

# Jet Interactive Pty Ltd - Master Services Agreement

© Jet Interactive 2020 - Version 1

## TABLE OF CONTENTS

<b>OUR AGREEMENT WITH YOU</b>	<b>2</b>
<b>DEFINITIONS AND INTERPRETATION</b>	<b>2</b>
<b>AGREEMENT AND TERM</b>	<b>3</b>
<b>PROFESSIONAL SERVICES</b>	<b>3</b>
<b>REPORTING SERVICES</b>	<b>3</b>
<b>TELECOMMUNICATIONS SERVICES</b>	<b>3</b>
<b>CREDIT CHECK</b>	<b>5</b>
<b>FEES</b>	<b>5</b>
<b>GST</b>	<b>5</b>
<b>SERVICE LEVELS</b>	<b>6</b>
<b>INTELLECTUAL PROPERTY RIGHTS</b>	<b>6</b>
<b>WARRANTIES</b>	<b>6</b>
<b>TERMINATION</b>	<b>7</b>
<b>EFFECT OF TERMINATION</b>	<b>7</b>
<b>FORCE MAJEURE</b>	<b>7</b>
<b>INDEMNITY</b>	<b>7</b>
<b>LIABILITY</b>	<b>8</b>
<b>FAIR USE</b>	<b>8</b>
<b>CONFIDENTIALITY AND PRIVACY</b>	<b>8</b>
<b>CUSTOMER DATA</b>	<b>8</b>
<b>THIRD PARTIES</b>	<b>9</b>
<b>MODIFICATION TO TERMS</b>	<b>9</b>
<b>GENERAL</b>	<b>9</b>

If you have any questions or require support during your time with us, our Customer Support team can be reached through the following:

**Support Enquiries:** [support@jetinteractive.com.au](mailto:support@jetinteractive.com.au) - 1300 10 13 10

Staffed hours: Monday to Friday 8.30am - 5.30pm

## 1. OUR AGREEMENT WITH YOU

- 1.1. The following are the terms and conditions that apply between Jet Interactive Pty Ltd (**us, we**) and you (either an individual or a legal entity that you represent as an authorised employee or agent) (**you, your**). By using the Services, you agree to these terms and conditions.

