

Last Modified: November 2021

1. **Acceptance of the Terms of Use.** The following terms and conditions, together with any documents that are expressly incorporated by reference (collectively, these “Terms of Use”), govern your access to and use of the Company’s products and services (collectively referred herein to as the “Services”), and any persons using or accessing any software, hardware, or infrastructure provided by the Company in connection therewith (“Services Infrastructure”), offered by Arbeit Software LLC, a New York limited liability company (the “Company”). For the purposes hereof, the recipients of the Services and Services Infrastructure are referred to as “you,” “your,” or “User,” and Company is referred to as the “Company,” “we,” “us,” or “our”. The Software can be accessed or used through a variety of online, mobile or other platforms as Company decides to make available (in its sole and absolute discretion) from time to time.

PLEASE READ THESE TERMS OF USE CAREFULLY. BY ENTERING INTO THIS AGREEMENT RECEIVING ANY SERVICES, AND/OR UTILIZING ANY SERVICES INFRASTRUCTURE, YOU AGREE TO FOLLOW AND BE BOUND BY THESE TERMS OF USE. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS OF USE AND, IN SUCH EVENT, “YOU” AND “YOUR” AS USED IN THIS AGREEMENT SHALL REFER TO SUCH ENTITY, IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE TO ALL THE TERMS AND CONDITIONS IN THIS AGREEMENT, YOU MAY NOT USE THE SOFTWARE. ANY QUESTIONS CONCERNING THIS AGREEMENT SHOULD BE REFERRED TO alex@arbeitsoftware.com.

2. **Changes to the Terms of Use.** We may revise and update these Terms of Use from time to time in our sole discretion. All changes are effective immediately when we post them, and apply to all Services offered by Arbeit thereafter, as well as the access to and use of any Services Infrastructure. Your continued use of the Services and/or Services Infrastructure following the posting of revised Terms of Use on our website (www.arbeitsoftware.com) means that you accept and agree to the changes. The Company shall email you any updated Terms of Use as they are posted to the website.

3. **Authorized Users; Accessing Our Services.** The Services and Services Infrastructure are provided by the Company for access and use by Authorized Users (as defined below). By using the Services, you represent and warrant that you (a) have the right, authority, and capacity to enter into this Agreement and (b) will abide by all of these Terms of Use. If you have agreed to become a paying customer for the Services and/or Services Infrastructure, then your eligibility for continued use of the same shall be contingent on your continued compliance with the terms of the applicable usage agreement and these Terms of Use. If you are receiving our Services or utilizing our Services Infrastructure on a trial basis and have not agreed to become a paying customer, your receipt of our Services or use of our Services Infrastructure is still subject to the terms and conditions set forth herein.

We shall authorize your individual employees, as designated by you from time to time (each an “Authorized User”), who will be provided the Services or will have access to the Services Infrastructure. You will also be asked to choose a username and a password for each Authorized User. We may change any username and password for any Authorized User at any time, with notice to you following any such change. Further, we reserve the right to disable any user name, password or other identifier, at any time in our sole discretion for any or no reason, including if, in our opinion, there has been a violation of any

provision of these Terms of Use.

Each Authorized User must use his or her own username and password and shall not disclose them to anyone else. You shall immediately notify us of any unauthorized disclosure. You are responsible for (a) each Authorized User's compliance with this Agreement and (b) any of your employees, any person to whom you have given access to the Services Infrastructure and any person who gains access to our Services Infrastructure as a result of your failure to use reasonable security precautions, even if such use was not authorized by you.

We reserve the right to amend and/or cease providing any Services and/or to withdraw or amend our Services Infrastructure in our sole discretion and will provide notice of the same. We will attempt to provide continuous availability and access to our Services and Services Infrastructure but will not be liable if for any reason all or any of our Services or Services Infrastructure are unavailable at any time or for any period.

We reserve the right upon a material breach by the Customer of Section 5 of these Terms of Use, to freeze any Customer account and associated passwords without notice and at any time there is a breach by the Customer of the Agreement, to freeze any Customer account and associated passwords with forty- eight (48) hours prior notice.

