



## TERMS OF SERVICE

### Master Subscription Agreement

This Master Subscription Agreement (the “*Agreement*”) governs your acquisition and use of GhostMonitor Inc’s (dba. Recart) services (“*Services*” or “*Service*”), during the Subscription Period (defined below) or while testing the experience of the Service. By accepting this Agreement, either by clicking a box to indicate your acceptance or otherwise executing a document that references this Agreement, you agree to the terms of this Agreement. This Agreement shall become effective on the date of your acceptance (the “*Effective Date*”). If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity and its affiliates. If you do not have such authority, or if you do not agree with these terms and conditions, you must not accept this Agreement and may not use the Services. This Agreement is effective between You and GhostMonitor Inc. dba. Recart (“*Recart*”) as of the date You accept this Agreement.

The parties to this Agreement hereby agree as follows:

#### 1. ACCESS AND USE.

- 1. Access Right.** Subject to the terms and conditions of this Agreement, Recart grants to You during the Subscription Period (defined below) a nonexclusive, non-sublicensable (except as set forth herein) and nontransferable right to access and use the Service solely for Your internal business purposes. The foregoing license includes the right for Your employees and third-party contractors and consultants to access and use the Service solely on behalf of You, *provided* that You shall be fully responsible for any and all liabilities arising from the activities of such employees and third-party contractors and consultants in connection with their access and use of the Service. You may not use (or authorize the use of) the Service for any other purpose or for the benefit of any other party, except as may be permitted in writing by Recart. This access right terminates at the end of the Subscription Period or earlier termination of the Service in accordance with this Agreement.
- 2. Right to test the Service before the Subscription Period.** Recart has enabled a tool accessible on the homepage to allow users test the end-user’s experience of the Service (“*Testing Tool*”). By testing the Service, You agree to abide by the terms of this Agreement and the Privacy Policy. You acknowledge that the purpose of the Testing Tool is solely to test Recart’s SMS marketing services, and You agree to use it strictly for that purpose. You may not use any other person’s number to test the Service unless that person authorized you to do. You agree that the content of the test message will adhere to the parameters delimited in this Agreement, and You are responsible for any violation of the law arising from the use of the Testing Tool
- 3. Service Availability.** Recart’s goal will be to make the Service, and the Testing



Tool, available 24 hours a day, 7 days a week, except during scheduled maintenance windows. However, 24x7 availability of the Service is only a goal and Recart does not represent or guarantee that such goal will be achieved at all times. You acknowledge that Your ability to access and use the Service may also be affected by resources and factors outside the control of Recart, including Your access to the internet. Please note that in using the Testing Tool, there will be a limit of 1 SMS per SMS type, per day.

4. **Mode of Access.** You shall not access or attempt to access the Service by any means other than the web and mobile device interfaces provided by Recart, or to attempt to circumvent or disable any access or use restrictions put in place by Recart. You shall maintain a list of all third-party contractors and consultants authorized to access the Service on behalf of You and will make such list available to Recart upon request.
5. **Other Restrictions.** You shall use the Service and the Testing Tool only for purposes and in a manner that are permitted by applicable laws, rules and regulations. You shall not (and shall not attempt to) decompile, reverse engineer or otherwise derive or discover the source code of the software underlying the Service or the Testing Tool, or use the Service or Testing Tool in a service bureau or other resale capacity.
6. **Account Information.** You shall provide Recart with complete and accurate account, billing and payment information and keep such information up to date during the Subscription Period.
7. **Passwords and Account Security.** You are responsible for maintaining the security and confidentiality of all passwords associated with Your account, and for all activities that occur under Your account. If You become aware of any unauthorized or illegal use of any such password or account, You shall immediately notify Recart.