## 2. DEFINITIONS AND INTERPRETATION

- 2.1. **Agreement** means these terms and conditions.
- 2.2. **Applicable Law** includes any requirement of any statute, rule, regulation, proclamation, order in council, ordinance or by-law whether commonwealth, state, territorial or local.
- 2.3. **Business Day** means a day on which banks are open for business in Sydney excluding a Saturday, Sunday or public holiday.
- 2.4. **Carrier** has the meaning given in clause 6.2.
- 2.5. **Customer Data** means: (a) the data concerning the characteristics and activities of visitors to your webpage; and (b) call information gained from your use of the Telecommunications Services.
- 2.6. **Documentation** means any documentation we provide or make available to you in relation to the Services.
- 2.7. **Fees** means the fees payable under this Agreement as set out in the Master Price List or an Order.
- 2.8. **Force Majeure** means a circumstance beyond the reasonable control of a Party such as strikes, riots, insurrection, fires, floods, explosions, war, governmental action, labour conditions, earthquakes, natural disasters or interruptions to internet services to an area where we or you (or our servers) are located or co-located.
- 2.9. **GST** means GST as defined in A New Tax System (Goods and Services Tax) Act 1999 as amended (**GST Act**) or any replacement or other relevant legislation and regulations.
- 2.10. **Inbound Services** means the inbound call services as set out in an Order, to be provided in accordance with clause 6 and which may include Premium Services and Local Trackable Numbers.
- 2.11. **Intellectual Property Rights** or **IPR** means any patent, trade mark (whether registered and whether within or outside Australia), copyright, registered design or other design right (including rights to apply for the grant or registration of any of them under the laws of Australia or any other jurisdiction) and any corresponding property or right under the laws of Australia or any other jurisdiction, together with any rights and the benefit of any obligation owed in respect of an invention, discovery, trade secret, know-how or confidential information.
- 2.12. **JST** (or Jet Source Tracker) means the tracking software which we provide for installation on your webpage from time to time for the purposes of collecting Customer Data.
- 2.13. **Master Price List** means our standard price list as advised to you from time to time.
- 2.14. **Order** means an order agreed between the Parties for the provision of Telecommunications Services or Reporting Services, including where an order is made using an online registration process. An order may include:
  - 2.14.1. our proposal to you;
  - 2.14.2. a quote;
  - 2.14.3. an application form;
  - 2.14.4. an account details form;
  - 2.14.5. a number configuration form;
  - 2.14.6. a Master Price List; and
  - 2.14.7. a contract
- 2.15. **Parties** means us and you.
- 2.16. **Personal Information** has the meaning given to it in the *Privacy Act 1988* (Cth).
- 2.17. **Privacy Policy** means our privacy policy which we make available to you from time to time, or which we publish on our website from time to time.
- 2.18. **Professional Services** means the professional services set out in an Order to be provided in accordance with clause 4
- 2.19. **Rebate** means a rebate applicable to a Service Level, set out in our standard service level agreement which we notify to you from time to time.
- 2.20. **Related Body Corporate** has the meaning given in section 9 of the *Corporations Act 2001* (Cth).
- 2.21. **Reports** means the reports as set out in an Order for Reporting Services.
- 2.22. **Reporting Services** means the production of Reports based on analysis of the Customer Data, to be provided in accordance with clause 5. The reporting services may include Jet Source Tracker software, Jet CallTracker reporting interface, Jet Call Exporter and Jet call integrations with third party CRM and analytics partners.
- 2.23. **Services** means the Telecommunications Services, the Professional Services, the Reporting Services.
- 2.24. **Services IPR** means all IPR:
  - 2.24.1. created by or on behalf of us in connection with provision of the Services;
  - 2.24.2. subsisting in all materials and information supplied by us to you in the provision of the Services; and
  - 2.24.3. in JST and the Documentation.
- 2.25. **Service Levels** means the service levels set out in our standard service level agreement which we notify to you from time to time.

- 2.26. **Telecommunications Services** means the telecommunications services set out in an Order, including but not limited to, Inbound Services, phone lines, data connections, mobile phones, phone calls, IVRs, PABX, and Cloud Telephone Systems supplied by us.
- 2.27. **Transferred Services** has the meaning given in clause 6.6.
- 2.28. **Your IPR** means all IPR subsisting in materials and information that you provide to us pursuant to this Agreement.
- 2.29. Words used in this Agreement but not defined herein have the meaning given in the *Telecommunications Act 1997* (Cth).

### 3. AGREEMENT AND TERM

- 3.1. We will provide you the Services on the terms set out in this Agreement.
- 3.2. This Agreement will continue for as long as we are providing Services to you.

### 4. PROFESSIONAL SERVICES

- 4.1. This clause 4 applies where the parties agree to any Order.
- 4.2. We will perform the Professional Services set out in an Order in a professional manner with due care and skill in accordance with the SOW.
- 4.3. If there is any inconsistency between a provision of an Order and these terms, then the provision contained in the order prevails to the extent of any inconsistency.
- 4.4. You will provide us with all reasonable assistance required for us to complete the Professional Services. To the extent permitted by Applicable Law, we will not be liable for any failure to provide the Professional Services due to your failure to do so.
- 4.5. You may not (and must ensure that your Related Bodies Corporate do not) during the term of this Agreement and for a period of 12 months thereafter induce, solicit, engage or employ (or procure the inducement, solicitation, engagement or employment of) any of our officers, contractors or employees.