4. **Intellectual Property Rights.** Our Services, Services Infrastructure, and the features and functionality incorporated therein, including, without limitation, any intellectual property, inventions, trade secrets, or other proprietary information developed or utilized in connection therewith, are owned by the Company, its licensors or other providers of such material and are protected by United States and international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws. Subject to the limited rights expressly granted hereunder, we reserve all rights, title and interest in and to the Services, Services Infrastructure, and the features and functionality incorporated therein, including, without limitation, all related intellectual property rights. No rights are granted to you hereunder other than as expressly set forth herein.

The Company name and Company logo and all related names, logos, product and service names, designs and slogans are trademarks of the Company or its affiliates or licensors. You must not use such marks without the prior written permission of the Company.

Further, you shall not: (a) permit any third party to access the Services or Services Infrastructure except as permitted herein; (b) create derivative works based on the Services or Services Infrastructure except as authorized herein; (c) copy, frame or mirror any part or content of the Services or Services Infrastructure, other than copying or framing on your own intranets or otherwise for your own internal business purposes; (d) reverse engineer or attempt to reverse engineer the Services or Services Infrastructure; or (e) access or attempt to access the Services or Services Infrastructure in order to (i) build a product or service competitive with those offered by the Company, or (ii) copy any features, functions or graphics of the Services or Services Infrastructure. In the event the Company determines, in its sole discretion, that you have breached the foregoing restrictions, your right to use our Services or Services Infrastructure will cease immediately and you must, at our option, return or destroy any copies of the materials you have made. No right, title or interest in or to our Services or Services Infrastructure or any content on our website is transferred to you, and all rights not expressly granted are reserved by the Company. Any use of the Services or Services Infrastructure not expressly permitted by these Terms

of Use is a breach of these Terms of Use and may violate copyright, trademark and other laws.

ANY SERVICES AND/OR SERVICES INFRASTRUCTURE WE PROVIDE IS PROVIDED "AS IS" AND ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED. IN NO EVENT SHALL THE COMPANY BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA, OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF OUR SERVICES OR SERVICES INFRASTRUCTURE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

5. **Use of the Services; Prohibited Uses; Request for Production.** We retain the right, in our sole discretion, to determine whether or not your conduct is consistent with the letter and spirit of these Terms of Use, the Usage Agreement or the Free Trial Agreement and Liability Waiver, as applicable, and may amend or cease provision of our Services and/or may amend or terminate access to our Services Infrastructure if your conduct is inconsistent with the terms and conditions contained herein or therein, including, but not limited to the following usage restrictions:

- (a) Customer agrees and acknowledges that it is aware of and agrees to strictly comply with any and all federal, state, and local laws, statutes, rules, and regulations including but not limited to any Office of the Comptroller of Currency (OCC) or Federal Communications Commission (FCC) bulletin, directive, or order that specifically relates to this Agreement, all applicable Federal Trade Commission (FTC), Cellular Telecommunications Industry Association (CTIA) and Consumer Financial Protection Bureau (CFPB) guidelines, the Dodd-Frank Act and its Unfair, Deceptive or Abusive Acts or Practices (UDAAP) regulations; the Gramm-Leach-Bliley Act and its implementing regulations (GLBA); the Foreign Corrupt Practices Act (FCPA); the Bank Secrecy Act and its implementing regulations (BSA); applicable Office of Foreign Assets Control (OFAC) regulations; the Fair Credit Reporting Act (FCRA); the Equal Credit Opportunity Act (ECOA); the Military Lending Act (MLA); the Service Members Civil Relief Act (SCRA); the Truth in Lending Act (TILA); the Secure and Fair Enforcement and Licensing Act (SAFE); the U.S. Bankruptcy Act, the Fair Debt Collection Practices Act (FDCPA), the Telephone Consumer Protection Act (TCPA) of 1992 and the Federal Trade Commission's (FTC) Telemarketing Sales Rule (TSR) (collectively, the "Law"). Customer agrees and acknowledges that for all intents and purposes, text messages are treated the same as, and are subject to the same Laws and regulations, as telephone calls. Among other things, the Laws generally prohibit prerecorded telemarketing calls as well as the sending of text messages without prior written permission from call/text message recipients. There are very stringent monetary penalties for making such illegal calls/text messages and you are solely responsible and shall be solely liable for any violation while receiving our Services or utilizing our Services Infrastructure. By receiving our Services or utilizing our Services Infrastructure, you represent and warrant that you, and any Authorized User, will at all times fully comply with all applicable Laws. You should consult with your own legal counsel to ensure that your campaigns comply with the Law. You shall be responsible for any violation of any Law caused by any of your Authorized Users.
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Any fines or penalties incurred by the Company due to Customer's failure to comply with such Laws shall be paid by Customer.

