



## CUSTOMER USAGE AGREEMENT

This Agreement is effective from the Commencement Date between ReachTEL Pty Ltd of Level 10, 231 North Quay, Brisbane QLD 4000 ("REACHTEL") and the Customer.

This Agreement is constituted by these Terms and Conditions including any Schedules. This Agreement is accepted in full and without exclusion by way of explicit signing by the Customer or implicitly by the Customer's use of any Products & Services.

Where Schedules are required to detail more specific arrangements then such Schedules must be explicitly executed, in counterparts or otherwise, with this Agreement forming an attachment and duly initialled on each page by all parties.

### DEFINITIONS

- A. **Address Tags** means the information displayed on a received message which identifies the sending party. Address Tags are normally the sending mobile number (or email address) but may also be an alpha numeric string of up to 11 characters as defined within the Products & Services.
- B. **Approved Purpose** in the context of exchange of confidential information means for the purpose of working together for a commercial benefit as identified through an order for any Products & Services without detriment to either Party.
- C. **Business Day** means a day other than a Saturday, Sunday or public holiday in the capital city of any Australian State or Territory.
- D. **Charity Element** means a selection of questions concerning charitable support as determined by REACHTEL, to be put to consumers in conjunction with a campaign (where consented to by the Customer).
- E. **Commencement Date** means the earliest date of execution by the parties or where the Agreement is not executed but accepted by implication through the Customer's use of the Products & Services then the first date upon which the Customer accesses or uses in any manner the Products & Services.
- F. **Commercial Message** has the same meaning as defined in the SPAM Act 2003 under the jurisdiction of the Australian Communications & Media Authority. In other countries the definition will apply as is intended in Australia and within any legislated or required manner of the country in which the Products & Services are being used.
- G. **Confidential Information** means any information provided by either Party or its authorised representatives to the other Party or its authorised representatives for the Approved Purpose, whether such information is in written form, electronic, or communicated verbally.
- For the avoidance of doubt:
- (a) Confidential Information includes information that: is by its nature confidential; is designated as confidential; or that the receiving Party knows or ought to know is confidential and includes any information comprised in or relating to any Intellectual Property Rights; information relating to policies, strategies, practices and procedures; and information relating to Customers or suppliers or licensors, and like information; and
- (b) information generated from a Charity Element is not Confidential Information of the Customer.
- H. **Content** means any item of copyrightable or protectable material including words, phrases, images, animations, audio or video. This includes any reproduction, adaptation or copy of an artistic work, ringtone, music score, creation, file or other data.
- I. **Customer** means the individual or organisation using the Products & Services whether explicitly named and a signatory to this Agreement or implicitly named through the use of the Products & Services and thereby acknowledging and accepting this Agreement as though a formal signatory. Where an individual is signing or using the Products & Services on behalf of others or an organisation then it is the individual's responsibility to ensure that the user is fully aware of their complete obligations under this Agreement.
- J. **Intellectual Property Rights** includes copyright, trade mark, design, patent, trade, business or company names, confidential or other proprietary rights, or any rights to registration of such rights, whether created before or after the date of this Agreement and whether created in Australia, the United States the European Union or elsewhere.
- K. **Event of Insolvency** means any of the following events:
- (a) in the case of a corporation:
- i. the corporation is wound up or dissolved or an application is made to a Court for an order to that effect;
- ii. a resolution is passed for the corporation to be wound up or dissolved or for the appointment of an administrator;
- iii. a liquidator, provisional liquidator, controller, trustee or administrator is appointed in respect of the corporation or its assets or any part of its assets or an application is made to a Court for an order seeking such appointment;
- iv. the corporation is presumed to be insolvent within the meaning of any provision of the *Corporations Act* (Cth); and
- (b) in the case of a natural person, the person:
- i. is or becomes bankrupt;
- ii. is or states that he or she is unable to pay his/her debts as and when they become due and payable; or
- iii. attempts to enter into, or convenes a meeting for the purpose of entering into, a debt agreement, personal insolvency agreement or



other like arrangement with his or her creditors.