### 5. REPORTING SERVICES

- 5.1. You may register for the Reporting Services by making an Order. To the extent permitted by Applicable Law, you are solely responsible for any and all activities that occur under your account. The remainder of this clause 5 applies where an Order is made for Reporting Services.
- 5.2. We may log in to the Reporting Services using your account in order to maintain or improve the Reporting Services, including to provide you with assistance with technical or billing issues. You hereby acknowledge and consent to such access.
- 5.3. We will use our reasonable endeavours to provide the Reporting Services to you, provided that you:
  - 5.3.1. install JST on the required webpages; and
  - 5.3.2. subscribe to our Telecommunications Services.
- 5.4. We grant you a limited, revocable, non-exclusive, non-sublicensable, non-transferable licence to install, copy and use JST solely as necessary to use the Reporting Services for your own internal use.
- 5.5. You must not and must not allow any third party to:
  - 5.5.1. copy, modify, adapt, translate or otherwise create derivative works of JST or the Documentation;
  - 5.5.2. reverse engineer, de-compile, disassemble or otherwise attempt to discover the source code of JST;
  - 5.5.3. rent, lease, sell, lease, assign or otherwise transfer rights in or to JST or the Reporting Service;
  - 5.5.4. remove any proprietary notices or labels on JST or placed by the Reporting Service; or
  - 5.5.5. use, post, transmit or introduce any device, software or routine which interferes or attempts to interfere with the operation of the Service or JST.
- 5.6. You may remotely access, view and download your Reports at <http://portal.jetinteractive.com.au/> (or such other URL which we may provide from time to time).

### 6. TELECOMMUNICATIONS SERVICES

- 6.1. You may register for the Telecommunications Services by making an Order. To the extent permitted by Applicable Law, you are solely responsible for any and all activities that occur under your account. The remainder of this clause 6 applies where an Order is made for Telecommunications Services.
- 6.2. Telecommunications Services will be supplied to you through the carriers or networks (**Carriers**) that we nominate in writing from time to time. You agree that we:
  - 6.2.1. may change Carriers without reference to you and at any time; and
  - 6.2.2. have your express authorisation to notify any relevant Carrier in respect of and to effect any such change.
- 6.3. We do not warrant that we will be able to supply the Telecommunications Services and we are not liable for any failure to provide all or part of any of the Telecommunications Services, but, to the extent and to the

- standard that Carriers provide Telecommunications Services to us, those Telecommunications Services will be provided by us to you. When your connection is disrupted, we will do our best to reinstate our Telecommunications Services to you as soon as we can.
- 6.4. Our obligation to provide the Telecommunications Services ceases when we transfer your account to another supplier and the other supplier takes over full billing of those services.
  - 6.5. You authorise us to be your agent for the delivery of the Telecommunications Services that use caller line identification (CLI) data.
  - 6.6. When you transfer to us any Telecommunications Services from a Carrier, a telecommunications service provider or equipment supplier who supplies telecommunications services or equipment to you at the time you make any Order for Telephone Numbers (**Transferred Services**):
    - 6.6.1. you authorise us to sign on your behalf and in your name any forms required by the current supplier to transfer the Transferred Services to us; and
    - 6.6.2. you must immediately pay the current supplier any amounts owed for the Transferred Services up to the date of the transfer (including any transfer fees, contractual payout fees, early termination fees and penalties).
  - 6.7. If you direct us to transfer any Telecommunications Services to another supplier:
    - 6.7.1. you must pay:
      - 6.7.1.a. all of our invoices for the Telecommunications Services up until the time we cease supplying them; and
      - 6.7.1.b. all other proper Fees and charges that we become aware of after the date of transfer that relate to the Services we provided to you; and
    - 6.7.2. clause 14 will be apply to the transferred Telecommunications Services.
  - 6.8. We may immediately terminate any Telecommunications Services where any Carrier ceases providing necessary services to us.
  - 6.9. If any Telecommunications Services are terminated in accordance with clauses 6.8 or 13 and a Carrier arranges to supply you services other than through us, you acknowledge that:
    - 6.9.1. the Carrier may not be able to make those arrangements immediately; and
    - 6.9.2. once the Carrier has made those arrangements, the services acquired by you from the Carrier will be acquired on the Carrier's then current tariffs and terms and conditions and the Carrier will bill you accordingly.
  - 6.10. You authorise and consent to the following:
    - 6.10.1. our conducting an audit of the Telecommunications Services and any equipment supplied in respect of the Telecommunications Services should we consider it necessary (or appointing an agent to do the same on our behalf);
    - 6.10.2. our exchanging with Carriers all information about you and the Telecommunications Services provided to you in our possession or control including, but not limited to, your name, billing address, street address, relevant telephone numbers, and any other information obtain by us for the purposes of your Order or this Agreement;
    - 6.10.3. the Carrier exchanging with us any information in the Carrier's possession or under its control in relation to the Telecommunications Services including, without limitation, all your records and, in particular, exchange line details, account information, call charge records and call event records; and
    - 6.10.4. ours and the Carrier's use of the information referred to in clauses 6.10(2) and 6.10(3).
  - 6.11. Unless otherwise specified in an Order, the Telephone Numbers associated with your Telecommunications Services are your property. You may not port any phone numbers supplied by us to an alternative service provider, Carrier or network without our prior written consent. Each phone number ported away from us attracts a \$50 porting fee (and clause 14 will apply to the extent this results in any termination).
  - 6.12. If your Order for Telecommunications Services includes call recording services, you expressly agree and acknowledge that:
    - 6.12.1. you authorise us to make incoming call recordings and collect Personal Information on your behalf (without limiting the generality of the aforesaid, you specifically authorise us to act as your agent in respect of all caller line identification data and other Personal Information collected by us);
    - 6.12.2. you either:
      - 6.12.2.a. authorise us to play a voice message advising the calling party that the incoming call is being recorded prior to the said incoming call being connected to you or your employee, contractor, officer, agent, authorised representative or other third party answering the incoming call; or
      - 6.12.2.b. make the necessary arrangements to ensure that the calling party is provided with the necessary warning about the presence of any recordings made of an incoming call in accordance with Applicable Law;
    - 6.12.3. all call recordings are stored by us for a period of three (3) months, commencing the date that a recording is made. Following the expiry of the storage period, you will not be able to retrieve a copy of the recording and to the extent permitted by Applicable Law, you hereby acknowledge and agree that we have no liability whatsoever for any failure to retain or store such copies of recordings beyond the said storage period;

