



## TERMS OF USE AGREEMENT FOR FIDIDEL ON-DEMAND WEBSITE

Welcome to the Fididel On-Demand website (“**Website**”), home of Fididel Value Pricing Service™ (VPS™) and Vehicle Sales Accelerator Solution™ Software (VSAS™) (“**Software**”).

In connection with the Website, Fididel, Inc. (“**Fididel**”, “**us**”, or “**we**”) provides the Software, which provides a venue in which Users (“**You**”) can negotiate your own sales of goods. The “**Website**” consist of the Software, the Website, the Fididel Agent Website, and any other features, content, or, applications that we may offer from time-to-time in connection with the Software or the Website.

This Terms of Use Agreement (“**Agreement**”), which includes the Fididel privacy policy that may be found at [Privacy Policy](#) and that is hereby incorporated by reference into the Agreement, sets forth the legally binding terms for your use of/access to the Website. By accessing and using the Website, you agree to comply with and be bound by the Agreement. If you are an individual using/accessing the Website on behalf of a company, you represent and warrant that you have all necessary authority to bind your company to the terms and conditions of the Agreement.

If you sign up for additional features and Website, those features and Website may be governed by additional terms and conditions, in which case we will inform you of those terms and conditions when you sign up. Unless otherwise provided by the additional terms and conditions, they are hereby incorporated by reference into the Agreement.

PLEASE READ THE AGREEMENT CAREFULLY BEFORE USING ANY OF THE WEBSITE. THIS AGREEMENT IS A LEGALLY BINDING AGREEMENT BETWEEN YOU (THE INDIVIDUAL USING THE WEBSITE, OR THE COMPANY ON WHOSE BEHALF YOU ARE USING THE WEBSITE, IF ANY) AND FIDIDEL.

### 1. IP OWNERSHIP; USE OF WEBSITE

**1.1 Website - Ownership and Restrictions.** You acknowledge that all the intellectual property rights in the Website and its Website are owned by Fididel, or Fididel’s licensors. You agree not to (a) reproduce, modify, publish, transmit, distribute, publicly perform or display, sell, or create derivative works based on the Website and its Website or (b) rent, lease, loan, or sell access to the Website.

### 2. THIRD PARTIES AND OTHER USERS

**2.1 Third Party Content.** Content from other Users, advertisers, and other third parties maybe made available to you through the Website (including advertising and information about third-party products or Website). Because we do not control that Content, you agree that we (a) are not responsible for such Content; and (b) make no representations or guarantees about the accuracy,



currency, suitability, or quality of such Content. Without limiting the foregoing, we assume no responsibility for objectionable, inaccurate, misleading, or unlawful Content made available by other Users, advertisers, or third parties.

**2.3 Responsibility.** Your interactions with other Users using the Websites or with advertisers (including those relating to payment and delivery of goods) and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such third parties. You agree that Fididel is not responsible for any loss or damage incurred as the result of any such dealings or with respect to any other User's use or disclosure of information about you that you have posted. If there is a dispute between you and any other User or third party, Fididel is under no obligation to become involved.

**2.4 Fididel Interaction.** You will not use any information obtained from the Website in order to harass, abuse, or harm another person, or in order to contact, advertise to, solicit, or sell to any Users without their prior explicit consent.

### **3. YOUR RESPONSIBILITIES AND FIDIDEL'S RIGHTS**

**3.1 Enforcement by Fididel.** Any use of the Website in violation of the Agreement may result in, among other consequences, termination or suspension of your rights to use the Website. In order to cooperate with legitimate governmental requests, subpoenas or court orders, to protect our systems and other Users, or to ensure the integrity and operation of our business, systems, and the Website, we may access and disclose any information and Content we consider necessary or appropriate, including, without limitation, Account information (i.e. name, e-mail address, etc.), IP addressing and traffic information, usage history, posted Content, and Items purchased, sold, or dealt with using the Website. We have the right (but not the obligation) to review any Content or Item offering and delete (or modify) any such Content or Item offering that is Prohibited Content or Prohibited Items, that we believe in our sole discretion violates the Agreement, or that may otherwise harm, violate the rights of, or threaten the safety of any User or any other person, or create liability for us or any User. We reserve the right (but have no obligation) to investigate and take appropriate legal action in our sole discretion against you if you violate this provision or any other provision of the Agreement, including without limitation, removing Content and Item Offerings from the Website (or modifying it), terminating your membership and Account, reporting you to law enforcement authorities, and taking legal action against you. You are solely responsible for creating backup copies of and replacing any Content you post on the Website at your sole cost and expense.