L. **Force Majeure Event** means any of the following causes provided that they are outside the reasonable control of the affected party and could not have been prevented or avoided by that party taking all reasonable steps:

- (a) act of God, earthquake, cyclone, fire, explosion, flood, landslide, lightning, storm, tempest, drought or meteor;
- (b) war (declared or undeclared), invasion, act of foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
- (c) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
- (d) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government authority; or
- (e) industrial action not specific to REACHTEL.

M. **Products & Services** means any software application, Web service, messaging service, on device application or any other commercial item offered by REACHTEL to the Customer whether provided for a fee or free. This includes any intellectual property, concepts, ideas and innovation of REACHTEL where the Customer is provided access or use.

Where REACHTEL fully manages the delivery or execution of a process or campaign on behalf of the Customer then this is regarded as a service and also covered by this Agreement. The products developed, owned and licensed by REACHTEL include but is not limited to ReachTEL Voice Broadcast, ReachTEL SMS Broadcast, ReachTEL Email Broadcast, ReachTEL Data Validation, ReachTEL IT Support, web portal services, SMS Games, SMS Chat, Mobile Content Adaptation platform and the REACHTEL Campaign Management platform.

L. **Schedule** means any other document executed by both parties and attached to a copy of this Agreement. Schedules include but are not limited to, defining recitals, additional terms and conditions, special financial arrangements or development specifications.

## INTERPRETATION

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The following rules of interpretation apply, unless the context otherwise requires:

- (a) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or any legislative provision substituted for, and any subordinate legislation under, that legislation or legislative provision;
- (b) the singular includes the plural and vice versa;
- (c) a reference to an individual or person includes a corporation, firm, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (d) a reference to any gender includes all genders;
- (e) a reference to a recital, clause, schedule or annexure is to a recital, clause, schedule or annexure of or to this Agreement;
- (f) a recital, schedule or annexure forms part of this Agreement;
- (g) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (h) a reference to any party to this Agreement or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (i) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
- (j) a reference to "dollars" or "\$" is to an amount in Australian currency.

Headings are for convenience only and do not affect interpretation.

## HEADINGS

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## TERMS & CONDITIONS

### QUOTATIONS

1. A quotation for Products & Services or any other custom developed or managed services provided by REACHTEL to the Customer is valid for a maximum of 30 (thirty) days from the date of the quotation. However, REACHTEL reserve the right to withdraw the quotation at any time at the sole and exclusive discretion of REACHTEL and without reason.

### BILLING

2. REACHTEL may require payment for use of the Products & Services by way of an automated payment system operated by a third party. Such payment system is intended to streamline the billing and payment processes. Where REACHTEL render an invoice then payment must be made within 30 days unless otherwise stated.

Where accounts remain outstanding for more than 30 days, REACHTEL reserve the right to suspend the Customer's access to the Products & Services without notice, penalty or liability. Such failure to settle outstanding money due to REACHTEL is regarded as a material breach of the Agreement and relieves REACHTEL of all performance and supply obligations until such payments are settled in full. Where custom development or project works are undertaken, REACHTEL reserve the right to require a 50% deposit prior to commencement. REACHTEL reserves the right to charge interest at 3 per cent above the published lending rate of the Westpac Bank on any sum not paid on the due date, together with all costs of recovery. Such interest shall run from day to day and accrue until full payment has been made.

The Customer is required to notify REACHTEL within twenty (20) working days of its receipt of an invoice if it has any question, which would lead it to dispute an invoice or part thereof. Whilst the Customer may withhold any disputed payment in respect of the whole or any part of an invoice, it shall not be entitled to withhold any payment of the whole or any part of any invoice properly raised and which is properly due on the ground that it has any dispute over the whole or part of any other invoice, or has an alleged claim, counterclaim or set-off against REACHTEL.

