



(Basic Terms And Conditions)

DELTEL, INC.

Mobi-dic TERMS AND CONDITIONS OF SERVICE

DelTel, Inc. (“DelTel”) will provide you with the Mobi-dic service under the following Terms and Conditions of Service (the “Agreement”). Your use of the Services (as defined herein) constitutes your acceptance of this Agreement in its entirety and the terms and conditions contained herein. Please read this Agreement carefully.

1. SERVICES.

1.1 Provision of Services. Subject to your compliance with this Agreement, we will provide to you a proprietary software, sales management service, establish an account for you, set up a voice mailbox, transcribe the voice mail messages received from you and allow you to download the information into and update your contact management software (using the “Mobi Sync” software), together with such services as you may request and which DelTel may activate for you from time to time (collectively, the “Services” or “the Mobi-dic service”). The Services are accessible via computer and telephone. You understand that in order for our Services to perform to your satisfaction, or at all, you are solely responsible for the hardware, software or other technology you use to access our Services. We will not be responsible for any service difficulties resulting from your failure to possess technology adequate to use our Services to your satisfaction. DelTel may decide to discontinue providing Services to you at any time for any lawful reason, and may request that you provide it with any information it reasonably requires to determine whether you qualify for Services. Use of the Mobi-dic service is subject to the terms and conditions of an end-user license agreement the terms of which you will be required to accept as part of and during the registration process for the Service.

1.2 Modification of the Services and or this Agreement. DelTel reserves the right, at its discretion, to modify the functionality of the Services and/or this Agreement at any time upon thirty (30) days prior written notice. You will have the right to terminate the Services by providing DelTel written notice within fifteen (15) days following receipt of notice of such modifications if either (a) any such modifications of the Services materially degrades the functionality of the Services or (b) you do not accept any such modifications of this Agreement. Failure to so terminate shall constitute your acceptance of such modifications.

1.3 Limited Grant of Software License. DelTel hereby grants you a non-exclusive, non-transferable restricted license to you use the Mobi Sync software solely in conjunction with your use of the Services in accordance with the terms and conditions of this Agreement. The license granted hereby will terminate simultaneously with the termination of your subscription to use the Services. No ownership interest in any software or any proprietary rights incident thereto are transferred by this Agreement.

1.4 Mobi-dic is providing access to and use of the Service to you only, and you agree not to share your password with any other individual or entity or allow any other individual or entity to utilize the service on behalf of themselves, on your behalf, or otherwise.

1.5 Mobi-dic is intended for notes, memoranda and to record common business data. The dictation of notes and memoranda to you is an appropriate use of Mobi-dic. Dictating numerous multiple-page documents, highly complex documents, conversations or meetings of two or more people is not. Mobi-dic does not support transcription of multiple speakers i.e. conversations, meetings, etc. Mobi-dic does not support the transcription of recordings played into the phone.

2. PAYMENT

2.1 Credit Verification. You must have and maintain satisfactory credit to receive and continue to receive Services. DelTel will verify your credit before agreeing to provide Services to you and may verify your credit at

any time while it provides Services to you. Credit verification may include a review of credit reports that DelTel receives from commercially available credit bureaus. DelTel may require a guaranty of payment by an individual or entity approved by DelTel. If, at any time, DelTel determines in its sole discretion, that payment for Services may not be made when due, DelTel may suspend Services to you and require that you provide payment on account or a guarantee of payment before DelTel resumes Services to you.

2.2 Fees. You agree that DelTel is permitted to charge your credit card or ACH a monthly subscription fee, any applicable sales tax, any usage charges and any other charges you may incur in connection with your use of Mobi-dic. You are liable for all charges related to such Services accessed through your account regardless of who actually utilizes the services. The subscription fee will be billed at the beginning of your subscription and on each monthly renewal thereafter unless and until you cancel. We will automatically charge your credit card or ACH all fees each month on the calendar day corresponding to the commencement date of this Agreement. In the event this Agreement became effective on a day not contained in a given month, we will bill your credit card on the last day of such month. For example, if this Agreement you became a member on January 31st, your card would be billed on February 28th. All fees and charges are nonrefundable. If you want to use a different credit card or if there is a change in your credit card validity or expiration date, please call customer service at 888-Mobi-dic (888-662-4342).

