

REFERRAL REP AGREEMENT

SCHEDULE 1

AGREEMENT DETAILS																				
Party Details	Referral Rep	Red Oxygen																		
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; padding: 5px;">Name</td> <td style="padding: 5px;">.</td> <td style="padding: 5px;">Red Oxygen Pty Limited</td> </tr> <tr> <td style="padding: 5px;">Address</td> <td style="padding: 5px;"></td> <td style="padding: 5px;">Level 9, Suite 39 445 Upper Edward Street Brisbane, QLD 4001 Australia</td> </tr> <tr> <td style="padding: 5px;">Phone</td> <td style="padding: 5px;"></td> <td style="padding: 5px;">+61-7-3100-8836 Australia +1-866-990-8398 USA</td> </tr> <tr> <td style="padding: 5px;">Fax</td> <td style="padding: 5px;"></td> <td style="padding: 5px;">+61 7 3100 8838</td> </tr> <tr> <td style="padding: 5px;">Email</td> <td style="padding: 5px;"></td> <td style="padding: 5px;">kassandra.macdade@redoxygen.com</td> </tr> <tr> <td style="padding: 5px;">Contact Name</td> <td style="padding: 5px;"></td> <td style="padding: 5px;">Kassandra Macdade</td> </tr> </table>	Name	.	Red Oxygen Pty Limited	Address		Level 9, Suite 39 445 Upper Edward Street Brisbane, QLD 4001 Australia	Phone		+61-7-3100-8836 Australia +1-866-990-8398 USA	Fax		+61 7 3100 8838	Email		kassandra.macdade@redoxygen.com	Contact Name		Kassandra Macdade	
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Fax		+61 7 3100 8838																		
Email		kassandra.macdade@redoxygen.com																		
Contact Name		Kassandra Macdade																		
Effective Date																				
Territory	Worldwide																			
Establishment Fee	\$0																			
Red Oxygen Products	OfficeSMS, WinSMS, WebSMS, RedAPI, NotesSMS, SametimeSMS, TextMe, BulkSMS, Base Camp, OMS (Outlook Mobile Service), and Web Administration System.																			
Commission Percentage	10%																			
Sales Commission	<p>In respect of a Referred Account, Referral Rep will receive from Red Oxygen the above listed Commission Percentage of proceeds excluding taxes and receivable costs (generally credit card fees and charges) during the Term of this Agreement, for the life of the Contract between Red Oxygen and such Referred Account subject to terms and conditions as per below. With changed/adjusted/special contracts the commission may be lower depending on a case by case basis.</p>																			
Additional Terms	<p>In addition to the terms and conditions following, the parties agree that:</p> <ul style="list-style-type: none"> Red Oxygen will provide Referral Rep with 100 SMS messages for demonstration purposes. Additional SMS messages can be purchased from Red Oxygen at Red Oxygen's standard rates. Red Oxygen will provide Referral Rep with Red Oxygen's range of sales and marketing materials and demos in file formats, as well as Red Oxygen's standard pricing information and service agreement. 																			
<p>Note: All amounts under this agreement are plus GST, VAT, other sales taxes, duties and taxes (if any).</p>																				

REFERRAL REP AGREEMENT

This Referral Rep Agreement (**Agreement**) commences on the Effective Date between Red Oxygen Pty Limited (ABN 51 097 164 371) of Suite 39, Level 9, 445 Upper Edward Street, Spring Hill, QLD 4000 Australia (**Red Oxygen**) and Referral Rep named in Schedule 1 (**Referral Rep**).

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

All expressions used in this Agreement which are defined in Schedule 1, will have the meanings given to them in Schedule 1.

“Active Referral Rep” means a Referral Rep who has referred accounts resulting in one or more new Contracts during the previous 12 months and includes Referral Rep’s authorized distributors and resellers.

“Business Day” means any day other than a Saturday, Sunday or official public holiday in Queensland, Australia.

