

Last Updated February 17, 2023

**Excel Telemessaging
Telephone Answering Service Terms and Conditions**

These Terms and Conditions constitute an agreement between you (“Customer”) and Excel Telemessaging, Inc. (“Excel”) for the provision of Telephone Answering Services to the Customer.

ARTICLE 1. DEFINITIONS

1.1 Agreement. This Agreement consists of the Service Order Agreement, executed by the Customer and accepted by Excel, and these Terms and Conditions. If you visit, use, or enter information into Excel’s website, you additionally agree to be bound by Excel’s [Website Privacy Policy](#) and Excel’s [Website Terms of Use](#).

1.2 Services. Excel will provide Telephone Answering Services (“Service(s)”) to the Customer, which will consist of (a) Excel receiving incoming telephone calls, emails, and/or Web Chats when these calls, emails, or Web Chats are properly transferred or forwarded to Excel by the Customer, (b) taking messages for Customers when a call, email, or Web Chat is received (c) processing and Dispatching Messages to the Customer based on the Customer’s instructions. Excel responds to forwarded emails and Web Chats based on the Customer’s instructions. Excel will access a Customer’s website or portal to enter caller data, or schedule appointments for Customer’s when directed by the Customer to do so. Excel supplies voicemail boxes for Customer’s when requested. Voicemails can be retrieved by the Customer by calling into the voicemail system, or the voicemail can be emailed to the Customer. Excel does not give the Customer’s callers any verbal or written instructions or advice, except in the case where express written direction is provided by the Customer for specific circumstances and the express written direction complies with all applicable laws and regulations.

1.3 Dispatching Messages. The dispatching of messages can be by any combination of: an outbound call to the client, an email, a SMS Text Message, a voicemail, a Secure Message, a Web Post, a CRM integration, and/or Facsimile.

1.4 SMS. Short Message Service (SMS) also known as Text Messaging.

1.5 Secure Message(s). Secure Message means an electronic message that is encrypted using industry standard software or a third party application to protect the content of the message from being viewed or modified in an unauthorized manner.

1.6 Web Post(s). A Web Post is a method of sending form data directly to a Customer website through an HTTP POST.

1.7 Web Chat(s). A Web Chat is the online exchange of messages in real time.

1.8 CRM Integration. A direct connection to the Customer's Customer Relationship Management (CRM) system that allows Excel to send data to the Customer's CRM.

1.9 Usage. Usage is defined as all minutes used by the Customer during a billing period.

1.10 Included Minutes. Included Minutes are defined as minutes included in the Customer's recurring monthly pricing package. The charges for Included Minutes may also be referred to as the Customer's "base rate" or "monthly recurring service charges."

1.11 Billable Minutes. Billable Minutes are defined as minutes used by the Customer during a billing period that exceed the Customer's Included Minutes. Billable Minutes may also be referred to as "overage" or "additional minutes."

1.12 Excel Website or Website. The Excel website is where these Terms and Conditions, the [Website Privacy Policy](#), and the [Website Terms of Use](#) will be posted. The current URL for the homepage of the Excel Website is <http://www.exceltelemessaging.com>. Excel may update the Website and/or URL from time to time.

1.13 Party or Parties. A reference to Excel or the Customer; and in the plural, a reference to both Excel and the Customer.

1.14 Service Commencement Date. The date(s) on which Excel first makes Service available for use by Customer.

1.15 Service Order. A request for Excel to provide the Services to the Customer submitted by Customer to Excel on a current Excel form designated for that purpose.

1.16 Service Term. The duration of time (commencing on the Service Commencement Date) for which Services are ordered, as specified in the Service Order, continuing until notice of termination is provided by either party. Notice must be given pursuant to the terms set forth in Section 15.1.

1.17 Confidential Information. All information regarding either party's business which has been marked or is otherwise communicated as being "proprietary" or "confidential." or which reasonably should be known by the receiving party to be proprietary or confidential information.

ARTICLE 2. CHANGES TO THE AGREEMENT TERMS

2.1 Changes to the Agreement Terms. Excel may modify these Terms and Conditions at any time after providing notice to the Customer. Whenever changes are made, the new terms will be posted on Excel's website. New terms will be effective thirty (30) days after the changes are posted on the Excel website. Before the changes take effect, Excel will notify the Customer of such changes by any reasonable means, such as by sending a notice of the new terms to the primary email address the Customer provided on the Service Order and/or by sending a notice of the changes with the Customer's monthly billing invoice. If the Customer does not agree with any of the new terms, the Customer may notify Excel in writing by sending an email

to legal@exceltelemessaging.com and the Customer may request the immediate termination of Services. The Customer's continued use of Services following any changes to these Terms and Conditions will constitute the Customer's acceptance of such changes. These Terms and Conditions will remain in effect at all times while the Customer receives Services from Excel.

ARTICLE 3. DELIVERY OF SERVICES AND TERM

3.1 Orders. A Service Order must be completed to initiate Service. A Service Order shall become binding on the parties when it is specifically accepted by Excel or when Excel begins providing the Services described in the Service Order.

3.2 Service Commencement Date. Excel and the Customer shall mutually agree upon a start date for Services subject to the following conditions: The Services to be performed under this Agreement shall not commence until Excel has received (1) a signed copy of the Service Order (2) payment in full for the first month of Service (3) the initial Deposit and (4) any and all information that Excel deems necessary for Excel to start Services. Excel will not start Services until all reasonably necessary agent trainings and account set up processes have been completed.

3.3 Current and Complete Information. The Customer must provide Excel current and complete information as necessary for Excel to manage Customer's account. This includes, but is not limited to, current and accurate contact information for the Customer's authorized representatives, the Customer's physical address, business phone numbers, cell phone numbers, and email addresses. This information can be supplied to Excel by mail, facsimile, or e-mail. The Customer will be fully responsible for the correctness and accuracy of all information. Excel shall be entitled to rely on the information supplied by the Customer, including, but not limited to, telephone numbers, names of persons to whom the calls should be relayed, the hours when the persons are to receive forwarded telephone calls and all other items of information used in the performance of Services by Excel. Excel shall not be required or have a duty to inquire about the accuracy, advisability or nature of the information supplied by the Customer.

3.4 Term. The term of a Service Order shall commence on the Service Commencement Date. This Agreement shall continue in force for an initial term of ninety (90) days and thereafter on a calendar month-to-month basis unless and until either Excel or the Customer provides written notice to the other of termination of this Agreement no less than thirty (30) days prior to the effective date of termination of all Services. Notice of termination must be given pursuant to the terms set forth in Section 15.1.

3.5 Changes to Monthly Recurring Service Charges. At any time after the initial ninety (90) day Service term, Excel may increase the monthly recurring service charges for the Services subject to thirty (30) days prior notice to Customer. Excel shall provide notice to the Customer of any pricing changes by (1) including a notice in the Customer's monthly invoice and/or (2) by sending an email notice to the primary email address that the Customer provided in the Service Order. The Customer will have thirty (30) days from receipt of such notice to cancel the applicable Service. The Customer shall notify Excel in writing of the Customer's decision to cancel services by sending an email to info@exceltelemessaging.com. Should the Customer fail

to cancel within this timeframe, the Customer will be deemed to have accepted the modified Service pricing.

ARTICLE 4. CHARGES, BILLING AND PAYMENT

4.1 Charges. Customer agrees to pay all charges associated with the Services, as set forth or referenced in the applicable Service Order(s) or invoiced by Excel. These charges may include, but are not limited to, set up fees, annual maintenance charges, mailing charges, sales taxes (if applicable), late fees and/or Usage charges, which includes Included Minutes and Billable Minutes. Usage charges are calculated either by Agent Minutes or by Agent Talk Time. Except as otherwise indicated herein or on the applicable Service Order(s), monthly recurring service charges for Services shall not increase during the initial Service term. Changes to monthly recurring service charges after the initial Service term are governed by Article 3.5.

4.2 Agent Minute(s). Agent Minutes are defined as all of the time an Excel agent is actively engaging with the Customer's account for any reason. Agent minutes are calculated in seconds. Excel does not calculate any minimum times and Excel does not do any rounding. The seconds are calculated exactly from the time an Excel agent accesses the Customer account, until the exact second the Excel agent leaves the Customer's account. Billing calculations are done from 12:00 a.m. on the first day of the month until 11:59:59 p.m. on the last day of the month. Pricing terms and the applicable method of calculating charges shall be set forth in the Service Order. After the initial ninety (90) day service term, price rates are subject to change pursuant to Section 3.5. of these Terms and Conditions.

