

## CALLBLU, LLC TERMS OF SERVICE AGREEMENT

*Last Updated July, 2016*

CallBlu LLC ("CallBlu") is the provider of the Services described below.

"You," "Your" or "Subscribing Advertiser" refers to the user of the Services provided by CallBlu and subject to the applicable Terms of Use described below.

This Terms of Service Agreement (the "Agreement") sets forth the terms and conditions that apply to Your use of the Services offered by CallBlu. By completing the subscription process and executing the Customer Contract Worksheet You are indicating that You agree to be bound by all of the terms in this Agreement. Please print and retain a copy of this Agreement for your records.

### DEFINITIONS

The following terms used in this Agreement shall have the following meanings:

"**Agreement**" or "**Terms of Use**" means this binding legal agreement.

"**Advertising Network**" means any search engine, or Internet directory or site on which your business could be listed to drive leads.

"**Call**" refers to any and all telephone calls placed to a Tracking Number assigned to Your advertising program.

"**Caller**" refers to any person or entity that places a Call.

"**Contract Term**" is one (1) year from the Effective Date of this Agreement with automatic renewals for successive one (1) year terms unless earlier terminated by either party as provided for in this Agreement.

"**Customer Contract Worksheet**" means one or more agreements executed by You and CallBlu, which include the specific parameters of any Services to be provided by CallBlu pursuant to the terms of this Agreement. All Customer Contract Worksheets will reference this Agreement.

"**Effective Date**" is the date CallBlu begins providing Services to You under this Agreement.

"**Foundation Package**" means a packaging of core services that may or may not include some or all of the following; evaluation of a Subscriber's website, Local Listing Management, Search Engine Optimization, Internet mapping services, Social Media services, call tracking and consumer review notification.

"**Local Listing Management**" means the review and maintenance of Your existing online directory listing presence with sites that CallBlu has partnered with to ensure Your name, address, phone number and site appear correctly and site is linked to multiple site listings. CallBlu charges an upfront fee plus a recurring monthly management fee for these services.

"**Mirrored Site**" means a mirrored version of the Subscribing Advertiser's Website created by

CallBlu with a similar look and feel as the Subscribing Advertiser's Website, with a URL visible above the mirrored version of the site showing the web site address for the mirrored version of the site, and not showing the URL of the Subscribing Advertiser's Website.

**"Online Marketing Strategies"** mean any marketing and advertising done on the Internet to promote the Subscribing Advertiser.

**"Pay Per Click Management"** means the management of Your paid advertising campaigns. CallBlu may charge an upfront fee plus a recurring monthly management fee for Pay Per Click Management services.

**"Performance Based SEO Pay-Per-Call"** means the development of websites with unique phone tracking numbers to deliver Qualified Calls to You. CallBlu may use various Online Marketing Strategies to drive Calls and will bill the Subscribing Advertiser according to the number of Qualified Calls generated by CallBlu's Online Marketing Strategies.

**"Qualified Call,"** means the net number of Calls, following application of a Scrub Rate, billed to the Subscribing Advertiser during a billing period. Qualified Calls also include: (i) Unanswered Calls exceeding five percent (5%) of total Calls during a billing period; and (ii) all Voice Message Calls. All on-line forms received by Subscribing Advertiser from websites developed as part of the Performance Based SEO Pay-per-Call Services shall be considered a Qualified Call and not subject to the Scrub Rate.

**"Scrub Rate"** means the parameters used (e.g. Call percentages, Call time limits, repeat Unique Calls) to determine the number of Calls that are scrubbed (not billed) for the Subscribing Advertiser.

**"Search Engine Optimization" or "SEO"** means the process of improving the visibility of a website or a web page in a search engine's natural list of search results. SEO services may include keyword analysis and research, local Search Engine Optimization, and Social Media optimization. CallBlu may charge an upfront fee plus recurring monthly fee for SEO services.

**"Services"** mean the Foundation Package, Performance Based SEO Pay-Per-Call, Web Design, Local Listing Management, Search Engine Optimization, Pay Per Click Management, and all other services provided to the Subscribing Advertiser by CallBlu, all as more fully described in the Customer Contract Worksheet.

**"Social Media"** for purposes of this agreement means websites and applications that enable business users to create and share business content or to participate in social networking for business purposes.

**"Subscribing Advertising Website"** means an existing website of Subscribing Advertiser created by or for Subscribing Advertiser by a party other than CallBlu.

**"Tracking Number,"** means the telephone number assigned to Your advertising program. The Tracking Number may be a local, long-distance, or toll-free telephone number or extension or a click to call mechanism assigned by CallBlu to a Subscribing Advertiser.

