

# Terms and Conditions

## **VivaConnect Pvt. Ltd.**

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## Terms and Conditions

This End User License Agreement ("EULA") is a legal agreement between you ("You" and "Your" includes a person and/or an individual entity and VivaConnect. (VivaConnect) with respect to VivaConnect website, the web pages, Desktop Application or API Tools and/or COM Object Tool and/or SMPPProtocol, object code component parts, all other component parts, and related documentation and information and any "online" or electronic documentation, as applicable or any part thereof (hereinafter referred to as "Software"). VivaConnect Products and/or Services are designed to allow users to send SMS to his/her contacts using VivaConnect service. By accepting the Software or by browsing, accessing, downloading, storing, installing, copying or otherwise using the Software and /or Documentation or any part thereof (collectively VivaConnect Products and/or Services) shall invariably be bound by these Terms and Conditions.

IMPORTANT: In accordance to the Information Technology Act, 2000 (Government of India), Telecom Regulatory Authority of India (TRAI) Act 1997 & 2000 and the common law of contract, these Terms and Conditions are valid, binding and enforceable for all persons that access the VivaConnect Products and/or Services. Hence, if you do not agree to be bound over by these Terms

And Conditions, then you may not use the VivaConnect Products and/or Services. The reasonable use of the VivaConnect Products and/or Services shall automatically bind the Users to this agreement.

You agree and understand that certain portions of VivaConnect Products and/or Services may be governed by other terms, guidelines, licenses and copyright information, which must be observed and followed. By clicking on the acceptance button which follows this EULA and/or by browsing, accessing, downloading, storing, installing and/or copying VivaConnect Products and/or Services, You indicate your acceptance of the EULA and the warranty disclaimer and limitation of liability set out in the EULA. If you are accepting the EULA on behalf of a corporate license, you represent that you are authorized to do so. If you are not so authorized, nor deemed in law to have such authority, you assume sole personal liability for the obligations set out in this EULA. You should therefore read the license carefully before clicking on the 'I accept the terms in the License Agreement' checkbox. If you do not accept these terms and conditions, you should click on the 'Cancel' button and not browse, access, download, store, install and/or copy or use VivaConnect Products and/or Services in any manner whatsoever. You should also destroy any unlicensed copies of the Software, which might be in your possession.

VivaConnect may change the terms of this EULA at any time and such changes shall be effective immediately. You are responsible for reviewing the EULA before each use of the Software. The most recent version of EULA can be found at <http://www.vivaconnect.in>. Your continued use of VivaConnect Products and/or Services affirms your agreement to the revised EULA.

### DEFINITIONS AND INTERPRETATION

VivaConnect is a service / brand name for SMS, Mobility, Wireless, Push & Pull messaging services offered by VivaConnect, having the Service Tax Registration ST/MUM/DIV IV/OID/178/REG/2005 and situated at 242, Oshiwara Industrial Centre, Opp. Oshiwara Bus Depot, New Link Road, Goregaon West, Mumbai -400104. India, and which includes all its subsidiaries, owners, shareholders and business units.

The VivaConnect website means all of [www.vivaconnect.in](http://www.vivaconnect.in), [www.smsapi.org](http://www.smsapi.org), [www.vivainfomedia.com](http://www.vivainfomedia.com) including any page, part or element thereof, which is owned and operated by VivaConnect.

The User means any person or entity that enters the VivaConnect website and/or uses the VivaConnect Products/Services or Sends SMS via API Tools and/or COM Object Tool and/or SMPPProtocol, notwithstanding the fact that such person only visits the home page of the website and/or downloads the Products.

## 1. LICENSE

### 1.1 License Grant

Subject to the payment of all applicable license fees, and the terms and conditions of this EULA, You have been granted a personal, limited, non-sub-licensable, non-exclusive, non-commercial, non-transferable right to download install and use one copy of the specified version of the Software, solely for your individual use. Even though copies of VivaConnect Products may be provided on media of different formats or formats they do not constitute multiple licenses to the Software. If VivaConnect Products and/or Services are licensed as a suite or bundle with more than one specified VivaConnect Products and/or Services, this license applies to all such specified VivaConnect Products and/or Services, subject to any restrictions or usage terms specified on the applicable product packaging that applies to any of such VivaConnect Products and/or Services individually.