4.3 Agent Talk Time. Agent Talk Time is calculated by the second. For incoming calls, Agent Talk Time starts when an Excel agent answers an incoming call, and ends when the Excel agent disconnects the call. For outbound calls, Agent Talk Time includes the seconds the Excel agent is waiting for the call to be answered, and ends when the Excel agent disconnects the call. All Agent Talk Time calculations are based on exact seconds. There are no minimums and no rounding. Pricing terms and the applicable method of calculating charges shall be set forth in the Service Order. After the initial ninety (90) day service term, price rates are subject to change pursuant to Section 3.5 of these Terms and Conditions.

4.4 Payment of Bills. Except as otherwise indicated herein or in the Service Order(s), Excel will invoice the Customer in advance on a monthly basis for all monthly recurring service charges and fees arising under the Agreement. All other charges will be billed monthly in arrears. Customer shall make payment to Excel for all invoiced amounts within twenty (20) days after the date of the invoice. Any amounts not paid to Excel within such period will be considered past due.

4.5 Partial Payment. Partial payment of any bill will be applied to the Customer's outstanding charges in the amounts and proportions as solely determined by Excel. No acceptance of partial payment(s) by Excel shall constitute a waiver of any rights to collect the full balance owed under the Agreement.

4.6 Payment by Credit Card. Upon Customer's written request and Excel's acceptance of such request, Excel will accept certain credit card payments for charges generated under the Agreement. By providing Excel with a credit card number, Customer authorizes Excel to charge the card for all charges generated under this Agreement, until (i) this Agreement is terminated and all remaining undisputed charges have been paid or (ii) Customer provides sixty (60) days prior notice that Excel stop charging the credit card. Customer agrees to provide Excel with updated credit card or alternate payment information on a timely basis prior to the expiration or termination of the credit card on file or in the event that Customer's credit card limit is or will be insufficient to cover payment. If Excel is unable to charge Customer's credit card for any reason, Customer agrees to pay all amounts due, including any late payment charges or bank charges, upon demand by Excel. Excel may limit the option to pay by credit card to specific Services or may discontinue acceptance of credit card payments in whole or in part upon thirty (30) days prior notice to Customer.

4.7 Disputed Invoice. If the Customer disputes any portion of an invoice, the Customer must pay the undisputed portion of the invoice and submit a written claim, including all documentation substantiating Customer's claim, to Excel for the disputed amount of the invoice. The failure of the Customer to send a written notice of dispute within sixty (60) days of receipt of the invoice shall be deemed a waiver by the Customer of the right to dispute any portion of the statement. The Parties shall negotiate in good faith to resolve a disputed invoice. However, should the parties fail to mutually resolve the dispute within sixty (60) days after the dispute was submitted to Excel, all disputed amounts shall become immediately due and payable to Excel. The customer may further pursue the disputed amount in accordance with Article 9.

4.8 Past-Due Amounts. Any undisputed payment not made when due will be subject to a late fee. A late fee of fifteen dollars (\$15) or one percent (1%) of the amount due, whichever is greater, will be charged on any unpaid balance due on all statements not paid in full by the statement's due date. At any time an account becomes thirty (30) days delinquent, Excel shall have the right, at its sole discretion, to suspend or terminate all Services, upon twenty-four (24) hour prior written notice to the Customer. Services which are suspended or terminated for nonpayment shall be subject to a reconnection charge of \$50.00. An additional deposit may also be required. The Customer shall be responsible for payment of all Services up to the time of suspension or termination and for payment of all late fees. Excel shall have the right to apply the deposit to any unpaid balances, but the Customer shall remain responsible for payment of any amounts in excess of the deposit, plus late fees on such amounts. If Customer's account is delinquent, Excel may refer the account to a collection agency or attorney that may pursue collection of the past due amount. If Excel is required to use a collection agency or attorney to collect any amount owed by the Customer, the Customer agrees to pay all reasonable costs of collection or other action. The remedies set forth herein are in addition to and not in limitation of any other rights and remedies available to Excel under the Agreement or at law or in equity.

4.9 Rejected Payments. Except to the extent otherwise prohibited by law, Customer will be assessed a service charge up to the full amount permitted under applicable law for any check or other instrument used to pay for the Services that has been rejected by the bank or other financial institution.

