

TERMS OF SERVICE

Please read these Terms of Service (“Terms”) carefully before using the J. Berg & Associates (the “Company”) Resources (as defined below), applying to become an insurance agent for the Company, or otherwise seeking affiliation with the Company.

PLEASE CAREFULLY READ AND UNDERSTAND THESE TERMS. THEY CONTAIN AN ARBITRATION AGREEMENT, JURY AND CLASS ACTION WAIVERS, LIMITATIONS OF LIABILITY AND OTHER PROVISIONS THAT AFFECT YOUR LEGAL RIGHTS.

1. Use of Resources

Your use of the Company’s website, customer relationship management software, agent portal, leads, or your receipt of any commissions or other compensation from any insurance carrier affiliated with the Company (collectively, “Resources”) is conditioned on your acknowledgement, agreement, and compliance with these Terms. These Terms apply to all insurance agents that sell or market any products through their affiliation with the Company or in connection with use of any of the Resources.

By using the Company’s Resources, you agree to be bound by these Terms. If you disagree with any part of the Terms, you must immediately notify the Company and discontinue your relationship with the Company.

All Resources are provided “as is.” The Company makes no warranties, express, implied or otherwise, regarding the accuracy, completeness or performance of any Resource.

2. Outbound Communications and Compliance with Law

In connection with your activities pertaining to the marketing and sale of insurance products that involve the Company in any way (including any use of the Company trademarks or any Resource), you agree that you will not:

- (i) sell any leads purchased from the Company or with the Company’s assistance unless expressly authorized by the Company to engage in the sale of leads;
- (ii) use (or engage others to use on your behalf), any automatic telephone dialing system, autodialer, spam text, prerecorded message, artificial voice calls, or telemarketing service;
- (iii) purchase or use leads that have been generated using any automatic telephone dialing system, autodialer, spam text, prerecorded message, artificial voice calls, or telemarketing service;
- (iv) contact any lead without evidence of proper consent or, if no consent exists, without screening against the federal Do-Not-Call (“DNC”) Registry and any applicable state DNC list;
- (v) contact any lead that requested to opt out of communications;
- (vi) if involved in the sale or marketing of a Medicare Advantage, Medicare Part D or MAPDP product:
 - a. use telephonic solicitation, including text messages, door-to-door solicitation, email solicitation without an opt-out function or approach potential enrollees in common areas;

- b. call a prospective enrollee who has not given permission to the entity with which you are affiliated to be contacted by a plan or sales agent;
 - c. use communications and marketing materials that are inaccurate, misleading, have not been approved by CMS or the applicable carrier if approval is required, or otherwise do not comply with the Medicare marketing guidelines;
 - d. fail to obtain an appropriate Scope of Appointment prior to a one-on-one telephonic or in-person marketing appointment; or
 - e. enroll a prospective enrollee into a Medicare Advantage plan on an outbound call; or
- (vii) contact leads or use the Resources in any way that violates any federal or state law including, without limitation, marketing laws, the Telephone Consumer Protection Act of 1991 (“TCPA”), the Telemarketing Sales Rule (“TSR”), CAN-SPAM Act, the Health Insurance Portability and Accountability Act (“HIPAA”), the California Consumer Privacy Act (“CCPA”), or to the extent applicable, Medicare laws, regulations and guidance.

3. Communication with Agent

As an agent, you authorize the Company to contact you in connection with the sale of insurance products. The Company may contact you by phone, email, text, voicemail, or other methods. You may opt out of communications by communicating to the Company your preference to opt out.

4. Independent Contractors

Except for employee agents, the Company’s agents are independent contractors of the Company and are not employees of the Company. Non-employee agents have the right to determine the method, manner, and means by which they perform their services. Nothing herein shall be construed to create a partnership, joint venture, or an agency relationship between non-employee contractors and the Company.

5. Trademarks

The Company’s name and logo, and all related names, logos, product and service names, designs and slogans are trademarks of the Company or its affiliates or licensors. You may not use such marks without the prior written permission of the Company. All other names, logos, product and service names, designs and slogans on the Company’s website are the trademarks of their respective owners.

6. Indemnification

You agree to defend, indemnify, and hold harmless the Company, its affiliates, licensors and service providers, and its and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses or fees (including reasonable attorneys’ fees) arising out of or relating to your violation of these Terms or your use of the Resources, including your violation of law.

7. Limitation on Liability

TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL THE COMPANY (OR ITS EMPLOYEES, OFFICERS, DIRECTORS OR AGENTS) BE LIABLE TO YOU FOR ANY CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE

THE RESOURCES, REGARDLESS OF LEGAL THEORY, AND EVEN IF THE COMPANY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE COMPANY'S LIABILITY TO YOU ARISING FROM THESE TERMS, OR THE USE OF OR INABILITY TO USE THE RESOURCES, SHALL AT ALL TIMES BE LIMITED TO THE GREATER OF \$1,000 OR THE AMOUNTS PAID BY YOU TO THE COMPANY FOR ACCESS TO AND USE OF THE RESOURCES.

8. Agreement to Arbitrate

Any dispute, claim or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation or validity thereof or the use of the Resources shall be settled by binding arbitration. You and the Company are each waiving the right to a trial by jury or to participate as a plaintiff or class member in any purported class action or representative proceeding. The agreement to arbitrate shall survive any termination of these Terms. The arbitration will be administered by the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the "AAA Rules") then in effect, in Dallas, Texas. The arbitrator will be selected by the parties from the AAA's roster of arbitrators. If the parties are unable to agree upon an arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with the AAA Rules. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. The arbitrator's award of damages must be consistent with the terms of the "Limitation of Liability" section above as to the types and amounts of damages for which a party may be held liable.

9. Waiver and Severability

The failure of the Company to enforce any right or provision of these Terms will not constitute a waiver of future enforcement of that right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of the Company. If for any reason a court of competent jurisdiction or an arbitrator finds any provision of these Terms invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect.