

# Grizella LLC

## Application Use Agreement

Thank you for deciding to use software applications and/or tools (collectively, the "Application") provided by Grizella LLC ("Grizella"). BY CHECKING THE "I AGREE TO THE TERMS AND CONDITIONS" BOX, YOU ACKNOWLEDGE THAT YOU HAVE READ AND AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS. If you do not agree with the terms and conditions of this Use Agreement (the "Agreement"), you should NOT check the "I agree to the Terms and Conditions" box and exit this Application (and/or its installation). This is a legal and binding contract between you and Grizella. It is important that you read this Agreement before using the Application and any accompanying user documentation ("Documentation").

This Application Use Agreement was last updated January 5, 2018

Grizella reserves the right, at Grizella's sole discretion, to change or modify (including, without limitation, by way of additions or deletions to) these Terms and Conditions periodically. Such changes or modifications shall be effective immediately upon posting of such changes or modifications to the website unless Grizella notifies you otherwise. Your continued use of the Application following the posting of the then current version of these Terms and Conditions will mean that you accept such then current version (inclusive of any applicable changes or modifications).

**Scope of Access and Related Rights:** Subject to the terms and conditions of this Agreement, Grizella grants you a limited, revocable right to access and use the Application solely for your internal business purposes. You agree not to modify, adapt, or translate the Application, or reverse engineer, de-compile, disassemble, or otherwise attempt to discern the source code of the Application. You agree not to use the Application and/or its source code and the Intellectual Property associated therein, for any public or commercial purposes without the written consent of Grizella. Further, you may not reproduce all or any portion of the Application (except as expressly permitted in this Agreement) or the Documentation. Additionally, you agree not to access the Application for the purpose of building a competitive product or service or copying its features or user interface. You agree to notify your employees and agents who may have access to the Application of the restrictions contained in this Agreement and to ensure their compliance with these restrictions. The Application and any copies that you are authorized by Grizella to make are the intellectual property of and are owned by Grizella. The structure, organization and code of the Application are the valuable trade secrets and confidential information of Grizella. The Application is protected by United States copyright law, patent law and international treaty provisions. Any copies that you are permitted to make pursuant to this Agreement must contain the same copyright and other proprietary notices that appear on or in the Application. The restrictions detailed in this Section apply to any and all Grizella applications/tools you may have access to through your use of the Grizella services, including but not limited to Saferwatch™ and PostEverywhere®.

In addition, if this Application is one that involves your submission of data for further processing, then the Application is intended as a bridge to enable such processing. If this Application is one that has a posting tool function, any related data postings to one or more websites is done in a representative capacity on your behalf, and, if any websites to which your data may be so posted require that only you or an authorized representative of yours posts data to such websites, then you agree that Grizella and/or the Application shall be considered to be such an authorized representative of yours for such purpose.

You hereby acknowledge that a violation of the terms of this Section would cause irreparable harm to Grizella and that monetary damages would be inadequate to compensate Grizella for any breach of these terms. You agree that Grizella will have the right to obtain immediate injunctive relief against any breach or threatened breach of this Section without the necessity of proving actual damages, as well as the right to

pursue any and all other rights and remedies available at law, in equity or otherwise for such a breach or threatened breach.

**Security:** You are responsible for maintaining the security of any user passwords issued to you for use with the Application. You are also responsible for the integrity and security of the operating environment from which you access the Application.

Depending on the Application you are using, it may also include features that facilitate payment processing via credit card, debit card, or bank account ACH transaction. Grizella believes it is important to ensure the security of your information that may be stored on our website and we therefore have partnered with Authorize.Net, a leading payment gateway since 1996, to offer safe and secure credit card and electronic check transactions for our customers. The Authorize.Net Payment Gateway manages the complex routing of sensitive customer information through the credit card and electronic check processing networks (see Grizella's Payment and Security Policy for more details). Authorize.Net adheres to strict industry standards for payment processing, including: technology for secure Internet Protocol (IP) transactions, industry leading encryption hardware and software methods and security protocols to protect customer information, and compliance with the Payment Card Industry (PCI) Data Security Standard. Please note, however, that while Grizella actively seeks to protect its customers' information that may be in our possession, we disclaim any liability or harm resulting from intrusions into a Grizella-operated website by unauthorized persons.