“Confidential Information” means this Agreement and all confidential, non-public, or proprietary information exchanged between the parties before, on or after the Effective Date relating to the business, technology, customers, Referred Accounts, or other affairs of the provider of the information, but excludes information which:

- (a) is in or becomes part of the public domain other than through a breach of this Agreement or an obligation of confidence owed to the provider;
- (b) a party can prove was already known to it at the time of disclosure by the disclosing party (other than if such knowledge arises from disclosure of confidential information in breach of an obligation of confidentiality);
- (c) the recipient acquires from a third party entitled to disclose it; or
- (d) was independently developed by a party without breach of any obligation of confidentiality owed to the other party.

“Contract” means an executed contract between Red Oxygen and a Referred Account for the provision of Red Oxygen Products, and does not include a letter of intent or a memorandum of understanding.

“Insolvency Event” means the following events in relation to a party:

- (a) a liquidator, provision liquidator, official manager, company administrator, administrator, receiver, manager or receiver and manager or similar officer is appointed in respect of it;

- (b) it enters into, or resolves to enter into, a scheme of arrangement or composition with or assignment for the benefit of, or it proposes a reorganization, moratorium or other administration, involving its creditors or a class of its creditors;
- (c) it resolves to wind itself up or otherwise dissolve itself;
- (d) it suspends payment of its debts generally;
- (e) it is or becomes unable to pay its debts when they are due;
- (f) it ceases to carry on its business; or
- (g) it commits or is subject to any act with a similar effect to the events in paragraphs (a) to (f).

“Intellectual Property Rights” means any and all intellectual and industrial property rights through the world including rights in respect of or in connection with any confidential information, copyright (including future copyright and rights in the nature of or analogous to copyright), moral rights, trade marks, service marks, patents, designs and circuit layouts whether or not now existing, and whether or not registered or registrable and includes any right to apply for the registration of such rights and includes all renewals and extensions.

“Referred Account” means a customer that Referral Rep refers in writing (e-mail acceptable) to Red Oxygen for activation and which is acknowledged in writing (e-mail acceptable) by Red Oxygen and which as a result of that referral subsequently enters into a Contract with Red Oxygen.

Referred Accounts will only be entities which were introduced by Referral Rep to Red Oxygen. In the event of any dispute as to whether or not a Referred Account was referred to Red Oxygen by Referral Rep or a third party, Red Oxygen’s decision, acting reasonably, will be final.

“Promotional Material” means sales and marketing materials supplied by Red Oxygen to Referral Rep which relate to the Red Oxygen Products, as may be amended and updated by Red Oxygen from time to time.

“Red Oxygen Products” means the list of Red Oxygen Products identified in Schedule 1 and may include additional products as notified by Red Oxygen to Referral Rep from time to time. Specifically excluded from this Agreement are Red Oxygen’s Summit server systems.

1.2 Interpretation In this Agreement the following rules of interpretation apply unless the contrary intention appears.

- (a) Headings are for convenience only and do not affect the interpretation of this Agreement.
- (b) The singular includes the plural and vice versa.

- (c) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (d) A reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (ii) a party includes its successors and permitted assigns;
 - (iii) a document includes all amendments or supplements to that document;
 - (iv) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this Agreement;
 - (v) this Agreement includes all schedules and attachments to it; and
 - (vi) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced.
- (e) When the day on which something must be done is not a Business Day, that thing must be done on the following Business Day.
- (f) In determining the time of day where relevant to this Agreement, the relevant time of day is:
 - (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
 - (ii) for any other purpose under this agreement, the time of day in the place where the party required to perform an obligation is located.

2. APPOINTMENT AND AUTHORITY OF REFERRAL REP

2.1 Appointment of Referral Rep Subject to the terms of this Agreement, Red Oxygen appoints Referral Rep to act with respect to potential customers and Referred Accounts in accordance with, and on the terms of, this Agreement, and Referral Rep accepts that appointment.

2.2 Grant of Rights In consideration for the payment of the Establishment Fee, if any, by Referral Rep to Red Oxygen, Red Oxygen grants to Referral Rep the following rights in the Territory:

- (a) the non-exclusive right to market and promote the Red Oxygen Products to potential new customers of Red Oxygen;
- (b) a non-exclusive, royalty free licence to use the Red Oxygen Products for the promotion and marketing purposes specified in paragraph (a); and

- (c) the right to invite potential new customers to contract with Red Oxygen.