ARTICLE 5. TERMINATION OF AGREEMENT

5.1 Termination. Notwithstanding any other term or provision in this Agreement, the Customer shall have the right to terminate this Agreement after the initial ninety (90) day Service term, upon thirty (30) days prior written notice to Excel, and subject to payment to Excel of all outstanding amounts due for the Services. Such termination shall be effective thirty (30) days after Excel's receipt of the termination notice. Excel may terminate this Agreement for any reason not expressly protected by law. Termination by either party does not waive any other rights or remedies that it may have under this Agreement.

5.2 Effect of Termination of the Agreement. Upon the expiration or termination of Service for any reason, Excel may delete all applicable data, files, electronic messages, voicemails or other information related to the Customer's account that is stored on Excel's servers or systems, except for data Excel is required to store pursuant to applicable law.

5.3 Regulatory and Legal Changes. The parties acknowledge that the respective rights and obligations of each party as set forth in this Agreement upon its execution are based on law and the regulatory environment as it exists on the date of execution of this Agreement. Excel may, in its sole discretion, immediately terminate this Agreement, in whole or in part, in the event there is a material change in any law, rule, regulation, Force Majeure event, or judgment of any court or government agency, and that change affects Excel's ability to provide the Services herein.

ARTICLE 6: OWNERSHIP AND PROPERTY RIGHTS

6.1 Ownership and Property Rights. All technologies, software, hardware, operating applications, procedures, scripts, telephone numbers, email addresses or other materials of any nature or type prepared, furnished, or utilized by Excel, other than those items furnished by the Customer to Excel, shall be considered the sole and exclusive property of Excel and shall be retained by Excel upon the termination of this Agreement. Excel may change or reassign the telephone numbers or email addresses that Excel has provided to the Customer at any time.

ARTICLE 7. LIMITATION OF LIABILITY; DISCLAIMER OF WARRANTIES

7.1 LIMITATION OF LIABILITY. IN NO EVENT SHALL EXCEL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT FORESEEABLE, OF ANY KIND INCLUDING, BUT NOT LIMITED TO, ANY LOSS REVENUE, LOSS OF USE, LOSS OF BUSINESS OR LOSS OF PROFIT, WHETHER SUCH ALLEGED LIABILITY ARISES IN CONTRACT OR TORT, OR ARISES EITHER DIRECTLY OR INDIRECTLY FROM THE PERFORMANCE, OR FAILURE TO PERFORM, ANY SERVICES. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, THE ENTIRE LIABILITY OF EXCEL AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS, SUPPLIERS OR CONTRACTORS ("ASSOCIATED PARTIES") FOR LOSS, DAMAGES AND CLAIMS ARISING OUT OF THE PROVISION OF SERVICES SHALL BE LIMITED TO A CREDIT ADJUSTMENT EQUAL TO THE CUSTOMER'S PRO-RATED MONTHLY SERVICE CHARGE FOR THE PERIOD DURING WHICH THE LIABILITY AROSE, TO A MAXIMUM OF FIFTEEN (15) DAYS OR \$500.00, WHICHEVER IS LESS.

7.2 NO WARRANTIES. THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED. ALL WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED TO THE MAXIMUM EXTENT ALLOWED BY LAW. EXCEL DOES NOT WARRANT THAT THE SERVICES, EXCEL EQUIPMENT, ANY THIRD PARTY EQUIPMENT OR SERVICES UTILIZED BY EXCEL, OR ANY LICENSED SOFTWARE WILL BE (1) UNINTERRUPTED, ERROR-FREE, OR FREE OF LATENCY OR DELAY, (2) WILL MEET THE CUSTOMER'S REQUIREMENTS, OR (3) WILL PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES. EXCEL MAKES NO WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE SERVICES, EQUIPMENT, OR LICENSED SOFTWARE FOR USE BY THIRD PARTIES.

7.3 LOSSES, DAMAGES AND CLAIMS. IN NO EVENT SHALL EXCEL, OR ITS ASSOCIATED PARTIES, SUPPLIERS, CONTRACTORS OR LICENSORS BE LIABLE FOR ANY LOSS, DAMAGE OR CLAIM ARISING OUT OF OR RELATED TO: (I) STORED, TRANSMITTED, OR RECORDED DATA, FILES, OR SOFTWARE; (II) ANY ACT OR OMISSION OF CUSTOMER, ITS USERS OR THIRD PARTIES; (III) INTEROPERABILITY, INTERACTION OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, EQUIPMENT, SERVICES OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; OR (IV) LOSS OR DESTRUCTION OF ANY CUSTOMER HARDWARE, SOFTWARE, FILES OR DATA RESULTING FROM ANY VIRUS OR OTHER HARMFUL FEATURE OR FROM ANY ATTEMPT TO REMOVE IT.