### TAXES

3. Where applicable, invoices will include Australian GST as legislated and applicable. Where withholding taxes or duties of any kind are incurred then these will be the sole responsibility of the Customer ensuring that the full invoiced amount is received by REACHTEL without deduction. REACHTEL may add taxes and other duties as required in the country to which services are being provided.

### CUSTOM WORKS

4. Where REACHTEL undertake custom development work or any form of professional services, Customer will not unreasonably withhold signoff and approval of the completed project including payment of monies due, where REACHTEL are able to reasonably demonstrate they meet the agreed specifications or requirements.

Customer further accepts without limitation that any fees, royalties or other payments for use of Content is paid by the Customer.

### INDEMNITY

6.
  - (a) Subject to clause 6(b) and otherwise to the extent permitted by law, neither party will be liable to the other party for any indirect or consequential loss or damage arising from or in connection with this agreement or the Products & Services (including loss of profit, revenue or business or special or incidental loss or damage),

whether arising in contract, tort (including negligence), under statute or in equity. This exclusion does not apply to the extent the law prohibits the exclusion or limitation of the liability of a party (including under any statutory or implied representation, condition, warranty, term or guarantee that cannot be excluded by law); and

- (b) each party will indemnify, and keep indemnified, the other party and its directors, officers and employees from and against all loss and damage suffered or incurred by the other party and all actions, proceedings, claims, costs and expenses which may be taken or made against the other party (or which the other party incurs or which becomes payable by the other party) arising out of or in connection with any incorrect information provided by the first party to the other party in relation to the provision of and/or the use of the Products & Services including but not limited to the use of any custom developed tools or interfaces, use of any Content and the distribution of messages to Customer supplied numbers.

### STANDARD OF SERVICES

7. In providing the Products & Services REACHTEL will:
  - (a) use reasonable care, skill and diligence and act in a professional manner;
  - (b) comply with any reasonable instructions given by the Customer; and
  - (c) conduct itself in an ethical and lawful manner and in accordance with this Agreement.

Subject to the relevant provisions, conditions and terms in this Agreement, REACHTEL strive to achieve 99.5% availability in respect of the Products & Services being offered and have implemented appropriate monitoring, tracking and support initiatives in the endeavour to meet these targeted availability levels.

8. Where a material failure in the targeted availability of any Products & Services occurs, the Customer's entire claim is limited to the pro-rata amount of monthly hosting, licensing or support fees that have been fully paid to REACHTEL for the period of interruption and will be refunded to the client upon an accepted written request from the Customer clearly identifying such failure in the availability. All data, infrastructure and messaging charges are still due and payable by Customer to REACHTEL.
9. REACHTEL accept no liability or responsibility for any interruptions in the provision of services as a result of any event or circumstance that is beyond the reasonable control of REACHTEL. This includes events such as failure or delays in the telecommunications network, failures or delays in the Internet connectivity between REACHTEL servers and external parties and the gateway connectivity providers between REACHTEL and the consumer.
10. REACHTEL cannot warrant availability and service levels beyond that of the service providers REACHTEL itself relies upon including but not limited to gateway operators, hosting providers and telecommunications providers;
11. Both parties agree to be reasonable in resolving any availability issues of the Products & Services.
12. REACHTEL has implemented redundancy and disaster recovery processes and will continue to evolve and advance REACHTEL's ability to offer uninterrupted service but Customer acknowledges and accepts that



access and availability of the Products & Services is not guaranteed.

#### DATA PROTECTION

13. REACHTEL agrees to maintain adequate security arrangements to the Customer's satisfaction in relation to:
- the electronic storage; and
  - the electronic access by the Customer; and
  - the electronic transfer to and from REACHTEL to the Customer,
- of all of the Customer's data relating to the use of the Products & Services. REACHTEL also agrees to maintain adequate arrangements to ensure the physical security of its premises that, at a minimum, are sufficient to guard against all reasonably foreseeable threats to the physical security of REACHTEL's premises (including without limitation, the premises where REACHTEL's data relating to the Customer's use of the Products & Services).