2.3 Potential New Customers Referral Rep agrees not to approach existing direct or indirect customers or trial accounts of Red Oxygen without Red Oxygen's approval in writing except pursuant to the offering of Referral Rep's products or services.

2.4 Independent Contractors The relationship of Red Oxygen and Referral Rep established by this Agreement is that of independent contractors. Referral Rep must pay all expenses incurred by it arising out of and in connection with its obligations under this Agreement. This Agreement shall not be considered a joint venture, partnership, employment relationship, franchise, agency or any other legal relationship between the parties. The parties are independent businesses. Neither party shall share or be responsible for the debts and liabilities of the other party nor have the authority to legally bind the other in any manner except as specifically set forth herein.

3. OBLIGATIONS OF REFERRAL REP

3.1 Obligations of Referral Rep Referral Rep:

- (a) is to identify the relevant decision making parties within potential customers and make appropriate sales presentations. Referral Rep must not negotiate any parts of a deal for Red Oxygen products or services with a potential customer unless expressly authorized or instructed to do so by Red Oxygen;
- (b) must conduct its business in its own name and in such a manner that reasonably promotes and reflects favourably at all times on the Red Oxygen Products and the good name, goodwill and reputation of Red Oxygen. Referral Rep must not engage in deceptive, misleading or unethical practices that are or might be detrimental to Red Oxygen, the Red Oxygen Products or any third party;
- (c) must comply with all reasonable directions of Red Oxygen;
- (d) must comply with all laws in all relevant jurisdictions;
- (e) must represent the Red Oxygen Products in accordance with the Promotional Material;
- (f) must ensure that no performance or statements are made that could be misleading or deceptive or that are inconsistent with the Promotional Material; and
- (g) must clearly distinguish between those activities performed by Referral Rep in its capacity as a representative of Red Oxygen acting within the scope of this Agreement, and those activities performed by Referral Rep on its own behalf and for its own account.

3.2 Referral Rep Services Referral Rep must perform the following services in a professional manner:

- (a) assume the prime responsibility for the day to day management of Referred Account with respect to Referral Rep's products and services only, including:
 - (i) establishment of relationships and the making of introductions with potential customers;
 - (ii) obtaining and managing trials with potential customers;
 - (iii) initial technical, sales, operational and other support for potential customers during trial period and during the term of any Contract; and
 - (iv) cross-selling of additional Red Oxygen services into Referred Accounts;

4. OBLIGATIONS OF RED OXYGEN

4.1 Marketing Support Red Oxygen will provide marketing and sales support to Referral Rep.

4.2 Other Support Red Oxygen will provide:

- (a) technical support and access to the Red Oxygen Products; and
- (b) a reasonable amount of instruction and training about the Red Oxygen Products,

to Referral Rep for the purpose of Referral Rep performing its obligations under this Agreement.

4.3 Trial Accounts Red Oxygen will provide trial software for each potential customer at Red Oxygen's expense. Red Oxygen will determine the number of free messages to be provided to each potential customer.

4.4 Records Red Oxygen must maintain books and records sufficient to demonstrate its compliance with this Agreement. If requested in writing by Referral Rep during the term of this Agreement and for a period of two years thereafter (**Audit Request**), Red Oxygen will supply to Referral Rep such books, records and other documentation relating to Red Oxygen's performance of its obligations under this Agreement as may be reasonably requested by Referral Rep. Referral Rep may make no more than two Audit Requests in any 12 month period.

5. LIMITATION OF LIABILITY

To the extent allowed by law, the maximum aggregate liability of either party for breach of this Agreement or in negligence or any other tort or for any other common law or statutory cause of action arising from or in relation to this Agreement or otherwise is limited to the higher of AUD \$10,000.00 or the aggregate fees paid by Red Oxygen to Referral Rep under this Agreement over the 6 months prior to the event.

6. FEES AND PAYMENT TERMS

6.1 Establishment Fees Referral Rep must pay Red Oxygen the Establishment Fee, if any, specified in Schedule 1 within 30 days of the Effective Date.