## 2. SUBSCRIPTION AND PRICING.

1. **Subscription Period.** The Service will be made available on commencing on the Effective Date until You cancel the Subscription or this Agreement is terminated under Section 8 (the “*Subscription Period*”), subject to Your payment of the Access Fees (defined below).
2. **Access Fees.** You will pay the access fees set forth on the schedule attached as set forth on Recart’s website (the “*Access Fees*”). Recart reserves the right to modify the Access Fees from time to time; Recart will provide notice of any changes to the Access Fees on its website. The Access Fee excludes all applicable sales, use and other taxes, and You will be responsible for payment of all such taxes, fees, duties and charges, and any related penalties and interest, that may arise from Your use of the Service.
3. **Payment.** You must have a valid credit card and provide such credit card



information to Recart in order to use the Service. Recart will use a third party solution to save your credentials and charge you your use of the Service. Your account will have a credit limit which Recart may set at its sole discretion (“*Credit Limit*”). You will be charged each month for the Access Fees you have incurred, or if you exceed your Credit Limit. By way of example, if Your Credit Limit is \$20 USD and you incur more than \$20 in Access Fees prior to the end of the monthly payment cycle, You will be charged for the balance on your account. Notwithstanding the foregoing, certain Access Fees for Services may be offered on other alternative fee arrangements including, but not limited to a fixed fee basis requiring advanced payment. Failure to provide timely payment may result in the suspension of Your access to and use of the Service until the outstanding balance has been paid in full. Recart will restore access to the Service promptly after all outstanding amounts owed have been paid.

### 3. SUPPORT.

1. **Technical Support.** Recart will provide reasonable technical support by email and the chat function (available following registration on Recart’s website) to assist in Your access to and use of the Service. You may contact Recart at [support@recart.com](mailto:support@recart.com).
2. **Software Updates.** Recart may update from time to time the server-side software, and web and mobile device interfaces, underlying the Service or the Testing Tool. Such updates are intended to improve or enhance the Service and the Testing Tool and may take the form of bug fixes, program code updates and enhancements.

### 4. CONTENT AND DATA.

1. **Responsibility for Content Resulting From Use of the Service.** You acknowledge and agree that, as between the parties hereto, all information communicated to You in connection with use of the Service or the Testing Tool by You and/or Your third-party contractors and consultants is the responsibility of You, and that Recart has no responsibility for such content.
2. **Input Data.** As between the parties hereto, You shall own and, other than to the limited extent provided in this Section 4.2, have sole control over any and all data transmitted to the Service or the Testing Tool by You, Your third-party contractors and consultants, and/or by other persons communicating with You via the Service or Testing Tool (collectively, the “*Input Data*”). You hereby grant to Recart a non-exclusive, royalty-free, worldwide license during the Term of this Agreement to reproduce, modify, create derivative works from, distribute, publicly perform and publicly display the Input Data solely in conjunction with the Service or Testing Tool. You acknowledge and agree that as between the parties hereto, all Input Data is the responsibility of You; provided, however, that Recart shall have the



right (but not the obligation) in its discretion to remove from the Service or Testing Tool any Input Data that violates this Agreement or Recart’s policies and procedures or is otherwise objectionable.

3. **Security.** You acknowledge that servers and databases are maintained by or on behalf of Recart to store the Input Data and other data processed by the Service and may keep such information indefinitely. Recart employs reasonable technological and operational security procedures intended to protect such data from loss, misuse, alteration, or destruction. However, You acknowledge that no security measure can guarantee against compromise, and Recart does not guarantee that the servers and databases underlying the Service will not experience any such compromise.
4. **Data Protection.** You acknowledge and agree that with regard to the personal data provided by You to Recart during the Subscription Period in connection with the Service You shall be qualified as controller, and Recart shall be qualified as processor as defined in Sections (7) and (8) of Article 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (hereinafter: “**General Data Protection Regulation**” or “**GDPR**”).

You hereby declare that Your end users (subscribers) have granted their express consent to process their personal data (including processing for marketing purposes) and you are fully compliant with any applicable data protection regulations. Accordingly, You may provide Recart only with the personal data (including phone numbers) of the active opted-in subscribers when using the importing function. Without prejudice to the Privacy Policy of Recart available at <https://recart.com/privacy-policy> (hereinafter: “**Privacy Policy**”) and the Standard Contractual Clauses attached thereto as Schedule I. (hereinafter: “**SCC**”) You shall be fully liable for non-compliance with this obligation.

Should You have an establishment in the European Union (hereinafter: “**EU**”) or You process personal data of data subjects who are in the EU and therefore GDPR shall apply, You hereby declare that Recart has made available to You, and You have read and agreed to the SCC which shall constitute an integral part of the Agreement between You and Recart.