2.3 Taxes. DelTel will invoice you for taxes, regulatory related obligations and other charges levied by federal, state or local authorities, or foreign governments on the Services, or mandated to be paid in proportion to DelTel's receipts from Services. Even though taxes, regulatory related obligations and other charges not directly paid by DelTel will not be invoiced to you, you are, and will at all times remain, responsible to pay to the applicable taxing or levying authority of any such applicable taxes, all regulatory related obligations and other charges arising from your use of the Services. If you claim any tax exemption, you must provide DelTel with a valid tax exemption certificate. Any tax exemption applies only from the date that DelTel receives such valid tax exemption certificate.

2.4 Late Payments. Late payments shall be subject to interest at the rate of one and one-half percent (1 1/2%) per month but in no case more than the maximum allowed by law. In addition to any other remedies DelTel may have, DelTel reserves the right to suspend the provision of the Services if you fail to pay any fees when due. Any request by you to resume the Services following any such suspension shall be at DelTel's discretion and shall be subject to DelTel's then applicable reactivation fee. You agree to pay all legal and collection fees arising from DelTel's efforts to collect any past due amounts from you to the extent allowed by law. Acceptance by DelTel of late payments or partial payments (even if marked "paid in full") will in no way waive or affect DelTel's right to collect all amounts that you owe to DelTel.

2.5 Modification of the Fees. DelTel reserves the right, at its discretion, to increase the fees for the Services at any time upon thirty (30) days prior written notice. You shall have the right to terminate the Services by providing DelTel written notice within fifteen (15) days following receipt of notice of such increase. Failure to so terminate shall constitute your acceptance of such increase.

3. CREDITS FOR SERVICE INTERRUPTION

3.1 Granting of Credit. The Services may be temporarily interrupted, delayed or otherwise limited for a variety of reasons. While DelTel does not assume any duty to provide uninterrupted Services to you, DelTel will give you a credit for certain interruptions of Services as described below. However, a credit will not be given for interruptions in the Services caused by (a) your negligent or willful actions, (b) the failure or incompatibility of equipment, software or services not provided by DelTel or (c) causes beyond the reasonable control of DelTel.

3.2 Calculation of Credit. You agree that the liability of DelTel, if any, for interruptions, delays and/or

failures of the Services, whether caused by DelTel or otherwise, is limited solely to the allowance of a credit as set forth herein. Credits for an interruption of Services will only be given when the interruption lasts for twenty-four (24) consecutive hours or more and will consist of a pro-rata adjustment of the monthly service fees for the Services rendered unusable by the interruption. Credits will be given only when you report interruptions to DelTel. For the purpose of calculating the applicable credit, an interruption will be measured from the time it is reported to DelTel. The issuance of the pro-rata credit will constitute a full accord and satisfaction of all claims by you against DelTel for interruption of the Services. In no case will the pro-rata credit exceed the applicable monthly service fees for the Services rendered unusable by the interruption.

4. LIMITATIONS ON USE.

You agree that you will not (a) rent, sell, lease or otherwise transfer the Services or (b) use the Services in a manner that violates applicable law. You shall be liable to DelTel for any failure to comply with the terms of the Agreement. You further agree that you will only use the Service for lawful purposes, in compliance with all applicable local, state and Federal laws and regulations, including, without limitations, copyright, trademark, obscenity and defamation laws. Further, agree not to use the Services to: (c) transmit spam, chain letters, junk mail or distribution lists to any person who has not given specific permission to be included in such a process, (d) transmit any unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable material of any kind, or (e) make any threats of physical harm. You hereby agree to defend, indemnify and hold harmless DelTel, its affiliates, officers, directors, employees and representatives from and against any claim or action that arises from your use of the Service in an unlawful manner or in any manner otherwise inconsistent with the restrictions and policies stated herein.

5. DISCLAIMERS AND LIMITATIONS.

5.1 Disclaimer of Warranties THE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. TO THE FULLEST EXTENT PERMITTED BY LAW, DELTEL DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES AS TO THE SUITABILITY, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THE SERVICES. DELTEL DOES NOT WARRANT THAT THE SERVICES WILL OPERATE UNINTERRUPTED OR ERROR-FREE. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING WITHOUT LIMITATION STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE OR PERFORMANCE OF THE SERVICES, WHETHER MADE BY DELTEL’S EMPLOYEES OR OTHERWISE, THAT IS NOT CONTAINED IN THIS AGREEMENT SHALL BE DEEMED TO BE A WARRANTY BY DELTEL FOR ANY PURPOSE, OR GIVE RISE TO ANY LIABILITY OF DELTEL WHATSOEVER.