### 1.2 Installation and Use

VivaConnect Products and/or Services are licensed for use on desktop computer through a software application or web interface or API Tools and/or COM Object Tool and/or SMPP Protocol or any other equipment as may be specified by VivaConnect, from time to time ("Client Devices").

You hereby acknowledge that VivaConnect Products and/or Services may utilize the capacity of Client Devices you are utilizing, for the limited purpose of facilitating the communication between VivaConnect Products and/or Services users. VivaConnect will use its commercially reasonable efforts to protect the privacy and integrity of the Client Device; however, you acknowledge and agree that VivaConnect cannot give any warranties in this respect.

Before installing the VivaConnect Products and/or Services on Client Devices, You shall ascertain that using the VivaConnect Products and/or Services and each of its features and facilities is legal in your territory/country. If you browse, access, download, store, install, copy or otherwise use the VivaConnect Products and/or Services illegally, then you shall be solely responsible for any legal liability and it will be your sole responsibility to indemnify VivaConnect with respect to such illegal browse, access, download, storage, installation, copying or usage.

### 1.3 Restrictions on Use of the Software

Except as provided herein, use of software, hardware or services that bypass any VivaConnect Products and/or Services license restrictions and/or permit non-licensed users to browse, access, download, store, install, copy or utilize the VivaConnect Products and/or Services (e.g., "multiplexing," "pooling," or third party add on VivaConnect Products and/or Services or hardware) expressly does not reduce the number of licenses required (i.e., the required number of licenses would equal the number of named user inputs to the multiplexing or pooling VivaConnect Products and/or Services or hardware "front end").

If the number of users operating Client Devices that can potentially connect to the VivaConnect Products and/or Services exceeds or has the potential to exceed the number of licenses You have obtained, then You must have a reasonable self-enforcing automatic mechanism in place to ensure that Your use of the VivaConnect Products and/or Services does not exceed the permissible limits specified for the license You have obtained.

#### 1.4 Export Restrictions

You acknowledge and agree that the VivaConnect Products and/or Services may be subject to international rules that govern the export of software. You hereby agree to comply with all applicable international and national laws that apply to the VivaConnect Products and/or Services as well as end-user, end-use and destination restrictions issued by national governments.

## 2. OWNERSHIP

### a. Ownership Rights

The VivaConnect Products and/or Services are protected by copyright and other intellectual property laws, and international treaty provisions. All rights, titles and interest in and to all copyrights, patents, trade secret rights, trademarks and other intellectual property rights in and to the VivaConnect Products and/or Services (including, but not limited to, any images, graphics, photographs, animations, video, audio, music, text, template and "applets" incorporated into the Software), are owned by Viva Connect. You acknowledge that your browsing, accessing, downloading, storing, installing, copying, possession, or use of the VivaConnect Products and/or Services does not transfer to you any ownership, right, title, or registerable interest of any kind to the intellectual property in the Software, and that You will not acquire any rights to the VivaConnect Products and/or Services except as expressly set forth in this EULA. You agree that all backup, archival, or any other type of copies of the VivaConnect Products and/or Services will contain the same proprietary notices that appear on and in the VivaConnect Products and/or Services.

### b. Submissions

Should you decide to submit any materials to VivaConnect via electronic mail, through or to VivaConnect website(s), or otherwise, whether as feedback, data, questions, comments, ideas, concepts, techniques, suggestions or the like, You agree that such submissions are unrestricted and shall be deemed non-confidential upon submission. You grant to VivaConnect and its assigns a non-exclusive, royalty-free, worldwide, perpetual, irrevocable license, with the right to sublicense, to use, copy, transmit, distribute, create derivative works of, commercialize, display and perform such submissions.

## 3. PAYMENT

Upon downloading the VivaConnect Products and/or Services you shall be entitled for free trial for the period as may be notified by VivaConnect from time to time. You shall receive a communication at the end of the trial period after which you may choose to obtain the SMS Credits to use the VivaConnect Products and/or Services subject to the then applicable Terms of Use and EULA.

On the happening of any of the events mentioned in this clause, VivaConnect shall be entitled to approach You and receive payments of the license fees or other payments due from You to VivaConnect or any authorized VivaConnect distributor, reseller, installer or consultant with respect to the VivaConnect Products and/or Services, without routing the payments through any such any authorized VivaConnect distributor, reseller, installer or consultant.