You understand that by using the Testing Tool, you consent to Recart collecting the following information from you: name, store name, store URL, phone number, email address, or other information it deems necessary to enable Your use of the Testing Tool. This information will be collected on your behalf for the purposes of the Testing Tool, and may be used by Recart for future marketing purposes. The storage of this data will be governed by the terms of the Privacy Policy.

#### 5. **TCPA Compliance**

You understand and agree that You are solely responsible and liable for ensuring that Your use of the Services or Testing Tool complies with all applicable laws, including but not limited to the Telephone Consumer Protection Act (the “**TCPA**”), 47 U.S.C. § 227 et seq., and all implementing rules, orders, and regulations of the Federal Communications Commission, 47 C.F.R. § 64.1200 et seq., and the Federal Trade



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C.F.R. § 310, the Do-Not-Call Implementation Act and the Do-Not-Call list registry rules (<http://www.donotcall.gov>), and all other state, local or international laws, rules, regulations, and guidelines relating to calling, texting, telemarketing and telephonic solicitation (collectively, the “*Calling Laws*”). Without limiting the foregoing, You represent and warrant that You have provided all notices and obtained all consents and permissions necessary to transmit calls or text messages to Your end users and other recipients through the Services or Testing Tool, and to enable Recart to collect, receive and access information from You in connection with its provision of the Services or Testing Tool. Further, You are responsible for honoring consumer opt-outs immediately and shall not transmit or cause to be transmitted calls or SMS or MMS text messages to any recipient who has opted-out, withdrawn consent or for whom You do not otherwise have all necessary consents and permissions to communicate with through the Services. You acknowledge that solely You are responsible and liable for any and all phone numbers that are acquired for or on behalf of You in connection with the Services or Testing Tool, and You certify that it is authorized to enroll any and all such phone numbers to receive calls and SMS and MMS text messages.

## 5. INTELLECTUAL PROPERTY RIGHTS.

1. **Reservation of Rights.** All rights not expressly granted herein are reserved by Recart, including, but not limited to, the unrestricted right to grant access to the Service or Testing Tool to third parties in any form anywhere. Nothing in this Agreement is intended by the parties to constitute a sale of the software or associated documentation underlying the Service or Testing Tool, or any derivations thereof. Recart reserves the right to modify the Service and the Testing Tool in Recart’s discretion.
2. **Title.** The Service and the Testing Tool (including the software and associated documentation underlying the Service) are the valuable proprietary and trade secret information and property of Recart or its licensors. Title, ownership rights and intellectual property rights, including but not limited to, copyright and patent rights, in the Service and Testing Tool, and all derivatives thereof, shall remain with Recart and its licensors. You acknowledge the ownership and intellectual property rights of Recart and will not take any action to jeopardize, limit or interfere in any manner with such ownership or other rights.
3. **Marks.** The trademarks, logos and service marks (the “*Marks*”) displayed in the Service and Testing Tool and on Recart’s website are the property of Recart or third parties. You shall not use any Mark (or allow the use of any Mark by any of Your third-party contractors or consultants) without the prior written consent of Recart or applicable third-party owner of the Mark.

4. Feedback. Although You will remain the owner of any feedback provided to Recart regarding the Service or Testing Tool, You hereby grants Recart a non-exclusive, royalty- free, fully paid up, perpetual, irrevocable, transferable, unlimited, world-wide right to use and otherwise commercially exploit any feedback, ideas or other suggestions communicated by You to Recart.

## 6. NO WARRANTY.

THE SERVICE, TESTING TOOL AND ANY RELATED SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, WITHOUT WARRANTY OF ANY KIND, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED. RE CART DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. RE CART DOES NOT REPRESENT OR WARRANT THAT THE SERVICE OR TESTING TOOL WILL MEET YOUR NEEDS OR REQUIREMENTS, THAT ANY INFORMATION OBTAINED THROUGH USE OF THE SERVICE OR TESTING TOOL WILL BE ACCURATE OR RELIABLE, THAT USE OF THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, OR THAT ALL DEFECTS IN THE SERVICE WILL BE CORRECTED.

