

## **IFBYPHONE TERMS OF SERVICE**

BY USING (1) ANY SERVICE PROVIDED BY IFBYPHONE, INC., A DELAWARE CORPORATION REGISTERED TO DO BUSINESS IN ILLINOIS ("IFBYPHONE" OR "WE") OR (2) ANY SERVICES ACCESSIBLE THROUGH WWW.IFBYPHONE.COM OR PUBLIC.IFBYPHONE.COM (COLLECTIVELY, THE "SERVICE"), OR BY CREATING OR MAINTAINING AN ACCOUNT FOR SERVICE FOR USE BY YOU OR ANY OTHER PERSON, YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS, UNLESS WE EXPRESSLY AGREE IN A WRITING SIGNED BY AN AUTHORIZED REPRESENTATIVE OF IFBYPHONE THAT DIFFERENT OR ADDITIONAL TERMS APPLY.

**THESE TERMS APPLY TO YOU WHETHER OR NOT YOU CLICK "I AGREE" THROUGH ANY REGISTRATION OR ACCESS PROCESS AT PUBLIC.IFBYPHONE.COM (THE "IFBYPHONE WEBSITE") AND WHETHER OR NOT YOU ARE THE REGISTERED MEMBER UNDER AN IFBYPHONE SERVICE ACCOUNT OR A USER THEREOF. IF YOU DO NOT AGREE, PLEASE DO NOT ATTEMPT TO USE OR ACCESS THE SERVICE OR THE IFBYPHONE WEBSITE.**

You will be referred to from time to time as "you" in this Agreement. "Member" means you if you are the registered or named holder of a subscription or Account for the Service, or the named Account holder if you are using an Account registered in the name of another person. "Account" means the account (a) under which you use the Service, whether registered to you or a Member who has provided you access to use his, her, or its account, or (b) that you create on behalf of another person who becomes a Member thereby.

### **Accounts; Member Subscription**

You may use the Service only while you are (1) a paying Member who subscribes to the Service, (2) using the Service with the express permission of a paying Member who subscribes to the Service, or (3) a "free trial" user or a registered participant in an alpha or beta testing program (in either case, your participation may be terminated at any time by Ifbyphone for any reason). Unless otherwise specified by Ifbyphone or by another express Agreement with Ifbyphone to the contrary, your right to access or use the Service terminates on the earlier of (a) the date which is the last day of the billing cycle for which the last Service prepayment for the Account has been received by Ifbyphone, or (b) the date on which any charge or fee, or other balance due under the Account, is past due and Ifbyphone determines, in its discretion, to terminate the Account or suspend the Service, or (c) any other date upon which Ifbyphone has the right to terminate the Account or suspend the Service as provided in this Agreement or any other applicable agreement or policy.

You represent and warrant that you are at least 18 years of age or have the approval of your parent or guardian to register for or use the Service. If Ifbyphone becomes aware

that you or a Member is under the age of 18 and not appropriately supervised, Ifbyphone may cancel the Account or otherwise restrict access to it.

You represent, to the extent you use any feature of the Service and you are not a Member, that you have the express permission of a Member to use that Member's Account. Conversely, if you are creating or registering an Account on behalf of another person who will become a Member thereby, you hereby represent, warrant, and covenant that you have the express authority to register such person, create such Account, and bind such Member (as a "Member") to this Agreement and the policies and requirements pertaining to the Service (including without limitation the authority to incur recurring payment card billing obligations on behalf of such Member), and you hereby indemnify Ifbyphone from any loss, damage, claim or expense (including reasonable attorney's fees and expenses) arising out of or related to your failure to actually acquire such authority or such new Member's dispute or denial of any such authority. Ifbyphone reserves the right to discontinue allowing persons who are not (or who do not become thereby) registered Members to create, use, or access Accounts or the Service, whether on an account by account basis or otherwise, in its sole discretion. Ifbyphone may establish other reasonable Account or Service registration or usage limits in its discretion. We further reserve the right to refuse Service to any person for any reason, in our discretion.

During registration, each Member must submit and maintain current and accurate Account and contact information, including a working e-mail address and telephone number, and any inaccuracy therein shall be grounds for Account termination. We may distribute notices and other important information to members to such e-mail addresses, or by publication on the Ifbyphone Website, by transmission through the Service, or by written communication sent by mail to the Member address on record. Regardless of method, each Member is responsible to assure that other users of the Account or the Service thereunder are notified accordingly and all such users shall be deemed to have received such notice when provided to the Member of record by reasonable means. Such notices, including any amendments to this Agreement determined by Ifbyphone in its discretion, or to any policies, rules, or restrictions, shall be effective as against the Member and all other Service users upon such publication or distribution.