**"Unanswered Call"** means any Call directed to a Subscribing Advertiser that is not answered during normal business or operating hours.

**"Unique Call "** means the first Call generated from a Caller phone number to a Tracking Number assigned to You during a specified billing period.

**"Usage Information"** means any information provided by CallBlu as to how leads/calls are driven, what third parties they have partnered with, or any other information detailing CallBlu's program.

**"Voice Message Calls"** means any Call directed to a Subscribing Advertiser during normal business hours that is answered with a recording asking the Caller to leave a message, or any other directive not resulting in the Call being answered by the Subscribing Advertiser.

**"Web Design"** means website development services provided by CallBlu as may be specified in a Customer Contract Worksheet.

### **TERMS APPLICABLE TO ALL SERVICES**

1. CallBlu will provide to You the Services specified in the Customer Contract Worksheet(s) executed by You and CallBlu, and You will pay the fees for the Services specified in the Customer Contract Worksheet(s) in accordance with the payment terms specified in the Customer Contract Worksheet, including set-up fees, monthly fees and late or non-payment fees. You acknowledge that CallBlu may subcontract the performance of the Services in its sole discretion.
2. You agree that CallBlu may modify this Agreement at any time in its sole discretion upon written notice to you. Thereafter, Your continued use of the Service constitutes acceptance of the terms of the Agreement as modified by CallBlu. You may not modify the terms of this Agreement unless CallBlu agrees to a modification in writing.
3. You acknowledge, agree, and accept that (i) the Services may be provided to You by CallBlu or its affiliates or its third-party business partners and that Your advertisements may be included on the websites, advertising networks, and ad media of such affiliates or third party business partners, in addition to, or instead of, those websites, ad media and advertising networks of CallBlu; (ii) there is no guarantee that Your advertisements will be included on any Advertising Network or on the website, ad media, or advertising network of any CallBlu business partner, and CallBlu and its business partners shall have no liability relating to such exclusion; and (iii) CallBlu is authorized by You to modify Your listing content or written text so that it can be distributed in multiple media forms by CallBlu and its distribution affiliates and partners, including, without limitation, audio or video.
4. CallBlu reserves the right, in its sole and absolute discretion, to reject or remove any advertisement it deems unsuitable for the Services.
5. You expressly agree that CallBlu does not guarantee that Your advertising program will receive a certain number or quality of Calls, and that CallBlu does not agree that You will receive any particular benefits or results from Your relationship under this Agreement or otherwise with CallBlu. This paragraph applies notwithstanding any oral or written statements by any party to the contrary.
6. You agree to keep the provisions of the Agreement and any Usage Information and/or other Call-related information you receive pursuant to the Agreement strictly confidential. Your obligations under this paragraph continue in the event either party terminates this Agreement, and You agree to be bound by Your confidentiality obligations during the Agreement term

and for a period of three (3) years following the termination of the Agreement, unless released by CallBlu in writing.

7. You agree that CallBlu retains all use and ownership rights to all Services provided under this Agreement including all Mirrored Site content and all text, images, URL (domain) and Internet search engine and directory listings, but specifically excluding any of Your logos and trademarks which You provide to CallBlu for use by CallBlu in providing Services, or any URL's owned by You (collectively "Subscribing Advertiser Owned Materials"). You agree not to copy or use any content, text, images, URL's or other Services created or owned by CallBlu under this Agreement without written consent from CallBlu.
8. You hereby grant CallBlu a limited, non-exclusive, royalty-free, fully paid-up right and license to use the Subscribing Advertiser Materials and the Subscribing Advertiser Website for the provision of Services. CallBlu agrees not to copy or use any Subscribing Advertiser Owned Materials without written consent from Subscribing Advertiser except for the provision of Services under this Agreement.
9. If Subscribing Advertiser has requested CallBlu to utilize, in connection with the Services, a Subscribing Advertiser Website as a Mirrored Site hereunder ("Subscribing Advertiser Mirrored Site") then, during the Agreement term, Subscribing Advertiser hereby consents to CallBlu's use of the Subscribing Advertiser Mirrored Site in connection with the provision of the Services and Subscribing Advertiser hereby grants to CallBlu a limited, non-exclusive, royalty-free, fully paid-up right and license to (i) edit, modify, adapt, translate, exhibit, publish, transmit, use, reproduce, distribute, publicly perform, publicly display and digitally perform the Subscribing Advertiser Mirrored Site and all data, text, pictures, sound, graphics, logos, trademarks, symbols, video and other materials provided or made available to CallBlu by Subscribing Advertiser under this Agreement including, without limitation, content and information solely to the extent necessary to render the Services to Subscribing Advertiser hereunder; and (ii) capture, collect, store, translate, transmit, use, reproduce, and distribute all data and information about, or provided by, Subscribing Advertiser solely to the extent necessary to render the Services to Subscribing Advertiser hereunder. Within a reasonable time following the termination of this Agreement (contingent upon CallBlu having access to the Subscribing Advertiser Mirrored Site), CallBlu will restore the Subscribing Advertiser Mirrored Site content to its state prior to the initial CallBlu modifications made in connection with the Services.
10. If You have engaged CallBlu to provide Local Listing Management as part of the Services, the following additional provisions apply: (i) CallBlu is not responsible for Your information on website/directories that CallBlu has not partnered with; and (ii) if You have previous advertising agreements with directories or websites that prevent CallBlu from updating information, CallBlu is not responsible for any incorrect information.
11. The fees for the Services may be modified at any time as follows: (i) You and CallBlu may execute a new Customer Service Contract which specifies additional or different fees or Services; or (ii) CallBlu may modify the fees for any Services or discontinue any Services upon thirty (30) days written notice to You; provided that, upon receipt of any notice of a change in fees, You may discontinue the Services prior to application of the new fees by notifying CallBlu in writing or by email.
12. You acknowledge that all fees charged and paid to CallBlu for Services do not include any amounts for taxes, and that You are responsible for collecting and paying any and all taxes