**3.2 Lawful Use.** You will solely use the Website in a manner consistent with any and all applicable laws and regulations and solely for lawful purposes. You will not attempt to impersonate another User or person, including any of our employees.

**3.3 No Disruption.** You will not: (i) cover or obscure any banner advertisements on the Website, or any Fididel page via HTML/CSS, scripting, or any other means, (ii) interfere with, disrupt, or create an undue burden on the Website or the networks or Website connected to the Website; (iii) introduce software or automated agents to the Website, or access the Website through such



software or agents, whether for producing multiple accounts, generating automated messages, stripping or mining data from the Website, or for any other purpose; or (iv) interfere with, disrupt, or modify any data or functionality of the Website.

#### **4. THIRD-PARTY WEBSITES**

The Website may contain links to third-party websites (“**Third-Party Websites**”) that are (a) placed by us as a service to those interested in this information; or (b) posted by other Users. You use all such links to Third-Party Websites at your own risk. We do not monitor or have any control over, and makes no claim or representation regarding Third-Party Websites. To the extent such links are provided by us, they are provided only as a convenience, and such link to a Third-Party Website does not imply our endorsement, adoption or sponsorship of, or affiliation with, such Third-Party Website. We accept no responsibility for reviewing changes or updates to, or the quality, content, policies, nature or reliability of Third-Party Websites, or websites linking to the Website. When you leave the Website, our terms and policies no longer govern. You should review applicable terms and policies, including privacy and data gathering practices, of any Third-Party Website, and should make whatever investigation you feel necessary or appropriate before proceeding with any transaction with any third party.

#### **5. DISCLAIMERS**

Under no circumstances shall we be responsible for (a) any errors or inaccuracies in the Content (including any information in profiles) posted on the Website, whether caused by Users or by any of the equipment or programming associated with or utilized in the Website; (b) any Item offered, negotiated, sold, or bought, or otherwise traded through the Website; (c) the conduct, whether online or offline, of any User of the Website, including any interaction, communication, transactions, or other dealings between Users; (d) any error, omission, interruption, deletion, defect, delay in operation or transmission, communications line failure, theft or destruction or unauthorized access to, or alteration of, any communication with other Users; (e) any problems or technical malfunction of any hardware or software due to technical problems on the Internet or at the Website or combination thereof, including any injury or damage to Users or to any person’s computer related to or resulting from participation or downloading materials in connection with the Website; (f) any loss or damage, including personal injury or death, resulting from use of the Website or from any Content posted on the Website or transmitted to Users, any interactions between Users of the Website, and any interactions and dealings between Users in connection with the sale or purchase of Items, whether online or offline, and (g) the performance of the Website (or the lack thereof).

THE WEBSITE ARE PROVIDED “AS-IS” AND “AS-AVAILABLE.” WE EXPRESSLY DISCLAIM ANY WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, ACCURACY, OR NON-INFRINGEMENT. WE MAKE NO WARRANTY THAT: (A) THE WEBSITE WILL MEET YOUR REQUIREMENTS; (B) THE WEBSITE WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS; OR (C) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE



WEBSITE WILL BE ACCURATE OR RELIABLE.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU.

