditions of use. Accordingly, all such Users shall be deemed to have received such notice when provided to Customer's contact person of record by email or other reasonable means.

2.4 **EQUIPMENT.** Customer is responsible for providing the equipment and any other software or components necessary for the proper use of the Service. Provider is not responsible for any telephone or internet connection charges, surcharges, taxes, or other amounts incurred in accessing the Service, for which Customer accepts responsibility. If Provider specifies, at any time, any particular system requirements or hardware specifications for use of the Service, You will be responsible to provide the same or to cease to use the Service.

### 2.5 **TERMINATION OF AGREEMENT.**

2.5.1 **By Provider.** Unless otherwise specified to the contrary, Customer's right to access or use the Service terminates on the earlier of: (i) the date which is the last day of the billing cycle for which the last Service prepayment for the Account has been received by Provider, (ii) the date on which any charge or fee, or other balance due under the Account, is past due, or (iii) any other date upon which Provider has the right to terminate the Account or suspend the Service as provided in this Agreement or any other applicable agreement or policy.

2.5.2 **By Customer.** Customer may cancel his, her, or its Account through the cancellation process at the customer portal page within the Provider's website. Such cancellation shall be effective at the end of the current billing cycle, unless Customer has expressly committed to a longer period of Service, in which case such cancellation is effective at the end of such period, by the process required in any agreement for such commitment.

2.5.3 **Termination for Non-Payment or Other Breach.** Provider may, without refund, terminate an Account or suspend access to the Service immediately without notice, in Provider's sole discretion, if Customer fails to (i) pay all amounts when due, or (ii) comply with this Agreement, thereby terminating this Agreement (except for terms which by their nature should survive) and all obligations of Provider hereunder or with respect to the Service. Customer shall be responsible for any balance due on the Account.

2.6 **ACCOUNT INFORMATION AND DATA.** Provider may, after 30 days post Account cancellation, delete all Account usage information and data, including, but not limited to, calling history, audio files, configuration profiles, and other information indicative of Your use of the Service.

2.7 **LIMITATION OF USE.** Provider may establish other reasonable Account or Service registration or usage limits in its discretion. We further reserve the right to refuse or cancel Service to any Customer for any reason, in our discretion.

3. **Customer Representations and Warranties.** In order to utilize the Service, Customer hereby represents and warrants to the extent any features of the Service are used by any individual through an Account, Customer has provided the express permission to use Customer's Account.

4. **Price and Payment.**

4.1 **APPLICABLE CHARGES.**

4.1.1 ***Payment of Fees.*** Customer acknowledges it has reviewed and accepts the fees and charges associated with Customer's Account. As such, Customer agrees to pay all fees, usage charges, international calling surcharges, per-minute calling rates, regulatory cost recovery fees, and other Service charges applied to the Customer's Account in accordance herewith and with the applicable selected Service plan and in accordance with the billing plan selected by Customer. Customer shall comply with applicable billing terms (prepaid or post-paid) in effect at the time the fee or charge becomes payable (including without limitation, as applicable, that payments will be charged to the Customer's payment card).

4.1.2 ***Payment of Additional Charges.*** Customer is also responsible to pay (unless stated as included in Service charges) any additional amounts attributed to Customer's use of the Service, including any additional amounts charged by domestic and international telephone companies.

4.1.3 ***International Calling.*** Unless expressly specified otherwise, the Service and all quoted fees and charges are for United States domestic voice only, and any international or other usage will be billed at current market rates plus applicable surcharges. International calling surcharges and rates are subject to change from time to time, therefore, the rates set forth at the time of sign up may not be valid for the entirety of the Services. International calls are also subject to minimum call durations, billing increments, and duration rounding practices used by Provider or its carriers, in accordance with Provider's standard practices, notwithstanding any call transfer, disconnection by one party, or other event.