associated with the use, purchase or resale of the CallBlu Services.

### **ADDITIONAL TERMS FOR PERFORMANCE BASED SEO PAY-PER-CALL**

1. If specified in a Customer Contract Worksheet, CallBlu may provide, for an additional fee, periodic reports of all Calls for Your records and Your quality assessment. You explicitly acknowledge that the Tracking Number(s) may be distributed and published across the Internet through different websites and third parties without knowledge or consent of CallBlu or You, and that the Tracking Number(s) can appear on different advertisements from multiple third-party companies. You agree that CallBlu may perform On Line Marketing Strategies so that Your information appears many places on the Internet, provided that CallBlu does not guarantee that Your information will appear on any specific sites. For clarity, a Call includes telephone calls to the Tracking Number(s) regardless of where the Tracking Number(s) appears including, without limitation, appearances in locations and situations, which are not listed in this Agreement.
2. In exchange for CallBlu performing the Performance Based SEO Pay-Per-Call services, You agree to pay the rate set forth in the Customer Contract Worksheet for all Qualified Calls. Qualified Calls are calculated by applying the Scrub Rate to the total of all Calls received using the Tracking Number. You agree to the Scrub Rate as defined in the Customer Contract Worksheet for all Calls received on the Tracking Number(s) assigned to You.
3. You agree that CallBlu may listen to all Call recordings generated through the Tracking Number(s) assigned to Your advertising program and CallBlu may also record calls in its sole discretion for quality control purposes.
4. CallBlu reserves the right to place the Tracking Number(s) assigned to Your advertising program in advertisements across the Internet to drive Calls to your business. CallBlu will create content to create these ads.
5. You authorize CallBlu to redirect a Call made by a Caller from a Tracking Number to a telephone number You specify in the subscription process. The telephone number You specify must be a telephone number within the United States, Canada or Mexico. CallBlu does not currently redirect calls to telephone numbers outside of these areas. You agree that You shall use the Services only for the purposes for which it is intended, which means that You expressly agree to use the Services as an advertising service and not as a telecommunications service or a free or discounted long distance, local, or toll-free telephone number. You also authorize CallBlu to utilize the Tracking Number(s) and Mirrored Sites for any Internet marketing services not currently utilized by You.
6. Tracking Number(s) will be displayed to the user in lieu of Your telephone number and will forward to Your existing telephone number. With regard to Tracking Number(s), you agree that CallBlu is not responsible for functionality or operations of the existing phone numbers to which the Tracking Number(s) will forward Calls. You agree that CallBlu has the right, but not the obligation, to activate enhanced phone tracking features. Those features may include, but are not limited to, call review, whereby a recording of the inbound phone call is made and stored for review by CallBlu, and caller identification, whereby the phone number of the caller is recorded along with the time and date of the call. In the case of call review, You hereby agree and understand that an initial recording may be played to Callers notifying the Caller that the Call may be recorded.

