



## REACHIFY TERMS OF SERVICE

### DEFINITIONS:

“Agreement” means this subscription agreement and any related quotes, orders and exhibits.

“Contract Period” means the number of months you subscribe for services when placing your order.

“Effective Date” means the date you subscribe for services.

“Reachify” means Reachify, LLC, a California corporation having offices at 13280 Evening Creek Drive South, Suite 225, San Diego, CA 92128

“Subscriber” means you or the business entity for whom you are authorized to subscribe for services.

### 1. SERVICES; USE; SUPPORT

A. Services. Subscriber may subscribe to software service offerings and order products (the “Services” and “Equipment”) for the Contract Period by signing a quote with Reachify (a “Service Order”).

B. Service Orders. Subscriber may order additional Services or Equipment by completing additional Service Orders. Each Service Order is subject to the terms and conditions of this Agreement. In the event of any conflict between a Service Order and this Agreement, the Service Order will control. For the avoidance of doubt, if there are terms and conditions in this Agreement regarding subjects on which a Service Order is silent, such silence will not constitute a conflict and the terms and conditions in the Agreement will control.

C. Subscriber Information. Subscriber shall provide accurate, current and complete Subscriber registration information, including, without limitation, Subscriber’s legal name, address, email address, telephone number and, where applicable, payment information (together, “Subscriber Information”). Subscriber agrees to promptly notify Reachify of any changes in Subscriber Information and to verify such information as Reachify may reasonably request.

D. Access and Use of the Services. Subject to the terms and limitations of this Agreement, Reachify agrees to provide Subscriber access to the Services and Equipment as set forth on Service Order(s), up to the quantities specified on such Service Order(s), during the Contract Period and any renewals thereof, on a non-exclusive, non-transferable basis, solely for Subscriber’s internal business purposes and as may be requested or necessary between Subscriber and its customers. Notwithstanding anything to the contrary in this Agreement, the parties acknowledge that the rights and obligations as between Reachify and the Subscriber, including data and privacy rights, shall be governed by the most current applicable terms of use and policies referenced herein or available at <https://support.reachify.io/>.

E. Use Restrictions. Subscriber agrees not to (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make the Services available to any third party in any way; (ii) modify or make derivative works based upon the Services; (iii) create unauthorized Internet “links” to the Services or “frame” or “mirror” any content on any other server or wireless or Internet-based device; or (iv) reverse engineer the Services.



F. Technical Requirements for Use of the Services. In order to utilize the Service, Subscriber must adhere to certain technical specifications and acquire and maintain certain minimum hardware, software and Internet connectivity, as specified at <https://support.reachify.io/> (“Required Equipment”). During the sales process and prior to service activation, Reachify, with Subscriber’s reasonable cooperation, will conduct an assessment of Subscriber’s current Required Equipment. Based on this assessment, Reachify may recommend adjustments to the Required Equipment in order to meet the minimum technical requirements to utilize the Service. Subscriber is ultimately responsible for implementing any recommendations made by Reachify with respect to Required Equipment and also for the ownership and ongoing maintenance of Required Equipment. Reachify’s recommendations with respect to Required Equipment do not constitute a guarantee or warranty as to the future suitability of the Required Equipment for operating the Services. SUBSCRIBER ACKNOWLEDGES AND AGREES THAT IT IS SOLELY RESPONSIBLE FOR OBTAINING AND SUPPORTING REQUIRED EQUIPMENT AS NECESSARY TO UTILIZE THE SERVICES, AND SUBSCRIBER MAY NOT TERMINATE THIS AGREEMENT OR REQUEST A REFUND BASED ON A FAILURE OF ITS HARDWARE, SOFTWARE OR INTERNET CONNECTIVITY TO PROPERLY FUNCTION WITH THE SERVICES.

G. Technical Support. Standard technical support is available as part of the Services. The support services and options available from Reachify are more fully described at <https://support.reachify.io/>, Support services may include on-line help, FAQ's, training guides and templates.

H. Equipment Lease. Any Equipment, including Required Equipment, provided by Reachify hereunder is leased to Subscriber. Pricing on a Service Order reflects an equipment lease, not a purchase.