## 7. CONDITIONS TO 8X ROI GUARANTEE

1. Subject to the conditions and qualifications set forth by Recart in its sole discretion, Recart guarantees You a minimum of eight times return on investment on your expenditure on Recart SMS service (the “**8X ROI Guarantee**”).
2. In order for You to be eligible for 8X ROI Guarantee You must have satisfied all of the following conditions in the relevant billing cycle:
  - (i) The Recart popups should have had a minimum combined Impressions of 7000 through the end user traffic generated by You. For the purposes of this section, “**Impressions**” shall mean the number of ends users who witnessed the Recart popup through You.
  - (ii) You should have abided by and followed, to the satisfaction of Recart, the guidelines, instructions and practices conveyed by Recart to You relating to the use of Recart’s Services.
3. Notwithstanding anything to the contrary contained in this Agreement, Recart reserves the right to change and update the aforementioned conditions to the 8X ROI Guarantee at its sole discretion.
4. You expressly acknowledge and agree that in no event shall Recart’s liability for any breach of the 8X ROI Guarantee exceed the limitation set forth in Section 9 of this Agreement.

## 8. TERMINATION

1. By You. You may terminate this Agreement (and cancel the Service) by giving Recart at least thirty (30) days prior written notice of termination. Except as provided in Section 8.3 below, will not owe any Access Fees for periods subsequent to the effective date of such notice and may continue to use the Service if the Access Fees that have been paid cover a subscription period that has not expired.
2. By Recart. Recart may terminate this Agreement (and Your access to the Service) at any time if You have failed to pay the Access Fee for any particular month when due and failed to make such payment within 30 days after receiving a reminder from Recart in writing. Recart may also terminate the Service prior to the end of any Subscription Period if You has committed any other material breach of this Agreement and failed to cure such material breach within 30 days after receiving written notice of the breach from Recart.
3. Early Termination fee. In the event that You have committed to utilize Recart's services for a specific period of time (the "***Committed Subscription Period***"), should You elect to terminate your Agreement with Recart prior to the expiration of such Committed Subscription Period, You agree to pay Recart the applicable fees for the remaining term of such Committed Subscription Period as an early termination fee (the "***Early Termination Fee***"). You acknowledge and agree that the Early Termination Fee provided herein shall be in addition to any other claim of damages Recart might have against You arising from the termination of this Agreement.
4. Effects of Termination. Upon the expiration or termination of this Agreement, Recart will disable Your online access to the Service. Termination of this Agreement will not relieve either party from its obligation to comply with any terms of this Agreement that call for performance prior or subsequent to the termination date of the Service, including Your obligation to pay for access to the Service for periods prior to the termination date.

## 9. RISK OF LOSS AND LIMITATION OF LIABILITY.

1. **Risk of Loss.** You accept all risk of loss or damage to the computer systems or other devices of You and of Your third-party contractors and consultants, or loss of data, which results from or in connection with use of the Service or Testing Tool by You and/or Your third-party contractors and consultants.
2. **Limitation of Liability.** IN NO EVENT SHALL RECART BE LIABLE FOR ANY INDIRECT, ECONOMIC, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES RELATED TO: (A) THE SERVICES OR TESTING TOOL; (B) YOUR USE OF, INABILITY TO USE, OR THE PERFORMANCE OF THE SERVICES OR TESTING TOOL; (F) ACTION TAKEN IN CONNECTION WITH AN INVESTIGATION BY RECART OR LAW ENFORCEMENT AUTHORITIES REGARDING YOUR USE OF THE SERVICES OR TESTING TOOL; (G) ACTION TAKEN IN CONNECTION WITH COPYRIGHT OR OTHER INTELLECTUAL PROPERTY OWNERS; (H) ANY ERRORS OR OMISSIONS IN THE SERVICES' TECHNICAL OPERATION; (I) ANY VIOLATION OR ALLEGED VIOLATION