#### SUPPORT

14. Standard Help Desk Hours are 9AM-5PM Monday to Friday excluding Public Holidays Australian Eastern Standard Time. Support outside of hours, or out of normal scope to be charged as quoted. Where additional Support is required, REACHTEL can provide this on a fee for service basis.

#### USE OF SYSTEMS

15. Customer must not use the Products & Services for any illegal purpose whatsoever including any breaches of the Australian SPAM Act 2003, Telecommunications Act 1997 or any other similar Act in the country of operation of the Customer. It is the Customers responsibility to seek appropriate advice on use of the Products & Services to ensure all legal requirements are met within the country of use.

#### SPAM ACT 2003

16. Customer warrants that they will conform to all aspects of the SPAM Act 2003 in respect of legislated messaging requirements to prevent consumers being sent unsolicited Commercial Messages and provide all opt-out and complaint processes as required under the Act.

#### COMPLIANCE WITH LAWS AND STANDARDS

17. The Customer must conform to the Australian Telecommunications Act 1997 in all aspects including taking all reasonable steps to avoid sending Commercial Messages between the hours of 9pm and 8am Monday to Friday and 9pm to 9am on weekends unless the recipient has expressly requested such Commercial Message or opted in to a service where delivery times are expressly stated as a condition of opting in to the service. Further, where the Commercial Message could reasonably be deemed to be age sensitive the Customer must take reasonable steps to ensure recipients are legally entitled to view, participate or use the product or service being promoted. The Customer also warrants that it will conform to all aspects of:
- the Do Not Call Register Act 2006.
  - section 139 part 6 of the Telecommunications Act 1997.

The Customer expressly indemnifies REACHTEL from any loss it suffers from Customer's breach of any of clauses 15, 16, 17, 18 or 20 or non-compliance with any Act or industry code, applicable laws, regulations or requirements of any statutory body, guidelines and service requirements of mobile operators as are issued from time to time and any applicable binding industry standards or codes.

#### PERMITS

18. Where Customer runs any form of competition, trade promotion or lottery, Customer undertakes to ensure all permits and licences are obtained for all relevant locations where the activity is being promoted. Unless REACHTEL have been directly engaged to assist with regulatory processes, REACHTEL

reserve the right to request conformance evidence if the Products & Services are being used in a manner that would require permits, approvals or any other form of legislative approval.

#### INTELLECTUAL PROPERTY

19. Unless agreed in writing between REACHTEL and Customer, REACHTEL will retain all intellectual property (IP) rights in any custom development or modification to the Products and Services to cater for Customer's special requirements. Where integration with Customer systems is also undertaken, then the Customer retains all rights in their systems. In principle, the IP rights of each party remain as they were prior to any modifications or custom developments.

#### LISTS

20. Where Customer secures third party contact lists to undertake outbound messaging activity using the Products & Services the Customer warrants that the owners of the individual records have all "opted in" to receive such messages and that all the relevant conditions of the SPAM Act 2003 and Telecommunications Act 1997 are adhered to in respect of identifying the sender and where necessary the source of the list of contacts.

#### CUSTOMER RECORDS

21. All customer records and other private information in the possession of REACHTEL in any form as a result of the Customer's use of the Products & Services remains the sole property of the Customer other than identity and other information voluntarily generated by consumers in response to a Charity Element. Other than as arises from a Charity Element, REACHTEL has no right to use in any way whatsoever, the mobile numbers or other information received by way of the Customer's use of the Products & Services, but Customer acknowledges and accepts that REACHTEL must retain all such information for purposes of audit, billing, performance monitoring, complaints handling and or other legal obligations or investigations.

#### DEVICE SUPPORT

22. REACHTEL undertakes to deliver an experience on the widest range of devices possible. However, every handset make & model varies with new releases occurring regularly. Therefore, the Products & Services as they relate to handset specific conversion or delivery are offered on a reasonable endeavours basis.

#### INTEGRATION

23. Where required, the Customer must only connect and integrate Customer systems with the Products & Services in accordance with the specifications, guidelines and specific instructions provided by REACHTEL. Such integration guidelines and processes will be provided to Customer at time of planning and development of interfaces.