7.4 DISRUPTION OF SERVICE. THE SERVICES ARE NOT FAIL-SAFE AND ARE NOT DESIGNED OR INTENDED FOR USE IN SITUATIONS REQUIRING FAIL-SAFE PERFORMANCE OR IN WHICH AN ERROR OR INTERRUPTION IN THE SERVICES COULD LEAD TO SEVERE INJURY TO BUSINESS, PERSONS, PROPERTY OR ENVIRONMENT ("HIGH RISK ACTIVITIES"). THESE HIGH RISK ACTIVITIES MAY INCLUDE, WITHOUT LIMITATION, VITAL BUSINESS OR PERSONAL COMMUNICATIONS, OR ACTIVITIES WHERE ABSOLUTELY ACCURATE DATA OR INFORMATION IS REQUIRED. CUSTOMER EXPRESSLY ASSUMES THE RISKS OF ANY DAMAGES RESULTING FROM HIGH RISK ACTIVITIES. EXCEL SHALL NOT BE LIABLE FOR ANY INCONVENIENCE, LOSS, LIABILITY, OR DAMAGE RESULTING FROM ANY INTERRUPTION OF THE SERVICES, DIRECTLY OR INDIRECTLY CAUSED BY, OR PROXIMATELY RESULTING FROM, ANY CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, CAUSES ATTRIBUTABLE TO CUSTOMER OR CUSTOMER- EQUIPMENT; INABILITY TO OBTAIN ACCESS TO THE SERVICE DUE TO ANY OCCURRENCE OUTSIDE OF EXCEL'S CONTROL, INCLUDING BUT NOT LIMITED TO THE PROVISIONS OF ARTICLE 7.6 (FORCE MAJEURE.)

7.5 REMEDIES. THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES UNDER THIS AGREEMENT ARE AS EXPRESSLY SET FORTH IN THIS AGREEMENT.

7.6 FORCE MAJEURE. IN NO EVENT SHALL EXCEL OR ITS EMPLOYEES OR AGENTS BE LIABLE TO THE CUSTOMER FOR ANY DAMAGES FOR, BASED

UPON, OR ARISING OUT OF ANY NATURAL DISASTERS, WEATHER CONDITIONS, CIVIL DISTURBANCES, MATERIAL SHORTAGES, ELECTRONIC OR MECHANICAL FAILURES, PROBLEMS WITH OR THE INTERRUPTION OF TELEPHONE SERVICE, INTERNET SERVICE OR ELECTRICAL POWER OR ACT OF TERRORISM, RIOTS, PLAGUE, EPIDEMIC, PANDEMIC, OUTBREAKS OF INFECTIOUS DISEASE OR ANY OTHER PUBLIC HEALTH CRISIS, INCLUDING QUARANTINE OR OTHER EMPLOYEE RESTRICTIONS.

ARTICLE 8. INDEMNIFICATION

8.1 Indemnification. Except as a result of Excel's gross negligence or willful misconduct, the Customer agrees to defend, indemnify and hold Excel and its employees and agents harmless as against any and all liabilities, losses, damages, injuries, claims, suits, judgments, settlements, awards, costs, charges and expenses, including but not limited to any fees, costs, charges and expenses incurred by Excel for investigation, defense and resolution, for, based upon, or arising out of the performance or failure to perform any Services under or pursuant to this Agreement.

ARTICLE 9. DISPUTE RESOLUTION

9.1 Mediation. If a dispute arises out of or relates to this Agreement or its breach that cannot be resolved through negotiation, the parties agree to try in good faith to settle the dispute by mediation in accordance with the following terms and conditions:

- (a) The mediation shall be treated as a settlement discussion and shall therefore be confidential and may not be used against either party in any later proceeding relating to the dispute. The mediator may not testify for either party in any later proceeding relating to the dispute.
- (b) Each party shall bear its own costs in the mediation. The parties shall share equally the fees and expenses of the mediator. Each party shall treat information received from the other party pursuant to the mediation as confidential.
- (c) If the parties have engaged in good faith participation in the mediation but have not resolved the dispute for any reason, either party or the mediator may terminate the mediation at any time.