You are responsible for providing the equipment and services, if any, and configuring the same correctly, as necessary for your access to the Service. Ifbyphone is not responsible for any telephone or internet connection charges, surcharges, taxes, or other amounts incurred in accessing the Service, for which you accept all responsibility. If Ifbyphone specifies, at any time, any particular system requirements or hardware specifications for use of the Service, you will be responsible to provide the same or to cease to use the Service.

### **Price and Payment; Cancellation or Termination of Service**

Each Member will be billed according to his, her, or its chosen Service and billing plan, as described on the applicable page(s) of the Ifbyphone Website. Generally (and

subject to the Member's chosen Service and plans), Service plans provide one of two billing options: (1) recurring fees and base/minimum Service usage charges are billed in advance for each billing cycle, and excess usage or other non-recurring fees, charges, and surcharges are billed in arrears (a "Prepaid Usage Plan"); or (2) plan recurring charges and other base fees are billed in advance, usage charges are billed in increments on an interim basis as usage thresholds are reached through the billing cycle, and when final usage totals for the billing cycle are available, the Member will be billed, and the Account balance trued up, according to the most favorable standard Ifbyphone usage tier that matches the applicable Account's level of usage for that billing cycle, in arrears following the end of the billing cycle, at which time all other excess usage, non-recurring fees, charges, and surcharges for such billing cycle shall also be billed ("Automatic Best Rate Plan"). Generally, Accounts are billed on Prepaid Billing Plans unless a Member expressly selects an Automatic Best Rate Plan (which may not be available for all Service plans or all Members), and meets all required criteria and other qualifications therefor. Ifbyphone is not required to offer Automatic Best Rate Plans to all Members or for all Service plans. Ifbyphone reserves the right to withdraw or modify Service or billing plans at any time or from time to time effective at the end of any billing cycle.

Monthly prepaid amounts are valid for the billing cycle (typically, a calendar month) for which they are prepaid and expire at the end thereof, whether used or not. No refunds for unused time or capacity, or for partial periods of usage prior to effective Account cancellation, shall be given. The Member agrees to pay all fees, usage charges, international calling surcharges, per-minute calling rates, regulatory cost recovery fees, and other Service charges applied to the Member's Account in accordance herewith or with the applicable Service plan and in accordance with the type of billing plan (whether a Prepaid Usage Plan or an Automatic Best Rate Plan) selected by the Member, and to comply with applicable billing terms (prepaid or post-paid) in effect at the time the fee or charge becomes payable (including without limitation, as applicable, that payments will be charged to the Member's payment card).

If the Member has subscribed for a Service plan and/or billing plan that provides for monthly payment card billing, such as a monthly Prepaid Usage Plan, or for periodic interim billing according to an Automatic Best Rate Plan, such Member hereby authorizes regular billing from time to time, including charges to be applied to the Member's payment card, according to such plan(s) until cancelled as provided below. Each Member is also responsible to pay (1) unless they are stated as included in Service charges, any applicable taxes, surcharges (including without limitation international calling surcharges), tariffs, payphone compensation charges, destination/called party mobile number rates, regulatory cost recovery fees, and other governmentally imposed or mandated amounts on the Service (Service plans and calling rates often include some anticipated taxes and surcharges and Regulatory Cost Recovery Fees will generally be charged as a separate line item and include many of the governmentally mandated taxes and surcharges imposed on usage of the Service; further information available upon request), (2) any penalties, administrative fees, or other amounts arising out of unauthorized payment card usage, charge-backs, bounced

checks, and the like, and (3) account reactivation fees imposed by Ifbyphone after Service termination or suspension. Billing disputes must be submitted within 30 days of the applicable billing date or are deemed waived. Payments to Ifbyphone are non-refundable.

Time is of the essence for payments hereunder, and any past due amounts shall bear interest at the lower of 15% per annum or the highest rate allowed by applicable law. Each Member is responsible for any costs or expenses (including legal or collection agent fees and expenses) of collecting any past due amounts from such Member or on his, her, or its Account. Unpaid bills may be sent to third party collections. Member payment obligations are not contingent upon collection of any amounts from any users or third parties.