#### ONGOING DEVELOPMENT

24. REACHTEL may at any time modify any of the Products & Services but in so modifying shall use every effort to ensure that such modification will not have an adverse effect on the Customers usage of the REACHTEL systems. REACHTEL may modify the Products & Services used by the Customer:
- without notice to the Customer where this is necessary to comply with law or because of a change of law, or any other event outside of REACHTEL's reasonable control; or



- (b) for any other reason provided REACHTEL will give to the Customer not less than 45 days' prior notice in respect of any material change.

#### CONDUCT

25. Customer must not use, or permit others to use, the systems, services or products offered by REACHTEL:

- (a) to circulate or send any unsolicited or unauthorised marketing, publicity or advertising material message to any person (including a message Commercial Message) unless that person has consented to receiving in a manner as defined in the SPAM Act 2003;
- (b) for the sending of messages without a reasonable intent or for the purpose of causing annoyance, inconvenience of distress to any person;
- (c) in any way that may have a detrimental effect to the goodwill and good standing of REACHTEL or any of the partners & associates of REACHTEL;
- (d) to transmit computer worms or viruses or anything else which may cause harm to the Products & Services;
- (e) to access any other REACHTEL computer system or network without REACHTEL's consent or disrupt or damage any REACHTEL computer systems or network;
- (f) to forge any messages; to send any material that is likely to be, having regard to the contemporary attitudes of Australian society, offensive to reasonable adults (or other applicable Countries); or
- (g) to send any obscene, menacing, sexually explicit, abusive, offensive or defamatory material or any material that violates any Commonwealth, State, Territory or local law or regulation or any law, rule or guideline applicable to any country where the Service is marketed, provided or received or is contrary to any Code of Conduct issued by the Communications Alliance.

Customer will comply with the REACHTEL Guidelines provided by REACHTEL from time to time.

#### FORCE MAJEURE EVENT

26. Effects of Event:

Despite any other provision of this Agreement, if a party is unable to perform or is delayed in performing an obligation under this Agreement which is caused by or which arises or results from a Force Majeure Event and notice has been given in accordance with clause 44:

- (a) that obligation is suspended but only so far and for so long as it is affected by the Force Majeure Event; and
- (b) the affected party will not be responsible for any loss or expense suffered or incurred by any other party as a result of, and to the extent that, the affected party is unable to perform or is delayed in performing its obligations because of the Force Majeure Event.

27. Notice of Force Majeure Event

A party affected by a Force Majeure Event must give to the other party a written notice which:

- (a) sets out the details of the Force Majeure Event;
- (b) identifies the nature and extent of the obligations affected by the Force Majeure Event;
- (c) advises the period of time during which the affected party estimates that it will not be able to perform or will be delayed in performing its obligations; and
- (d) provides details of the action that it has taken or proposes to take to remedy the situation.

28. Obligations of affected party

A party affected by a Force Majeure Event must:

- (a) use all possible diligence to avoid, remove or limit the effects of the Force Majeure Event on its performance of the suspended obligations as quickly as possible; and
- (b) promptly re-commence performing the suspended obligations as soon as reasonably possible.

29. Alternative Arrangements

During the period for which an obligation of the affected party is suspended pursuant to clause 26(a), any other party to whom the obligation is owed may (at that party's cost) make alternative arrangements for the performance of the suspended obligation (whether by another person or otherwise), without any liability to the affected party.

30. Termination

If a Force Majeure Event occurs and its effect continues for a period of 20 Business Days, the Services affected by the Force Majeure Event may be terminated at any time thereafter by the other party giving written notice to the affected party, provided that the Force Majeure Event continues to apply or have effect. The termination notice will take effect from the date specified in the termination notice (which date may not be earlier than the date on which the notice is given) and if no date is specified, the date of the termination notice.