9.3 Governing Law: This Agreement shall be deemed to have been executed in the State of California and shall be interpreted, construed and enforced in accordance with and governed by the laws of the State of California.

9.4 Jurisdiction: Each party (a) consents to the exclusive jurisdiction and venue of the federal and state courts located in the State of Florida in any action arising out of or relating to this Agreement; (b) waives any objection it might have to jurisdiction or venue of such forums or that the forum is inconvenient; and (c) agrees not to bring any such action in any other jurisdiction or venue to which either party might be entitled by domicile or otherwise.

9.5 Litigation Costs and Expenses. If any party institutes any legal suit, action, or proceeding against the other party to enforce this Agreement or to obtain any other remedy regarding any breach of this Agreement, arising out of, or relating to this Agreement, the prevailing party in the final, non-appealable judgment regarding the suit, action, or proceeding is entitled to receive, and the non-prevailing party shall pay, in addition to all other remedies to which the prevailing party may be entitled, the costs and expenses incurred by the prevailing party in conducting the suit, action, or proceeding, including the reasonable attorneys' fees and expenses and court costs, even if not otherwise recoverable by law including, without limitation, all fees, taxes, costs, and expenses incident to appellate and post-judgment proceedings.

ARTICLE 10. CONFIDENTIAL INFORMATION

10.1 Disclosure and Use. All Confidential Information shall be kept by the receiving party in strict confidence and shall not be disclosed to any third party without the disclosing party's express written consent. Notwithstanding the foregoing, such information may be disclosed (i) to the receiving party's employees, affiliates, and agents who have a need to know for the purpose of performing this Agreement, using the Services, rendering the Services, and marketing related products and services (provided that in all cases the receiving party shall take appropriate measures prior to disclosure to its employees, affiliates, and agents to assure against unauthorized use or disclosure); or (ii) as otherwise authorized by this Agreement. Each party agrees to treat all Confidential Information of the other in the same manner as it treats its own proprietary information, but in no case using a degree of care less than a reasonable degree of care.

10.2 Exceptions. Notwithstanding the foregoing, each party's confidentiality obligations hereunder shall not apply to information that: (i) is already known to the receiving party without a pre-existing restriction as to disclosure; (ii) is or becomes publicly available without fault of the receiving party; (iii) is rightfully obtained by the receiving party from a third party without restriction as to disclosure, or is approved for release by written authorization of the disclosing party; (iv) is developed independently by the receiving party without use of the disclosing party's Confidential Information; or (v) is required to be disclosed by law or regulation. Excel shall not be responsible for any unintentional or inadvertent disclosure and shall have the right to fully cooperate with all law enforcement agencies or organizations and may disclose any information that is requested pursuant to a legal, judicial, or administrative proceeding.

10.3 HIPAA Compliance. If this Agreement involves services, activities or products subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Excel will appropriately safeguard Protected Health Information (defined in 45 CFR 160.103), and agrees that it is subject to, and shall comply with, the provisions of 45 CFR 164 Subpart E, regarding the use and disclosure of Protected Health Information. Before Excel may receive, maintain or create any content subject to HIPAA, Excel and the Customer shall execute a HIPAA Business Associate Agreement (BAA). To the extent that the BAA conflicts with any term contained in this Agreement, the terms of the BAA will control.

10.4 Communications. The Customer agrees to receive information and messages related to the provision of the Services via electronic means including but not limited to SMS, email, and

secure message app and not engage in using the Services in violation of any and all applicable state and Federal laws, rules and regulations, including but not limited to the Health Insurance Portability and Accountability Act (“HIPAA”) and Protected Health Information (“PHI”) or in connection with offensive or obscene subject matter.

ARTICLE 11. PRIVACY POLICY

11.1 Privacy Policy. In addition to the provisions of Articles 10 (Confidential Information), the Website Privacy Policy, available at <https://exceltelemessaging.com/terms>, applies to how Excel handles confidential information captured by or entered into the Excel Website. In the event of a conflict between the provisions of Article 10 and any provision of the Website Privacy Policy, the applicable provision of these Terms and Conditions shall prevail in the resolution of the conflict.

