

Solutions by Text, LLC Terms of Service

For Master Service Agreements executed between June 5, 2020 and February 28, 2022

These amended Terms of Service (“Amended Terms” or “Terms”) replace the Solutions by Text, LLC (“SBT”) Terms of Service *and* General Terms and Conditions in effect before June 5, 2020. By beginning or continuing to use SBT’s products and services, Partner consents to be bound by these Terms. These Terms are incorporated by reference into the Agreement as if fully set forth therein.

I. Services

1.1. Generally. SBT provides various services (“SBT Services”) supporting Short Message Service (“SMS”) messages, Multimedia Message Service (“MMS”) messages, Rich Communication Service (“RCS”) messages, telephone calls, facsimile transmittals, and email (collectively “Messages”) systems via a hosted network. Specific descriptions of SBT’s Message offerings can be found at: <https://www.solutionsbytext.com/product-descriptions/>

1.2. Partner Obligations. SBT Services do not include, and, if necessary to perform any agreement, Partner must perform the following duties, including, but not limited to:

- (a) provide and maintain compatible equipment, hardware, and software necessary to establish a connection to the Application Programming Interface (“API”) or User Interface (“UI”);
- (b) configure and operate any required equipment, hardware, and software necessary to utilize the SBT Services;
- (c) provide access to the API or UI from its network or data processing equipment via the Internet or telephone facilities;
- (d) pay any service charges and/or other charges associated with accessing or using the SBT Services;
- (e) maintain the security of and prevent unauthorized access to the SBT API or UI;
- (f) properly obtain consent to send its desired recipients and customers (“End-Users”) Messages, retain records of the obtained consent, and provide records of the obtained consent to SBT if requested; and
- (g) cooperate with SBT, third-party service providers, and/or governmental authorities in investigations of any alleged or perceived violation of any applicable law, rule, or regulation.

1.3. SBT Obligations. During the term of the Agreement, and through the date of termination (“Termination Date”), SBT will provide the SBT Services in exchange for the consideration provided by the Agreement, unless otherwise provided herein.

1.4. Support. SBT offers software and technical support Monday through Friday during normal business hours (9:00 a.m.– 5:00 p.m. CST). After-hours support services are provided by contacting 888-980-8871. If you call for after-hours support, you will be prompted to leave a message with company/contact details and a brief description of your immediate need. An SBT support team member will use the contact information provided to respond within thirty (30) minutes to confirm your request, provide initial findings from our research, gather any additional information, and document the resolution process/procedure.

1.5. Additional Consulting Services. SBT will provide Partner with professional consulting services (“Consulting Services”) upon Partner’s request, subject to SBT’s availability. The professional rate for the Consulting Services will be complimentary so long as the requested Consulting Services are related to or necessary for the performance of the Agreement. SBT requires Partner to reimburse SBT for any reasonable and necessary costs in providing the Consulting Services. Partner may request Consulting Services outside the scope of or unrelated to the Agreement, and, if SBT is able to fulfil the request, SBT and Partner will enter into a separate agreement detailing the scope of work and payment terms.

1.6. Provisioned Short Codes. If applicable and if requested by Partner, SBT will, to the extent permitted and approved, procure and lease a Short Code directly from the applicable Short Code administrative organization on behalf of Partner. SBT, on behalf of Partner, shall purchase the right to use the Short Code and will automatically renew the term of the Short Code lease for the length of the Agreement. SBT CANNOT GUARANTEE A REQUEST FOR A SHORT CODE WILL BE APPROVED AND CANNOT GUARANTEE ANY TIMEFRAME FOR THE SHORT CODE APPROVAL PROCESS. SBT will take reasonable efforts to get the Partner’s Short Code approved as soon as possible, but the ultimate approval decision and timeframe to obtain approval is not within SBT’s control.

II. Fees and Payment

2.1. Initial and Renewal Terms. The length of the Agreement's original term ("Initial Term") and/or subsequent automatically renewed terms ("Renewal Term(s)") are identified in the Agreement. If the Agreement is silent on the time period of the Initial Term and/or Renewal Term(s), the Parties agree that this Section will govern. Specifically, the Parties agree that the Initial Term of the Agreement will be for (1) year from the Agreement's Effective Date. After expiration of the Initial Term of the Agreement, the Agreement will automatically renew for consecutive one (1) year periods until either Party cancels the Agreement pursuant to the Terms herein.

2.2. Fees. If applicable, Partner is required to pay SBT the "Initial Investment" listed on the Price Sheet upon receipt of the fully executed Agreement requiring same, but no later than thirty (30) days after the Effective Date of the Agreement.

During the Agreement's Initial Term or any subsequent Renewal Term(s), SBT will provide an invoice ("Invoice") once per month or once per quarter (individually "Billing Period"), the creation date and frequency of which will be determined by SBT based on the SBT Services provided under the Agreement. The Invoice will detail the Partner's selected SBT Services and corresponding prices as provided in the Agreement (collectively "SBT Usage Fees") including, but not limited to:

- a) Set Up & Activation Fees;
- b) Short Code and Long Code Provisioning Fees;
- c) Short Code, Long Code, and Premier (Vanity) Code Lease Fees;
- d) Gateway Licensing Fees;
- e) Annual Renewal Fees;
- f) Bulk Prepaid Service Credits;
- g) File Processing Fees;
- h) Branded Short URL Domain Fees;
- i) Subscription Fees; and
- j) Any other SBT Services provided for in the Agreement or that the Parties agree to.

If applicable, Partner will purchase a bundle of Prepaid Service Credits ("Prepaid Service Credits"). The amount purchased will be listed on the Price Sheet. A Prepaid Service Credit will be deducted from Partner's Prepaid Service Credit balance according to the Prepaid Service Credit type and corresponding depletion rate outlined in Section 2.10, *infra*. Prepaid Service Credits must be used within one (1) year of the date of purchase or they will expire and no refund or credit for any remaining Prepaid Service Credits will be issued.

Any Invoice for Usage Fees, except those identified in the Initial Investment, are due upon receipt of the Invoice for same, but no later than thirty (30) days after the date of the Invoice. Invoices not paid within thirty (30) days are subject to service interruption and/or cancellation of the Agreement, explained in Section 4.3 herein. The Usage Fees will be invoiced during the Initial Term of the Agreement and any subsequent Renewal Term(s).