A Member may cancel his, her, or its Account (1) by e-mail (to [support@ifbyphone.com](mailto:support@ifbyphone.com)) or (2) through the cancellation process on the Ifbyphone Website (at [www.ifbyphone.com](http://www.ifbyphone.com)), effective at the end of the current billing cycle or other Account period (typically, a calendar month), unless such Member has expressly committed to a longer period of Service, in which case such cancellation is effective at the end of such period, by the process required in any agreement for such commitment. Unless otherwise expressly provided in another agreement with Ifbyphone, any notice of cancellation must be submitted at least 5 business days' prior to the end of the billing cycle (typically, a calendar month), or the cancellation will take effect at the end of the following billing cycle.

Ifbyphone may, without refund, terminate an Account or suspend access to the Service immediately without notice, in Ifbyphone's sole discretion, if you or a Member whose account you are using, or any other user of that Account, fails to (1) pay all amounts when due, or (2) comply with this Agreement, thereby terminating this Agreement (except for terms which by their nature should survive) and all obligations of Ifbyphone hereunder or with respect to the Service. The Member shall be responsible for any balance due on the Account.

Unless expressly specified otherwise, the Service and all quoted fees and charges are for United States domestic voice only, and any international or other usage will be billed at Ifbyphone's standard rates plus applicable surcharges (or, if none, at Ifbyphone's cost plus applicable surcharges). International calling surcharges and rates, together with minimum call durations, billing increments, and duration rounding practices (collectively, "International Calling Terms") are generally available through Ifbyphone's [International Rates Calculator](#) provided that Ifbyphone reserves the right to provide notice of International Calling Terms (or changes thereto) by other reasonable means. International Calling Terms may be subject to change from time to time without notice other than as available through the **International Rates Calculator**, and accordingly Ifbyphone recommends that you check back periodically for current International Calling Terms and changes thereto applicable to your Service usage, and that you use the **International Rates Calculator** immediately prior to any significant use of the Services for international calling.

For clarification and without limitation to any other billing method practiced by Ifbyphone, Ifbyphone bills, and Members must pay, for all minutes of usage for each call from the instant a call is initiated by, or connected to, the Ifbyphone network to the instant all parties to such call are disconnected (subject to minimum call durations, billing increments, and duration rounding practices used by Ifbyphone or its carriers), in accordance with Ifbyphone or industry standard practices, notwithstanding any call transfer, disconnection by one party, or other event.

### **Account Rules and Requirements; Acceptable Use Policies**

When an Account is registered, the registrant will select a PIN (or, for multi-user accounts, multiple PINs may be selected). All users agree to keep their respective PIN secret, and any person who registers an Account on behalf of any other person, or any Member who allows use of the Service by other users under its Account, shall cause such persons to, and to agree to, keep all applicable respective PINs secret. You will be held liable for all Account use or misuse under your PIN, and Member Account holders are responsible for all activities under the Account under any PIN (including, with respect to each of the foregoing, any civil or criminal liability therefor). If you feel there may have been a breach in security, such as the unauthorized disclosure or use of any phone number or PIN, you must promptly notify Ifbyphone, and we strongly recommend that you change PINs. Ifbyphone is not liable for any loss or damage arising from your failure to comply with this section or any unauthorized Account usage.

When creating an Account for, using, or accessing the Service, you agree, and each Member shall cause all other users of such Member's Account to agree, to abide by all of Ifbyphone's use policies in effect from time to time, including any Acceptable Use Policy published at the Ifbyphone Website, any policies distributed by email, or any amendments thereto, which policies include, without limitation, the following: you, and each Member or other user of the Account (a) shall (i) abide by all applicable laws, rules, and regulations relating to the use, posting, transmission, distribution, capture, download, and/or recording of voice, content, software or other matter; (ii) conform all usage to applicable rules, laws, and regulations pertaining to or regulating the use of telephone networks, telemarketing, do-not-call requests or lists, pre-recorded messages and other automated voice broadcasts, automated dialers, call or voice recording or surveillance, text, SMS, and other messages, and electronic mail (including anti-spamming laws) (for each of which you take sole responsibility for compliance); and (iii) provide us with accurate and legally compliant user telephone numbers and contact information, caller ID, ANI and other Service user information (which you represent and warrant to be accurate and compliant); and (b) shall not (nor allow any person to) (i) use the Service in any manner which violates the rights of any person or is illegal, fraudulent, deceptive (including without limitation any spoofing of caller ID information or similar practices likely to deceive any other party contacted through the Service), harassing, threatening, harmful, libelous, defamatory, abusive, slanderous, hateful, sexually, racially or ethnically objectionable, vulgar, pornographic, obscene, invasive of privacy, or otherwise objectionable or unlawful; (ii) attempt to gain unauthorized access

