

# LOCAL MOBILE MARKETING SOLUTIONS PLATFORM LICENSE AGREEMENT

Last Updated August 19, 2023

Please read through the Local Mobile Terms and Conditions below prior to using our service(s) also called "The Prospect Wizard." By starting use of the Prospect Wizard, and/or having an account created for you, you are indicating that you and your Company understand and agree to be bound by these terms and conditions.

## 1. REGISTRATION

Thank you for choosing Local Mobile Marketing Solutions, Inc. (the "Company," "we", "us", or "our"). These are the terms and conditions (the "Terms") that apply to your use of the Company's website (the "Site"), and text messaging software, and to those services identified in documentation provided to you by email, on the Site, or by any other means in connection with any purchase, or any other services provided by the Company (collectively referred to as the "Services").

Please read these Terms before registering for the Services. By creating your account, having an account created for you, or completing your registration on your own, you will become a registered user (a "User," or, alternatively, "you", "your", "yours") of the Services and Licensed IP and you agree to be bound by these Terms. **If you do not agree to the Terms, do not register for or use the Services.**

Company's Services include software which may be used by you in order to communicate with customers through the use of text message marketing. Company's services may be used to generate consent from consumers, as required by law, through the use of online embedded web applications; direct inbound and outbound text messaging, as permitted by law; and through the use of texting short code. Company requires that you utilize the Services in a compliant manner, in accordance with all applicable law and in accordance with these Terms.

The Terms are subject to change by the Company at any time; however, the most current version of the Terms is available by clicking on the link at the bottom of the Site. We encourage you to regularly review the Terms to ensure that you are aware of any changes. By continuing to use the Services after changes in the Terms have been posted on the Site, you agree to be bound by the most current version of the Terms.

By registering for, using or receiving the Services, you:

- represent that you are 18 years of age or older;
- represent that you have the legal capacity and authority to bind yourself and/or the person or entity for whom you are accepting these Terms;
- represent, warrant and covenant that the information and data that you have provided or will provide to the Company is or will be correct and complete in all

respects, and that you have the right to provide such information and data to the Company;

- acknowledge that the Company has and will rely upon the information and data that you provide and that any incorrect or incomplete information that you provide to the Company may result in the Company withholding, suspending or terminating the Services and/or terminating this agreement; and

agree to be bound by these Terms, as it may be updated by the Company from time to time in its sole discretion.

If there exists any conflict between these Terms and the terms of any other offer for the Services, these Terms will govern. For information regarding how information is gathered and used at the Site, please read our Privacy Policy.

## **2. CHANGES/UPGRADES TO THE SERVICES**

We have the right, in our sole discretion, to modify or change the Site and/or the Services. We will notify you of such changes via the Site, email, or any other method we deem appropriate. Your continued use after any such modification or change is made constitutes your acceptance of such modification or change.

## **3. REFUND POLICY**

No refunds. You may cancel your Local Mobile Text Message account at any time, but you won't be issued a refund.

## **4. USE OF SERVICES AND SITE**

(a) Eligibility: You must be 18 years old, or the age of majority, as determined by the laws of your state of residency, to become a User and assume the obligations set forth in these Terms. In order for you to receive the Services, which will be provided remotely, the Company may qualify your Internet connection for the minimum line rate (speed) available for support based on standard line qualification procedures.

(b) Security of the Services: You are responsible to keep your password(s) secure, and you agree not to disclose your password(s) or any login information to any third party. You are solely responsible for any activity that occurs under your user names and accounts. You expressly agree that you will not resell the Services. You may not assign your obligations under these Terms to any other party.

(c) Restrictions on Use: You may only access and use the Site or software in the manner authorized by the Terms and any other documents we provide to you. We are not liable to you for any unauthorized access to or misuse of the Services or the Site or software. You may not use the Site or software in any manner that could damage, disable, overburden, or impair the Site or software or interfere with any

other party's use and enjoyment of the Site. You may not attempt to gain unauthorized access to the Site or software (or computer systems or networks connected to the Site or software) through hacking, password mining, or any other means. You agree that you will not engage in any activities with respect to the Site or software that violate any applicable local, state, national or international laws or regulations, the intellectual property or other rights of third parties, or submit or transmit any material that is abusive, defamatory, obscene, threatening, or otherwise inappropriate, as reasonably determined by the Company.

(d) You are required to use the Services in full compliance with all applicable laws and regulations, including without limitation, all state, federal and international:

- Do-Not-Call ("DNC") list prohibitions;
- telemarketer licensing and bonding requirements;
- consumer cancellation rights;
- mandatory disclosures;
- wireless calling restrictions;
- restrictions on the use of automatic telephone dialing systems and pre-recorded messages (i.e. robocalling or voice broadcasting);
- internal opt-out rules;
- intellectual property rights and restrictions; and other product and industry specific rules and disclosures.