2.3. Start Date. Any Usage Fees due pursuant to the Agreement begin accruing on the Effective Date of the Agreement. Any contracted SBT Services will not begin until the required payments, if any, are received by SBT. Any reasonable delay or service interruption, whether due to acts and/or omissions of either Party or those of a third-party, will not alter the Effective Date of the Agreement unless the Parties agree, in writing, otherwise. If the Agreement requires SBT to issue any payment(s) to Partner, any amounts due begin to accrue on the Effective Date of the Agreement; SBT will not be

responsible for any amounts due to Partner or any third-party for transactions that occur before the Agreement's Effective Date.

2.4. Replenishment. Partner is responsible for maintaining a sufficient balance of Prepaid Service Credits to support its usage of SBT Services. Partner's Prepaid Service Credit balance will be replenished with additional Prepaid Service Credits when the Partner's Prepaid Service Credit balance reaches one-third (1/3) of the original amount of Prepaid Service Credits purchased ("Replenishment Threshold"). SBT reserves the right to modify the Replenishment Threshold as deemed necessary to maintain sufficient Prepaid Service Credits to support Partner's usage of SBT Services. Prepaid Service Credits will be replenished by the amount of the original purchase volume of Prepaid Service Credits unless otherwise agreed. SBT will invoice Partner upon any replenishment of Prepaid Service Credit quantities in addition to any monthly and/or quarterly fees due for SBT Services under the Agreement. Notwithstanding any payment terms to the contrary, if Partner's Prepaid Service Credit balance becomes negative, SBT reserves the right to bill Partner immediately for the amount necessary to bring the Partner's Prepaid Service Credit balance current as well as for any amount necessary to reach the Replenishment Threshold.

2.5. Late Payments and Fees. Any invoice reflecting amounts due to SBT that are not paid in full within thirty (30) days of the date of the invoice ("Late Payment") are subject to a late fee in the amount of one and one-half percent (1.5%) of the total amount due ("Late Fee"). The Late Fee will be assessed monthly on the total amount due until the required payment is received by SBT. SBT reserves the right to use any and all means available under applicable law to collect any amounts outstanding for ninety (90) days or more. SBT reserves the right to use any Partner payment method on file for any Late Payment which remains outstanding for a period of thirty (30) days or more.

2.6. Recurring and Returned Payments. Any Partner that has provided a credit card, debit card, or an authorization to process Automated Clearing House ("ACH") payments (individually "Payment Option") authorizes SBT to utilize the Payment Option to process any payments due by Partner to SBT on a monthly and/or quarterly basis, as applicable, by the payment due date and pursuant to the Agreement. By providing authorization for ACH payments, Partner authorizes SBT to initiate a one-time electronic funds transfer ("Transfer") from the checking or savings account provided ("Funding Account") on the payment due date. Partner authorizes SBT to utilize any payment information on file if the preferred payment method fails or is unable to be processed. Partner must submit any desired change or termination of a Payment Option at least fifteen (15) days prior to the next billing date. SBT reserves the right to charge a \$25.00 fee for each returned payment regardless of the reason the payment is returned.

2.7. Taxes. All quoted or actual Usage Fees are stated exclusive of any applicable taxes, unless otherwise required by law. SBT will collect from Partners and remit to the applicable taxing authority all sales, use, and excise taxes related to the provision of the SBT Services, if any. Partner is responsible for paying any taxes, duties, charges, and/or governmental levies of any kind including, but not limited to, those related to sales, services, use, and value-added, whether domestic or international related to Partner's revenue and business operations.

2.8. Price Alterations. SBT provides services and sets Usage Fee prices partially based on the actions and standards of wireless carriers, which SBT does not control. As such, SBT reserves the right to alter Usage Fees provided within the Agreement upon thirty (30) days written notice to Partner. Price alterations will not be retroactive and will only apply to future billing. SBT assures Partner that price alterations, if any, will be implemented only when SBT finds it necessary.

2.9. Service Pause. Partner may request to pause any SBT Services provided under the Agreement for up to ninety (90) days upon written request. Only one (1) request to pause SBT Services will be permitted per calendar year, unless SBT expressly agrees otherwise. A request to pause SBT Services must be submitted to SBT in writing thirty (30) days prior to the desired pause date, and such notice must provide the requested time period, up to ninety (90) days, for which SBT Services will be paused (“Pause Period”). SBT will not pause any SBT Services unless Partner is current on payments to SBT. Partner can request that SBT Services be resumed at any point during the Pause Period, at which point SBT Services and any associated recurring billing for same will resume. SBT Services and access to same will not be permitted during the Pause Period. If Partner requests a Pause Period that exceeds ninety (90) days, the Agreement will be cancelled, and Partner can resume services when able, but will be required to sign a new agreement. If the Agreement is cancelled, unused Prepaid Service Credits will expire and not be refunded, Partner will need to execute a new agreement, and Partner will be responsible for any Usage Fee subsequently required by the new agreement.

2.10. Service Credit Depletion. Prepaid Service Credits will be deducted from Partner’s Prepaid Service Credit balance depending on the specific type of Prepaid Service Credit used (“Prepaid Service Credit Type”) and the amount of Prepaid Service Credit(s) used for each instance (“Depletion Rate”). Specifically, the current Prepaid Service Credit Types and the corresponding Depletion Rates can be found at: <https://www.solutionsbytext.com/current-depletion-rate-grid/>

SBT reserves the right to add to and/or remove Prepaid Service Credit Types and/or the corresponding Depletion Rate upon written notice to Partner.

2.11. Promotions and Discounted Pricing. SBT may, at times, run a promotion (“Promotion”) for current or prospective Partners that provides discounted rates for certain SBT Services. The Terms enumerated herein apply to any Promotion. Promotions offering discounting pricing, if any, are only applicable for the length of time specified in the Promotion and are subject to these Terms and any additional terms enumerated within the specific Promotion. At the conclusion of the Promotion, current pricing for SBT’s Services will apply. Notwithstanding these Terms, the restrictions and specifics governing any Promotion will supersede the Terms herein if there is a conflict.

2.12. Wireless Carrier Surcharges. SBT reserves the right to assess applicable wireless carrier surcharges against Partner’s Prepaid Service Credit balance. Any Prepaid Service Credit rates listed in the Agreement are exclusive of any applicable wireless carrier surcharges. Partner remains solely responsible for payment of any wireless carrier surcharges. Current wireless carrier surcharges can be found at: <https://www.solutionsbytext.com/am-site/media/surcharge-grid-2020.pdf>

2.13. Price Sheets. SBT may send a current or prospective Partner a quote for SBT Services with corresponding prices (“Price Sheet”). SBT cannot guarantee the SBT Services will be available and/or the corresponding prices will be the same after the Price Sheet’s listed expiration date (“Expiration Date”). If no Expiration Date is listed on the Price Sheet, the Price Sheet will expire thirty (30) days after the date the Price Sheet was created, after which SBT will have no obligation to honor any specifications within the Price Sheet.

III. Proprietary Rights

3.1. Limited License. SBT grants Partner a limited, non-exclusive, revocable, non-transferable license, without the right to sublicense, to access all software, applications, interfaces, designs, materials, trademarks, copyrights, patents, industrial designs, geographical identifications, trade secrets, hyperlinks, logos, demonstrative marketing materials, and other legal interests recognized or protected as intellectual property under applicable law (collectively "Intellectual Property") required to utilize the SBT Services, provided by or belonging to SBT only to the extent necessary to satisfy the obligations of the Agreement. Partner is not granted any interest in or rights to any of the SBT Intellectual Property. This limited license shall not include the right to modify, make derivative works of or improvements to, resell or distribute in any way, lease or rent, and/or assign or allow access to a third-party any of the SBT Intellectual Property. Any rights granted herein shall cease on the Agreement's Termination Date. Partner can publicize, alter, customize, and/or disseminate any SBT Intellectual Property only upon prior written permission from SBT.

3.2. Confidential Information. The Parties agree not to disclose any Confidential Information, as defined herein, pertaining to the other Party or its goods or services to any third-party nor use the Confidential Information for any purpose other than to perform the obligations and duties under the Agreement. "Confidential Information" is defined as, expressly includes, but is not limited to, the following:

- (a) any data or information that is of value to the disclosing Party and is not generally known by the public;
- (b) information about the disclosing Party's executives or employees;
- (c) marketing techniques, including activities and promotional materials not yet made public;
- (d) price lists and specific pricing for offered goods and/or services;
- (e) internal policies;
- (f) payments or referral fees earned, made, or due to either Party in connection with performance of the Agreement;
- (g) customer and vendor lists;
- (h) the disclosing Party's business methods, practices, and operations;
- (i) the disclosing Party's contracts or agreements, including the obligations contained therein, and the identity of the other parties thereto;
- (j) any information which the disclosing Party treats as proprietary;
- (k) any information which the disclosing Party has verbally or physically designated as confidential; and
- (l) either of the Party's Intellectual Property.

3.3. Obligations. During the term of the Agreement, and at all times afterwards, each Party, in handling the other Party's Confidential Information, shall:

- (a) safeguard the Confidential Information with the same degree of care that it uses to protect its own Confidential Information;
- (b) maintain the confidentiality of the Confidential Information;
- (c) not use the information except as permitted under the Agreement;
- (d) not disseminate, disclose, sell, publish, or otherwise make available the Confidential Information to any third-party without the prior written consent of the applicable owner of such Confidential Information; and
- (e) perform any obligations under any applicable non-disclosure or similar agreement between the Parties.

3.4. Exclusions. Confidential Information expressly excludes the following information:

- (a) information that is already lawfully in the non-owner Party's possession from a source other than the owner Party, unless received pursuant to a non-disclosure agreement;
- (b) is or becomes generally available to the public through no fault of the non-owner Party or a third-party with whom the non-owner Party is affiliated;
- (c) is disclosed to the non-owner Party by a third-party who may transfer or disclose such information without restriction;
- (d) is required to be disclosed by the non-owner Party as a matter of law, provided that the non-owner Party will use all reasonable efforts to provide the owner Party with prior notice of such disclosure to obtain a protective order or similar protection;
- (e) is disclosed with the owner Party's approval; and
- (f) is independently developed by the non-owner Party without any use of owner Party's Confidential Information.

3.5. Notice. In all cases, the non-owner Party will use all reasonable efforts to give the owner Party ten (10) days prior written notice of any disclosure of Confidential Information permitted under this Agreement. Any breach of Sections 3.1—3.4 will irreparably harm the owner Party. As such, in the event of a breach, in addition to any other remedy provided herein or by law or in equity, the owner Party is entitled to promptly seek injunctive relief in a court of competent jurisdiction without the requirement to post any applicable bond.

3.6. SBT Proprietary Rights. Partner acknowledges that SBT retains all property rights and title in and to all of its Confidential Information, Intellectual Property, and/or other proprietary information, products, services, and the ideas, concepts, techniques, inventions, processes, software or works of authorship developed, embodied in, or practiced in connection with the SBT Services hereunder, including, without limitation, all modifications, enhancements, derivative works, configurations, translations, upgrades, and interfaces. Nothing in this Agreement shall create any right of ownership for Partner of the SBT Confidential Information and/or SBT Intellectual Property.

IV. Cancellation, Termination, and Service Disruption

4.1. Cancellation. Either Party may cancel the Agreement, whether during the Initial Term or a Renewal Term, by submitting the request to cancel in writing to the other Party thirty (30) days in advance of the desired termination date ("Termination Date"). If Partner chooses to cancel the Agreement, it will remain responsible only for payment of any Usage Fees through the Termination Date and payment of any outstanding balances. No refunds or credits for Prepaid Service Credits will be issued upon cancellation, unless the Agreement is cancelled by SBT for any reason other than those permitting automatic cancellation pursuant to Section 4.2. Any permissible Prepaid Service Credit refund will be equal to the amount of remaining Prepaid Service Credits on the date of cancellation at the applicable Prepaid Service Credit rate at the time of purchase. No refunds will be issued for Usage Fees, no matter the reason for cancellation of the Agreement.