5. **Acceptable Use Policy.**

5.1 **PASSWORD.** When an Account is registered, Customer will select a password (or, for multi-user accounts, multiple passwords may be selected). Customer is responsible for the privacy and security of its password(s). Customer will be responsible all Account use or misuse under its password, and Customer Account holders are responsible for all activities under the Account under any

Password (including, with respect to each of the foregoing, any civil or criminal liability therefor). If Customer feels there may have been a breach in security, such as the unauthorized disclosure or use of any phone number or password, promptly notify Provider, and we strongly recommend that You change passwords. Provider is not liable for any loss or damage arising from the failure to comply with this section or for any other unauthorized Account usage.

5.2 **PRIVACY POLICY.** Customer is bound by the Provider Privacy Policy located at <http://dealerwebb.com/PrivatePolicy.php> Provider may amend such Privacy Policy from time to time, which changes will be effective upon adoption at the Provider website. Provider will provide notice of such change to Provider website, Customer portal, or a Customer at the Customer contact address provided above.

5.3 **LINKS AND AFFILIATED SITES.** Additional terms of use and policies apply to the community features of the Provider or affiliated website, and other community websites reachable through the Provider's website, to which You are bound to the extent the features are used. Customer may enter into correspondence with, participate in promotions by, or purchase the products or services of, sponsors marketing their products or services on or through the Provider website, a Provider Service, or a Provider partner. Notwithstanding anything herein (or on the Provider website) to the contrary, all transactions or correspondence, including without limitation with respect to delivery of and payment for such goods and services, and any other terms, conditions, warranties or representations associated therewith, are solely between Customer and such sponsor or other person, and Provider shall have no liability, obligation or responsibility with respect to such transactions.

5.4 **COMPLIANCE WITH LAWS.** Customers using the Service for telemarketing or similarly regulated purposes are directly and solely responsible for compliance with applicable laws, including without limitation for filing, subscribing, or holding appropriate regulatory compliance documentation as required by competent jurisdictions and/or the purchase of access to any do-not-call lists and the like.

5.5 **HIPAA COMPLIANCE.** If Customer is a 'covered entity' or a "business associate" thereof, as each term is used under the Health Insurance Portability and Accountability Act of 1996 (as may be amended or replaced, "HIPAA") or are otherwise subject to any HIPAA, related, or similar legal requirement, Customer is solely responsible to ensure full compliance therewith, including without limitation those requirements codified at 42 U.S.C. and 1320 through d-8, and any regulations promulgated thereunder, including, without limitation, the federal privacy regulations contained in 45 C.F.R. Part 164, and the federal data security standards contained in 45 C.F.R. Part 142. Provider disclaims any warranty of HIPAA or related compliance absent a separately executed agreement regarding HIPAA-compliant Services.

5.6 **REMEDIES.** Any violation of Provider policies by Customer or anyone using its Account will be grounds for termination of the Account, at Provider's sole discretion, and You may be reported to appropriate law-enforcement agencies.

6. **Provider Maintenance and Limitations.**

6.1 **MAINTENANCE.** The calling network component of the Service will be subject to (i) scheduled maintenance outages of which we provide notice on the Provider's website or by email, and (ii) regular backup and maintenance performed (without further notice) between 2 a.m. and 5 a.m. Central Time Zone. For the purposes of clarification, if the Provider network or Service is being used to full capacity and thus cannot be accessed by certain Users, this does not constitute Service unavailability or downtime.

6.2 **MODIFICATION OF FEATURES.** Provider may at any time change, modify, suspend, or discontinue any aspect of the Service, including, without limitation, the availability of any Service feature, database or content, hours of availability, or equipment needed to access the Service. Provider may also impose limits on certain features or restrict Your access to parts or all of the Service without notice or liability. Provider does not guaranty that the Service may be accessed from all locations or with all equipment or types of communications access.

6.3 **HIGH USE; SUDDEN CAPACITY INCREASES.** If You engage in any planned marketing activities or other calling events which may use significant Provider capacity, You agree to provide Provider with as much prior notice as possible (to the following email address: notifications@dealerwebb.com so that we can take reasonable steps to make Service capacity available for Your event. Provider reserves the right to limit or suspend Service usage under any Account using the Service at volumes significantly in excess of planned usage or prior usage patterns, or when reasonable prior notice of capacity needs has not been provided. Customer acknowledges that such Account limitations or suspensions from such high volume usage without prior notice may result in inbound calls being rejected by fast-busy signal.