By making any use of the Services, You expressly warrant to us that You are and shall continue to act in full compliance with the law. All of our offers are void where prohibited by law. You agree that You have read and understand the FTC's Telemarketing Sales Rule ("TSR") and the FCC's Telephone Consumer Protection Act ("TCPA"), and all other applicable laws and regulations. You must review these rules with your own legal counsel to ensure that you understand and are fully compliant. We do not assume responsibility for ensuring that your marketing campaigns meet applicable legal requirements. We will not assume any liability if You are ever held guilty or liable for any law violation, Notwithstanding the foregoing, You acknowledges that we have and are taking active steps to ensure the compliance of our customers, including by having you agree to these terms and otherwise. If we discover evidence demonstrating that you may have violated the law, we may suspend or terminate your use of the Services immediately. You realize and agree that we may be required by law to provide certain information about you if we receive a subpoena from a court or regulator with competent jurisdiction. We are under no obligation to object to the same, except in our sole discretion.

(e) Service interruptions: The Services are web-based and may be interrupted or negatively affected by items outside of our control. The Company may also discontinue any of the Services from time to time in its sole discretion. We are not liable to you for interruptions to or problems with the Services caused by acts of any governmental

body, war, insurrection, sabotage, armed conflict, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, virus attacks or hackers, failure of third party software (including, without limitation, e-business software, payment gateways, chat, statistics or free scripts) or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of the Services; failure of access circuits to our computer network, DNS (domain name server) issues outside our direct control; issues with FTP, POP3, SMTP, or any items relating to your access to the Site or the Services; your acts or omissions (or acts or omissions of others engaged or authorized by you), including, without limitation, custom scripting or coding (e.g., COI, Python, HTML, ASP, etc.), any negligence, willful misconduct, or use of Site or Services in breach of these Terms; e-mail or WebMail delivery and transmission; DNS propagation; or outages elsewhere on the internet that hinder access to the Site or the Services. Because the Services are dependent on you ensuring that your Third Party Equipment is active and fully functioning, the Company is not liable for any failure of your Third Party Equipment.

## **5. INTELLECTUAL PROPERTY LICENSE**

(a) You acknowledge that you have no ownership, rights, title or other interest in the Site or the Services apart from that granted hereunder. All rights, title, and interest including, but not limited to, intellectual property interests, in and to the Site and the Services are the exclusive property of the Company, and these Terms shall not be deemed a transfer of title or ownership in any respect. All rights not expressly granted to you pursuant to this Section 4 are expressly reserved by us.

(b) Cancellation of the Services revokes your license and ends your rights thereunder. In case of such cancellation, you will immediately cease use of the Site and the Services. The terms that by their sense and context are intended to survive performance by either or both parties shall so survive the performance and termination of the license, including without limitation those terms relating to warranty limitations, limitation of liability, remedies or damages, or our proprietary rights.

(c) If any modifications, enhancements, improvements or alterations to the Site or Services are or have been made us, by you or by any non-party, either singly or in combination, all such modifications, enhancements, improvements or alterations shall belong exclusively to us. You agree to assign to us any ownership or other right, title and interest in or to any such improvements, enhancements, modifications or alterations and to execute any documents to facilitate said assignment that we request.

(d) You acknowledge that, in connection with the performance of this agreement, you may receive certain confidential information of Company, which confidential information shall include information relating to the Software and Services. You hereby agree: (a) to hold and maintain in strict confidence all confidential information of the Company and not to disclose it to any third party; and (b) not to use any confidential information of the

Company except as permitted by these Terms or as may be necessary to exercise rights or perform obligations under these Terms. In the event that you disclose or are required to disclose confidential information, you shall use commercially reasonable efforts to provide the Company with prompt notice prior to any disclosure to afford a reasonable opportunity to protect the confidential information from public disclosure.

(e) You authorize us to retain certain data about you, including without limitation, call and messaging logs, in order for us to protect ourselves later on from either a third-party claim, or from a future claim alleging breach by You.

## **6. WARRANTIES**

THE COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER AS TO THE PERFORMANCE, FUNCTIONALITY OR LEGAL COMPLIANCE OF THE SITE OR THE SERVICES. THE SITE AND THE SERVICES ARE BEING PROVIDED TO YOU ON AN "AS-IS" AND "AS AVAILABLE" BASIS. YOU USE THE SITE AND THE SERVICES AT YOUR SOLE RISK. ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT ARE EXPRESSLY DISCLAIMED WHETHER SUCH WARRANTIES ARE EXPRESS, IMPLIED, OR STATUTORY.