The events are:

- (a) When any such any authorized VivaConnect distributor, reseller, installer or consultant refuses, neglects or fails to make any payment to VivaConnect as contemplated in the agreement between VivaConnect and such authorized VivaConnect distributor, reseller, installer or consultant for the distribution of the VivaConnect Products and/or Services (i.e. under the "VivaConnect Products and/or Services Distribution Agreement").

(b) When upon termination of the VivaConnect Products and/or Services Distribution Agreement, any such authorized VivaConnect distributor, reseller, installer or consultant refuses neglects or fails to make any payment to VivaConnect as contemplated in the VivaConnect Products and/or Services Distribution Agreement.

#### **4. TERM**

This EULA is effective unless and until the EULA is terminated earlier, in accordance with the terms set forth herein. Regardless of the location of the Software, You are responsible for strict compliance with any and all of the terms and conditions of this license.

This EULA will terminate automatically if you fail to comply with any of the limitations or other requirements described herein, and such termination shall be in addition to and not in lieu of any criminal, civil or other remedies available to VivaConnect. When this EULA terminates, you must immediately cease using the VivaConnect Products and/or Services and destroy all copies of VivaConnect products, services and the documentation. You may terminate this EULA at any point by destroying all copies of the VivaConnect Products and/or Services and the Documentation.

#### **5. USER PRIVACY**

VivaConnect respects the privacy of the Users and assures that it shall not monitor, edit, or disclose any personal information about the Users or about the User's VivaConnect account, which includes all of its contents, without the User's prior permission.

The Users also acknowledge that VivaConnect retains rights to record the IP (Internet Protocol) addresses of its Users whenever they Sign up for VivaConnect user account or while sending or transmitting SMS messages using VivaConnect Products and/or Services via its Web Interface or Desktop application or while using API Tools and/or COM Object Tool and/or SMPP Protocol. The IP addresses will be collected and stored along with the Date and Time of making any such request to

VivaConnect servers using VivaConnect Products and/or Services via its Web Interface or Desktop application or while using API Tools and/or COM Object Tool and/or SMPP Protocol. The IP address log may not be used or disclosed without the User's prior permission.

#### **However, the above will not apply if VivaConnect has to:**

- Conform to the statutory and/or legal requirements or comply with the legal process;
- Protect and defend the rights or property of VivaConnect;
- Enforce this Agreement or protect VivaConnect business or reputation, including without limitation, upon termination, cancellation or suspension of this Agreement by VivaConnect;
- Respond to the request for identification in connection with the claim of copyright or trademark infringement by the Users or to a claim by a third party that the Users is using the Products and/or Services in connection with an infringement, illegal or improper activity; or
- Act to protect the interests of the Users or any others in general

The User agrees that VivaConnect can access his/her account, including the message content, as stated above or respond to product specific queries or technical issues.

The User hereby permits VivaConnect to send him/her communication via email/SMS of any updates, upgrades, notices, or any other information that VivaConnect deems important for the Users to know, relating to the Products and/or Services.

## 6. UPDATES

VivaConnect may, at its sole discretion, make bug fixes, updates and/or service packs available. VivaConnect maintenance service, if applicable and offered, is available at an additional cost to you, as Licensee, under a separate written agreement.

## 7. CAPACITY AND RESTRICTIONS

7.1 You represent and warrant that:

- (i) You are at least eighteen (18) years of age;
- (ii) You possess the legal right and ability to enter into this EULA, and
- (iii) The performance of the obligations and use of the Services by you and your customers and users will not violate any applicable laws, regulations or cause a breach of any agreements with any third parties or unreasonably interfere with other VivaConnect customers' use of the Services. You assume all risks related to processing of transactions related to electronic commerce.

VivaConnect expressly prohibits any unauthorized commercial use of the Products and/or Services. The User gives irrevocable agreement to abide by all the applicable local, national and international laws and regulations and is solely responsible for all acts or omissions (that occur under his/her account or password), including responsibility for the content of any transmissions through VivaConnect.

The Users acknowledge that VivaConnect and its licensors retain ownership of all the proprietary applications, software, intellectual property "IP" (Intellectual Property) and any portions or copies thereof in relation to them, and all rights therein.