6.4 **TELEPHONE NUMBERS.** Provider will use commercially reasonable efforts to obtain the telephone number(s) requested, and use commercially reasonable efforts to initiate and complete port requests. Customer acknowledges that Provider may need to change the telephone number assigned to You (due to an area code reassignment or split, or for any other reason). Customer acknowledges that if the Service is suspended or terminated due to non-payment or breach of this Agreement, that Customer may not be able to obtain the same local or toll-free numbers should the Service be reactivated. Provider may, after 30 days post-cancellation of service and the inability or lack of desire to port the telephone number, remove all telephone numbers from Account.

6.5 **DISCLAIMER OF WARRANTIES.** EXCEPT AS OTHERWISE SET FORTH HEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, PROVIDER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICE, THE ACCOUNT, THE SOFTWARE, THE PROVIDER'S WEBSITE, OR ANY OTHER SERVICE OR MATERIALS PROVIDED BY PROVIDER. PROVIDER MAKES NO WARRANTY AS TO THE CONTINUOUS AVAILABILITY OF THE SERVICE OR THE RESULTS TO BE OBTAINED FROM THE USE OF THE SERVICE. THE SERVICE IS PERFORMED AND THE SOFTWARE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE (EACH OF WHICH IS HEREBY DISCLAIMED). YOU ARE SOLELY RESPONSIBLE FOR THE BACKUP OF ANY DATA WHICH YOU MAY REQUIRE BE STORED IN RESPECT OF THE SERVICE.

IN PARTICULAR, EXCEPT AS PROVIDED HEREUNDER, PROVIDER DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SERVICE IS BORNE BY YOU.

THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT AND THE SERVICE WOULD NOT BE AVAILABLE WITHOUT IT. SOME JURISDICTIONS DO NOT ALLOW EXCLUSIONS OF AN IMPLIED WARRANTY, SO PORTIONS OF THIS DISCLAIMER MAY NOT APPLY TO YOU AND YOU MAY HAVE OTHER LEGAL RIGHTS THAT VARY BY JURISDICTION.

Further, Provider disclaims any responsibility for the accuracy, content, or availability of information available through the Service, and Provider shall not be held responsible for the accuracy, legality, or decency of material contained in third-party sites or through third-party services (including any service or content reached through the Service or the Provider's website), and Customer hereby irrevocably waives any claim against Provider with respect thereto.

6.6 **CREDIT CARD SECURITY.** PROVIDER SERVICES DO NOT COMPLY WITH AND ARE NOT INTENDED TO COMPLY WITH, ANY LEVEL OF CREDIT CARD SECURITY OR PCI (PAYMENT CARD INDUSTRY) STANDARDS AND MAY NOT OTHERWISE BE ENCRYPTED OR HACKER-PROOF. DO NOT USE PROVIDER SERVICES TO COLLECT CREDIT CARD OR OTHER PERSONAL OR FINANCIAL INFORMATION. PROVIDER EXPRESSLY

DISCLAIMS ANY, AND CUSTOMER AGREES WE HAVE NO, LIABILITY FOR ANY CLAIMS OR DAMAGES RESULTING FROM FAILURE TO COMPLY WITH ANY DATA SECURITY STANDARDS PERTAINING TO USE OF THE SERVICE, INCLUDING WITHOUT LIMITATION ANY CREDIT CARD SECURITY/PCI COMPLIANCE STANDARDS. CUSTOMER MAY CONTACT PROVIDER DIRECTLY TO ARRANGE A SEPARATELY EXECUTED AGREEMENT REGARDING PCI-COMPLIANT SERVICES.