ANY THIRD PARTY LINKS, RESOURCES, AND CONTENT AVAILABLE WITH THE SITE OR THE SERVICES ARE NOT CONTROLLED BY THE COMPANY, AND THE COMPANY DOES NOT MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, REGARDING SUCH THIRD PARTY LINKS, RESOURCES, AND CONTENT INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. THE COMPANY WILL NOT BE LIABLE FOR YOUR ACCESS TO, USE OF OR DOWNLOADING OF CONTENT AVAILABLE ON OR THROUGH, THE SERVICES OR SITE.

SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES OR THE LIMITATION OF CERTAIN DAMAGES, SO SOME OF THE ABOVE DISCLAIMERS, WAIVERS, AND LIMITATIONS OF LIABILITY MAY NOT APPLY TO YOU.

YOU UNDERSTAND AND AGREE THAT CERTAIN CALLING AND MESSAGING TECHNOLOGIES, INCLUDING PRERECORDED MESSAGES, FOR EXAMPLE, MAY EXIST IN HIGHLY REGULATED AREAS OF THE LAW AND YOU AGREE TO ACCEPT ALL RISKS RELATED TO THE SAME. YOU AGREE NOT TO USE OUR TECHNOLOGY TO CALL OR TEXT WIRELESS PHONES OR ANY DEVICE WHERE THE CALLED PARTY IS CHARGED FOR THE CALL, WITHOUT WELL DOCUMENTED PRIOR EXPRESS WRITTEN CONSENT. YOU ALSO AGREE NOT TO USE OUR SERVICES TO TELEMARKEET TO INDIVIDUALS ON ANY STATE OR FEDERAL DNC LIST WITHOUT EITHER WRITTEN CONSENT OR A VALID ESTABLISHED BUSINESS RELATIONSHIP EXEMPTION.

## **7. TELEMARKETING PRACTICES**

In connection with the services provided by Company through the Site or software, users understand that the Company may provide services for use by customers which may be categorized as telemarketing. By using any of these services you confirm that it is aware of and agrees to abide by all applicable telemarketing laws and regulations at the Federal, State and local levels. Among others these shall include the Telephone Consumer Protection Act ("TCPA") which is administered by the Federal Communications Commission, as well as the Telemarketing Sales Rule ("TSR") which is administered by the Federal Trade Commission. You confirm that it will generate leads in a compliant manner in its fulfillment of its Agreement with Consultant. Though not an exhaustive list, you agree that it will not participate in any of the following specific prohibited activities:

- A. You will not contact consumers whose telephone numbers are on the Federal or any State Do-Not-Call lists, without the appropriate exemption, or consent from the consumer to do so.
- B. You will not initiate any call or text contacts with any consumers using a system with auto-dialing or auto-texting capacity to wireless telephone numbers for sales purposes, including functionality of the Site or software for the same, without express written consent from the consumer, as defined by applicable law.
- C. You will not send any ringless voice messages to any wireless telephone number without first having obtained Express Written Consent from the owner of the number.
- D. You will immediately mark as Do-Not-Call in its system the telephone number of any consumer who has requested not to be contacted by you and will not contact them again. Such phrases which shall prompt you to add such a consumer's telephone number to your internal Do-Not-Call list shall include, but shall not be limited to: "place me on your do not call list"; "stop calling/texting me"; "remove me from your list", etc.
- E. You will not transmit any pre-recorded messages to any potential consumer for sales purposes, without the express written consent from the potential consumer to do so. 6. You will project only telephone numbers which it owns and uses on the caller identification systems of its potential consumers. You will abide by all applicable anti-spoofing laws.

## **8. TELEMARKETING CONSENT**

Company requires that you use the Services in compliance with all applicable law, including all Federal and State law governing the use of telemarketing. Depending on the specific use of the Services, you may require express written consent in order to use full functionality of the Services. You must use consent language which is appropriate

and sufficient to obtain express written consent. You should consult with an attorney to ensure that your method of obtaining consent., including the consent language, is sufficient to be in compliance with all applicable laws. At a minimum, the Company requires that any consent language used by you to obtain consent for the use of Company's service, employ the following points: 1. The Consumer must make an affirmative act to consent to calls (i.e. pressing select, checking a box, etc.): 2. The telephone number of the consumer that will be contacted using the Services must be included or referenced in the consent language, and if referenced, the number must have been provided in a simultaneous submission or one immediately previous to the affirmative action demonstrating consent; 3. The consent language must indicate that the communications will be for marketing purposes; 4. The consent language must identify your company by name as the company that will be contacting the consumer. 5. The consent language must identify that the communications may be made using automatic telephone dialing technology, as well as any other technology to be used; 6. The consent language must state that "consent is not required to make a purchase," or some other synonymous expression of that statement. Sample consent language which would be deemed acceptable by company is as follows: "By pressing submit you agree to receive marketing communications on the telephone number provided from [COMPANY], using technology which may include the use of automatic telephone dialing systems or pre-recorded messages. You understand that consent is not required to make a purchase."