VivaConnect provides by way of example, and not as a limitation, the stipulation that the Users agree not to, directly or indirectly:

- Reverse engineer, de-compile, disassemble or otherwise make any attempt to establish the source code or the underlying ideas? Or algorithms of the Products and/or Services;
- Modify, translate, or create distinctive and derivative works based on the Products and/or Services;
- Copy (except for archival purposes), rent, lease, distribute, assign, or otherwise transfer rights to the Products and/or Services;
- Use the Products and/or Services for timesharing or to the benefit of a third party;
- Remove any proprietary notices or label(s) that identify VivaConnect Products and/or Services.
- Use the Services in any way connected to any chain letters, junk, spam or any unsolicited messages (commercial or otherwise);
- Use the Products and/or Services to transmit SMS linked to any political party, or any election campaign or voting or any politically related activities.
- Harvest or otherwise collect, information about other Users, including email addresses or any other personal information without obtaining their consent;
- Transmit any unlawful, harassing, libellous, or abusive, threatening, and harmful, or vulgar, obscene or otherwise any objectionable material of any kind or nature;
- Transmit any material that is an infringement of the intellectual property rights or other rights of third parties, which will include any trademark, copyright or right of publicity;
- Defames or slanders any person, or try to infringe upon any person's privacy rights;

- Transmit any material that may contain any viruses, Trojan horses, worms, time bombs, cancel bots, or any other harmful or deleterious programs;
- Interfere with or disrupt the networks connected to VivaConnect or violate the regulations, policies or procedures of such networks;
- Attempt to gain unauthorized access to the Products and/or Services or to other accounts, computer systems or networks connected to VivaConnect;
- Interfere with another User's peaceful use and enjoyment of the Products and/or Services; or Engage in any other activity that VivaConnect could believe may subject it to criminal liability or civil penalty or judgment.
- To send marketing or promotional or unsolicited SMS using VivaConnect Products and/or Services without filtering the database through the National Do Not Call Registry (NDNC) maintained by the Telecom Regulatory Authority of India (TRAI).
- To Send or Transmit SMS using VivaConnect Products and/or Services without valid sender ID's (GSM & CDMA), A valid GSM Sender ID will consist of 8 Characters, A valid CDMA Sender ID consists of a valid 12 Digit Mobile Number (for e.g. 919XXXXXXXXX). Sender ID specifications may be changed by TRAI from Time to Time which the user will have to abide. SMS transmitted using invalid Sender ID will be rejected and the SMS sending will be charged, the SMS credits will be deducted and the SMS will not be sent for using an invalid Sender ID.
- If you transfer possession of any copy of the VivaConnect Products and/or Services and/or Documentation to any other party,
- Your EULA is automatically terminated.
- All rights not expressly set forth hereunder are reserved by VivaConnect. VivaConnect reserves the right to periodically conduct audits upon advance written notice to verify compliance with the terms of this EULA.

7.3 User may be required to register and provide information to VivaConnect, such as name, postal address, phone numbers, e-mail address (the "Registration Information"). If you access, use or register for the Software, you agree to provide accurate and complete Registration Information and you agree to keep such information current. If you suspect an error in the Registration Information supplied to VivaConnect, you shall immediately make 'best efforts' to correct the error wherever possible or inform VivaConnect in writing. VivaConnect is not responsible for any loss or damage caused to you due to non-compliance with this clause.

## **8. WARRANTY DISCLAIMER**

### **8.1 Warranty Disclaimer**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VIVACONNECT PRODUCTS AND/OR SERVICES (AND ACCOMPANYING DOCUMENTATION) IS PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED.

WITHOUT LIMITING THE FOREGOING PROVISIONS, YOU ASSUME SOLE RESPONSIBILITY FOR SELECTING VIVACONNECT PRODUCTS AND/OR SERVICES TO ACHIEVE YOUR INTENDED RESULTS, AND SOLE RESPONSIBILITY FOR (I) ASCERTAINING THAT THE USE OF THE VIVACONNECT PRODUCTS AND/OR SERVICES AND EACH ITS FEATURES AND FACILITIES IS LEGAL IN THE TERRITORY OF USE AND (II) THE INSTALLATION OF, USE OF, AND RESULTS OBTAINED FROM THE VIVACONNECT PRODUCTS AND/OR SERVICES.

WITHOUT LIMITING THE FOREGOING PROVISIONS, VIVACONNECT MAKES NO WARRANTY THAT THE

VIVACONNECT PRODUCTS AND/OR SERVICES WILL BE ERROR-FREE, VIRUS FREE, OR FREE FROM INTERRUPTIONS OR OTHER FAILURES OR THAT THE VIVACONNECT PRODUCTS AND/OR SERVICES WILL SATISFY YOUR SPECIFIC REQUIREMENTS.