**6.7 WAIVER OF LIABILITY.** EXCEPT AS SPECIFICALLY SET FORTH TO THE CONTRARY HEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, CONTRACT, OR OTHERWISE, SHALL PROVIDER, BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR ANY DAMAGES THAT RESULT IN ANY WAY FROM ANY USE OF THE ACCOUNT OR THE SERVICE BY ANY PARTY OR THE INABILITY TO USE THE SERVICE OR CUSTOMER'S RELIANCE ON OR USE OF INFORMATION OR SERVICES PROVIDED ON OR THROUGH THE SERVICE OR THE PROVIDER'S WEBSITE OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, ERRORS, DEFECTS, DELAYS IN OPERATION OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE, WHETHER SUCH DAMAGES ARE DIRECT, INDIRECT, SPECIAL, INCIDENTAL, COVER, RELIANCE OR CONSEQUENTIAL DAMAGES, EVEN IF PROVIDER SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. IF, NOTWITHSTANDING THE FOREGOING, PROVIDER IS FOUND LIABLE FOR DAMAGES FROM ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE), PROVIDER'S LIABILITY TO CUSTOMER WILL BE LIMITED TO THE AMOUNT PAID BY CUSTOMER FOR THE SERVICE SUBSCRIPTION IN THE LAST THREE (3) MOST RECENTLY PAID MONTHS.

## **7. Additional Restrictions.**

**7.1 NO EMERGENCY DIALING.** THE SERVICE DOES NOT INCLUDE ANY E911 OR RELATED SHORT DIGIT EMERGENCY DIALING FEATURE. CUSTOMER UNDERSTANDS THE SERVICE IS AN ENHANCED INFORMATION SERVICE AND NOT INTENDED, NOR CAN IT BE USED, AS A FULL INBOUND-OUTBOUND TELEPHONE REPLACEMENT, AND THAT CUSTOMER SHOULD MAINTAIN STANDARD ACCESS TO LAND-LINE OR MOBILE TELEPHONE SERVICE WITH E911/SHORT DIGIT EMERGENCY DIALING SERVICE, OTHER THAN OUR SERVICE. YOU WAIVE ANY CLAIMS AGAINST PROVIDER BASED UPON OR ARISING OUT OF ANY

FAILURE TO PROVIDE SHORT DIGIT EMERGENCY DIALING CAPABILITY.

## **7.2 NOT FOR EMERGENCY SITUATIONS.**

While the Service is designed to promptly broadcast voice messages to a large group of recipients, it is intended for general business, organizational, and personal use and may not have the capacity to deliver messages of an emergency nature on an immediate basis. Accordingly, use alternative methods for mission critical or emergency services usage to deliver emergency messages of any urgent, public safety or similar nature. You agree that Provider has no liability arising out of or related to any such use.

## **7.3 CALL DESTINATIONS OUTSIDE THE U.S.**

Due to the methods (and networks) with which we use to connect calls and due to certain United States and foreign regulations, we cannot guarantee the successful completion of any call to any destination outside of the United States when placed: (a) without a local originating number provided as caller ID information, (b) using a toll-free number as the caller ID information, (c) blocking caller ID information or providing no caller ID information, or (d) using other non-compliant caller ID information. Such calls may receive a "fast-busy" signal or other error message.

## **8. Intellectual Property Rights.**

**8.1 OWNERSHIP.** The brand names, slogans, trademarks, service marks, designs, and logos used on the Provider's website or in conjunction with the Service, including without limitation the Provider's name (collectively, the "Marks"), are the trademarks of Provider and its licensors. You may not copy, display or use the Marks in any manner except as may be automatically displayed by the Service or the Provider's website or as may be provided in a separate express written agreement with Provider. You may not alter any Marks or logos or any other Provider materials, and You hereby agree that all goodwill and other intangible rights which accrue by use or display of any Marks or other materials shall accrue solely to the benefit of Provider. You further agree not to use any domain name, trademark, trade name, service mark, logo, or other materials confusingly similar to the Marks), without the prior written consent of Provider.

**8.2 SITE CONTENT.** All information and materials published, transmitted, or otherwise available on the Provider's website or through the Service (including, but not limited to, terms of service, use policies, service documentation, user help, informational resources, images, equipment configurations, interactive voice response, menus, audio clips, and video clips, collectively, "Content") are protected by copyright or trademarked (as applicable), and owned or controlled by Provider, its licensors, or affiliated companies. Customer shall abide by all copyright and trademark notices, limitations, and restrictions applicable to any Content or to the Service. Without limiting the foregoing, no Content may be copied, reproduced, republished, reused, uploaded, downloaded,

posted, or transmitted, other than through the Service in accordance with its intended use, nor may derivative works be created from it or distributed in any way.