I. Equipment Purchase Plan. Any Equipment purchased under an Equipment Payment Plan shall be purchased in full upon any termination and due upon termination.

J. Devices. The term “Device” when used in this Agreement and any exhibit related thereto, may consist of a physical device (e.g., Polycom VVX 400 Business Media telephone) or may consist of a virtual instance of a telephone or similar communications tool. Each physical device is a Device and may also be referred to as Equipment. Each instance of a virtual telephone or virtual communications tool is also a Device.

## 2. ACTIVATION, FEES AND BILLING

A. Initial Service Activation and Provisioning. Prior to the activation of the Services and provisioning of any applicable Equipment, as set forth in Subscriber's initial Service Order, Subscriber shall pay Reachify the applicable advance service fees, if any, set forth on the Service Order, including any applicable implementation and activation fees and pre-paid long distance or other usage-based charges that may apply (collectively, the “**Implementation Fees**”) and if applicable, advance payment for any Equipment (the “**Equipment Fees**”). Upon receipt of payment for the Activation Fees, and if applicable, payment for the Equipment Fees, Reachify will activate Subscriber’s account and commence the provisioning process for the Services and any applicable Equipment. The date the Services are provisioned or “go live” is referred to as the “**Commencement Date**”). Subscriber shall provide a list to Reachify identifying each office and a contact person (the “**Recipient List**”).

B. Subsequent Service Orders. For subsequent Service Orders, Reachify shall commence the provisioning process for the additional Services as required by such Service Orders upon receipt of the Subscriber signed Service Order. Reachify will invoice Subscriber for the services ordered. Payment terms are in accordance with Section 3(F) below.



C. Order Renewals. Unless otherwise specified in a Service Order, each Service Order shall automatically renew for additional periods equal to the length of the Contract Period, which term shall be monthly if not otherwise stated in a Service Order, unless Subscriber provides advance written notice (via e-mail at [info@reachify.io](mailto:info@reachify.io)) of non-renewal at least thirty (30) days prior to the end of the then-current term. Reachify reserves the right to modify its Service Fees and charges for other services by providing at least thirty (30) days prior written notice.

D. Fees, Billing Date and Billing Cycle. Subscriber shall pay Reachify the recurring fees for the Services as set forth in the Service Order, Service and Equipment Fees. Unless otherwise indicated in a Service Order or in this Agreement, Subscriber shall pay all Service Fees in advance and all usage in arrears. Subscriber's Initial Service billing shall be the earlier of Commencement Date or 30 days from the Service Order signing date. In the case that the Initial Service billing is due to Commencement Date, the Subscriber's Initial Service billing cycle shall be pro-rated to the end of the month following the Commencement Date, and thereafter shall be the first day of each subsequent month (the "**Billing Date**"). Each subsequent invoice will include all recurring monthly Service Fees for the next billing month, all long distance and other usage-based charges incurred during the prior billing month as noted on the Service Order, and, if applicable, any professional services or other one-time charges for Services delivered during the billing period.

E. Reasonable Use Policy. Reachify is engineered to process and deliver traffic profiles and utilization levels of typical business client calling patterns. "Unlimited" refers to that type and level of usage, which is typically less than 10,000 minutes and 5,000 SMS messages per office per month. Below this threshold is considered reasonable use. For "unlimited" services, in the event the average number of minutes and/or messages per office per month exceeds this threshold, Reachify may apply a reasonable surcharge.

F. Prepaid Long Distance. Reachify may require that, prior to activation, Subscriber deposit a one-time certain amount of prepaid long distance and other usage-based charges ("**Prepaid Long Distance**") as stated in the Service Order. The amount will be held as a deposit. Subscriber will be invoiced for long distance and other usage-based charges monthly in arrears as it is incurred.

G. Payment Terms and Method. Payment for Services (including any Service Fees and Activation Fees) is due at the beginning of each month, (1) charged to Subscriber's credit card on file, or (2) paid by electronic funds transfer from Subscriber's bank account, in either method no later than the 10<sup>th</sup> day of each month (hereinafter "**Autopay**"). Subscriber is responsible for all sales, value-added or similar taxes due under this Agreement. Subscriber shall provide its payment information to set up Autopay according to this Section.