- 6.12.4. all Personal Information collected or compiled by us for, and supplied to, you must be used by you and your employee, contractor, officer, agent, authorised representative or other third party in compliance with Applicable Law, including without limitation, any provisions under the Telecommunications Act 1997 (Cth), Privacy Act 1988 (Cth), the Telecommunications (Interception) Act 1979 (Cth), and all regulations or guidelines promulgated thereunder;
- 6.12.5. you must notify your employee, contractor, officer, agent, authorised representative or other third party that their telephone conversation with a calling party in respect of an incoming call is being recorded by us through or in connection with the Telecommunications Services;
- 6.12.6. (to the extent permitted by Applicable Law, we will have no liability whatsoever in respect of any use made by you, your employee, contractor, officer, agent, authorised representative or other third party, of the recordings and its contents, and/or of any Personal Information; and
- 6.12.7. recording of credit card details is not permitted (and if credit card details need to be collected, the call must be terminated and your customer called back on an outbound line).

## 7. CREDIT CHECK

- 7.1. Prior to our accepting your Order, you have provided to us information relevant to our assessment of your credit rating. You consent to the following:
  - 7.1.1. our obtaining from a credit reporting agency a credit report containing Personal Information about you;
  - 7.1.2. our giving to and seeking from any credit provider named in a credit report or in your application, information in relation to your credit rating including without limitation any information about your credit worthiness, credit history or credit capacity that credit providers are allowed to give or receive from other credit providers under the Privacy Act 1988 (Cth);
  - 7.1.3. our making independent enquiries of third parties concerning your financial standing and for this purpose you have authorised and permitted such third parties to supply such information regardless of any confidentiality or privilege which applies to the information sought; and
  - 7.1.4. our providing any information we obtain about you any relevant Carrier.