to any account, the Ifbyphone network, or any related components; (iii) use or access the Service by mobile telephone while operating a motor vehicle to the extent prohibited by any competent jurisdiction (when such usage is permitted, we strongly recommend use of a hands-free telephone); or (iv) interfere with another's use and enjoyment of any Ifbyphone services.

Any Member or user who uses the Service for telemarketing or similarly regulated purposes is directly and solely responsible for compliance with applicable laws, including without limitation for filing, subscribing, or holding appropriate regulatory compliance documentation as required by competent jurisdictions and/or the purchase of access to any do-not-call lists and the like, and hereby indemnifies and holds harmless Ifbyphone and its owners, officers, employees, and other agents from and against any claim, liability, loss, cost, or expense (including attorneys' fees and expenses) arising out of or related to such use of the Service or any failure to comply with applicable legal requirements with respect thereto.

Any violation of Ifbyphone policies by you or anyone using your Account will be grounds for termination of the Account, at Ifbyphone's sole discretion, and you may be reported to appropriate law-enforcement agencies. Ifbyphone shall not be liable for any injury or damage suffered by or during use of the Service, and you hereby indemnify and hold harmless Ifbyphone and its agents, officers, employees, and providers from any claims, damage, or loss (including attorneys fees and expenses) arising out of your use of the Service or that of any other user of your Account.

If you, or the Member whose account you are using, is a 'covered entity' or a "business associate" thereof, as each term is used under the Health Insurance Portability and Accountability Act of 1996 (as may be amended or replaced, "HIPAA") or are otherwise subject to any HIPAA, related, or similar legal requirement, you are solely responsible to insure full compliance therewith, including without limitation those requirements codified at 42 U.S.C. and 1320 through d-8, and any regulations promulgated thereunder, including, without limitation, the federal privacy regulations contained in 45 C.F.R. Part 164, and the federal data security standards contained in 45 C.F.R. Part 142, and you hereby indemnify, defend and hold harmless Ifbyphone from any claim, loss, damage, cost or expense (including without limitation legal fees and expenses, and any judgments or other damages) arising out of any claim under HIPAA or any related or similar legal requirements of any applicable jurisdiction.

### **Service Availability and Guarantee; Modifications**

Ifbyphone guarantees that the calling network component of the Service will be available 99% of the time (the "Service Guarantee"), subject to (and other than) (1) scheduled maintenance outages of which we provide notice on the Ifbyphone Website or by email, and (2) regular backup and maintenance performed (without further notice) between 2 a.m. and 5 a.m. Central Time Zone. For the purposes of clarification, if the Ifbyphone network or Service is being used to full capacity and thus cannot be accessed by certain Users, this does not constitute Service unavailability or downtime.

Other than the Service Guarantee, we make no guarantee as to the continuous availability of the Service or any specific feature of the Service. If the calling network component of the Service is unavailable, other than the maintenance and backup described above, more than 1% in any preceding 90 day period, we will, upon request from the registered Account holding Member, credit to the Account one minute of time for every minute of unavailability in excess of 1%, provided, however, that such credit cannot exceed the current monthly minimum service commitment level for that Account, or \$50.00, whichever is less. This shall be your sole remedy for our failure to fulfill the Service Guarantee. You hereby waive all claims for damages for Service unavailability, scheduled or unscheduled other than claims under the Service Guaranty, and indemnify Ifbyphone for any similar claims made by any other users on your Account.

We may at any time change, modify, suspend, or discontinue any aspect of the Service at any time, including, without limitation, the availability of any Service feature, database or content, hours of availability, or equipment needed to access the Service. We may also impose limits on certain features or restrict your access to parts or all of the Service without notice or liability. We do not guaranty that the Service may be accessed from all locations or with all equipment or types of communications access. We do not recommend, and do not support, use of the Service in mission critical situations or on mission critical equipment.