- (b) **Prohibited Uses.** You shall use the Services and Services Infrastructure only in accordance with these Terms of Use and applicable laws and government regulations. By way of example, and not as a limitation, you shall not use the Services or Services Infrastructure:
- (i) in connection with pyramid schemes, illegal or unethical testimonials, cross soliciting, money games, spamming or any duplicative or unsolicited messages (commercial or otherwise);
 - (ii) to harvest or otherwise collect information about others, including email addresses, without their consent;
 - (iii) to create a false identity or forged email or caller id, or otherwise attempt to mislead others as to the identity of the sender or the origin of the message;
 - (iv) to transmit unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable material of any kind or nature;
 - (v) to transmit any material that may infringe the intellectual property rights or other rights of third parties, including trademark, copyright or right of publicity;
 - (vi) to libel, defame or slander any person, or infringe upon any person's privacy rights;
 - (vii) to transmit any material that contains viruses, trojan horses, worms, time bombs, cancel bots, or any other harmful or deleterious programs;
 - (viii) to violate any U.S. law regarding the transmission of technical data or software exported from the United States;
 - (ix) to interfere with or disrupt networks connected to the Services or violate the regulations, policies or procedures of such networks;
 - (x) to attempt to gain unauthorized access to the Services, other accounts, computer systems or networks connected to the Services, through password mining or any other means;
 - (xi) to interfere with another's use and enjoyment of the Services or another entity's use and enjoyment of similar services;
 - (xii) to engage in any other activity that we believe could subject us to criminal liability or civil penalty or judgment; or
 - (xiii) to record calls without obtaining any consent which may be required by federal and state law.
- (c) The Company has no obligation to monitor any Authorized User's use of the Services or the
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Services Infrastructure. However, the Company reserves the right at all times to monitor, inspect and/or review any information in its sole discretion. Customer will provide such other information or documentation, and affirmatively cooperate with the Company, all as may be reasonably required by the Company relevant to providing the Services. Company may immediately terminate Customer's access to the Services Infrastructure and/or Customer's use of the Services if Customer fails to provide Company with all documentation, information or other material as requested by the Company within [ten (10)] days after Company's request.

6. **User Data; Security.** The Company will not sell or otherwise provide your information to any person or company without written permission. We and our third party service providers have implemented and maintain commercially reasonable technical and organizational security measures designed to meet the following objectives: (a) ensure the security and confidentiality of user data in our and/or our third party service providers' custody and control; (b) protect against anticipated threats or hazards to the security or integrity of user data; (c) protect against unauthorized access to or use of user data; (d) encrypt user data during transmission by us and our third party service providers and when being uploaded by a user for use in connection with the Services using a secured connection; and (e) ensure that our return or disposal of user data is performed in a manner consistent with the foregoing. However, we cannot guarantee that unauthorized third parties will never be able to defeat those measures to access your data for improper purposes. You acknowledge that there are risks inherent in internet connectivity that could result in the loss of your privacy, confidential information and property.

The company acknowledges and agrees all data and information provided by you is owned by you, including call recordings and other call information, and shall be subject to the Company's Data Retention Policy.

7. 911 Dialing Limitations Notification.