#### TERMINATION

31. Right to terminate

Either party has the right to terminate this Agreement by notice in writing to the other if:

- (a) the other party becomes, threatens or resolves to become or is in jeopardy of becoming, subject to any form of insolvency administration, or is the subject of an Event of Insolvency;
- (b) the other party commits any breach of this Agreement; and
  - i. the breach is material and not capable of being cured; or
  - ii. the breach is capable of being cured and the party fails to cure the breach within 30 (thirty) Business Days of being notified in writing of the breach by the other party;
- (c) ceases or threatens to cease conducting its business in the normal manner; and
- (d) for convenience, by providing 45 days' notice in writing.

32. Upon termination by either party, the Customer's obligations under this Agreement relating to confidentiality and non-disclosure survive for a period of 3 years. Further, REACHTEL have the right to seek compensation, outstanding fees, damages or costs if appropriate and subject to the reasons for termination.

#### SUSPEND

33. REACHTEL may immediately suspend Customer's access to the Products & Services if Customer misuses the Products & Services, or fails to comply with Customer obligations under these Terms & Conditions and the noncompliance is not capable of remedy, or if it is capable of remedy, it is not rectified within 14 days after REACHTEL notifies Customer of the non-compliance. Such suspension does not remove any financial obligations the Customer has to REACHTEL during the suspension period or the remaining term of the Agreement.

#### CARRIERS

34. REACHTEL uses a range of delivery strategies for communications delivery to carriers in Australia and overseas. The REACHTEL communications delivery capability and subsequent analytics and failover processes are performed on a best endeavours basis due to the carrier issues beyond our direct control.



#### DEDICATED NUMBERS

35. Where Customer makes an application for any form of number (premium or long code) which is approved, REACHTEL will make the telephone numbers available for Customer use subject to the provisions of the Telecommunications Numbering Plan 1997. Consequently, REACHTEL does not warrant that any telephone number made available for use will be continuously available.

#### ADDRESS TAGS

36. Information provided by the Customer at time of registration to use certain Products & Services is used to define the Address Tag of outbound messages. Customer warrants that supplied information including contact mobile number and company name are true and correct and are not in breach of any legislation in being used as the Address Tag. Where Customer has been provided the ability to define their own Address Tag, Customer accepts full liability without limitation and will ensure that any Address Tag does not breach the rights of any person or company in any manner whatsoever and does not contravene any law or legislation including the SPAM Act 2003. The use of custom Address Tags can be withdrawn unconditionally at the sole discretion of the carriers at any time and therefore REACHTEL offer this capability only whilst REACHTEL is able.

#### PROTECT CONFIDENTIALITY

37. The recipient of Confidential Information from the other party must keep confidential all Confidential Information; and use all Confidential Information and Intellectual Property Rights solely for the Approved Purpose; and not copy or record in any other form any part of the Confidential Information except as is strictly necessary for the Approved Purpose; and not apply for, or assist any other person, directly or indirectly, to apply for any patents, designs or other registered Intellectual Property Rights based on or utilising any part of the Confidential Information; and not contest or seek to invalidate any patents, designs or other registered Intellectual Property Rights or applications for Intellectual Property Rights that are based on or that utilise any part of the Confidential Information; and not directly or indirectly exploit the Confidential Information in any way for the benefit, profit or advantage of the recipient or any other person without the prior written consent of the disclosing party.

#### CONFIDENTIAL INFORMATION

38. Treatment of Confidential Information  
The parties acknowledge and agree that this Agreement and the Confidential Information are confidential and sensitive commercial information. Each party undertakes to keep the commercial information secret and to protect and preserve the confidential nature and secrecy of the confidential information.
39. Use of Confidential Information  
A party may only use the Confidential Information of the other party for the purposes of performing the party's obligations or exercising the party's rights under this Agreement.
40. Disclosure of Confidential Information  
A party may not disclose Confidential Information of the other party to any person except:
- representatives, legal advisors, auditors and other consultants of that party who require it for the purposes of that party performing its obligations or exercising its rights under this Agreement and then only on a need to know basis;
  - with the prior written consent of the other party;
  - if that party is required to do so by law or a stock exchange; or
  - if that party is required to do so in connection with legal proceedings relating to this Agreement.