H. Late Fee. Past due balances over 30 days, including past due balances resulting from denied Autopay or charge-backs, are subject to an interest charge of 1.5% per month or the maximum amount permitted by applicable law, whichever is less.

I. No Set Off. Subscriber bears sole responsibility for payment of Services and applicable Equipment under this Agreement. Payments due to Reachify are not dependent on any payment arrangement between Subscriber and a Recipient or any user. Reachify is not a party to any such arrangements that may be made by Subscriber to Recipients, users or any other third-party. Subscriber has no right to set off, delay or reduction in payment based on any such arrangement.

J. Refund Policy. Except as otherwise set forth on a Service Order, all prepaid fees under this Agreement are non-refundable, except if Subscriber's account is closed in good standing, under the terms



of this Agreement, with all undisputed balances paid in full, any unused balance of Prepaid Long Distance shall be refunded to Subscriber.

K. Disputed Charges and Resolution of Disputes. Subscriber agrees to pay all charges under this Agreement without counter-claim, set-off or deduction. In the event that Subscriber legitimately and reasonably disputes an invoiced amount, Subscriber will provide Reachify with written notice (via e-mail at info@reachify.io) of the amount in dispute and the basis for the dispute. Reachify agrees that it will work with Subscriber to reasonably and expeditiously resolve the dispute and promptly provide a credit to Subscriber's account when appropriate.

L. Waiver. Failure of Reachify to invoice Subscriber in a timely manner for any amounts due under this Agreement shall not be deemed a waiver by Reachify of its rights to payment for such amounts, and all outstanding amounts shall remain due and payable by Subscriber, provided that, Reachify must bill Subscriber for all outstanding amounts owed within 60 days of any termination of this Agreement.

### 3. TERM AND TERMINATION

A. Term of this Agreement. The term of this Agreement shall be for the Contract Period and shall renew thereafter (the "Renewal Date") for additional Contract Periods until terminated as provided for in this Agreement (the "Term").

B. Suspension or Termination by Reachify. Reachify may suspend or cancel Subscriber's access to a Service or terminate this Agreement as follows:

i. For Cessation of Services. Reachify may suspend access to any portion or feature of the Services by providing Subscriber with written notice at least thirty (30) days prior to the date it intends to cease providing such Service.

ii. For Delinquent Accounts. Reachify may suspend or disable Subscriber's access to the Services for any accounts for which undisputed payment is delinquent, provided however the Reachify shall have provided Subscriber with reasonable adequate notice and sufficient time to cure the delinquency.

iii. For Actual or Potential Harm to Reachify or a Third Party. Reachify may suspend or terminate Subscriber's account if Reachify has a good faith belief the Subscriber (A) is using the Services in a manner that may cause immediate and ongoing harm to Reachify or to a third party, including but not limited to, actions that violate federal, state or local laws, rules or regulations, such as compliance with "Do Not Call Lists"; (B) is compromising the security of the Service and the privacy of Reachify's other Subscribers; or (C) is engaging in other activity that could reasonably be construed as causing or potentially causing harm to Reachify or a third party. Reachify agrees that in the event it becomes aware of such actions by the Subscriber it will immediately notify the Subscriber of the unauthorized activity and either allow the Subscriber reasonable time to cease the activity or, if warranted by the circumstances, immediately suspend Subscriber's access to the Service.

C. Termination by Either Party. Either party may terminate this Agreement upon a Ninety (90) day written notice to the other party prior to any Renewal Date. Either party may terminate this Agreement (i) upon a Thirty (30) day written notice in the event of a material breach of any provision of



this Agreement by the other party, provided that, during the Thirty (30) day period the breaching party fails to cure such breach (except the 30-day notice period shall not apply to Subscribers with delinquent accounts or Subscribers engaged in unlawful activities); or (ii) at any time when Reachify is not obligated to provide and Subscriber is not entitled to receive any Services. Failure to pay for Services, abuse of the Services, use of the Services in an unauthorized manner, and causing or potentially causing harm are material breaches of this Agreement.