6.2 Sales Commission During the Term of this Agreement, Red Oxygen agrees to pay Referral Rep the Sales Commission specified in Schedule 1 while they remain an Active Referral Rep.

6.3 General Payment Terms Red Oxygen will pay the Sales Commission to Referral Rep after any funds charged by Red Oxygen to Referred Accounts under the Contract and remitted by these Referred Accounts are received by Red Oxygen. Due to the costs involved in international bank transfers these funds will be forwarded to Referral Rep only when either of the following conditions is met:-

- (a) total due amount at the end of a calendar month exceeds AUD \$500
- (b) total due amount at the end of a quarter exceeds AUD \$250

Otherwise the total amount due will accumulate until one of these two threshold conditions is met (unless alternate payment arrangements are agreed between the two parties).

Referral Rep will not receive payment of the Sales Commission if Customer cancels their account within 30 days of account activation. All payments made will be in the currency of the nominated bank account of Referral Rep or such other as Referral Rep specifies. These transfers will be made by electronic funds transfer to the nominated bank account of Referral Rep or by such other means as Referral Rep specifies. Any necessary currency exchanges will be calculated at the prevailing bank exchange rates at the time of transfer. The fees listed in this Agreement do not include taxes. If any taxes are required to be withheld on payments, or Red Oxygen is required to directly pay such tax, then the amount of payment to Referral Rep will be automatically reduced by the amount of such tax.

6.4 Taxes All sums payable under this Agreement shall be paid exclusive of any value added tax, goods and services tax or other sales tax, which must be paid in addition to the payment in respect of which such tax is levied. Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any credit, adjustment or refund in relation to any amount of sales paid or payable pursuant to any supply made under or in connection with this Agreement.

7. TERM, TERMINATION AND EFFECT OF TERMINATION

7.1 Term This Agreement commences on the Effective Date and continues for a period of one year unless terminated earlier in accordance with clause 7.2. Thereafter, this Agreement will continue, until terminated by either party on three months written notice to the other party or unless terminated earlier in accordance with clause 7.2.

7.2 Termination Either party may terminate this Agreement immediately by giving written notice to the other party if the other party:

- (a) breaches a provision of this Agreement which is not capable of remedy;
- (b) breaches a material provision of this agreement and the breach has not been remedied within 14 days of the breaching party receiving notice of the breach; or
- (c) is the subject of an Insolvency Event.
- (d) ceases to be an Active Referral Rep.

7.3 Effect of Termination Upon termination or expiry of this Agreement:

- (a) Referral Rep will immediately cease performing its obligations under this Agreement;
- (b) all rights granted to Referral Rep will cease;
- (c) upon request, all Confidential Information must be returned immediately to the disclosing party; and
- (d) all Promotional Material must be returned immediately to Red Oxygen

7.4 Survival of Certain Terms Any provision of this Agreement which, either expressly or by its nature, is intended to survive termination or expiry of this Agreement, will survive termination or expiry of this Agreement.

8. CONFIDENTIAL INFORMATION

8.1 Confidentiality Each party must keep the Confidential Information of the other party confidential, and must not disclose any such Confidential Information to any person except:

- (a) to employees, legal advisers, auditors and other consultants of the recipient who require the information for the purposes of this Agreement;
- (b) with the consent of the party who supplied the information;
- (c) if the recipient is required to do so by law or a recognized stock exchange; or
- (d) if the recipient is required to do so in connection with legal proceedings relating to this Agreement.

8.2 Disclosure A party disclosing Confidential Information under clauses 8.1 (a) or (b) must use all reasonable endeavours to ensure that a person receiving Confidential Information from it does not disclose the information except in the circumstances permitted in clause 8.1.

8.3 Return of Confidential Information A party who has received Confidential Information from the other party under this Agreement must, on the request of the other party, immediately deliver to that party all documents or other materials containing or referring to that information which are in its possession, power or control, or in the possession, power or control of persons who have received Confidential Information from it under clauses 8.1 (a) or (b).