- (a) **Description of 911-Type Dialing Capabilities.** Arbeit offers E911 dialing service (“E911 Services”) within Arbeit VoIP-serviceable areas in the U.S. When you dial 911, your call is routed from the Arbeit network to the Public Safety Answering Point (“PSAP”) or local emergency service personnel designated for the address that you listed at the time of activation. As described below, there are critical differences between traditional telephone service and Arbeit VoIP service as related to 911 emergency services. Customer hereby acknowledges these differences. Generally, any Internet connection failure will cause a loss of telephone and E911 Services and it may require you to reset or reconfigure equipment prior to utilizing the VoIP service or 911 dialing again. Such failures may occur for a variety of reasons, including, but not limited to those reasons described in these Terms of Use. Due to this, Arbeit recommends that you always have an alternative means of accessing 911 during a power failure or Internet connection failure.
 - (b) **Power Failure, Disruptions or Suspension of Service.** Should there be an interruption in any power supply, the VoIP Service and E911 Services MAY NOT function until power is restored. Additionally, suspension or termination of service by Arbeit will also interrupt E911 Services.
 - (c) **Failure to Designate the Correct Physical Address When Activating E911 Services, Moving Installed Equipment, or Use with Movable Equipment.** Failure to provide the current and correct physical address and location by following the instructions from the designated Arbeit representative, or moving the equipment installed at your premise to another location will result in any 911
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communication you may make being routed to the incorrect local emergency service provider. The address you provide must be the actual physical street address where you are located, not a post office box, mail drop or similar address. If you have users that will be using devices such as software telephones that are installed on mobile personal computers, laptops, smart phones, netbooks and any other mobile VoIP supported device that is intended to be mobile with Arbeit service, you must update your service address prior to using the service from a different location by contacting Arbeit Customer Service in order for your current location to be transmitted automatically and accurately to emergency services.

- (d) **Telephone Number Identification.** At this time in the technical development of Arbeit's E911 Services, it is possible for the PSAP and the local emergency personnel to identify your phone number when you dial 911, provided the customer provides the correct information in the initial Service setup stage. Arbeit's system is configured in most instances to send the automatic number identification ("ANI"); however, the PSAP itself must be able to receive the information and pass it along properly. PSAPs are not yet always technically capable of doing so. PSAP and emergency personnel may or may not be able to identify your phone number or those of your customers in order to call you back if the call is unable to be completed, is dropped or disconnected, or if the caller is unable to speak to tell them your phone number and/or if the VoIP Service is not operational for any reason, including without limitation those listed elsewhere in these Terms of Use.
- (e) **Limitation of Liability and Indemnification.** Arbeit's liability is limited for any VoIP Service outage and/or inability to dial 911 from your line or to access emergency service personnel, as set forth in these Terms of Use. You agree to defend, indemnify, and hold harmless Arbeit, its officers, directors, employees, affiliates and agents from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, reasonable attorney's fees) by, or on behalf of, Customer or any third party or End User of Customer's service relating to the absence, failure or outage of the VoIP Service, including E911 Services and/or inability of Customer or any third person or party or user of Customer's service to be able to dial 911 or to access emergency service personnel.
- (f) **911 Dialing Feature Acceptance.** Customer understands and acknowledges that the E911 Services are included in the Services. Customer assumes all liability in connection with any 911 calls or occurrences of the Customer's users, and Customer will defend, indemnify and hold Arbeit including any and all parent corporations and subsidiaries and their directors, officers, employees, agents, contractors or representatives, harmless from any claims, liabilities, losses, judgments, damages and expenses asserted by Customer or Customer's users or other third parties due to a failure of, or lack of, any 911 dialing features. Based on Customer's agreement and understanding of the requirements associated with 911 dialing, Customer hereby accepts inclusion of the E911 Services and assumes responsibility for updating Customer's physical location and updating and informing Arbeit about the locations of any users of the VoIP service who are not located at the Customer's primary physical address. Customer agrees to pay the charges associated with the E911 Services as shown on invoices sent to Customer, the rate for which is included in these Terms of Use.

8. **Call Recordings.** As part of the Voice service, Arbeit may provide call recording as a feature "as is". Arbeit will make commercially reasonable efforts to ensure the accuracy, consistency, and existence of recorded call media for a standard period of time, but due to the inherent possibility of corruption in internet VoIP communications, signaling, and recording of call media and due to technical circumstances beyond Arbeit's reasonable control, Arbeit cannot guarantee that all call recording media will be

available to Customer. Arbeit will not be responsible or held liable for any consequential, direct, special, or incidental losses or damages, foreseen, foreseeable, unforeseen, or unforeseeable, pertaining to call recording or the preservation of call media or failure of Arbeit to maintain the accuracy, consistency, or existence of call recording media or any information or meta-data pertaining to a call recording or call recording media, nor any lost profits or damages resulting therefrom.