## 8. FEES

- 8.1. You agree:
  - 8.1.1. to pay all Fees for the Services, regardless of whether it is you who uses them;
  - 8.1.2. to pay for all calls made to the Inbound Services;
  - 8.1.3. to pay all Fees (together with any applicable taxes) by the due date set out in our invoice to you;
  - 8.1.4. the Fees apply from the time services are activated and supplied to you by us (including all connection fees and monthly charges for Telecommunications Services and Reporting Services).
- 8.2. We may change the Master Price List from time to time, but we will notify you of any changes when they happen. Copies of the Master Price List are available from us, on request.
- 8.3. You may dispute an amount in good faith by notifying us in writing within fourteen days of receipt of the relevant invoice setting out the reasons for the dispute and the amount in dispute. Notwithstanding any such dispute, you must pay the whole amount of each invoice by its due date.
- 8.4. If you do not pay any amount (including any Fees) within the time required by this Agreement:
  - 8.4.1. you must pay us interest calculated daily at an annual rate equal to 1.5% per month or part thereof on the outstanding amount of the invoice from the due date for payment until the date that payment is made to us in full;
  - 8.4.2. we may suspend any Services which we are providing to you, and you must pay our costs which we incur as a result of any such suspension; and
  - 8.4.3. we may change the prices which you are required to pay for any Services.
  - 8.4.4. This clause does not limit rights of termination which we may have.
- 8.5. Subject to clause 8.5(2)(e), all Fees for Telecommunications Services must be paid by direct debit or credit card on the following basis:
  - 8.5.1.(1) all credit card transactions will incur a 1% processing fee; and
  - 8.5.2. (2) in respect of direct debits:
    - 8.5.2.a. you must ensure that your nominated account can accept direct debits;
    - 8.5.2.b. you must ensure that on the drawing date there is sufficient cleared funds in the nominated account
    - 8.5.2.c. you must advise us if the nominated account is transferred or closed;
    - 8.5.2.d. if your drawing is returned or dishonoured by your financial institution a once off \$60 dishonour fee will be applied to your account (and the provisions of clause 8.4 will apply);
    - 8.5.2.e. if your financial institution no longer accepts direct debits, then it is your responsibility to pay each invoice on the due date by EFT (and we will apply a \$10 processing fee for each EFT transaction); and
    - 8.5.2.f. the direct debit will be made on the due date of your invoice.

## **9. GST**

- 9.1. To the extent that 1 Party is required to reimburse or indemnify another Party for a loss, cost or expense incurred by that other Party, that loss, cost or expense does not include any amount in respect of GST for which that other Party is entitled to claim an input tax credit.
- 9.2. In this clause 9:
- 9.2.1. words or expressions used in this clause which have a particular meaning in the GST law (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
  - 9.2.2. any reference to GST payable by a Party includes any corresponding GST payable by the representative member of any GST group of which that Party is a member;
  - 9.2.3. any reference to an input tax credit entitlement by a Party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that Party is a member; and
  - 9.2.4. if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.

## **10. SERVICE LEVELS**

- 10.1. We do not guarantee that any Service will be available at all times, but subject to clause 10.2, we will use reasonable endeavours to meet any Service Level applicable to any Service.
- 10.2. To the extent permitted by Applicable Law, we will not be liable for any failure of any Service (including any failure to meet any Service Levels) to the extent caused by:
- 10.2.1. outages to any public internet backbones, networks or servers;
  - 10.2.2. any failures of your equipment, systems or local access services;
  - 10.2.3. an act or omission by You, Your agents, employees, invitees or contractors;
  - 10.2.4. extended access trails or network or facility not supplied by us (including international terrestrial or satellite links) and used to extend the reach of our network to complete supply of the Services; or
  - 10.2.5. previously scheduled maintenance.
- 10.3. Where we fail to meet a Service Level, you may be entitled to claim a Rebate from us. If you claim a Rebate to which you are entitled, we will deduct it from our next invoice to you. To the extent permitted by Applicable Law, any Rebates claimed by you will be your exclusive remedy for any failure to meet the Service Levels. You may only claim a Rebate in the month in which it is incurred.

## **11. INTELLECTUAL PROPERTY RIGHTS**

- 11.1. You hereby grant to us a non-exclusive licence with the right to grant sub-licences to use Your IPR for all purposes related to the provision of the Services. Further, you hereby grant to us a non-exclusive, perpetual, irrevocable, royalty-free, worldwide licence to store and use the Your IPR for our internal records and related purposes (including for the purposes of defending any claims or proceedings against us or any of our Related Bodies Corporate).
- 11.2. Title to all Services IPR is and will remain our property. Any new Services IPR, will as between you and us upon its creation vest in us.
- 11.3. You warrant that Your IPR is owned or licensed by you and when provided to us, the licensing of that Customer IPR to us (including the our exercise of the rights granted to us under licence) does not and will not infringe the rights of any third party, including the infringement of any third party's Intellectual Property Rights, rights of confidentiality or rights of privacy.
- 11.4. You agree to pay any royalties, fees, or other monies owing to any person as a result of the licensing of the Your IPR to us.