41. Disclosure by a Party  
A party disclosing information under clause 40(a) or clause 40(b) must ensure that the persons receiving the Confidential Information from it are aware it is the other party's Confidential Information and do not disclose the information except in the circumstances permitted on clause 40.

42. Return of Confidential Information  
Subject to clause 43, a party must, on the other party's request, immediately deliver to the other party, all documents or other materials containing or referring to the other party's Confidential Information which are:

- in the party's possession, power or control; or
- in the possession, power or control of persons who have received Confidential Information pursuant to clause 40(a) or clause 40(b).

43. Exceptions  
The obligation in clause 42 does not apply to Confidential Information that the recipient requires in order to perform its obligations under this Agreement or is otherwise entitled to retain.

#### NOTICES

44. Form  
Unless expressly stated otherwise in this Agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this Agreement must be in writing and marked for the attention of the person identified in Schedule 1, or if the recipient has notified otherwise, then marked for attention in the way last notified.

45. Delivery  
The communications under clause 44 must be:

- left at the address set out or referred to in Schedule 1;
- sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in Schedule 1;
- sent by fax to the fax number set out or referred to in Schedule 1;
- sent by email to the email address set out or referred to in Schedule 1; or
- given in any other way permitted by law.

However, if the intended recipient has notified a changed postal address or changed fax number, then the communication must be to that address or number.

46. When effective  
The communications take effect from the time they are received unless a later time is specified in them.

47. Receipt – postal  
If sent by post, the communications are taken to be received three days after posting (or seven days after posting if sent to or from a place outside Australia).

48. Receipt – fax  
If sent by fax, the communications are taken to be received at the time shown in the transmission report as at the time that the whole fax was sent.

49. Receipt – general  
Despite sub-clauses 47 and 48, if the communications are received after 5pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day.

50. Waiver of notice period



Both parties may waive a period of notice required to be given by the other party under this Agreement.

#### PERMITTED DISCLOSURE

51. The recipient of Confidential Information is not bound to keep confidential any information if and to the extent that the information is required by law to be disclosed or in the public domain other than as a result of a breach of this agreement.

#### RETURN OF CONFIDENTIAL INFORMATION

52. On request by the discloser of Confidential Information, the recipient must at the disclosers request immediately return all the Confidential Information in its possession, destroy it or delete it in the case of computer records except where such Confidential Information is contained in statutory documents & records such as board papers. Where such Confidential Information is contained in statutory documents, the recipient remains obligated to protect and preserve the Confidential Information to the best of the recipient's ability.

#### AMENDMENTS

53. REACHTEL reserves the right to amend or change any aspect of these terms and conditions:

- (a) upon provision to Customer of notice where this is necessary to comply with law or because of a change of law; and
- (b) for any reason upon provision of not less than 45 days' notice to Customer.

REACHTEL reserves the right to amend or change any pricing with a minimum of 45 days' notice to Customer.

Where such changes are made REACHTEL will notify the Customer of the changes and provide a revised copy of this Agreement. Where prices are quoted and agreed in separate Schedules, REACHTEL at all times retain the right to amend pricing with 45 days' notice for any reason including but not limited to REACHTEL's supply cost increases. Further, some aspects of the Products & Services are provided by third party suppliers to REACHTEL including carriers and as such REACHTEL have no direct control or, to the extent permitted by law, liability over their continued provision including but not limited to Dedicated Numbers, Address Tags and International connectivity.

#### DEFAULTS & REMEDIES

54. Where a party is in breach of any clause of this Agreement or Schedules both parties agree to work reasonably together to resolve such a breach with the defaulting party agreeing to do all things reasonable to rectify the breach within 30 (thirty) days of being made aware of the breach. Failure by a party to exercise a right or delay in exercising that right does not prevent its exercise or operate as a waiver.