**Payment:** For access to the Application and related services, if any, provided by Grizella, you agree to pay to Grizella the amounts, if any, specified elsewhere between you and Grizella, which payment arrangement may consist of user payment processing screens and instructions connected with the Application or a Grizella-operated website related to the Application. Payments shall also be made in the manner and at the times specified in such payment arrangement.

**Application Upgrades:** Grizella may, from time to time, update the Application and offer such updated Application to you. However, updating shall be at Grizella's sole discretion and Grizella shall have no obligation, express or implied, to update the Application. Grizella shall have the right at any time, in its sole and absolute discretion, to modify or delete features and to change the operating interface in the Application, or to change the hardware and computer system specifications necessary or recommended to operate or access the Application. Grizella does not warrant the level of performance of the Application, that newer versions of the Application will continue to be accessible in your specific operating environment unless your environment conforms with the specifications applicable to such new version, or that earlier versions of the Application will continue to be accessible to you upon release of newer versions. Updates to active load and/or truck posting sites in PostEverywhere® are deemed to be upgrades to the Application, consistent with its core function of distributing loads as widely as possible. Grizella may from time to time perform such updates to ensure peak effectiveness of the Application. To opt out of load and truck posting site activation updates, send an email to [support@posteverywhere.com](mailto:support@posteverywhere.com) with "Opt Out Of PostEverywhere Site Activations" in the subject line and include your PostEverywhere login in the body.

**Review and Audit Rights:** If the payment arrangement for the Application and services made available to you by Grizella are based on or measured by sales, revenues, shipments, or on another basis tied to financial results, you agree that Grizella has the right, at its expense (except as noted below), to designate a third party service to review and audit on Grizella's behalf your related books and records to verify compliance with such related payment obligations. Grizella agrees that if it exercises its review and audit rights that it will provide you at least 10 days written notice of such exercise and it will use reasonable efforts to conduct such review and audit in a manner that minimizes disruptions to your normal business activities and that, absent a then existing breach by you of your applicable payment obligations, Grizella will not exercise its review and audit rights more frequently than once per calendar year. If the results of the review and audit demonstrate a shortfall in payment by you, you agree that you will within 20 days after Grizella's demand for such shortfall amount, pay such amount to Grizella. In addition if the results of the review and audit demonstrate a shortfall of more than five percent (5%) in the amounts that should properly have been to Grizella, then you agree that you shall be responsible for the reasonable documented

out-of-pocket expenses incurred by Grizella in connection with such review and audit (including, without limitation, the expenses associated with Grizella hiring a third party to conduct such review and audit). Grizella agrees to treat as confidential all non-public information first obtained by Grizella as a result of any such review and audit and to use such information only in connection with enforcing its payment rights concerning your use of the Application and any related services.

**Termination:** You may terminate this Agreement at any time and Grizella may terminate this Agreement upon the expiration of the period of time through which you have made payment for the access rights granted hereunder. In addition, your access rights to use the Application and the provision of related services, if any, by Grizella in connection therewith will automatically terminate if you fail to comply with this Agreement or to make any required payments. Upon any termination of this Agreement, you must cease all use of the Application, destroy all copies then in your possession or control and take such other actions as Grizella may reasonably request to ensure that no copies of the Application remain in your possession or control. You agree that Grizella will not be liable to you or any third party for any termination of your use of the Application as a result of your failure to comply with this Agreement or to make timely payment. In addition, Grizella shall be under no obligation to refund any payments once made (including any prepaid fees).

**Disclaimer of Warranty:** GRIZELLA IS ALLOWING YOU ACCESS TO THE APPLICATION AND THIS WEB SITE "AS IS" AND GRIZELLA MAKES NO WARRANTY AS TO ITS USE OR PERFORMANCE. ALL INFORMATION FURNISHED PURSUANT TO THE APPLICATION OR THIS WEB SITE IS OBTAINED BY GRIZELLA FROM SOURCES BELIEVED BY IT TO BE ACCURATE AND RELIABLE. HOWEVER, BECAUSE OF THE POSSIBILITY OF HUMAN OR OTHER ERROR, AS WELL AS OTHER FACTORS, ALL INFORMATION IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, AND GRIZELLA MAKES NO CLAIMS, PROMISES OR GUARANTEES ABOUT THE ACCURACY, TIMELINESS, COMPLETENESS, OR ADEQUACY OF THE CONTENTS OF THE APPLICATION OR THIS WEB SITE, AND EXPRESSLY DISCLAIMS LIABILITY FOR ERRORS AND OMISSIONS IN THE CONTENTS OF THIS APPLICATION AND WEB SITE. IN ADDITION, GRIZELLA DOES NOT WARRANT THE PERFORMANCE OR RESULTS THAT YOU MAY OBTAIN BY USING THE APPLICATION. EXCEPT TO THE EXTENT EXPRESSLY PROVIDED FOR HEREIN, GRIZELLA MAKES NO WARRANTIES OR REPRESENTATIONS (EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE) AS TO ANY MATTER, INCLUDING, WITHOUT LIMITATION, NONINFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY TITLE, OR FITNESS FOR ANY PARTICULAR PURPOSE. YOU BEAR ALL RISK RELATING TO QUALITY AND PERFORMANCE OF THE APPLICATION.