## **12. WARRANTIES**

- 12.1. Each Party warrants that it has the authority to enter into and perform its obligations under this Agreement, each Order and each Statement of Work, that it has the ability to perform its obligations under this Agreement, each Order and each Statement of Work, and that this Agreement has been duly executed and is a legal, valid and binding Agreement enforceable against it.
- 12.2. To the extent permitted by Applicable Law, the Services, JST and the Reports are provided "as-is" and we make no warranties, claims, representations, conditions or guarantees in respect of the Services, JST, the Reports or any other goods or services provided in connection with this Agreement that are not expressly stated. To the extent permitted by Applicable Law, where liability under any condition, guarantee or warranty which cannot legally be excluded but can be validly limited, such liability is limited, to (at our election):
- 12.2.1. in the case of goods, the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired; and

- 12.2.2. in the case of the services, supplying the services again; or paying the cost of having the services supplied again.
- 12.3. You warrant that:
  - 12.3.1. you have not relied on any representation made by us that has not been stated expressly in this Agreement, or upon any descriptions or specifications contained in any document including brochures, marketing and promotional materials provided by us; and
  - 12.3.2. any information provided to us by you is correct and you acknowledge that the cost of your supply of any incorrect information is to be borne by you.

### 13. TERMINATION

- 13.1. Either party may terminate any this Agreement, any Order, Statement of Work or any Services under this Agreement at any time. You must provide us with at least 30 days' notice of any termination. If any Services are terminated by you within any minimum term specified in an Order, we may invoice you an amount equivalent to the total monthly charges set out in the Order, multiplied by the number of months remaining in the minimum term.
- 13.2. Either Party may, by notice in writing given to the other Party, immediately terminate this Agreement or any Statement of Work if the other Party commits a material breach of this Agreement and where capable of remedy, has failed to remedy that breach within 14 days of receipt of written notice requiring it to do so.

### 14. EFFECT OF TERMINATION

- 14.1. 14.1 On termination of this Agreement or any Service by either Party:
  - 14.1.1. we will provide you with a final invoice for all relevant Services performed, up to and including the date of termination;
  - 14.1.2. we may retain any moneys paid by you and you will not be entitled to any refund;
  - 14.1.3. any historical Reports will not be available to you and you will not be able to access any Services;
  - 14.1.4. each Party must pay to the other all amounts owed by it in connection with this Agreement or the terminated Services, including under any indemnities;
  - 14.1.5. you must immediately cease use of JST and destroy all originals and copies of JST in your possession and so certify to us within three (3) Business Days of termination (including by deleting the JST code from all relevant webpages at your own cost);
  - 14.1.6. you must immediately cease any further use of the Services without our express written consent.
  - 14.1.7. those clauses intended to survive termination of this Agreement will continue (including clauses 11, 16, 17, 18, 19 and 22);
  - 14.1.8. the obligations of confidentiality under clause 18 will continue; and
  - 14.1.9. each Party, at the request of the other, must promptly return to the other party all materials or other property of that other party, or if requested by that other party, certify that all such materials have been destroyed.
- 14.2. Termination of this Agreement, any Order, Statement of Work or any Services under this Agreement will not affect the accrued rights or remedies of either Party under this Agreement or the relevant Statement of Work.

### 15. FORCE MAJEURE

- 15.1. Both Parties' obligations under this Agreement or any Statement of Work are suspended during the time and to the extent that the Party is prevented from complying with them due to Force Majeure.

### 16. INDEMNITY

- 16.1. You indemnify us, our Related Bodies Corporate, directors, employees, agent and affiliates (**Indemnified Parties**) against all claims, costs, damages, expenses and liability incurred or suffered by the Indemnified Parties to the extent arising from:
  - 16.1.1. a claim by any third party that use by an Indemnified Party of Your IPR in accordance with the terms of this Agreement infringes the Intellectual Property Rights or other rights of any third party;
  - 16.1.2. your breach of this Agreement;
  - 16.1.3. your use of the Services; and
  - 16.1.4. your violation of any Applicable Law.
- 16.2. You must cooperate as fully as reasonably required in the defence of any claim.