Without prejudice to any term of the Agreement, to the extent permitted by law REACHTEL's total aggregate liability in contract, tort (including negligence), under statute, in equity, or otherwise arising in connection with the Agreement, is limited to the charges paid by the Customer during the 12 months immediately prior to the event first giving rise to liability. In addition to and without prejudice to the limitation on total aggregate liability in the preceding sentence, REACHTEL's total liability arising in connection with this Agreement in respect of each claim is limited to the charges paid by the Customer for the particular Product or Service to which Customer's claim relates. For the purposes of this clause, any claims that arise from the same conduct shall be deemed to be one claim. These limitations do not apply to the extent the law prohibits the limitation of REACHTEL's liability (including under any statutory or implied representation, condition, warranty, term or guarantee that cannot be excluded by law).

To the extent REACHTEL is able to at Law, it excludes all statutory or implied representations, conditions, warranties and terms relating to the Products & Services or this agreement. REACHTEL does not exclude any such representations, conditions, warranties or terms to the extent it is prohibited by law from doing so (including under the Australian Consumer Law). REACHTEL's total liability for any loss or damage under any statutory or implied representation, condition, warranty, term or guarantee that it is unable to exclude by law (including under the Australian Consumer Law), is limited to the extent permitted by law, to REACHTEL re-supplying the Product & Service to the Customer, or, at REACHTEL's option, refunding to Customer the amount paid for the Product & Service to which Customer's claim relates.

#### TERM

55. Unless otherwise stated in an attached duly executed Schedule, the Term of this Agreement and the ongoing obligations of the Customer, is for a minimum period of 12 months from Commencement Date and the Agreement is automatically renewed for a further 12 months if no notification of termination is received from the Customer by REACHTEL within 60 days of expiry.

#### JURISDICTION

56. This Agreement is governed by the laws of the State of Queensland and the Commonwealth of Australia. Each party submits to the jurisdiction of the courts of Queensland and the Commonwealth of Australia.

#### INTERNATIONAL

57. Where clauses refer to specific legislation, guidelines or operational constraints of Australia but the Customer is using or REACHTEL is supplying Products & Services in other countries then such clauses shall be read and interpreted in an equivalent or similar manner so as to ensure their effect or meaning in the country of use or deployment is as originally intended in Australia.

#### SEVERABILITY

58. Each provision of this Agreement shall be deemed to be separate and severable from the others of them. If any provision of this Agreement is determined to be invalid or unenforceable in any jurisdiction, such determination and the consequential severance (if any) shall not invalidate the rest of this Agreement which shall remain in full force and effect as if such provision had not been made a part thereof, nor shall it affect the validity or enforceability of such provision in any other jurisdiction.

#### WAIVER

59. No waiver of any provision of this Agreement, nor consent to any departure there from, by any of the parties shall be effective unless the same shall be in writing and then such waiver or consent shall be effective only in the specific instance and for the purpose for which it is given. No default or delay on the part of any of the parties in exercising any rights, powers or privileges hereunder shall operate as a waiver thereof or of any other right hereunder, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

#### COUNTERPARTS

60. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.



61. This Agreement may be executed by one or more of the parties executing a counterpart which may be a facsimile copy of the Agreement, and transmitting that executed counterpart by facsimile to the party or parties, which upon either the sender's transmission record indicating that the same was duly received without error, or the receipt by the other party or by one of the other parties of the executed Agreement by the sender, shall be taken as conclusive evidence of the execution of the Agreement by that party.
62. The parties covenant to be bound by this Agreement being executed in counterpart in accordance with this clause.

#### AGREEMENT

63. All prior Agreements in relation to the provision of the Products & Services are merged in and superseded by this Agreement.

#### THIRD PARTY AGENCIES

64. Subject to the prior written approval of REACHTEL, the Customer may grant a third party the right to access the REACHTEL platform on its behalf. In this event, REACHTEL will issue separate login details to that third party to enable it to access the Customer's account. The Customer accepts all responsibility for any action that that third party takes on its behalf and the third party is subject to the same restrictions as the Customer in relation to its use of the REACHTEL platform.