4.2. Automatic Cancellation. The terminating Party may immediately cancel or suspend this Agreement, whether during the Initial Term or a Renewal Term, by submitting the notice of cancellation or suspension in writing, the date of which will be the Termination Date, to the non-terminating Party upon the occurrence of any of the following events:

- (a) the non-terminating Party commences a voluntary case under Title 11 of the United States Code or the corresponding provisions of any successor laws;
- (b) anyone commences an involuntary case against the non-terminating Party under Title 11 of the United States Code or the corresponding provisions of any successor laws and either:
 - (i) the case is not dismissed by midnight at the end of the sixtieth (60th) day after commencement; or
 - (ii) the court before which the case is pending issues an order for relief or similar order approving the case;
- (c) a court of competent jurisdiction appoints, or the non-terminating Party makes an assignment of all or substantially all of its assets to, a custodian (as the term is defined in Title 11 of the United States Code or the corresponding provisions of any successor laws) for the non-terminating Party or all or substantially all of its assets;
- (d) the non-terminating Party fails generally to pay its debts as they become due, unless those debts are subject to a good-faith dispute as to liability or amount, or acknowledges in writing that it is unable to do so;
- (e) the non-terminating Party commits any irremediable breach of this Agreement;
- (f) the non-terminating Party commits any remediable breach of this Agreement and fails to remedy such breach or fails to comply with this Agreement within fourteen (14) days from written notice to the non-terminating Party specifying the details of the alleged breach;
- (g) the non-terminating Party ceases to do business as an ongoing concern, winds down and/or ceases to do business, terminates the operation of its business, or materially changes the manner or operations of its business;
- (h) the non-terminating Party begins doing business with or is acquired by a direct competitor of SBT, defined as an entity providing professional services substantially similar to the SBT Services;
- (i) cancellation of the Agreement by SBT is necessary to comply with applicable laws, regulations, or requirements of governmental entities, wireless carriers, Short Code provisioners/licensors, aggregators, wireless industry associations and any other third parties involved in provisioning the SBT Services;
- (j) an enacted law or regulatory action prohibits, impairs, or makes impractical or uneconomical the provision of the SBT Services;
- (k) there is use by the non-terminating Party of the SBT Services which may create liability or may be considered fraudulent, illegal, improper, or in violation of any of the Agreement;

- (l) there is improper use of the API or UI by the non-terminating Party;
- (m) there is improper use or sharing of Confidential Information as provided herein;
- (n) the Party fails to obtain proper consent from End-Users to send Messages via the SBT Services;
- (o) a Late Payment remains outstanding, in whole or in part, for a period of seventy-five (75) days or more; or
- (p) Partner's Prepaid Service Credit balance becomes negative and remains negative for a period of seven (7) days.

4.3. Service Suspension and Cancellation. If a Late Payment remains outstanding, in whole or in part, for a period of forty-five (45) days or more, SBT may cease providing any or all SBT Services and fully disconnect Partner from the SBT API, UI, and any applications developed using the API or UI until the outstanding balance is received. If a Late Payment remains outstanding, in whole or in part, for a period of seventy-five (75) days or more, SBT may cease providing any or all SBT Services, fully disconnect Partner from the SBT API, UI, and any applications developed using the API or UI, and terminate the Agreement in its entirety.

4.4. Effect of Termination. If either Party cancels the Agreement pursuant to these Terms, either Party's obligation to provide any services and/or issue any payments under this Agreement cease on the Termination Date, unless expressly provided in the Agreement or herein. Upon termination of the Agreement by either Party for any reason, Partner shall:

- (a) be solely responsible for procuring any new or replacement text-based services;
- (b) remain obligated to pay for all Usage Fees accrued before and through the Termination Date;
- (c) cease using the SBT Services, any SBT issued IDs, usernames, and/or passwords, the SBT API and UI, and all applications developed using the API and UI;
- (d) destroy all copies of SBT assigned IDs, usernames, and/or passwords;
- (e) procure any replacement Short Code, if necessary; and
- (f) return all of SBT's Confidential Information in its custody or control.

4.5. Licenses. Any licenses granted to Partner by SBT shall automatically terminate on the Termination Date, and Partner is responsible for obtaining any necessary replacement licenses.

4.6. API, UI, and Applications. Partner's access to and ability to use the SBT API, UI, any applications developed using the SBT API or UI, as well as any of the SBT Intellectual Property, cease on the Termination Date. Partner will be responsible for purchasing, developing, and/or procuring any necessary replacement software.

4.7. Reallocation of Short Codes. If Partner or SBT terminates the Agreement, and Partner wants to continue using the Short Code procured by SBT and assigned to Partner, Partner will be responsible for all administrative actions and payments necessary for continuation of the Short Code after the Termination Date.

V. Data Security

5.1. Use of Customer Data. Data and other information made available to SBT by or on

behalf of Partners (“Partner Data”) or End-Users (“End-User Data”) (collectively “Data”) for use of SBT Services and/or any obligation under the Agreement will be held in the strictest confidence.

Data shall be disclosed in order for SBT to accurately perform the SBT Services including, but not limited to, instances where Data must be disclosed to detect, prevent, and investigate security incidents, fraud, spam, or unlawful use of the SBT Services, and to respond to any technical problems to ensure proper use and functionality of the SBT Services. Partner acknowledges that Messages are insecure and are generally not encrypted in transit. Security of any Messages or Data transmitted electronically is vulnerable to security breaches, interruptions, and interceptions. **SINCE SBT CANNOT GUARANTEE SECURE TRANSMITTAL OF MESSAGES, SBT IS NOT RESPONSIBLE FOR ANY PROBLEMS, INTERRUPTIONS, DISRUPTION AND/OR CHANGES TO OR LOSSES OF DATA IN THE COURSE OF PERFORMING THE SBT SERVICES THAT ARE OUTSIDE OF SBT’S CONTROL.**

5.2. Data Retention. SBT will promptly return any Data to the custodian of same if requested or required pursuant to the Agreement and/or applicable law upon termination or expiration of the Agreement. SBT will keep and securely store any Data during the Term of the Agreement, including the Initial Term and any Renewal Term(s), and after the termination of the Agreement pursuant to the Agreement and/or applicable law, regardless of the reason for termination of the Agreement. This includes, but is not limited to, the following obligations:

- (a) keep all Data, including, but not limited to, customer lists, customer phone numbers, wireless opt-ins, written opt-ins, the text of all Messages sent to or received from Partner’s customers, and/or any Confidential Information or otherwise sensitive data, for a period of ten (10) years after the termination of the Agreement, unless otherwise required or permissible by the Agreement, or required to do so by legal request or order, and/or applicable law; and
- (b) keep all Partner provided multi-media files, including images, for a period of thirty (30) days after the termination of the Agreement, unless otherwise required or permissible by the Agreement, or required to do so by legal request or order, and/or applicable law.