ARTICLE 12. MONITORING AND RECORDING

12.1 Monitoring and Recording. In compliance with federal and state law, Excel may monitor and/or record all calls that are made in connection with the Service provided to the Customer. Where a recording is made pursuant to this Article, said recording shall be the sole property of Excel. The Customer acknowledges that it shall not be entitled to access, copy, compel delivery or otherwise, any recording whatsoever unless otherwise required by law.

ARTICLE 13. PROHIBITED USES

13.1 Prohibited Uses. The Customer represents and warrants that the Services are not to be used for any illegal, immoral, harmful, offensive, or otherwise undesirable purpose. It is in Excel’s full, unilateral discretion to determine whether the Customer’s use of the Services is permissible. If Excel becomes aware that the Services are being used for an impermissible purpose, Excel shall have the right to suspend or terminate all Services IMMEDIATELY, without any prior written or oral notice to the Customer. The Customer shall be responsible for payment of all Services up to the time of suspension or termination and Excel shall have the right to apply the Deposit to any unpaid balances. Any breach of this Article shall be deemed a material breach of this Agreement. In the event of such material breach, Excel shall have the right to restrict, suspend, or terminate immediately any or all Service Orders, without liability on the part of Excel.

ARTICLE 14. REPORTS AND STATISTICAL INFORMATION

14.1 Reports and Statistical Information. The Customer may periodically request reports or statistical information regarding the Services being performed by Excel. The cost to prepare and furnish such reports and statistical information is not included in the cost of the Services and must be paid for in full by the Customer. Excel will advise the Customer of the cost to be charged for the reports and statistical information and obtain the consent of the Customer before preparing and providing same to the Customer. Excel does not make any guarantees, warranties or representations as to the accuracy or availability of the reports and statistical information so requested or provided.

ARTICLE 15. MISCELLANEOUS TERMS

15.1 Notices. Except as otherwise provided in this Agreement, any notices or other communications contemplated or required under this Agreement, in order to be valid, shall be in writing and meet the following requirements. General notices to Excel shall be sent to PO Box 369, Rancho Santa Fe, CA 92067 or to info@exceltelemessaging.com. Legal notices, including but not limited to, unresolved Customer disputes or notices of pending legal action must be sent to PO Box 369, Rancho Santa Fe, CA 92067 **and** to legal@exceltelemessaging.com. All notices to the Customer shall be sent to the Customer's primary email address that the Customer provided to Excel on the Service Order.

15.2 Assignment and Transfer. The Customer may not assign or delegate its rights or obligations pursuant to this Agreement without the prior written consent of Excel. Any assignment or delegation in violation of this section is void. Excel may assign this Agreement to a Successor without Customer's consent. For this purpose, Successor means any person, firm, corporation or other business entity which at any time, whether by purchase, merger or otherwise, directly or indirectly acquires all or substantially all of the assets or business of Excel.

15.3 Survival. The rights and obligations of either party that by their nature would continue beyond the expiration or termination of this Agreement or any Service Order, including without limitation representations and warranties, indemnifications, and limitations of liability, shall survive termination or expiration of this Agreement or any Service Order.

15.4 Independent Contractors. The Parties to this Agreement are independent contractors. Neither Party is an agent, representative, or partner of the other Party. Neither Party shall have any right, power, or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture, or partnership between the Parties or to impose any liability attributable to such a relationship upon either Party.

15.5 Severability. In the event that any portion of this Agreement is held to be invalid or unenforceable, the parties shall replace the invalid or unenforceable portion with another provision that, as nearly as possible, reflects the original intention of the parties, and the remainder of this Agreement shall remain in full force and effect.

15.6 No Waiver. No failure by either party to enforce any rights hereunder shall constitute a waiver of such right(s).

15.7 Compliance with Laws. Each of the Parties agrees to comply with all applicable local, state and federal laws and regulations and ordinances in the performance of its respective obligations under this Agreement.

15.8 Entire Understanding. The Agreement constitutes the entire understanding of the parties related to the subject matter hereof. The Agreement supersedes all prior agreements, proposals, representations, statements, or understandings, whether written or oral, concerning the Services or the parties' rights or obligations relating to the Services. Any prior representations, promises,

inducements, or statements of intent regarding the Services that are not expressly provided for in this Agreement are of no effect. Subsequent agreements among the Parties concerning the Services must be executed in writing by authorized representatives of both parties.

15.9 Counterparts. This Agreement may be signed in any number of counterparts, all of which taken together constitute a single instrument.

Last Updated February 17, 2023