**Liability Limits:** IN NO EVENT WILL GRIZELLA BE LIABLE TO YOU FOR ANY DAMAGES, CLAIMS OR COSTS WHATSOEVER OR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL DAMAGES, OR ANY LOST PROFITS OR LOST SAVINGS, EVEN IF GRIZELLA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, DAMAGES, CLAIMS OR COSTS OR FOR ANY CLAIM BY ANY THIRD PARTY. THE FOREGOING LIMITATIONS AND EXCLUSIONS APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAW IN YOUR JURISDICTION. GRIZELLA'S AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT PAID BY YOU FOR THE APPLICATION, IF ANY. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

**Entire Agreement:** This Agreement, together with any related payment arrangements, embodies the entire understanding between the parties with respect to, and supersedes any prior understanding or agreement, oral or written, relating to, the Application.

**Export:** The Application (or any component elements of its technology) or its related Documentation may not be exported or re-exported in violation of the U.S. Export Administration Act and its implementing regulations.

**U.S. Government Rights:** Any Application which is downloaded from this server for or on behalf of the United States of America, its agencies and/or instrumentalities ("U.S. Government"), is provided only with Restricted Rights. All use, duplication, or disclosure of the Application by the U.S. Government is subject to restrictions as set forth in subparagraphs (c)(1)(ii) of the Rights in Technical Data Computer Application Clause at DFARs 252.22-70013 or subparagraphs c(1) and c(2) of the Commercial Computer Application Restricted Rights Clause at 48 C.F.R. Section 52.227-19, as applicable. The contractor/vendor/manufacture is Grizella LLC, PO Box 515, 617 Main Street, Hebron, ND 58638 U.S.A.

**Governing Law:** These terms and conditions shall be treated as though they were executed and performed in Hebron, North Dakota, and shall be governed by and construed in accordance with the laws of the United States of America and of the State of North Dakota, without regard to conflict of law principles. The language in these terms and conditions shall be deemed to be language chosen by you and Grizella to express the mutual intent of the parties, and no rule of strict construction shall be implied against you or Grizella. You agree that all legal proceedings arising out of or in connection with these terms and conditions shall be brought exclusively in the state courts of North Dakota located in Burleigh County, North Dakota, or in the U.S. District Court for District of North Dakota, and you expressly submit to the jurisdiction and venue of such courts and consent to extra-territorial service of process, should a dispute arise.

**Assignment:** These terms and conditions and your rights and obligations hereunder may not be assigned by you without the written permission of Grizella and shall inure to the benefit of Grizella's successors and assigns whether by merger, consolidation or otherwise. Grizella may assign these terms and conditions or any of its rights or obligations under these terms and conditions to a company affiliated with, or a successor to or assignee of, Grizella, or to any other third party.

**Dispute Resolution:** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, other than a controversy or claim relating to the validity of Grizella's intellectual property rights, shall be settled by final and binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. The arbitration shall take place in Bismarck, North Dakota. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitrators shall apply North Dakota law, without regard to its rules of conflict of law. Notwithstanding the foregoing, the parties may apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or conservatory relief, as necessary, without breach of this Agreement and without any abridgment of the powers of the arbitrator(s).

By checking the "I AGREE TO THE USE AGREEMENT" box, you represent that you are authorized to enter into this Agreement on behalf of your employer, and your acceptance of this Agreement will serve to bind BOTH you and your employer.

I HAVE READ THIS USE AGREEMENT, AND I UNDERSTAND AND AGREE WITH ALL OF ITS TERMS AND CONDITIONS.