D. Resumption of Service. Subscriber's resumption of access to the Services following a suspension by Reachify for the reasons cited above will not extend the then-current term, nor result in an extension of the period covered by the prepaid Service Fees. Resumption of Subscriber's account following suspension or termination by Reachify is subject to the sole discretion of Reachify. If Reachify allows Subscriber to resume using the Services, Subscriber may be subject to a reconnection fee and applicable retraining fees, and must pay in full all outstanding account balances.

E. Effect of Termination. Upon termination of this Agreement, (i) all rights granted hereunder shall immediately terminate and Subscriber shall have no right to continue to access or use the Service, (ii) each party shall return or, at the option of the other party, destroy or return all Confidential Information (as defined below) of the other party, as requested by the other party, in its possession or control and (iii) Subscriber shall promptly pay all undisputed outstanding fees and charges associated with Subscriber's account up through the date of the current Contract Period including all Service Fees through the date of termination, (including charges for services delivered by Reachify that have not yet been invoiced such as local and long-distance and other usage-based charges), provided that Reachify reserves the right to apply any security deposit or pre-paid charges or other amounts delivered by Subscriber to Reachify to satisfy any amounts owed to Reachify under the terms of this Agreement. All outstanding payment obligations and any other obligations in this Agreement that are ongoing obligations of the parties and intended to survive shall survive any termination or expiration of this Agreement.

F. Early Termination Fee. If Subscriber terminates this Agreement before the end of any Contract Period for any reason, or if Reachify terminates this Agreement for a reason set forth in 3.B Suspension or Termination by Reachify, Subscriber will be subject to an early termination fee (the "Early Termination Fee") that shall equal 100% of the remaining monthly recurring charges of the then current Contract Period for the terminated services, which shall be due and payable immediately upon such termination.

#### 4. SUBSCRIBER ACCOUNTS AND SECURITY

A. Access. Subscriber is responsible for all authorized and unauthorized access, activities and charges associated with the Subscriber's account and/or password(s) with Reachify, except for unauthorized charges that can reasonably be determined to be the result of Reachify's mistake, omission or negligence in providing sufficient safeguards against unauthorized third-party access to Subscriber's account. Subscriber is responsible for the confidentiality of its password(s), for all charges incurred from the use of the Service with its password(s) and for any and all charges made through the Subscriber's account by Subscriber's employees, agents, principals, consultants, or other entities or individuals in the employ of or engaged by Subscriber regardless of the reason for such charges. If Subscriber, or someone to whom Subscriber has given access to the Service, violates this Agreement, Subscriber's account may be terminated as set forth above, and Subscriber will be liable for all fees, charges, and damages of any kind related thereto.



B. **Confidential Information.** By virtue of this Agreement, either party may have access to confidential information of the other party. Confidential information shall be all information regarding the business or financial activities of either party made available to Reachify or Subscriber under or as a result of this Agreement (hereinafter “**Confidential Information**”). In addition, Subscriber’s data, text, recorded messages and/or voice conversations transmitted via the Services, financial information and any personal information including the Subscriber Information, shall be the Confidential Information of Subscriber. The Confidential Information shall at times be treated by both parties with strict confidence. A party’s obligations pertaining to Confidential Information shall not apply to information that the receiving party can document: (a) is or becomes part of the public domain through no act or omission of the receiving party, (b) was in the receiving party’s lawful possession prior to the disclosure, (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure, or (d) is independently developed by the receiving party without access to or use of the disclosing party’s Confidential Information. The parties agree to hold each other’s Confidential information in confidence during the term of this Agreement and perpetually thereafter. The receiving party agrees not to make the disclosing party’s Confidential Information available in any form to any third party unless, and only to the minimum extent, required by law or to satisfy governmental regulatory requirements (in which case the party seeking to make such disclosure shall notify the other party of its intent to make such disclosure, and, to the maximum extent available, such party shall seek protective treatment for such disclosed Confidential Information), or to use the disclosing party’s Confidential Information for any purpose beyond the scope of this Agreement. Each party agrees to take all reasonable steps to ensure that the other party’s Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement. Neither party may disclose to the public or to any third party the terms and conditions of this Agreement other than with the express prior written consent of the other party; except that such information may be disclosed to a party’s representatives, accountants, auditors, investors, or legal advisors provided that the foregoing are bound to maintain the confidentiality of such information.