5.3. Data Destruction. If SBT is not required to keep Data, whether pursuant to the Agreement, termination or expiration of the Agreement, pursuant to the Partner’s direction, and/or applicable law, or the time period for such retention specified in Section 5.2 *supra*, has ended, SBT will destroy any Data in its possession pursuant to the following:

- (a) Physical media (documents, pamphlets, manuals, guides, policies, etc.) shall be disposed of by one of the following methods:
 - i. shredding using SBT controlled cross-cut shredders; or
 - ii. placing Data in locked shredding bins for a third-party company to come on-site and securely collect to cross-cut shred the Data, witnessed by SBT personnel throughout the collection process.
- (b) Electronic media (hard-drives, tape cartridge, CDs, printer ribbons, flash drives, printer and copier hard-drives, stored Data, etc.) shall be disposed of by one of the following methods:
 - i. overwriting onto the location of the media where the data to be sanitized is located; or
 - ii. physically dismantling by methods of crushing, disassembling, or otherwise destroying the Data and rendering same entirely and completely inaccessible to ensure that the platforms have been physically destroyed and that no Data can

be accessed.

- (c) Any systems that have been used to process, store, or transmit Data that is considered Confidential Information, or considered sensitive in any way, shall not be released from SBT until the equipment has been sanitized and all stored information has been completely cleared.

5.4. Security Breach. SBT warrants that it has established and will maintain safeguards against the loss of or unauthorized access to Partner provided Non-Public Personal Information (“NPI”), as that term is defined by the Federal Trade Commission. SBT shall maintain the integrity of NPI in its possession in accordance with any federal or state law privacy mandates.

In the event SBT experiences any unauthorized access to, unauthorized disclosure of, loss of, damage to, or inability to account for (each individually “Breach”) Partner’s NPI, SBT agrees that it shall promptly, at its own expense:

- (a) report any Breach to Partner via email in a commercially reasonable timeframe, and describe in detail: (i) any suspected or actual accessed NPI; (ii) identification of any entities/individuals that may have been affected by such Breach; and (iii) the actual cause of the Breach, if known.
- (b) take all actions necessary or reasonably requested by Partner to stop, limit, and/or minimize the Breach;
- (c) restore and/or retrieve, as applicable, and return all NPI that was lost, damaged, accessed, copied, or removed to Partner. SBT shall reasonably cooperate with Partner to minimize the damage resulting from the Breach.

5.5. Authorized Users. SBT limits access to information, including NPI, so SBT employees have the ability to access only the information necessary to perform essential job functions. Employee access is reviewed and updated on a monthly basis. Any employee that has resigned or been terminated will immediately cease having access to any NPI.

5.6. Background Check Policy. Any SBT applicant must pass a stringent background check performed by a specialized third-party before an offer of employment is made. The background check performs the following searches for a period of seven (7) years prior to the application date: Social Security number, National Sex Offenders Public Registry, Office of Foreign Assets Control (“OFAC”) Specially Designated Nationals and Blocked Persons List (“SDN”), state and federal criminal history, consumer credit history, employment history, personal references, and education verification.

Any felony and/or misdemeanor convictions involving weapons, violence, theft, burglary, sale or delivery of illegal substances, dishonesty, moral turpitude, gang/mob related activity, or computer-related crimes will automatically disqualify an applicant from employment. Any other felony or misdemeanor conviction will be reviewed by the Executive Team before an offer of employment will be made. The Executive Team will review convictions for any hired employees, if any, and determine whether the employee can access certain information.

VI. Representations, Warranties, Limitations, and Indemnification

6.1. Partner’s Representations. Partner represents and warrants that it:

- (a) has the power and authority to enter into the Agreement and to fully perform its obligations therein;
- (b) has obtained the End-User's consent to receive the Messages from the Partner; and
- (c) will comply with all applicable consumer protection laws and regulations.

6.2. SBT's Representations. SBT represents and warrants that it:

- (a) has the power and authority to enter into the Agreement and to fully perform its obligations under the Agreement;
- (b) has the right to use any necessary third-party software, technological components, and/or any other information to perform its obligations under the Agreement;
- (c) will perform the SBT Services in a manner consistent with applicable industry standards by qualified personnel on a commercially reasonable basis; and
- (d) there is no current or threatened action, claim, suit, lawsuit, proceeding, class action lawsuit, and/ or investigation pending against SBT that would materially affect SBT's ability to execute, deliver, or perform its obligations under the Agreement.