### 17. LIABILITY

- 17.1. Subject to clause 17.2, and to the extent permitted by Applicable Law, our total aggregate liability under or in relation to this Agreement and any SOW (including any Rebates), whether arising in contract, tort (including negligence), in equity, under statute or otherwise, whether or not we were advised of the possibility of such



- loss or damage, is limited to 10% of the Fees paid by you (other than in respect of phone calls) in the year preceding any claim in relation to the Service to which the claim relates.
- 17.2. To the extent permitted by Applicable Law, we exclude all liability however arising for loss of profits, loss or corruption of data (including Customer Data), loss of reputation, loss of business, loss of business opportunities, loss of anticipated savings, loss of goodwill or for any type of special, indirect, incidental or consequential loss or damage which may be suffered or incurred or which may arise directly or indirectly under or in relation to this Agreement or any Statement of Work.
- 17.3. To the extent permitted by Applicable Law, we do not warrant, guarantee or represent that (and we disclaim all claims that):
- 17.3.1. the Services or JST will be uninterrupted or error-free or that defects will be corrected;
  - 17.3.2. the Services, JST or the Reports will be of acceptable quality or suitable for any particular purpose;
  - 17.3.3. the Services will be available or connected at any particular time;
  - 17.3.4. any faults with any service will be corrected within any particular time (except as provided by clause 10);
  - 17.3.5. JST will be free of viruses or other harmful components; or
  - 17.3.6. use of the Services or the Reports will be correct, accurate, timely or otherwise reliable.

## 18. FAIR USE

- 18.1. Some Services allow for unlimited use, such as internal calling between employees, or inbound calls to some geographic landline numbers or mobile numbers ("Unlimited Services"). Utilizing Unlimited Services in excess of what, in Jet Interactive's sole discretion, would be expected of normal business use ("Excessive Use"), may result in Jet Interactive either or all of:
- 18.1.1. restricting or terminating your Account,
  - 18.1.2. limiting your access to the Services,
  - 18.1.3. requiring you to subscribe to additional Paid Services, or;
  - 18.1.4. requiring you to pay for prior periods of Excessive Use.

## 19. CONFIDENTIALITY AND PRIVACY

- 19.1. Each Party (**Receiving Party**) acknowledges that information disclosed to it by the other Party (**Disclosing Party**) under this Agreement which is marked as confidential, or which is by its nature confidential, is proprietary, confidential or a trade secret of the Disclosing Party (**Confidential Information**).
- 19.2. Except as stated in this Agreement (and in particular in clauses 7, 6.10, and 19), the Receiving Party must not and must not permit any of its officers, employees, agents, contractors or Related Bodies Corporate to use or to disclose to any person any Confidential Information disclosed to it by the Disclosing Party under this Agreement without the prior written consent of the Disclosing Party.
- 19.3. Clauses 18.1 and 18.2 do not apply to any information which is generally available to the public (other than as a result of the wrongful disclosure by the Receiving Party), or is required to be disclosed by any Applicable Law.
- 19.4. You must safeguard the confidentiality of any usernames and passwords issued to or chosen by you in relation to the Services. You agree that you are liable for any use or misuse of any Services resulting from any third party using a password or username issued to or chosen by you in relation to the Services. You agree to immediately notify us of any unauthorised use of the Services or any other breach of security in relation to the Services known to you.
- 19.5. We will comply with our Privacy Policy. You must:
- 19.5.1. comply with all Applicable Laws relating to privacy;
  - 19.5.2. provide collection statements in accordance with Applicable Law that notify individuals that you may pass Personal Information on to us and that we may process and collect their Personal Information in the manner contemplated by this Agreement; and
  - 19.5.3. make available and abide by an appropriate privacy policy that:
    - 19.5.3.a. notifies the use and processing of Personal Information by us as contemplated by this Agreement; and
    - 19.5.3.b. allows the use of cookies to collect anonymous traffic data.