## 5. DATA USE

A. **Data Use.** During the normal operation of the Service, Reachify will collect and store on its systems certain information and data provided or collected by the Subscriber, including but not limited to data, text, recorded messages and/or voice conversations transmitted via the Services (collectively, “**Content**”). During the Term, Subscriber authorizes Reachify to store Content on Reachify’s systems and to use and copy Content solely for the purpose of providing the Service to Subscriber in accordance with this Agreement. Additionally, Subscriber agrees that Reachify may use non-individually identifiable Content for internal business purposes, to test, analyze and improve the Service both during and after the Term. If Subscriber is part of a franchise or common brand, Subscriber agrees that Reachify may share within the franchise or common brand general metrics derived from Content. Reachify will not resell or otherwise share any identifiable Content with a third party without Subscriber’s express written authorization.

B. **Data Retention.** To maximize system performance, Reachify retains the right to retain or periodically purge Content from Reachify servers. Data retention practices are set forth at <https://support.reachify.io>.

## 6. DISCLAIMER OF LIABILITY FOR EMERGENCY SERVICE (911 CALLING)

In the event Reachify provides or provide access to emergency services, neither Reachify, its officers, directors, employees, shareholders, affiliates nor agents shall be liable for any claim, damage, or loss arising from, or relating to, Subscriber’s use of Reachify’s Services or any other service provided hereunder to contact emergency services personnel. Subscriber specifically waives, to the maximum extent permitted by



applicable law, any and all such claims or causes of action, arising from or relating to Reachify's Services or any other service provided hereunder to contact emergency services personnel. Subscriber agrees to defend, indemnify, and hold harmless Reachify, its officers, directors, employees, shareholders, affiliates and agents from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, court costs and attorneys' fees) arising out of Subscriber's contact or attempt to contact emergency services.

## **7. COMPLIANCE WITH LAWS; "DO NOT CALL" REGULATIONS**

A. Subscriber agrees to comply with all federal, state and/or local law related to or connected with providing, selling, licensing and delivering information services and telecommunications services and products. Subscriber assumes all liability and responsibility for its use of the Services in compliance with any federal, state or local laws, rules or regulations pertaining to the use of telephones, email, fax, automated telephonic equipment (e.g. "Predictive Dialer") and other telephony and telecommunications products and services. Subscriber agrees to defend, indemnify, and hold harmless Reachify for any claims, liabilities or expenses (including reasonable attorney's fees) incurred by Reachify based upon Subscriber's illegal or fraudulent use of Service.

B. "Do Not Call" Compliance. If Subscriber is advised by any party that they do not wish to receive communications from Subscriber via the Service, Subscriber shall promptly add those parties to its internal company-specific Do Not Call List in their Services account, and thereafter refrain from calling such parties until such time as Subscriber's policies require. Subscriber is solely responsible for obtaining the consent of or a release from those persons or entities, to whom or to which Subscriber intends to send communications using the Service. Subscriber agrees to periodically review the list of recipients to be contacted, to contact only those persons who the Subscriber is legally permitted to contact from Subscriber's customer base and Content, and only in the manner permitted, under federal, state and local law.

SUBSCRIBER IS HEREBY ADVISED TO SEEK THE ADVICE OF AN ATTORNEY REGARDING USE OF AUTOMATED TELEPHONIC EQUIPMENT AND MARKETING LAWS, PRIOR TO USE OF THE SERVICE. Additional reference material is available at: <http://www.fcc.gov/cgb/donotcall/> and <http://ftc.gov/bcp/menu-tmark.htm#bized> (see "Telemarketing Sales Rule").

## **8. WARRANTY; DISCLAIMER OF WARRANTY**

A. Representations and Warranties. Each party represents and warrants to the other party that (i) it has the power and authority to enter into and perform all obligations under this Agreement and its various addenda and (ii) it will comply with all applicable laws in its performance under this Agreement.