6.3. Warranties. SBT WARRANTS THAT THE SERVICES PROVIDED UNDER THE AGREEMENT, IF ANY, SHALL BE PERFORMED IN ACCORDANCE WITH GOOD AND ACCEPTABLE INDUSTRY PRACTICES. SBT SHALL COMPLY WITH ALL LAWS, ORDINANCES, RULES, AND REGULATIONS OF ALL APPLICABLE GOVERNMENTAL AUTHORITIES IN PERFORMING SBT'S SERVICES. SBT WARRANTS THAT SBT IS THE OWNER OF THE SBT CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY AND HAS THE RIGHT TO USE SAME IN THE MANNER AND FOR THE PURPOSES SET FORTH IN THE AGREEMENT WITHOUT VIOLATING ANY RIGHTS OF A THIRD-PARTY. DESPITE THE WARRANTIES ABOVE, ALL ACCESS, IF ANY, TO THE SBT INTELLECTUAL PROPERTY IS DELIVERED AND ACCEPTED BY THE PARTY "AS-IS, WHERE-IS, AND WITH ALL FAULTS." SBT MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND ANY AND ALL WARRANTIES OF FITNESS FOR A PARTICULAR USE, FOR ANY OF THE SBT SERVICES OR SBT INTELLECTUAL PROPERTY. SBT DISCLAIMS ANY AND ALL WARRANTIES REGARDING THE SBT SERVICES, SBT INTELLECTUAL PROPERTY, OR ANY OTHER MATERIAL OR SERVICES PROVIDED BY SBT IN CONNECTION WITH THE AGREEMENT, OR THE ACCESS AND/OR SECURITY OF ANY WEBSITE MAINTAINED BY, ENDORSED, SUGGESTED, OR PROVIDED BY SBT, INCLUDING, BUT NOT LIMITED TO SOLUTIONSBYTEXT.COM. SBT DOES NOT WARRANT THAT ANY SBT OWNED/OPERATED WEBSITES, SERVERS, AND/OR EMAIL SENT FROM SBT OR ITS OWNED/OPERATED WEBSITES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. SBT HEREBY DISCLOSES THAT THE QUALITY OF SERVICES IT PROVIDES WILL VARY DUE TO PERFORMANCE OF CERTAIN SYSTEMS THAT AFFECT THE INTERNET AND THE SBT NETWORK, API, UI, AND APPLICATIONS. ANY EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, IF ANY, ARE IN LIEU OF, AND THIS AGREEMENT EXPRESSLY EXCLUDES, ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY THAT THE SBT SOFTWARE IS ERROR-FREE, WILL OPERATE WITHOUT INTERRUPTION, AND/OR IS COMPATIBLE WITH ALL EQUIPMENT AND/OR SOFTWARE CONFIGURATIONS. THIS SECTION SURVIVES EXPIRATION AND/OR EARLY TERMINATION OF THIS AGREEMENT.

IF ANY PORTION OF THIS SECTION IS FOUND TO BE OVERBROAD, THE LIMITATIONS OF THIS SECTION WILL ONLY BE REDUCED TO THE EXTENT NECESSARY TO COMPLY WITH APPLICABLE LAW.

SBT IS NOT RESPONSIBLE, AND SHALL INCUR NO LIABILITY FOR, ANY ACTS THAT ARE BEYOND SBT'S CONTROL, INCLUDING, BUT NOT LIMITED TO, THE ACTS OF THIRD PARTIES. UNDER NO CIRCUMSTANCE SHALL SBT BE LIABLE FOR DAMAGES THAT RESULT FROM THE USE OF, OR THE INABILITY TO USE, SBT'S SERVICES, INTELLECTUAL PROPERTY, INFORMATION, AND/OR WEBSITES. APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR CERTAIN DAMAGES, AND, IN SUCH EVENT, THE FOREGOING LIMITATIONS MAY BE REDUCED ONLY TO THE EXTENT NECESSARY TO COMPLY WITH APPLICABLE LAW.

6.4. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, AND/OR PUNITIVE DAMAGES, OR DAMAGES FOR LOSS OF PROFIT, REVENUE, OR DATA, OR DAMAGES FOR REPUTATIONAL HARM INCURRED BY THE OTHER PARTY OR ANY THIRD-PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

SBT'S TOTAL LIABILITY FOR ANY CLAIM ARISING OUT OF THE PERFORMACE OF THE AGREEMENT IS LIMITED IN ALL CASES AND IN THE AGGREGATE TO THE AMOUNT ACTUALLY PAID BY PARTNER TO SBT DURING THE TWELVE (12) MONTHS PRECEDING THE DATE OF THE EVENT THAT IS THE BASIS OF THE CLAIM.

THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE PARTIES ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY SPECIFIED HEREIN, WHICH ALLOCATES THE RISK BETWEEN PARTNER AND SBT AND FORM THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR CERTAIN DAMAGES, AND, IN SUCH EVENT, THE FOREGOING LIMITATIONS MAY BE REDUCED ONLY TO THE EXTENT NECESSARY TO COMPLY WITH APPLICABLE LAW.

6.5. Partner Indemnification. PARTNER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS SBT FROM ALL LIABILITIES, LOSSES, CLAIMS, DEMANDS, SUITS, OR PROCEEDINGS, INCLUDING INDEMNIFICATION FOR ANY DAMAGES, ATTORNEYS' FEES, AND COSTS, WHETHER INCURRED BY JUDGMENT OR SETTLEMENT, THAT ARISE FROM:

(A) USE OR MISUSE OF THE SBT INTELLECTUAL PROPERTY, SBT SERVICES, AND/OR SBT CONFIDENTIAL INFORMATION BY PARTNER OR ANY ENTITY TO WHOM PARTNER HAS GRANTED ACCESS TO SAME;

(B) AN ACT OR OMISSION BY PARTNER OR ANY ENTITY TO WHOM PARTNER HAS GRANTED ACCESS TO THAT RESULTS IN UNAUTHORIZED ACCESS TO SBT'S API, UI, INTELLECTUAL PROPERTY, SYSTEMS, NETWORK, DATA, OR OTHER TECHNOLOGY;

(C) ANY VIOLATION OF APPLICABLE LAW RELEVANT TO THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE TELEPHONE CONSUMER PROTECTION ACT OF 1991 (CODIFIED AS 47 U.S.C. § 277) ("TCPA"), THE FAIR DEBT COLLECTION PRACTICES ACT ("FDCPA"), AND ANY RELEVANT OR SUCCESSOR LAWS;

(D)PARTNER'S INCLUSION OF AN END-USER IN ANY PARTNER DATABASE, INFORMATION SUPPLIED TO SBT, OR OTHER PARTNER SUPPLIED

INFORMATION WHERE THE END-USER HAS NOT PROPERLY CONSENTED TO OR HAS PROPERLY OPTED OUT OF RECEIVING MESSAGES FROM PARTNER; (E) PARTNER'S REPRESENTATION THAT IT HAS BEEN GRANTED VALID CONSENT FROM A FIRST-PARTY OR OTHER ENTITY TO SEND AN END-USER MESSAGES WHEN THE CONSENT HAS NOT ACTUALLY BEEN GRANTED; (F) PARTNER'S FAILURE TO ENACT AVAILABLE SECURITY PROTECTIONS, INCLUDING, BUT NOT LIMITED TO, MULTI-FACTOR IDENTIFICATION OR TWO FACTOR IDENTIFICATION, FOR ANY APPLICATIONS, PLATFORMS, SOFTWARE, OR ANY OTHER NECESSARY PROGRAMS NECESSARY FOR OR AVAILABLE TO USE THE SBT SERVICES; AND (A) PARTNER'S VIOLATION OF ANY PROVISION OF THE AGREEMENT.