WITHOUT LIMITING THE FOREGOING PROVISIONS, VIVACONNECT WILL PUT IN ITS 'BEST EFFORTS' TO ACHIEVE THE BEST SUCCESS RATE IN DELIVERY OF THE SMS MESSAGES SO ROUTED THROUGH IT, HOWEVER DELIVERY OF SMS AND THROUGHPUT IS NOT GUARANTEED, VIVACONNECT MAKES NO WARRANTY THAT THE SMS TRANSMITTED USING VIVACONNECT PRODUCTS AND/OR SERVICES SHALL DELIVER IMMEDIATELY TO THE RECIPIENTS MOBILE HANDSET OR SUBSCRIBERS OF THE TELECOM PROVIDERS OR AS THE CASE MAY BE. MESSAGE TERMINATION OR DELIVERY TO THE RECIPIENTS MOBILE HANDSET OR SUBSCRIBERS OF THE TELECOM PROVIDERS OR AS THE CASE MAY BE IS NOT GUARANTEED ON HIGH TRAFFIC DAYS, FESTIVE OCCASIONS, PUBLIC HOLIDAYS, NATURAL CALAMITIES, TERRORIST ATTACKS, RIOTS OR DAYS LIKE NEW YEAR, VALENTINE'S DAY, DIWALI, DUSHERA, GANESH CHATURTHI, REPUBLIC DAY, ETC .

WITHOUT LIMITING THE FOREGOING PROVISIONS, VIVACONNECT MAKES NO WARRANTY THAT THE DELIVERY LOG REPORTS OF THE SMS SENT WILL BE AVAILABLE ON DEMAND 24 HOURS A DAY, DELIVERY REPORTS WILL BE UPDATED ON THE SERVER DEPENDING ON AVAILABILITY FROM THE TELECOM OPERATORS SERVER. DELIVERY LOG REPORTS WILL BE AVAILABLE FOR A PERIOD NO LONGER THAN 3 DAYS AFTER WHICH THEY WILL BE DELETED FROM THE SERVER.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THERE ARE NO WARRANTIES AND CONDITIONS, EITHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY (IF ANY) IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF LACK OF VIRUSES, OF LACK OF ACCURACY OR COMPLETENESS OF RESPONSES, OF RESULTS, AND LACK OF NEGLIGENCE OR LACK OF WORKMANLIKE EFFORT, ALL WITH REGARD TO THE VIVACONNECT PRODUCTS AND/OR SERVICES. THERE IS NO WARRANTY OR CONDITION OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION, OR NON-INFRINGEMENT WITH REGARD TO THE VIVACONNECT PRODUCTS AND/OR SERVICES. THE ENTIRE RISK OF THE QUALITY OF OR ARISING OUT OF USE OR PERFORMANCE OF THE SOFTWARE, IF ANY, REMAINS SOLELY WITH YOU (AND NOT THE LICENSOR NOR ANY RESELLER OF LICENSOR). THE FOREGOING PROVISIONS SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## 8.2 Indemnification

You agree to defend, indemnify and hold harmless VivaConnect and its directors, officers, employees, affiliates, sub licensees, and agents from and against all actions, claims, defence costs (including reasonable expert and attorneys' fees), judgments and other expenses arising out of or on account of any negligent act, omission, or wilful misconduct by You or on Your behalf in the performance of this EULA.

VivaConnect has no control on the contents of the SMS sent by you. VivaConnect shall forward the SMS in the same form as is received by you. You will be responsible for the contents of the SMS and you agree to defend, indemnify and hold harmless VivaConnect and its directors, officers, employees, affiliates, sub licensees, and agents from and against all actions, claims, defence costs (including reasonable expert and attorneys' fees), judgments and other expenses arising out of or on account of any.



### 8.3 Data

You acknowledge that data storage and any data conversions are subject to the likelihood of human and machine errors, omissions, delays, and losses, including inadvertent loss of data or damage to media, which may result in loss, or damage to you and/or your property. There would be no liability for any such errors, omissions, delays, losses or any failure in data conversion. You are responsible for adopting reasonable measures to limit the impact of such problems, including backing up data, adopting procedures to ensure the accuracy of input data, examining and confirming results prior to use, adopting procedures to identify and correct errors and omissions, replacing lost or damaged media, and reconstructing data. You are also responsible for complying with all local, state, and federal laws pertaining to the use and disclosure of any data.