We recommend that you provide us with as much prior notice as possible (to the following email address: [support@ifbyphone.com](mailto:support@ifbyphone.com)) of any planned marketing activities or other calling events which may use significant Ifbyphone capacity so that we can take reasonable steps to make Service capacity available for your event. We reserve the right to limit or suspend Service usage under any Account using the Service at volumes significantly in excess of planned usage or prior usage patterns, or when reasonable prior notice of capacity needs has not been provided. Without limitation to the foregoing, you acknowledge that such account limitations or suspensions may result in inbound calls being rejected by fast-busy signal.

While we will use reasonable efforts, we cannot promise that you or any Member will be able to maintain or keep any specific inbound telephone or toll-free number that we provide you and we do not support number portability. As between you and Ifbyphone, we own all local and toll-free numbers we provide as part of the Service and reserve the right to reallocate them at our discretion. You acknowledge that if the Service is suspended or terminated due to your non-payment or breach of this Agreement, that you may not be able to obtain the same local or toll-free numbers should you reactivate Service.

### **No Emergency Dialing**

THE SERVICE DOES NOT INCLUDE ANY E911 OR RELATED SHORT DIGIT EMERGENCY DIALING FEATURE. YOU UNDERSTAND THAT THE SERVICE IS AN ENHANCED INFORMATION SERVICE AND NOT INTENDED, NOR CAN IT BE USED, AS A FULL INBOUND-OUTBOUND TELEPHONE REPLACEMENT, AND THAT

YOU AND/OR ALL USERS OF YOUR ACCOUNT SHOULD MAINTAIN STANDARD ACCESS TO LAND-LINE OR MOBILE TELEPHONE SERVICE WITH E911/SHORT DIGIT EMERGENCY DIALING SERVICE, OTHER THAN OUR SERVICE. YOU WAIVE ANY CLAIMS AGAINST IFBYPHONE BASED UPON OR ARISING OUT OF ANY FAILURE TO PROVIDE SHORT DIGIT EMERGENCY DIALING CAPABILITY AND INDEMNIFY IFBYPHONE AGAINST ANY SIMILAR CLAIM BY ANY USER OF YOUR ACCOUNT.

### **No Emergency Notifications; Not for Use in any Emergency Situations**

While the Service is designed to promptly broadcast voice messages to a large group of recipients, it is intended for general business, organizational, and personal use and may not have the capacity to deliver messages of an emergency nature on an immediate basis. Accordingly we strongly recommend that alternative methods, specifically intended for mission critical or emergency services usage, be used, rather than the Service, to deliver emergency messages of any urgent, public safety or similar nature. You agree that Ifbyphone has no liability to you arising out of or related to any such use and indemnify Ifbyphone for any claim or liability, and all resulting costs, damages, and expenses (including reasonable attorney's fees and expenses) arising out of your use of the Service for such purposes.

### **Use Of Ifbyphone Content and Software**

All information and materials published, transmitted, or otherwise available on the Ifbyphone Website or through the Service (including, but not limited to, terms of service, use policies, service documentation, user help, informational resources, images, equipment configurations, interactive voice response, menus, audio clips, and video clips, collectively, "Content") are protected by copyright or trademarked (as applicable), and owned or controlled by Ifbyphone, its licensors, or affiliated companies. You shall abide by all copyright and trademark notices, limitations, and restrictions applicable to any Content or to the Service. Without limiting the foregoing, no Content may be copied, reproduced, republished, reused, uploaded, downloaded, posted, or transmitted, other than through the Service in accordance with its intended use, nor may derivative works be created from it or distributed in any way.

The software, hardware, and other technologies which Ifbyphone uses to deliver the Service (the "Ifbyphone Technologies") contain confidential and proprietary information, trade secrets, and other property rights belonging to Ifbyphone and its licensors, and all rights to the Ifbyphone Technologies and all property rights related to the Service, including without limitation all patents (registered or unregistered), trade secrets (including diagrams, drawings, processes, production methods, information, data, computer software, and formulas), copyrights (whether registered or unregistered), domain names and subdomains, end-user and consumer information, work product resulting from custom implementation services, and contract rights, including all derivative works thereof (whether produced by Ifbyphone, you, or otherwise), shall remain exclusively with Ifbyphone and its applicable licensors. Your rights to the

Ifbyphone Technologies are limited to a non-exclusive and non-transferable runtime right solely during the term of the applicable Account subscription and solely for the purpose of using the Service. All Service is hosted by Ifbyphone and no software code (other than APIs if Ifbyphone agrees to provide the same in its sole discretion) will be provided to you.