6.6. SBT Indemnification. SBT AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS PARTNER FROM ALL LIABILITIES, LOSSES, CLAIMS, DEMANDS, SUITS, OR PROCEEDINGS, INCLUDING INDEMNIFICATION FOR ANY DAMAGES, ATTORNEYS' FEES, AND COSTS, WHETHER INCURRED BY JUDGMENT OR SETTLEMENT, THAT ARISE FROM:

- (A) ALLEGATIONS THAT SBT, BY AND THROUGH ITS SERVICES, INTELLECTUAL PROPERTY, OR CONFIDENTIAL INFORMATION, HAS INFRINGED OR MISAPPROPRIATED ANY THIRD-PARTY'S INTELLECTUAL PROPERTY RIGHTS ("INFRINGEMENT CLAIM"); AND**
- (B) SBT'S VIOLATION OF ANY PROVISION WITHIN THE AGREEMENT.**

6.7. Indemnification Process. The Party seeking indemnification ("Indemnitee") shall promptly notify the indemnified Party ("Indemnitor") of any such claim for potential indemnity promptly after the Indemnitee learns of such claim, provided, however, that the Indemnitor shall only be relieved of its obligations under this Section due to the failure of the Indemnitee to provide such prompt notice to the extent that the failure materially prejudices the Indemnitor in defending such claim. The Indemnitor shall bear full responsibility for the defense and payment of any applicable claims, whether finalized by judgment or settlement, as provided herein. The Indemnitor shall keep the Indemnitee informed of, and consult with the Indemnitee in connection with, the progress of any claim. The Indemnitor shall not have any right, without the Indemnitee's written consent, which shall not be unreasonably withheld, to settle any claim if such settlement arises from or is part of any criminal action, the suit or proceeding contains a stipulation to, admission, or acknowledgment of any liability or wrongdoing (whether in contract, tort, or otherwise) on the part of the Indemnitee, or requires any specific performance or non-pecuniary remedy by the Indemnitee. The Indemnitee shall have the right to participate in the defense of a claim with counsel of its choice at its own expense.

6.8. SBT Options. In the event of any claim, regardless of whether indemnity is sought, alleging infringement of any U.S. Patent, copyright, trade secret, or other Intellectual Property, SBT shall have the right, at its sole discretion, to obtain the right to continue use of the SBT Services or to replace or modify the SBT Services so that they may be provided by SBT and used by Partner without infringement of a third-party's rights. If neither of the foregoing options is available to SBT on a commercially reasonable basis, SBT may terminate the Agreement immediately upon written notice to Partner.

6.9. Service Level. SBT offers Partners a Service Level Agreement ("SLA") which can be found at: <https://www.solutionsbytext.com/service-level-agreement/>

VII. General Terms

7.1. Independent Contractor. The relationship between the Parties shall at all times be that of independent contractors. No employment, partnership (general or limited), and/or joint venture relationship is formed by the Agreement, and each Party waives the right to claim any such relationship or fiduciary relationship exists by or between them.

7.2. Governing Law. The Agreement shall be governed and construed in accordance with the laws of the State of Texas, without regard to its conflict of laws rules.

7.3. Audits. Each Party shall have the right, at its sole expense and during normal working hours, no more than one (1) time per calendar year, to examine the records of the other Party to the extent such audit is specifically related to the Agreement and reasonably necessary to verify the accuracy of any statement, charge, or computation, or other information pursuant to the Agreement.

7.4. Arbitration. ALL DISPUTES, CLAIMS, REQUESTS FOR SPECIFIC CONTRACTUAL PERFORMANCE OR EQUITABLE RELIEF, DAMAGES, AND/OR ANY OTHER MATTERS IN QUESTION BETWEEN THE PARTIES ARISING OUT OF THE AGREEMENT SHALL BE SUBMITTED TO ARBITRATION, PROVIDED THAT, NOTHING IN THIS SECTION SHALL BAR A PARTY FROM SEEKING INJUNCTIVE RELIEF IN EMERGENT CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, THE DISSEMINATION OF THE PARTY'S INTELLECTUAL PROPERTY OR IMPROPER USE OF CONFIDENTIAL INFORMATION. DEMAND FOR ARBITRATION SHALL BE SUBMITTED IN WRITING TO THE AMERICAN ARBITRATION ASSOCIATION, SHALL BE CONDUCTED IN DALLAS, TEXAS, AND WILL BE DECIDED BY A ONE-PERSON ARBITRATOR, UNLESS THE PARTIES MUTUALLY AGREE OTHERWISE. ARBITRATION SHALL BE CONDUCTED IN ACCORDANCE WITH THE AMERICAN ARBITRATION ASSOCIATION'S COMMERCIAL RULES. THE ARBITRATOR'S AWARD SHALL BE FINAL AND JUDGMENT MAY BE ENTERED UPON IT IN ANY COURT HAVING JURISDICTION THEREOF. THE PREVAILING PARTY SHALL BE ENTITLED TO REASONABLE COSTS AND ATTORNEY'S FEES ARISING OUT OF SUCH ARBITRATION IN ADDITION TO OTHER DAMAGES AWARDED, IF ANY.

7.5. Class Action Waiver. Parties agrees that any claims or controversies arising out of this Agreement must be brought against each other on an individual basis only, and that neither Party can bring any claim or controversy as a plaintiff or class member in a class action, consolidated action, or representative action. If an arbitration proceeding is necessary, the arbitrator is prohibited from combining more than one entity's claims into a single case and is prohibited from presiding over any class action, consolidated action, or representative action. Any decision rendered by an arbitrator can only be binding and can only affect the entity that brought the initial claim and no information used therein will be applicable to any other claim.