## **9. LIABILITY**

THE COMPANY DOES NOT AUTHORIZE ANY PERSON TO CREATE FOR IT ANY OBLIGATION OR LIABILITY IN CONNECTION WITH THE SERVICES AND LICENSED IP. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL THE COMPANY, ITS SUPPLIERS, OR LICENSORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, LOSS OF CONFIDENTIAL OR OTHER INFORMATION, BUSINESS INTERRUPTION, PERSONAL INJURY, PERSONAL OR REAL PROPERTY DAMAGE, LOSS OF PRIVACY, FAILURE TO MEET ANY DUTY (INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, OR NEGLIGENCE) AND ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER, EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR IN ANY WAY RELATED TO (A) THE USE OF OR INABILITY TO USE THE SITE OR THE SERVICES ; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES; (C) THE COST OF INVESTIGATION, DEFENSE OR SETTLEMENT OF ANY TELEPHONE CONSUMER PROTECTION ACT OR SIMILAR CONSUMER PROTECTION CLAIM OR LAWSUIT; OR (D) ANY OTHER MATTER RELATING TO THE SITE AND THE SERVICES. EXCEPT AS OTHERWISE PROVIDED IN THESE TERMS, IF YOU ARE DISSATISFIED WITH ANY PORTION OF THE SITE OR THE SERVICES, YOUR SOLE AND EXCLUSIVE REMEDY IS TO CANCEL AND DISCONTINUE USING THE SITE AND THE SERVICES AND TO RECEIVE A REFUND FOR SERVICES YOU DEMONSTRATE WERE PROMISED BUT NOT

PROVIDED. IN NO INSTANCE WILL THE COMPANY'S LIABILITY TO YOU EXCEED THE FEES PAID BY YOU IN THE THREE (3) MONTH PERIOD PRIOR TO THE CLAIM AT ISSUE, AND YOU AGREE THAT THIS LIMITATION REPRESENTS A REASONABLE ALLOCATION OF RISK. THE FOREGOING EXCLUSIONS AND LIMITATIONS WILL APPLY REGARDLESS OF ANY ALLEGATION OR FINDING THAT A REMEDY FAILED OF ITS ESSENTIAL PURPOSE, REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE) AND EVEN IF THE COMPANY OR OTHERS WERE ADVISED OR AWARE OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OR LIABILITY.

## **10. INDEMNIFICATION**

BY REGISTERING FOR THE SERVICES AND OR USING THE SITE OR SOFTWARE, YOU AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE COMPANY, AND ITS SUBSIDIARIES, AFFILIATES, SUPPLIERS, AND LICENSORS, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND ASSIGNS FROM AND AGAINST ANY AND ALL THIRD PARTY CLAIMS, DEMANDS, PROCEEDINGS, SUITS AND ACTIONS, INCLUDING ANY RELATED LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, FINES, JUDGMENTS, SETTLEMENTS, EXPENSES (INCLUDING ATTORNEYS' AND ACCOUNTANTS' FEES AND DISBURSEMENTS) AND COSTS INCURRED BY, BORNE BY OR ASSERTED AGAINST THE COMPANY TO THE EXTENT SUCH CLAIMS IN ANY WAY RELATE TO, ARISE OUT OF, OR RESULT FROM (A) YOUR ACTUAL OR ALLEGED VIOLATION OF ANY APPLICABLE LAWS OR REGULATIONS, THESE TERMS, THE PRIVACY POLICY OR THE TERMS OF ANY AGREEMENT GOVERNING YOUR USE OF THIRD PARTY EQUIPMENT (OR ANY OF THE FOREGOING BY PARTIES WHO USE YOUR ACCOUNT, WITH OR WITHOUT YOUR PERMISSION, TO ACCESS THE SERVICE); (B) ACTS, ERRORS, OR OMISSIONS BY YOU (OR ANY PARTIES WHO USE YOUR ACCOUNT, WITH OR WITHOUT YOUR PERMISSION, TO ACCESS THE SERVICES); (D) CLAIMS FOR INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS ARISING FROM THE USE OF THE SITE OR THE SERVICES, THIRD PARTY EQUIPMENT, OR THE INTERNET; (E) CLAIMS ARISING FROM THE TELEPHONE CONSUMER PROTECTION ACT OR SIMILAR FEDERAL OR STATE CONSUMER PROTECTION LAWS, OR (F) YOUR USE OF THE SITE OR THE SERVICES.