B. Warranty Disclaimer. REACHIFY IS PROVIDING THE SERVICES AS A HOSTED SERVICE AND THE SERVICES ARE DELIVERED ON AN "AS IS" AND "AS AVAILABLE" BASIS. REACHIFY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR THAT ALL COMMUNICATIONS WILL BE DELIVERED, NOR DOES REACHIFY MAKE ANY WARRANTY AS TO ANY RESULTS THAT MAY BE OBTAINED BY USE OF THE SERVICES, REACHIFY MAKES NO WARRANTIES EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, IN RELATION TO THE SERVICES. Subscriber understands that the Services may be inaccessible or inoperable due to scheduled periodic maintenance and upgrades; or for reasons beyond Reachify's reasonable control including but not limited to (i) Subscriber or Reachify equipment



malfunctions; or (ii) service interruptions caused by independent telecommunications providers that provide voice and data connectivity to Reachify's or Subscriber's data centers.

## 9. LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY OTHER PERSON FOR ANY IN DIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY LOSS, DAMAGE OR LIABILITY RELATING TO: (A) LOSS OR CORRUPTION OF DATA; (B) INABILITY TO ACCESS THE SERVICE; (C) PERFORMANCE RELATED DELAYS; (D) COMPUTER VIRUSES; (E) LOSS OF BUSINESS DUE TO INOPERABILITY OR PERFORMANCE OF THE SERVICES; (F) NON-DELIVERY OR MIS-DELIVERY OF COMMUNICATIONS; (G) THE NEGLIGENT ACTS OF OTHER REACHIFY SUBSCRIBERS; (H) ANY DEFECTS, FAILURES, ERRORS, OMISSIONS OR MISSTATEMENTS IN ANY AND ALL INFORMATION DELIVERED BY OR PROVIDED FOR DELIVERY BY THE SERVICES; AND (I) LOSS OR LIABILITY RESULTING FROM ACTS BEYOND A PARTY'S CONTROL. EXCEPT FOR A PARTY'S BREACH OF SECTION 4 (CONFIDENTIALITY) OR A PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH HEREIN, IN NO EVENT SHALL EITHER PARTY'S LIABILITY UNDER THIS AGREEMENT EXCEED ALL FEES PAID BY SUBSCRIBER TO REACHIFY IN THE ONE (1) YEAR PERIOD PRIOR TO THE DATE OF THE EVENT THAT GAVE RISE TO THE LIABILITY.

## 10. INDEMNIFICATION

A. By Subscriber. Subscriber agrees to indemnify, hold harmless and defend Reachify, its shareholders, directors, officers, employees and agents from and against any action, claim, or damage, including reasonable costs and attorney's fees, asserted by any person, arising out of or relating to: (i) personal injury or property damage to the extent such claims or liabilities arise out of the gross negligence or willful acts or omissions of Subscriber and/or its employees or agents in connection with their duties and responsibilities under this Agreement; (ii) Subscriber's breach of this Agreement; or (iii) Subscriber's unauthorized use of the Service, including any information, communication, data or work that Subscriber provides in connection with Subscriber's use of the Service.

B. By Reachify. Reachify agrees to indemnify, hold harmless and defend Subscriber, its shareholders, directors, officers, employees and agents from and against any action, claim, or damage, including reasonable costs and attorney's fees, asserted by any person, arising out of or relating to: (i) personal injury or property damage to the extent such claims or liabilities arise out of the gross negligence or willful acts or omissions of Reachify and/or its employees or agents in connection with their duties and responsibilities under this Agreement, (ii) Reachify's breach of this Agreement, or (iii) any alleged or actual infringement by the Services of any patent, trademark, or copyright, or alleged or actual misappropriation of any trade secret, provided Subscriber is using the Service as authorized under this Agreement.

C. Procedure. An indemnified party shall (i) permit the indemnifying party to defend or settle any such claim, provided, however that (a) the indemnifying party shall not enter into any settlement agreement that would result in any admission by the indemnified party or payment by the indemnified party without the indemnified party's prior written consent, and (b) the indemnified party may at its election participate in the defense of such claim, suit or the like through separate counsel at its own expense, and (ii) provide the indemnifying party all reasonable assistance (at the expense of the indemnifying party) in connection with the defense or settlement of any such claim, suit or the like.