7.6. Entire Agreement and Severability. The Agreement constitutes the entire understanding of the Parties. It supersedes any other oral or written agreements, if any, and shall be binding upon the Parties' successors and assigns, if any. It may not be modified in any way without the written consent of both Parties, and any modifications thereto must be in writing to be binding. Neither Party has the right to assign the duties, obligations, and/or benefits provided by the Agreement in whole or in part without prior written consent of the other Party. Should any provision(s) of the Agreement be ruled invalid or unenforceable by any applicable legal authority, such provisions shall be to that extent deemed omitted and the remaining terms of the Agreement remain in full force and effect. Each provision of the Agreement which, either by its content or by implication, is intended to survive termination or expiration of the Agreement shall so survive without penalty or any additional consideration.

7.7. Non-Solicitation. During the term of the Agreement and for the period of one (1) year from the Termination Date, neither Party shall attempt to hire, solicit, or induce any person who is an

employee or contractor of the other Party to leave or cease his or her employment or contractual relationship with the other Party. This provision applies whether the employee or contractor is engaged with the Party pursuant to a written agreement, for a determined period, or at will.

7.8. Non-Exclusive. Nothing within the Agreement should be construed to grant exclusive rights to either Party to the benefit or detriment of the other Party for any item identified within the Agreement for any reason whatsoever.

7.9. Notices. All notices required to be given pursuant to the Agreement will be effective when actually received, and will be sufficient if given in writing and hand-delivered by courier or authorized representative, sent by First Class Mail (with delivery confirmation and tracking), certified mail with return receipt requested, or via overnight mail (with delivery confirmation and tracking). All notices must be addressed to one or more of the Parties' contacts listed in the Agreement.

7.10. Force Majeure. The Parties shall not be liable to each other or any other person or entity for any delay or failure in the performance of the Agreement or for loss or damage of any nature whatsoever suffered by such Party due to the following occurrences: disruption or unavailability of communication facilities, utility or internet service provider failure, equipment failure, acts of war, acts of terrorism, strikes or other labor disturbances, riots, acts of God or mother nature, acts of vandalism, lightning, fire, floods, unusually severe weather conditions, unavailability of energy sources, pandemics, epidemics, interruption or delay in transportation, or any other causes beyond the reasonable control of the Party.

7.11. Compliance with Laws. The Parties shall comply with all applicable local, state, and federal laws, rules, and regulations, including, without limitation, tax, import or export, data privacy and security, foreign exchange, telecommunication, and consumer protection rules and regulations. Regardless of any disclosure made by Partner to SBT concerning the ultimate destination of any software, hardware, or technical data acquired by SBT, and, notwithstanding anything contained in the Agreement to the contrary, Partner will not modify, export, or re-export, either directly or indirectly, any software, hardware, or technical data, or portions thereof, without first obtaining any and all necessary licenses from the United States government or agencies thereof or any other country with a licensure requirement. SBT shall have the right to immediately terminate the Agreement if Partner fails to comply with this provision.

7.12. Securities Laws and Material Non-Public Information. The Parties expressly acknowledge that federal and state securities laws prohibit any person who misappropriates material non-public information about a company from purchasing or selling securities of such company, or from communicating such information to any other person under circumstances to which it is reasonably foreseeable that such person is likely to purchase or sell securities.

7.13. Anti-Corruption Acknowledgement. Neither Party nor its subsidiaries or affiliates, nor any director, officer, or employee, nor, to either Party's knowledge, any agent or representative of the Party, has taken or will take any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts, or anything else of value, directly or indirectly, to any government official (including any office or employee of a government or government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) to influence official action or secure an improper advantage. The Parties and their subsidiaries or affiliates have conducted their business in compliance with applicable anti-corruption laws and have instituted and maintain and will continue to maintain policies and procedures designed to promote and achieve compliance with such laws and the representation and warranty contained herein.

7.14. Assignment. Neither Party may assign or transfer the Agreement or any obligation

thereunder without the prior written approval of the other Party, except that, upon written notice, a Party may assign or transfer the Agreement to an entity acquiring all or substantially all of the assets of that Party, whether by acquisition of assets or shares, or by merger or consolidation. Subject to the foregoing, the Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

7.15. Conflict with Agreement and Other Information. To the extent there is any conflict between any Terms enumerated herein and the provisions of the Agreement, the language in the Agreement shall govern the Parties. SBT creates and maintains various internal policies, procedures, documentation, and other information (“SBT Policies”) outside the scope of these Terms. To the extent there is any conflict between any Terms enumerated herein and any SBT Policies, the SBT Policies shall govern the Parties, provided Partner has been given time to review the Policies.

7.16. Incorporation by Reference. These Terms are incorporated by reference into the Agreement and have the same force and effect as if fully set forth herein.

7.17. Headings. Any headings, titles, and/or captions used in the Terms are for reference purposes only and should not have any effect on the interpretation or enforceability of the Agreement.

7.18. Counterparts. The Agreement may be executed in counterparts, each of which will be deemed to be an original, but all of which, taken together, will constitute one and the same Agreement.

7.19. Ability to Update. SBT may, at any time, and at its sole discretion, for any reason, modify these Terms upon written notice sent to Partner thirty (30) days prior to the implementation of the amended Terms. Partner’s continued use of SBT Services constitutes Partner’s acceptance of the amended Terms. SBT may not be able to provide thirty (30) days’ notice if the amendment of these Terms is required due to applicable law.

7.20. No Legal Advice Provided. SBT’s best practices, suggestions, principles, and/or information provided, whether oral or in writing, do not constitute or purport to provide any legal advice and should not be used as a substitute for obtaining legal advice from a qualified attorney in the proper jurisdiction. Use of and access to the SBT Services and SBT Intellectual Property does not in any way create an attorney-client relationship between SBT and Partner.

7.21. Fair Notice. Both Parties stipulate to the conspicuousness and fair notice of any provisions enumerated herein and acknowledge that such provisions were negotiated and form major components of the consideration bargained for hereunder.

7.22. English Version. In the event the Agreement is translated into any language other than English, and there is a conflict between the English language version and the translated version, the English language version shall prevail in all respects.

7.23. No Waiver. SBT’s failure to enforce at any time any provision of these Terms, or any obligations contemplated by the Agreement, does not waive SBT’s right to do so later. If SBT expressly waives any provision of these Terms, or any of the obligations contemplated by the Agreement, the provision is not waived for all time in the future. Any waiver must be in writing and signed by both Parties to be legally binding.