9. INTELLECTUAL PROPERTY RIGHTS

9.1 Rights Retained by Red Oxygen Referral Rep

acknowledges that Red Oxygen or its licensors retain all Intellectual Property Rights in the Red Oxygen Products and Promotional Material and no such Intellectual Property Rights will vest in or transfer to Referral Rep by operation of this Agreement.

9.2 Trademark Licence Red Oxygen grants to Referral Rep a non-exclusive, non-transferable licence for the term of this Agreement, to use the Red Oxygen trademarks in the Territory solely for the purposes contemplated by this Agreement.

9.3 No Tampering The Red Oxygen trademarks which appear on any Red Oxygen Product, or within any Promotional Material must not be removed, modified, disguised or altered by Referral Rep without Red Oxygen's prior written consent.

10. GENERAL

10.1 Assignment Neither this Agreement nor any right, obligation or Red Oxygen Product licensed hereunder may be assigned or otherwise transferred by Referral Rep without Red Oxygen's prior written consent (which may be withheld in Red Oxygen's sole discretion). Red Oxygen may assign or otherwise transfer this Agreement or any right, duty or liability under this Agreement to a Related Body Corporate (as that term is defined in the Corporations Act 2001 (Cth)) without obtaining the consent of Referral Rep.

10.2 Governing Law This Agreement will be governed by the laws of Queensland, Australia. The parties submit to the non-exclusive jurisdiction of the Courts of Queensland, Australia.

10.3 Injunctive Relief Each party acknowledges and agrees that in the event of material breach of this Agreement, the non-breaching party will be entitled to seek immediate injunctive relief, in addition to whatever remedies it may have at law or under this Agreement.

10.4 Entire Agreement

- (a) This deed is the entire agreement between the parties about its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter.
- (b) Each party represents and warrants that it has not relied on any representations or warranties about the subject matter of this deed except as expressly provided in this deed.

10.5 Amendments and Waivers

- (a) No variation of this Agreement is effective unless made in writing and signed by each party.
- (b) No waiver of a right or remedy under this Agreement is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted.
- (c) A single or partial exercise of a right or remedy under this Agreement does not prevent a further exercise of that or of any other right or remedy. Failure to exercise or delay in exercising a right or remedy under this

Agreement does not operate as a waiver or prevent further exercise of that or of any other right or remedy.

10.6 Third Party Rights Except as expressly provided in this Agreement:

- (a) each person who executes this Agreement does so solely in its own legal capacity and not as Rep or trustee for or a partner of any other person; and
- (b) only those persons who execute this Agreement have a right or benefit under it.

10.7 Severability Any term of this Agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this Agreement is not affected.

10.8 Cumulative Rights Except as expressly provided in this Agreement, the rights of a party under this Agreement are in addition to and do not exclude or limit any other rights or remedies provided by law.

10.9 Notices

- (a) A notice, consent or other communication under this Agreement is only effective if it is:
 - (i) in writing, signed by or on behalf of the party giving it;
 - (ii) written in legible English;

(iii) addressed to the party to whom it is to be given; and

(iv) either:

- (A) sent by pre-paid mail (by airmail, if the addressee is overseas) or delivered to that party's address; or
- (B) sent by fax to that party's fax number.

(b) A notice, consent or other communication that complies with clause (a) is regarded as given, received and dated:

(i) if it is sent by fax or delivered:

- (A) subject to paragraph (ii), at the time and on the day it was successfully sent; or
- (B) if successfully sent on a day that is not a Business Day or after 5.00 pm (local time in the place of receipt) on a Business Day, at 9.00 am on the next Business Day;

(ii) if it is sent by mail:

- (A) within Australia – 3 Business Days after posting; or
- (B) to or from a place outside Australia – 7 Business Days after posting.

(c) For the purposes of this clause, a party's address and fax number are those set out in Schedule 1

The parties, through their authorised representatives, have the right, power and authority to enter this Agreement.

EXECUTED as an agreement

Red Oxygen Pty Limited ("**Red Oxygen**")

("Referral Rep")

Signature: _____

Signature: _____

Name (print): _____

Name (print): _____

Title: _____

Title: _____

Date: _____

Date: _____