5.2 Limitation on Liability. IN NO EVENT WILL DELTEL, ITS INFORMATION TRANSMITTERS, TRANSCRIBERS AND ALL OTHER PERSONS INVOLVED IN PROVIDING THE SERVICES, BE LIABLE FOR ANY LOST OR ANTICIPATED PROFITS, DAMAGES RESULTING FROM EVENTS BEYOND ITS REASONABLE CONTROL OR ANY INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL, RELIANCE OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, LOST DATA OR ECONOMIC DAMAGE, REGARDLESS OF THE FORM OF ACTION, ARISING FROM YOUR USE OF THE SERVICES, INCLUDING BUT NOT LIMITED TO ANY CLAIMS RESULTING FROM INCONVENIENCE, DELAY OR LOSS OF USE OF THE TRANSCRIBED INFORMATION OR FROM OMISSIONS OR INACCURACIES IN THE TRANSCRIBED INFORMATION, AND REGARDLESS OF WHETHER DELTEL HAS BEEN ADVISED OR HAS REASON TO KNOW OF THE POSSIBILITY OF SUCH DAMAGES. AS A CONDITION TO ACCESSING OR RECEIVING THE SERVICES, YOU EXPRESSLY AGREE TO WAIVE ANY CLAIM YOU MAY HAVE AGAINST DELTEL, OR ANY OTHER PERSONS INVOLVED IN PROVIDING THE SERVICES AND ARISING THEREFROM, WHETHER IN

CONTRACT, TORT OR OTHERWISE. THIS WAIVER IS ONLY VALID IF ALLOWED IN YOUR SPECIFIC JURISDICTION AND TO THE EXTENT SUCH WAIVER IS PERMITTED BY APPLICABLE LAW; SUCH LIMITATIONS WILL BE CONSIDERED MODIFIED TO COMPLY WITH THE ALLOWABLE LIMITATION. THIS AGREEMENT GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY ALSO HAVE OTHER RIGHTS, WHICH VARY FROM JURISDICTION TO JURISDICTION. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, DELTEL WILL NOT BE LIABLE TO YOU OR TO ANY OTHER PERSON WITH RESPECT TO THE SERVICES UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY AMOUNTS IN EXCESS OF THE AGGREGATE AMOUNT YOU HAVE PAID TO DELTEL FOR THE SERVICES AS OF THE DATE OF THE EVENT GIVING RISE TO ANY CLAIM.

5.3 Limitation on Actions. You may not institute any action or arbitration proceedings in any form arising out of this Agreement or your use of the Services more than twelve (12) months after the cause of action has arisen.

5.4 No Liability for Security Breaches. IN ADDITION TO, AND NOT IN LIMITATION OF, THE LIMITATIONS ON DELTEL'S LIABILITY SET FORTH ELSEWHERE IN THIS SECTION 5, IN NO EVENT WILL DELTEL BE LIABLE IN ANY MANNER FOR ANY SECURITY BREACH ARISING OUT OF DELTEL'S CONNECTION TO YOUR E-MAIL SERVER, IF APPLICABLE, OR FOR ANY LOSS OR THEFT OF DATA AND/OR CONFIDENTIAL INFORMATION RESULTING THEREFROM.

6. TERM & TERMINATION

6.1 Term. The Services will be provided to you on a month-to-month basis, commencing on your signup date.

6.2 Renewal. Your Mobi-dic service subscription will be automatically renewed on a monthly basis. DelTel will charge the Mobi-dic monthly subscription fee to the credit card or ACH information you provide to us during registration (or to a different credit card if you change your account information) as set forth in Section 2.2. Your use of the Services will automatically renew for successive monthly subscriptions, without prior notice to you, unless and until you cancel your subscription or we terminate it. You must cancel your subscription before the calendar day corresponding to the commencement date of this Agreement to avoid billing of subscription fees to your credit card for the following month.

6.3 Termination for Default. Either party may terminate the Services (a) in the event the other party commits a material breach of this Agreement and such failure continues for a period of fifteen (15) days following written notice of such failure (provided that no such notice shall be required, and no such cure period shall be afforded, in connection with any failure by you to pay DelTel all amounts due and owing to DelTel hereunder); or (b) immediately and without notice if the other party makes any assignments of assets or business for the benefit of creditors, or a trustee or receiver is appointed to conduct its business or affairs, or it is adjudged in any legal proceeding to be in either voluntary or involuntary bankruptcy.