### 8.4 Authorized Resellers

Any authorized VivaConnect distributor, installer or consultant is not affiliated with VivaConnect in any capacity other than as a distributor, installer or consultant of VivaConnect products and has no authority to bind VivaConnect or modify any license or warranty. VivaConnect makes no representations, warranty, endorsement or guarantee with respect to the skills or qualifications of any authorized VivaConnect reseller, installer or consultant and you are encouraged to independently investigate the skills and qualifications of any authorized VivaConnect reseller, installer or consultant with whom you associate.

## 9. LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, SHALL VIVACONNECT BE LIABLE TO YOU OR TO ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, FOR PERSONAL INJURY, LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING A DUTY OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE (WHETHER ACTIVE OR PASSIVE), AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OR INABILITY TO USE THE VIVACONNECT PRODUCTS AND/OR SERVICES, ILLEGALITY OF USE OF THE VIVACONNECT PRODUCTS AND/OR SERVICES, LOSS OF DATA OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS EULA, EVEN IN THE EVENT OF FAULT, TORT (INCLUDING NEGLIGENCE, AND GROSS NEGLIGENCE), STRICT LIABILITY, BREACH OF CONTRACT, OR BREACH OF WARRANTY BY VIVA IN FOMEDIA, AND EVEN IF VIVA IN FOMEDIA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL VIVACONNECT BE LIABLE FOR ANY DAMAGES IN EXCESS OF THE LIST PRICE VIVA IN FOMEDIA CHARGES FOR A LICENSE TO THE VIVACONNECT PRODUCTS AND/OR SERVICES. SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO YOU. THE FOREGOING PROVISIONS SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## 10. HIGH RISK ACTIVITIES

The VivaConnect Products and/or Services are not fault-tolerant and is not designed or intended for use in hazardous environments requiring fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, direct life-support machines, or any other application in which the failure of the VivaConnect Products and/or Services could lead directly to death, personal injury, or severe or property damage (collectively, "High Risk Activities"). There is no express or implied warranty of fitness for High Risk Activities.

## **11. THIRD PARTY PRODUCTS AND/OR SERVICES**

During the process of accepting, installing, or otherwise using the Software, you may install or otherwise use Products and/or Services from third party Products and/or Services vendors pursuant to licenses or other arrangements between such vendors and yourself ("Third Party Software"). Please note that the Third Party Products and/or Services may be subject to different licenses or other arrangements, which you should read carefully. By installing and using this Third Party Products and/or Services you accept these Third Party Products and/or Services licenses or other arrangements and acknowledge that you have read them and understand them. Under this EULA no

Third Party Products and/or Services are sold, resold or licensed, and any responsibility for or liability related to the Third Party Products and/or Services are disclaimed to the maximum extent permitted by applicable law. Any questions, complaints or claims related to the Third Party Products and/or Services should be directed to the appropriate vendor.

## **12. CONFIDENTIALITY**

You agree that the Software, including, but not limited to, the object code components, and any Documentation provided to you is "Confidential Information" You shall retain all Confidential Information in strict confidence, at least with the same amount of diligence that You exercise in preserving the secrecy of Your most-valuable information, but in no event less than reasonable diligence.

You shall:

- (a) Only disclose Confidential Information to your employees and agents to the extent required to use the VivaConnect Products and/or Services under the terms of this EULA, and;
- (b) Bind your employees and agents in writing to maintain the confidentiality of such Confidential Information, and not use or disclose such information except as permitted under this EULA.

You are responsible for maintaining the confidentiality of the password and account, and are fully responsible for all activities that occur under your password or account.

You agree to:

- (a) Immediately notify VivaConnect in writing of any unauthorized use of your password or account or any other breach of security, and
- (b) Ensure that you exit / logout from your account at the end of each session. VivaConnect cannot and will not be liable for any loss or damage arising from your failure to comply with the above section.

## **13. ILLEGAL, UNAUTHORIZED, OR FRAUDULENT CONTENT OR ACTIVITIES**

VivaConnect Products and/or Services may be used only for lawful purposes and in a lawful manner and in compliance with the EULA. You agree to comply with all applicable laws and regulations.