You may not modify, create derivative works or, redistribute, sell, decompile, reverse engineer, or disassemble the Ifbyphone Technologies or otherwise attempt to deduce the source code, design, or data transmission characteristics of the Ifbyphone Technologies. You may not use packet sniffers or other network or IP tracing technologies on the Service or with the Ifbyphone Technologies except for the specific purpose of optimizing your network for use of the Service in accordance with Ifbyphone Service documentation.

**RESTRICTED RIGHTS.** Any Ifbyphone Technology which is downloaded for or on behalf of the United States of America, its agencies and/or instrumentalities, or any other national government, is provided with Restricted Rights. Manufacturer is ifbyphone, Inc., 8800 Bronx, Suite 105, Skokie, Il. 60077.

## **Trademarks**

The brand names, slogans, trademarks, service marks, designs, and logos used on the Ifbyphone Website or in conjunction with the Service, including without limitation IFBYPHONE (collectively, the "Marks") are the trademarks of Ifbyphone and its licensors. You may not copy, display or use the Trademarks in any manner except as may be automatically displayed by the Service or the Ifbyphone Website or as may be provided in a separate express written agreement with Ifbyphone.

## **Indemnification**

You agree to indemnify and hold harmless Ifbyphone, and its subsidiaries, parents, affiliates, managers, shareholders, officers, directors, agents, resellers, sales affiliates, licensees or other partners, and employees, from all claims, demands, liabilities, losses, damages and expenses (including without limitation reasonable legal fees and expenses), arising from or in connection with your use of the Service, any other user's use of your Account, or your or their conduct while using the Service, your violation of this Agreement, or your violation of any rights of another, including without limitation any violation of applicable law or any tort committed while using the Service.

## **Disclaimer of Warranties**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IFBYPHONE DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICE, THE ACCOUNT, THE SOFTWARE, THE IFBYPHONE WEBSITE, OR ANY OTHER SERVICE OR MATERIALS PROVIDED BY IFBYPHONE. IFBYPHONE MAKES NO WARRANTY AS TO THE RESULTS TO BE OBTAINED

FROM THE USE OF THE SERVICE. THE SERVICE IS PERFORMED AND THE SOFTWARE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE (EACH OF WHICH IS HEREBY DISCLAIMED). YOU ARE SOLELY RESPONSIBLE FOR THE BACKUP OF ANY DATA WHICH YOU MAY REQUIRE BE STORED IN RESPECT OF THE SERVICE.

IN PARTICULAR, EXCEPT AS PROVIDED UNDER THE SERVICE GUARANTEE, IFBYPHONE DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SERVICE IS BORNE BY YOU.

THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT AND THE SERVICE WOULD NOT BE AVAILABLE WITHOUT IT. SOME JURISDICTIONS DO NOT ALLOW EXCLUSIONS OF AN IMPLIED WARRANTY, SO PORTIONS OF THIS DISCLAIMER MAY NOT APPLY TO YOU AND YOU MAY HAVE OTHER LEGAL RIGHTS THAT VARY BY JURISDICTION.

Further, Ifbyphone disclaims any responsibility for the accuracy, content, or availability of information available through the Service, and Ifbyphone shall not be held responsible for the accuracy, legality, or decency of material contained in third-party sites or through third-party services (including any service or content reached through the Service or the Ifbyphone Website), and you hereby irrevocably waive any claim against us with respect thereto.

### **Credit Card Security**

IFBYPHONE IVR SYSTEMS AND SURVO VOICE FORMS DO NOT COMPLY WITH ANY LEVEL OF CREDIT CARD SECURITY OR PCI (PAYMENT CARD INDUSTRY) STANDARDS AND MAY NOT OTHERWISE BE ENCRYPTED OR HACKER-PROOF. WE STRONGLY DISCOURAGE USING IFBYPHONE VOICE FORMS TO COLLECT CREDIT CARD OR OTHER PERSONAL OR FINANCIAL INFORMATION. IFBYPHONE EXPRESSLY DISCLAIMS ANY, AND YOU AGREE WE HAVE NO, LIABILITY FOR ANY CLAIMS OR DAMAGES RESULTING FROM FAILURE TO COMPLY WITH ANY DATA SECURITY STANDARDS PERTAINING TO YOUR USE OF THE SERVICE, INCLUDING WITHOUT LIMITATION ANY CREDIT CARD SECURITY/PCI COMPLIANCE STANDARDS. YOU HEREBY INDEMNIFY, DEFEND AND HOLD HARMLESS IFBYPHONE FROM ANY SUCH CLAIMS OR RELATED CLAIMS, WHETHER BY YOU, A THIRD PARTY, A GOVERNMENTAL AUTHORITY, OR ANY PAYMENT CARD PROVIDERS.