## GENERAL TERMS

1. Either party may terminate this Agreement at any time upon sixty (60) days' written notice (the "Termination Date"), provided any termination by You during the first six (6) months of the initial Contract Term will incur an early termination charge equal to the price of one (1) month of the Services being provided by CallBlu at the time of termination. Upon termination of this Agreement, CallBlu will stop providing the Services, and CallBlu shall have no further obligations to You. In the event of any termination of this Agreement, You agree that (i) You will not be entitled to any refunds of any fees that You have paid CallBlu prior to the Termination Date, and (b) You will be charged the full outstanding balance for Services rendered through the Termination Date. Upon termination, You also agree that all other unpaid payment obligations, if any, will be immediately due and payable in full to CallBlu.
2. This Agreement, together with the Customer Contract Worksheets executed by the parties, contains the entire and only agreement between the parties, and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of this Agreement.
3. CallBlu and its employees, subcontractors, and other representatives are providing the Services under this Agreement as independent contractors.
4. The failure of any party to enforce any provision of this Agreement shall not be construed to be a waiver of such or of any other provision, nor in any way to affect the validity of all or any part of this Agreement or the right of such Party to enforce each and every provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.
5. This Agreement may not be modified or terminated except as provided herein.
6. You shall not assign any of Your rights or obligations hereunder without the prior written consent of CallBlu, and any purported assignment without such prior written consent shall be null and void and of no force and effect.
7. CallBlu shall be excused from performance to the extent that performance is prevented, delayed, or obstructed by causes beyond CallBlu's reasonable control, including any delays in performance by You for any reason, acts of nature (fire, storm, floods, earthquakes, etc.), civil disturbances, and the disruption of telecommunications, power, or essential services. In the event Your existing telephone service is interrupted for any reason, CallBlu reserves the right to bill You for all Calls.
8. If any provision of this Agreement is invalid or unenforceable for any reason, such provision shall be revised to the extent necessary to make it enforceable to the maximum extent permissible as to effect the intent of the parties, and the remainder of the Agreement will continue in full force and effect. If such reformation is not possible, the provision shall be severed from the Agreement, and the remainder of the Agreement will continue in full force and effect.
9. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas without reference to its conflict of laws principles. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration

administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. YOU FURTHER AGREE THAT ANY ARBITRATION ACTION BROUGHT BY YOU ARISING OUT OF OR RELATING TO THIS AGREEMENT OR SERVICES PROVIDED HEREUNDER SHALL BE FILED ONLY IN DALLAS COUNTY, TEXAS AND YOU HEREBY CONSENT AND SUBMIT TO THE PERSONAL JURISDICTION AND VENUE IN DALLAS COUNTY, TEXAS.

10. The Agreement term shall begin on the date specified on the Customer Contract Worksheet and shall continue until terminated by either party with thirty (30) days written notice.
11. You agrees to indemnify, defend and hold CallBlu harmless from and against any and all claims, demands, actions, costs, liabilities, losses and damages of any kind (including attorneys' fees), regardless of the theory of liability, incurred by or threatened against CallBlu in connection with: (i) any use by CallBlu of any materials or information provided by you to CallBlu, including but not limited to any Subscribing Advertiser Owned Materials; or (ii) any acts or omissions related to the provision of products or services by you or your representatives.
12. All notices required under this Agreement will be given by express mail using a nationally recognized carrier or by e-mail to the addresses specified on the Customer Contract Worksheet. Either party may change the address as to which notices are sent by providing notice to the other party at the address set forth in the Customer Contract Worksheet. Notwithstanding the above, any operational notices, and any notices described in Section 11 above under "Terms Applicable to All Services" may be provided by email to the last known email address of the other party.

#### **LIMITATION OF LIABILITY**

IN NO EVENT SHALL CALLBLU BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY OF LIABILITY, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, OR LOSS OF GOODWILL, EVEN IF CALLBLU HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. NOTWITHSTANDING WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT SHALL CALLBLU'S AGGREGATE LIABILITY FOR ANY SERVICES PROVIDED HEREUNDER EXCEED THE LESSER OF: (I) THE FEES PAID BY YOU TO CALLBLU FOR THE APPLICABLE SERVICE DURING THE ONE (1) MONTH PERIOD IMMEDIATELY PRIOR TO THE MONTH IN WHICH THE MOST RECENT EVENT GIVING RISE TO THE LIABILITY OCCURRED; OR (II) ONE THOUSAND DOLLARS (\$1000).

CALLBLU AND SUBSCRIBING ADVERTISER AGREE TO THE TERMS OF THIS AGREEMENT, INCLUDING ANY CUSTOMER CONTRACT WORKSHEET EXECUTED