## **11. CANCELLATION**

We reserve the right to suspend or cancel the Services at any time if you fail to pay amounts owing when due, violate or breach any of the Terms, or for any other reason at our sole discretion. If the Services are suspended or cancelled, you will still be responsible for payment of all outstanding balances accrued through the remainder of the month or other cancellation date, including any fees described herein. Upon termination of the Services, you will no longer have access to the Site or the Services.



## **12. SERVICES & FEES**

As more fully set forth in our written or emailed agreement, our services include access to and a limited, non-exclusive, revocable license to use, our calling and messaging technology ("The Prospect Wizard") to contact your existing customers, and others who you have appropriate consent to contact. The services are intended for the delivery of complaint communication. From time to time we may elect to use incentives to encourage participation in the surveys, and may choose to include an opt-in option for future marketing in certain cases where we deem that appropriate. Should you choose to use the Services to send marketing-related content, you must ensure that you have appropriate prior written consent or other applicable exemption. We will not assume responsibility for your legal compliance. We provide a tool and you must use that tool responsibly and in compliance with the law, as more fully set forth herein. The fees for our services depend upon the precise plan selected and are set forth in your written or emailed quote. Fees are subject to change from time to time upon reasonable advance notice to You. You are under no obligation to continue using or purchasing the Services if our fees change.

## **13. GENERAL**

(a) Waiver. Any waiver granted herein shall not be deemed effective unless in writing, executed by the party as to whom enforcement of the waiver is sought. A waiver by either party of any provision(s) hereof shall not be deemed a waiver as to any other provision hereof or of any subsequent breach by either party of the same or any other provision.

(b) Severability. If any provision of these Terms is prohibited or unenforceable by any applicable law, the provision shall be ineffective only to the extent and for the duration of the prohibition of unenforceability, without invalidating any of the remaining provisions

(c) Relationship. You acknowledge that the Company is an independent contractor and neither the Company nor any of its directors, officers, agents, employees, or affiliates is or shall be deemed employed by you. The Company reserves the right to determine the method, manner and means by which the Services will be performed. The Company and its directors, officers, agents, employees, and affiliates are not required to perform the Services for you during any particular hour of the day or night, and the time spent providing the Services is at the Company's discretion. You further acknowledge that the Company is not required to devote its full time or the full time of any of its directors, officers, agents, employees, or affiliates to the performance of the Services, and you acknowledge that the Company has other clients and that it offers Services to the general public. The order and sequence in which the Services are to be performed shall be under the control of the Company and its agents, employees and affiliates, and not under your control.

(d) Survival. Your obligations under these Terms that by their nature would continue beyond the termination of these Terms including, but not limited to, those sections relating to Indemnification will survive any termination.

(e) Assignment. We may assign all or part of our agreement, including without limitation, these Terms or the performance of all or any portion of the Services to be provided hereunder, at any time, without your consent. If notice is required for you or the assignee to fulfill any obligations under these Terms, we will provide such notice within a reasonable time of our assignment.

(f) Attorneys' fees. If we initiate legal action against you for collection of any amounts owed to us or to enforce our rights and your obligations under these Terms, we are entitled to recover from you our reasonable costs and expenses including, but not limited to, reasonable attorneys' fees incurred as a result.

(g) Remedies. The rights and remedies provided to us under these Terms are in addition to any other remedies available at law or in equity.

(h) Governing law and venue. These Terms shall be governed by and interpreted according to the laws of the State of New York, without regard to conflicts of law principles. Venue for any action, claim or proceeding pertaining to these Terms shall be in New York.

BY USING THE SERVICES AND LICENSED IP, HAVING AN ACCOUNT CREATED FOR YOUR BUSINESS, COMPLETING REGISTRATION ON YOUR OWN, OR CLICKING AN "I ACCEPT" BUTTON, YOU REPRESENT THAT YOU HAVE READ AND UNDERSTAND THESE ENTIRE TERMS, AND YOU AGREE TO ALL THE TERMS AND CONDITIONS OF THE SERVICES AND LICENSED IP AS STATED ABOVE.