**8.3 PROPRIETARY TECHNOLOGY.** The software, hardware, and other technologies which Provider uses to deliver the Service (the "Provider Technologies") contain confidential and proprietary information, trade secrets, and other property rights belonging to Provider and its licensors, and all rights to the Provider Technologies and all property rights related to the Service, including without limitation all patents (registered or unregistered), trade secrets (including diagrams, drawings, processes, production methods, information, data, computer software, and formulas), copyrights (whether registered or unregistered), domain names and subdomains, end-user and consumer information, work product resulting from custom implementation services, and contract rights, including all derivative works thereof (whether produced by Provider, You, or otherwise), shall remain exclusively with Provider and its applicable licensors. Customer rights to the Provider Technologies are limited to a non-exclusive and non-transferable runtime right solely during the term of the applicable Account subscription and solely for the purpose of using the Service. All Services are hosted by Provider and no software code (other than APIs if Provider agrees to provide the same in its sole discretion) will be provided to Customer.

**8.4 DERIVATIVE WORKS.** Customer may not modify, create derivative works or, redistribute, sell, decompile, reverse engineer, or disassemble the Provider Technologies or otherwise attempt to deduce the source code, design, or data transmission characteristics of the Provider Technologies. Customer may not use packet sniffers or other network or IP tracing technologies on the Service or with the Provider Technologies except for the specific purpose of optimizing Your network for use of the Service in accordance with Provider Service documentation.

**8.5 RESTRICTIVE RIGHTS.** Any Provider Technology which is downloaded for or on behalf of the United States of America, its agencies and/or instrumentalities, or any other national government, is provided with Restricted Rights.

**9. Indemnification.** With respect to any violation of this Agreement, including, without limitation, the provisions of Articles 5, 6 and 7 of this Agreement, Customer agrees to indemnify and hold harmless Provider, and its subsidiaries, parents, affiliates, managers, shareholders, officers, directors, agents, resellers, sales affiliates, licensees or other partners, and employees, from all claims, demands, liabilities, losses, damages and expenses (including without limitation reasonable legal fees and expenses), arising from or in connection with the use of the Service, any other parties' use of the Customer Account, or any conduct while using the Service, violation of this Agreement, or violation of any rights of another, including without limitation any

violation of applicable law or any tort committed while using the Service.

**10. Miscellaneous.**

**10.1 CHOICE OF LAW.** This Agreement shall be governed by and construed in accordance with the laws of Illinois, without giving effect to any principles of conflicts of law. All actions concerning any dispute arising out of the Agreement, the Account, the Service, or the Provider's website must be brought in the state or federal courts with appropriate subject matter jurisdiction located in (or having jurisdiction over) Cook County, Illinois, and each party consents to the jurisdiction and appropriate venue thereof, provided that actions for injunctive relief may be brought where sought to be enforced.

**10.2 ENFORCEABILITY.** If any provision of this Agreement shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severed from this Agreement and shall not affect the validity and enforceability of any remaining provisions.

**10.3 MODIFICATION.** Except when expressly provided by another written agreement with Provider, this is the entire Agreement between the parties relating to the subject matter herein and shall not be modified except in writing signed by an authorized representative of Provider. Customer agrees that Provider may, in its sole discretion, from time to time add to, delete from, or modify this Agreement in any reasonable manner by providing notice as permitted above.

**10.4 FORCE MAJEURE.** Provider shall not be deemed in breach of this Agreement, nor for any breach of any implied warranty or other obligation, for any failure in performance arising in connection with circumstances beyond its reasonable control, including, without limitation, fire, flood, storm, strike, lockout or other labor trouble, riot, war, rebellion, accident, or other acts of God.

**10.5 TRANSFERABILITY.** The right to use the Service and access the Account is not transferable, sublicenseable, and may not be sold, rented, or timeshared, unless expressly permitted in another agreement with Provider. Provider may assign this Agreement, in whole or in part, at any time with or without notice.

**10.6 NO WAIVER.** The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.