## 20. CUSTOMER DATA

- 20.1. 19.1 We will not distribute any Customer Data except that we may:
- 20.1.1. use the same for our own internal research and record keeping purposes; and
  - 20.1.2. extrapolate and use general information derived from the same.
- 20.2. Customer Data is and remains, as between the parties, your property. We will establish and maintain safeguards against the destruction, loss, alteration, corruption, disclosure or misuse of Customer Data in our possession or control. The safeguards will be no less rigorous than those which we use to protect our own data.
- 20.3. We will not:
- 20.3.1. disclose any Customer Data outside of Australia without your prior written consent; or



- 20.3.2. retain any Customer Data for longer than is necessary for us to perform our obligations and exercise our rights under this Agreement.
- 20.4. We will ensure that our personnel do not attempt to access, or allow access to, any Customer Data which they are not permitted to access under this agreement. If such access is attained, we will report the incident to you.
- 20.5. Where one of our assets is designated for disposal or for use other than in connection with the provision of the Services, we will ensure that all Customer Data held in the asset is expunged or purged prior to the disposal or use.
- 20.6. Except and to the extent otherwise specified in this Agreement, upon your request and in any event on termination, we will:
  - 20.6.1. promptly return to you all or any specified part of Customer Data and all physical and written records containing that Customer Data; and
  - 20.6.2. if requested by you, destroy or delete all or any specified part of Customer Data
- 20.7. Clause 19.6 does not apply to any copies of Customer Data necessary for our enforcement of our rights or remedies under this Agreement or necessary for the performance of any of our continuing obligations until completion of the performance of those obligations or for compliance with Applicable Law.

## 21. THIRD PARTIES

- 21.1. This clause 20 applies where you use any Services on behalf of any third party, or use any Services to collect information on behalf of any third party (**Third Party**).
- 21.2. You warrant and represent that:
  - 21.2.1. you are authorised to act on behalf of, and bind to this Agreement, that Third Party; and
  - 21.2.2. as between the Third Party and you, the Third Party owns any rights to any Customer Data in the applicable account.
- 21.3. You must ensure that any third party is bound by and abides by the terms of this Agreement. You indemnify us, our Related Bodies Corporate, directors, employees agent and affiliates (**Indemnified Parties**) against all claims, costs, damages, expenses and liability incurred or suffered by the Indemnified Parties to the extent arising from:
  - 21.3.1. any representations and warranties made by you concerning any aspect of the Services or Reports to Third Parties;
  - 21.3.2. any claims made by or on behalf of any Third Party pertaining directly or indirectly to your use of the Services or Reports; and
  - 21.3.3. violations of your obligations of privacy to any Third Party.

## 22. MODIFICATION TO TERMS

- 22.1. We may change any of the terms and conditions set out in this Agreement or any policy governing any of the Services, at any time, by posting the new agreement to the site located at <http://www.jetinteractive.com.au/privacy-policy.html> (or such other URL as we may provide).
- 22.2. No amendment or modification of this Agreement will be binding unless:
  - 22.2.1. in writing and signed by our duly authorised representative;
  - 22.2.2. you accept updated terms online; or
  - 22.2.3. you continue to use the Services after we have posted updates to the Agreement or to any policy governing any of the Services in accordance with clause 21.1.

## 23. GENERAL

- 23.1. This Agreement constitutes the entire agreement between you and us in relation to the subject matter of this Agreement.
- 23.2. You must, in your use and access to the Services, JST and the Reports:
  - 23.2.1. comply with all Applicable Laws; and
  - 23.2.2. not breach any persons rights and not cause us or a Carrier loss, liability or expense.
- 23.3. Without limiting clause 7, you agree to provide us with any information we request in connection with our providing the Telecommunications Services to you under this Agreement.
- 23.4. If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.
- 23.5. A Party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. A waiver is not effective unless it is in writing, and only relates to the specific purpose for which it is given.
- 23.6. We are, without prior notice to you, entitled to assign our interest in this Agreement or any Services.
- 23.7. You must not assign your interest in this Agreement or any Services without our prior written permission.
- 23.8. The law of New South Wales governs this Agreement. The Parties submit to the exclusive jurisdiction of the courts of New South Wales and the Federal Court of Australia and agree that any lawsuit must be heard in those courts.