6.4 Canceling Service, Termination for Modifications, Price Increases. You may cancel your subscription to the Services at any time. For security reasons, you must call 888-Mobi-dic (888-662-4342) to cancel. No other method of cancellation will be accepted. We do not provide refunds or credits for any partial monthly subscription periods. You may continue to use the Services until the end of the paid subscription period. You will be billed for any usage incurred and not paid for at the end of the subscription period.

7. INDEMNITY.

You agree to defend, indemnify, and hold harmless DelTel and its officers, directors, employees and agents, from and against any claims, actions or demands, including without limitation reasonable legal and accounting fees, alleging or resulting from your breach of the warranties or obligations under this Agreement. DelTel shall notify you of any such claim, suit, or proceeding and shall cooperate with you in defending any such claim, suit or proceeding at your expense.

8. OWNERSHIP OF TRANSCRIBED INFORMATION.

Mobi-dic acknowledges that the content of any dictation, transcription thereof, or transmitted data based on your dictation is your property and you own all rights to that content.

9. MISCELLANEOUS

9.1 Definition of User; User Information; As used in this Agreement, the term “user” means a natural person who is authorized to leave a call report using your account using the Services. DelTel may use information about you for internal business and marketing purposes.

9.2 No Joint Venture. Nothing in this Agreement shall create or imply any agency relationship between you and DelTel nor shall this Agreement be deemed to constitute a joint venture or partnership between us. Neither party shall have authority to bind or otherwise obligate the other in any manner whatsoever.

9.3 Force Majeure. DelTel will not be liable for its failure to perform hereunder due to contingencies beyond its reasonable control, including, but not limited to, strikes, riots, wars, fire, power failure, hardware failure, acts of God, or acts in compliance with any law or government regulation.

9.4 Governing Law; Arbitration. This Agreement shall be governed by and construed in accordance with the laws of The State of California, without regard to its conflict of laws principles. All claims and disputes arising out of this Agreement or the use or provision of Services shall be settled by binding arbitration pursuant to the rules and regulations of, and under the auspices of Judicial Arbitration and Mediation Services, Inc. (“JAMS”) in Orange County, California. In any arbitration proceedings, the prevailing party shall be entitled to recover all legal costs, fees and expenses incurred by it in connection with the arbitration, in addition to any other relief to which such party may be entitled.

9.5 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

9.6 Assignment. You may not assign or delegate any of your rights or obligations under this Agreement without the written consent of DelTel. DelTel may assign or delegate any of its rights or obligations under this Agreement without the written consent of Customer. DelTel may subcontract any or all of its obligations under this Agreement. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their successors and their permitted assigns.

9.7 Notices. Any notices required or permitted to be given under this Agreement shall be deemed sufficiently given if in writing and if delivered by hand, by courier, by confirmed facsimile or sent by registered or certified mail, postage and fees prepaid. Notices to you shall be sent to your last address on file with DelTel and notices to DelTel shall be sent to DelTel, Inc., 26741 Portola Pkwy Suite 1E PMB 714, Foothill Ranch, CA 92610 to the attention of President, or at such other addresses as may be furnished in writing to the notifying party.

9.8 Waiver. The waiver by one party of a breach of any provision of this Agreement by the other party

shall not operate or be construed as a waiver of any subsequent breach of the same or any other provision by the other party.

9.9 Severability. In the event that any of the provisions of this Agreement or the application of any such provisions to the parties hereto with respect to their obligations hereunder are held by a court of competent jurisdiction to be unlawful or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect, and shall not be affected, impaired, or invalidated in any manner.

9.10 Paragraph Headings. The paragraph headings contained herein are for reference only and shall not be considered as substantive parts of this Agreement.

9.11 Compliance with Law. Both parties shall comply with all applicable laws and regulations of governmental bodies or agencies in their performance under this Agreement.

9.12 Entire Agreement. This Agreement contains the entire and only understanding between the parties and supersedes all prior agreements, either written or oral, relating to the subject matter hereof. Except as otherwise expressly provided herein, no modifications or waivers of this Agreement shall be binding on either party unless made in a writing that specifically references this Agreement and is signed by persons authorized to sign agreements on behalf of you and DeITel.