## **6. LIMITATION ON LIABILITY**

The information and materials on the Website could include technical inaccuracies or typographical errors. Changes are periodically made to the information contained herein. FIDIDEL MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY INFORMATION, MATERIALS OR GRAPHICS ON THE WEB SITE, ALL OF WHICH IS PROVIDED ON A STRICTLY "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND AND HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES WITH REGARD TO ANY INFORMATION, MATERIALS OR GRAPHICS ON THE WEB SITE, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. UNDER NO CIRCUMSTANCES SHALL THE SITE OWNER OR PUBLISHER BE LIABLE UNDER ANY THEORY OF RECOVERY, AT LAW OR IN EQUITY, FOR ANY DAMAGES, INCLUDING WITHOUT LIMITATION, SPECIAL, DIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO LOSS OF USE OR LOST PROFITS), ARISING OUT OF OR IN ANY MANNER CONNECTED WITH THE USE OF INFORMATION OR WEBSITE, OR THE FAILURE TO PROVIDE INFORMATION OR WEBSITE, FROM THE WEB SITE.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OF CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION.

## **7. MISCELLANEOUS**

**7.1 Amendments.** Fididel reserves the right to change these Terms of Use at anytime by posting new Terms of Use at this location.

**7.2 Force Majeure.** Any delay in the performance of any duties or obligations of either party will not be considered a breach of the Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, war, terrorism, governmental act, failures of common carriers (including Internet service providers), acts of God, or any other event beyond the control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and to resume performance as soon as possible.

**7.3 Release.** To the maximum extent permitted by applicable law, you hereby release each of us, our officers, employees, agents and successors from all claims, demands any and all losses, damages, rights, claims, and actions of any kind including personal injuries, death, and property



damage, that is either directly or indirectly related to or arises from any interaction, dealing, or transaction with another User, whether online or offline. **If you are a California resident, you waive your rights, whether known or unknown, under California Civil Code § 1542**, which states, "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor." Residents of other states and nations similarly waive their rights under applicable and/or analogous laws, statutes, or regulations.

**7.4 Severability.** If any provision of this Agreement is found or held to be invalid or unenforceable by any tribunal of competent jurisdiction, then the meaning of such provision will be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it will be severed from the remainder of this Agreement, which will remain in full force and effect.

**7.5 Notice.** Any notice to Fididel must be delivered in writing to Fididel at the address listed below by courier, by certified or registered mail (postage prepaid and return receipt requested), or by a nationally-recognized express mail service. Notice will be effective upon receipt by Fididel.

Fididel, Inc.  
2 West Santa Clara Street, 4th Floor  
San Jose, CA 95113  
U.S.A.

**7.6 Governing Law and Arbitration.** This Agreement shall be governed by the laws of the State of California without giving effect to any conflict of laws principles that may provide the application of the law of another jurisdiction. You agree to submit to the personal jurisdiction of the state courts located within Santa Clara County and the federal courts in the Southern District of California for the purpose of litigating all such claims or disputes. Any claim or dispute in connection with the Agreement shall be resolved in a cost effective manner through binding non-appearance-based arbitration. The arbitration shall be initiated through an established alternative dispute resolution provider mutually agreed upon by the parties. The alternative dispute resolution provider and the parties must comply with the following rules:

- a) the arbitration shall be conducted by telephone, online and/or be solely based on written submissions, the specific manner shall be chosen by the party initiating the arbitration;
- b) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and
- c) any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Notwithstanding the foregoing, we may seek injunctive or other equitable relief to protect its intellectual property rights in any court of competent jurisdiction.

**7.7 Other.** This Agreement constitutes the entire agreement between you and us regarding the use of the Website. Our failure to exercise or enforce any right or provision of the Agreement shall not operate as a waiver of such right or provision. The section titles in the Agreement are



for convenience only and have no legal or contractual effect; as used in the Agreement, the word “including” means “including but not limited to”. Please contact us with any questions regarding the Agreement by e-mailing us at: [Customerservices@fididel.com](mailto:Customerservices@fididel.com)

**7.8 Disclosures.** Under California Civil Code Section 1789.3, Users who are residents of California are entitled to the following specific consumer rights information: the Complaint Assistance Unit of the Division of Consumer Website of the Department of Consumer Affairs may be contacted in writing at 1020 N. Street, #501, Sacramento, CA, 95814, or by telephone at (916) 445-1254.

**7.9 Copyright/Trademark Information.** Copyright. 2008, Fididel. All rights reserved. The trademarks, logos and service marks ("Marks") displayed on the Website are our property or the property of other third parties. You are not permitted to use these Marks without our prior written consent or the consent of such third party which may own the Mark.