## 11. OWNERSHIP OF MATERIALS AND RIGHTS

The Services are proprietary to Reachify and are protected by intellectual property laws and international intellectual property treaties. Content transmitted via the Services are proprietary to Subscriber. Reachify has no obligation to return, migrate or delete Content subsequent to the termination of the Services.

For purposes of this Agreement, “**Proprietary Materials**” means all patents, copyrights, design rights, trademarks, service marks, trade secrets and other worldwide intellectual property or proprietary rights owned by a party during the Term, and the software, schematics, diagrams, information, and other tangible embodiments, if any, relating thereto. Except for the right to access and use the Services granted by Reachify to Subscriber in this Agreement, nothing in this Agreement shall convey, transfer or assign any right, title or interest in either party's Proprietary Materials to the other party. As such, each party retains exclusive ownership of its Proprietary Materials in existence as of the Effective Date or developed by it during the Term. All rights not granted by Reachify herein are expressly reserved.

## 12. MISCELLANEOUS

A. Applicable Law. This Agreement shall be governed by the laws of the State of California without reference to conflicts of laws. Venue for any and all actions arising out of this Agreement shall be the County of San Diego, California.

B. Amendments. Other than any specifically negotiated terms agreed upon in writing in a Service Order, Reachify may amend the terms of this Agreement and any related terms and conditions by providing written notice to Subscriber prior to the effectiveness of such change.

C. Force Majeure. Neither party shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term of this Agreement when such failure or delay is caused by or results from causes beyond the reasonable control of the affected party, including but not limited to fire, floods, embargoes, war, acts of war, insurrections, riots, civil commotion, strikes, lockouts or other labor disturbances, acts of God or acts, omissions or delays in acting by any governmental authority; provided, however, that the party so affected shall promptly notify the other party of the force majeure event and use reasonable commercial efforts to avoid or remove such causes of non-performance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed.

D. Waiver and Severability. No failure or delay in exercising or enforcing any right or remedy hereunder by either party shall constitute a waiver of any other right or remedy, or failure exercise thereof. If any provision of the Agreement is determined to be invalid under any applicable statute or rule of law, it is only to that extent to be deemed omitted, and the balance of the Agreement shall remain enforceable.

E. Assignment. Neither party may assign this Agreement or any of its rights and obligations hereunder without the other party's prior written consent except that either party may assign this Agreement to a successor in interest without requiring such consent in the event of a reorganization, merger, consolidation or sale of all or substantially all of its assets or stock (“Change of Control”) by providing written notice of such Change of Control to the other party. Any attempted assignment not in connection with a Change of Control without the non-assigning party's prior written consent shall be void.

F. Attorneys' Fees. In the event of a dispute arising out of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees.



G. Notices. All notices, authorizations, and requests in connection with this Agreement shall be deemed given (i) three (3) days after they are deposited with the United States Postal Service, first-class postage prepaid; or (ii) one (1) business day after they are sent by air express courier, or (iii) upon receipt if sent by facsimile or electronic mail (with receipt-confirmation of successful delivery). All notices shall be delivered to Reachify via mail, facsimile, or email (currently info@reachify.io) at its then-current corporate headquarters as listed on the Reachify website, and to Subscriber at its most current street, facsimile and email address(es) as provided by Subscriber to Reachify in connection with Subscriber's registration process (or as thereafter updated or revised in a writing delivered by Subscriber to Reachify).

H. Entire Agreement. Subscriber agrees that this Agreement, including any exhibits, comprises the entire understanding between Reachify and Subscriber, and supersedes any prior agreements, understandings or correspondence between Subscriber and Reachify and/or any postings or other notices from Reachify with respect to the subject matter of this Agreement.

I. Counterparts. This Agreement may be executed in counterparts, via facsimile or electronically, each of which shall be deemed an original and taken together will constitute one single agreement.

J. Publicity. Neither party shall make, or cause to be made, any press release or public announcement in respect of this Agreement or the transactions contemplated by this Agreement or otherwise communicate with or through any news or other media without the prior written consent of the other party unless such press release or public announcement is required by law or applicable stock exchange regulation, in which case the parties to this Agreement shall, to the extent practicable, consult with each other as to the timing and contents of any such press release, public announcement or communication.