Any of the following, without limitation, would be a violation of the EULA and would result in termination of your license without notice, in which case you must destroy all copies of the VivaConnect Products and/or Services and all of its component parts.,

Accordingly, you expressly represent, warrant and covenant that you shall not use the VivaConnect Products and/or Services in a way which:

- (l) Restricts or prohibits you by the law of the land to use the VivaConnect Products and/or services in your territory/country

- (ii) Restricts or inhibits any other user from using the Software;
- (iii) is unlawful, threatening, abusive, libellous, defamatory, obscene, vulgar, offensive, profane, or indecent;
- (iv) Constitutes or encourages conduct that would constitute a criminal offense, gives rise to civil liability or otherwise violates law;
- (v) Violates, plagiarizes or infringes the rights of third parties including, without limitation, copyright, trademark, patent, rights of privacy or publicity or any other proprietary right;
- (vi) spreads a virus or other harmful component;
- (vii) Constitutes or contains false or misleading indications of origin or statements of fact.

In the event of complaints raised by any operator or service provider of VivaConnect, VIVCONNECT will terminate your account and the account balance of SMS credits forfeited until valid proof of no wrongdoing is provided and the same is approved by any operator or service provider of VivaConnect.

You understand that the technical processing and transmission of the Service, including your communication content, may involve:

- (a) Transmissions over various networks which may or may not be secure; and
- (b) Changes to conform and adapt to technical requirements of connecting networks or devices.

You understand that the VivaConnect Products and/or Services embodied within the Service may include security components that permit digital materials to be protected, and use of these materials is subject to usage rules set by VivaConnect and/or content providers who provide content to the Service. You may not attempt to override or circumvent any of the usage rules embedded into the Service. Any unauthorized reproduction, publication, further distribution or public exhibition of the materials provided on the Service, in whole or in part, is strictly prohibited.

#### **14. APPLICABLE LAW; JURISDICTION AND VENUE**

This EULA and all matters from it are governed by and construed in accordance with the laws of India whose courts shall have exclusive jurisdiction over all disputes arising in connection with this EULA. In case the breach is not rectified mutually then the matter will be referred to a sole Arbitrator who will be appointed by both the parties in consultation with each other and his Award would be final & binding on both the parties. The venue of the Arbitration shall be Mumbai and language would be English. All this will be Governed by with the provisions of Arbitration and Conciliation Act, 1996, or any statutory enactment thereof.

#### **15. ENTIRE AGREEMENT**

This EULA expressly supersedes and completely replaces any and all prior end user license agreements. VivaConnect shall not be bound by or liable to you for any pre-existing or contemporaneous written or oral representations or warranties, made by anyone, with respect to the VivaConnect Products and/or Services, including any authorized distributor or reseller or their respective agents, employees, or representatives, nor shall You be deemed a third party beneficiary of any obligations of VivaConnect any such distributor or reseller.

#### **16. SEVERABILITY**

If any provision of this EULA is held to be unenforceable, the enforceability of the remaining provisions shall in no way be affected or impaired thereby.

#### **17. NO WAIVER**

Any failure to enforce the strict performance of any provision of this EULA will not constitute a waiver of the right to subsequently enforce such provisions or any other provisions of this EULA. No waiver of any provision of this EULA shall be effective unless in writing.

#### **18. SURVIVABILITY**

All provisions of this EULA relating to ownership of intellectual property and proprietary rights, warranty disclaimers, limitation of liability, and indemnification shall survive the termination of your use or access to the Software, for whatever reason.

#### **19. INJUNCTIVE RELIEF**

You acknowledge that your violation of the provisions relating to intellectual property and proprietary rights may cause damage, which is unquantifiable, but nonetheless real and irreparable. Accordingly, in the event you have violated or will violate any such provision, an injunctive relief from a court of competent jurisdiction restraining such violation can be obtained. This right to injunctive relief shall be cumulative and shall not restrict or limit any ability to resort to any other remedy available under law or equity.

#### **20. REMEDIES**

Any specific remedy set forth under this EULA for any breach by you of this EULA or otherwise shall be cumulative and shall not restrict or limit the ability to resort to any other remedy available under law or equity.

#### **21. CONTACT**

If you have any questions concerning these terms and conditions, or if you would like to contact for any other reason, please email us at [info@vivaconnect.co](mailto:info@vivaconnect.co)

#### **22. ATTORNEYS' FEES**

If any party employs attorneys to enforce any rights arising out of or relating to this EULA, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs, and other expenses.

Any rights not expressly granted herein are reserved.