9. Voice VoIP Limitations.

- (a) **Short Duration Traffic.** A short duration call is a call that is six (6) seconds or less in duration (“Short Duration”). Short Duration traffic is harmful to Arbeit’s network, and Arbeit must take steps to mitigate the effects of Short Duration traffic to preserve the integrity of its network. It is the Customer’s responsibility to monitor its traffic for Short Duration traffic. If 10% or more of Customer’s completed calls are equal to or less than six (6) seconds in length during any 24-hour period, then Arbeit reserves the right, in its sole discretion, to: (i) charge and Customer shall pay, in addition to Customer’s current rates, a \$0.02 short duration surcharge per call for the 24-hour period in which the percentage of Short Duration calls by and/or to Customer exceeds 10%; and (ii) take curative action that may result in the modification, suspension or cancellation of Customer’s Services.
- (b) **Auto-Dialing and Call Blasting.** The Arbeit Voice product is not intended as a service to be used as or as an element in an auto-dialer or call blaster system by Customer. Auto-dialers, continuous call session connectivity, fax broadcasting, fax blasting, mass calling or any other blasting activities are not permitted with Arbeit Voice unless written approval is provided by Arbeit. If Arbeit has reasonable suspicion that Customer may be in violation of the foregoing prohibitions, Arbeit in its sole discretion may take curative action that may result in the modification, suspension or cancellation of Customer’s Services.
- (c) **Incomplete Call Ratio and Average Length of Call.**
- (i) A “Completed Call” is a call where Arbeit receives answer supervision from the terminating end. The “Total Call Attempts” equals the total calls attempted (both answered and incomplete). The incomplete call ratio (“ICR”) is the ratio of the total call attempts less the completed calls to the total number of attempted calls expressed as a percentage ($ICR = ((Total\ Call\ Attempts - Total\ Completed\ Calls) / Total\ Call\ Attempts) * 100$). Customer’s ICR shall not exceed forty (40) percent (“ICR Threshold”) in a 24-hour period. Arbeit may, upon notice, modify the ICR Threshold if industry standards change. If Customer’s ICR is above the ICR Threshold, Arbeit reserves the right, at its sole discretion, to impose a surcharge equal to \$0.02 per incomplete call exceeding the ICR Threshold during that 24-hour period.
- (ii) Customer’s average length of call (“ALOC”) must be a minimum of forty-five (45) seconds in any given 24-hour period. ALOC is calculated by taking the total billed seconds of use and dividing by the number of calls. Arbeit may, upon notice, modify the average length of call threshold if industry standards change. If Customer’s ALOC is below the ALOC Threshold, Arbeit reserves the right, at its sole discretion, to impose a surcharge in addition to any other billed charges equal to \$0.02 per call in the given 24-hour period in which the ALOC drops below 45 seconds.
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10. Early Port Out Fee. In the event Customer ports a telephone number out of Arbeit's network within 180 days of porting the particular telephone number in, Arbeit will be charged an early port out fee ("Early Port Out Fee"), and Customer agrees to pay to Arbeit \$5.00 per Early Port Out Fee charged to Arbeit for the early porting of Customer's telephone number.

General Payment Terms:

- Customer has authorized the Company to charge a valid credit card or bank account provided by Customer ("Account"). The Account information shall remain on file with the Company. If Customer closes such Account, it shall immediately notify the Company, and shall provide the Company with an alternative bank account or valid credit card. Customer represents and warrants that it has the full right and authority to permit the Company to charge such account for services rendered.
 - Customer hereby authorizes the Company to place a \$10.00 pre-authorization charge to the Account on file which will not be charged to the Account to authenticate the validity of the Account.
 - Each Tuesday, the Company shall charge the Account for any outstanding balance for Customer's use of the Services. In the event the charge is declined, the Company will attempt to make contact with Customer for a period of 24 hours in efforts to resolve the issue. If no resolution is made within 24 hours, the Company shall immediately deactivate Customer's access to the Services.
 - Customer consents to being contacted by the Company or any of the Company's agents in relation to any charge being declined, or the collection of past due accounts.
 - Upon resolution of the charges, the Company may at its discretion reactivate Customer's access to the Services.
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