## **No Liability**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, CONTRACT, OR OTHERWISE, SHALL IFBYPHONE BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY DAMAGES THAT RESULT IN ANY WAY FROM ANY USE OF THE ACCOUNT OR THE SERVICE BY ANY PARTY OR YOUR INABILITY TO USE THE SERVICE (EXCEPT WITH RESPECT TO THE SERVICE GUARANTEE) OR YOUR RELIANCE ON OR USE OF INFORMATION OR SERVICES PROVIDED ON OR THROUGH THE SERVICE OR THE IFBYPHONE WEBSITE OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, ERRORS, DEFECTS, DELAYS IN OPERATION OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE, WHETHER SUCH DAMAGES ARE DIRECT, INDIRECT, SPECIAL, INCIDENTAL, COVER, RELIANCE OR CONSEQUENTIAL DAMAGES, EVEN IF IFBYPHONE SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. IF, NOTWITHSTANDING THE FOREGOING, IFBYPHONE IS FOUND LIABLE TO YOU FOR DAMAGES FROM ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE), IFBYPHONE'S LIABILITY TO YOU WILL BE LIMITED TO THE AMOUNT PAID BY YOU (OR THE APPLICABLE MEMBER AND LIMITED TO A SINGLE-USER ACCOUNT) FOR THE SERVICE SUBSCRIPTION IN THE LAST THREE (3) MOST RECENTLY PAID MONTHS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO YOU.

## **Jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of Illinois, without giving effect to any principles of conflicts of law. All actions concerning any dispute arising out of the Agreement, the Account, the Service, or the Ifbyphone Website must be brought in the state or federal courts with appropriate subject matter jurisdiction located in (or having jurisdiction over) Cook County, Illinois, and each party consents to the jurisdiction and appropriate venue thereof, provided that actions for injunctive relief may be brought where sought to be enforced.

## **Other Policies and Terms of Use**

You are also bound by our Privacy Policy, which you can review here: <https://secure.ifbyphone.com/privacypolicy.pdf>. We may reasonably amend the Privacy Policy from time to time, which changes will be effective when notice is provided to a Member as provided above.

Additional terms of use and policies apply to the community features of the Ifbyphone Website, and other community websites reachable through the Ifbyphone Website, to which you are bound to the extent you use or access these features.

You may enter into correspondence with, participate in promotions by, or purchase the products or services of, sponsors marketing their products or services on or through the Ifbyphone Website, an Ifbyphone service, or an Ifbyphone partner. Notwithstanding anything herein or on the Ifbyphone Website to the contrary, all transactions or correspondence, including without limitation with respect to delivery of and payment for such goods and services, and any other terms, conditions, warranties or representations associated therewith, are solely between you and such sponsor or other person, and Ifbyphone shall have no liability, obligation or responsibility with respect to such transactions.

### **Miscellaneous**

If any provision of this Agreement shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severed from this Agreement and shall not affect the validity and enforceability of any remaining provisions. Except when expressly provided by another written agreement with Ifbyphone, this is the entire Agreement between the parties relating to the subject matter herein and shall not be modified except in writing signed by an authorized representative of Ifbyphone.

Ifbyphone shall not be deemed in breach of this Agreement, nor for any breach of any implied warranty or other obligation, for any failure in performance arising in connection with circumstances beyond its reasonable control, including, without limitation, fire, flood, storm, strike, lockout or other labor trouble, riot, war, rebellion, accident, or other acts of God.

Your right to use the Service and access the Account is not transferable, sublicenseable, and may not be sold, rented, or timeshared, unless expressly permitted in another agreement with Ifbyphone. Ifbyphone may assign this Agreement, in whole or in part, at any time with or without notice to you.

You agree that Ifbyphone may, in its sole discretion, from time to time add to, delete from, or modify this Agreement in any reasonable manner by providing notice as permitted above.