OF CALLING LAWS PURSUANT TO THE USE OF THE SERVICES OR TESTING TOOL, OR (J) ANY DAMAGE THAT RESULTS FROM EVENTS BEYOND OUR REASONABLE CONTROL, SUCH AS DAMAGES TO YOUR COMPUTER, MOBILE DEVICE, OR OTHER EQUIPMENT OR TECHNOLOGY INCLUDING, WITHOUT LIMITATION, DAMAGE FROM ANY SECURITY BREACH OR FROM ANY VIRUS, BUGS, TAMPERING, FRAUD, ERROR, OMISSION, INTERRUPTION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER LINE OR NETWORK FAILURE OR ANY OTHER TECHNICAL OR OTHER MALFUNCTION, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, LOSS OF DATA, WORK STOPPAGE, ACCURACY OF RESULTS, OR COMPUTER FAILURE OR MALFUNCTION, EVEN IF FORESEEABLE OR EVEN IF RECAPT HAS BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL RECAPT'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES OR CAUSES OF ACTION EXCEED THE AMOUNTS PAID BY YOU, IF ANY, TO RECAPT IN THE PAST TWELVE MONTHS. THE PRIOR LIMITATION ON DAMAGES IS NOT INTENDED TO LIMIT RECAPT'S OBLIGATION TO PAY PREVAILING PARTY COSTS OR FEES IF RECOVERABLE PURSUANT TO APPLICABLE LAW. THE LIMITATIONS SET FORTH IN THIS SECTION WILL NOT LIMIT OR EXCLUDE RECAPT'S LIABILITY FOR RECAPT'S GROSS NEGLIGENCE, FRAUD OR INTENTIONAL, WILLFUL, MALICIOUS OR RECKLESS MISCONDUCT. THIS SECTION SHALL SURVIVE ANY EXPIRATION OR TERMINATION OF YOUR RELATIONSHIP WITH RECAPT.

YOU AGREE THAT IN THE EVENT YOU INCUR ANY DAMAGES, LOSSES OR INJURIES THAT ARISE OUT OF RECAPT'S ACTS OR OMISSIONS, THE DAMAGES, IF ANY, CAUSED TO YOU ARE NOT IRREPARABLE OR SUFFICIENT TO ENTITLE YOU TO AN INJUNCTION PREVENTING ANY EXPLOITATION OF ANY WEB SITE, PROPERTY, PRODUCT, SERVICE, OR OTHER RECAPT CONTENT OWNED OR CONTROLLED BY RECAPT, AND YOU WILL HAVE NO RIGHTS TO ENJOIN OR RESTRAIN THE DEVELOPMENT, PRODUCTION, DISTRIBUTION, ADVERTISING, EXHIBITION OR EXPLOITATION OF ANY WEB SITE, PROPERTY, PRODUCT, SERVICE, OR OTHER RECAPT CONTENT OWNED OR CONTROLLED BY RECAPT.

THE OBLIGATIONS UNDER THIS SECTION SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THESE TERMS OF SERVICE OR YOUR USE OF THE SERVICES.

## **10. WAIVER OF CLAIMS**

BY ACCESSING THE SERVICES OR TESTING TOOL, YOU UNDERSTAND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOU ARE EXPRESSLY WAIVING RIGHTS WITH RESPECT TO CLAIMS ARISING OUT OF NON COMPLIANCE WITH CALLING LAWS THAT AT THIS TIME MIGHT BE UNKNOWN OR UNSUSPECTED, AND IN ACCORDANCE WITH SUCH WAIVER, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND, AND HEREBY EXPRESSLY WAIVE, THE BENEFITS OF SECTION 1542 OF THE CIVIL CODE OF CALIFORNIA, AND ANY SIMILAR LAW OF ANY STATE OR TERRITORY, WHICH PROVIDES AS FOLLOWS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE,



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BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

THE OBLIGATIONS UNDER THIS SECTION SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THESE TERMS OF SERVICE OR YOUR USE OF THE SERVICES.

## **11. INDEMNIFICATION**



You acknowledge that by making the Service and Testing Tool available, Recart does not assume any responsibility or liability for the risks associated with Your business. Accordingly, You shall defend, indemnify, and hold harmless Recart and its officers, directors, employees and representatives from and against all claims by third parties arising out of or relating in any way to the conduct of Your business or the use of or inability to use the Service, and all associated losses, costs, damages, and settlements, including reasonable legal fees and expenses. In the event of a claim in respect of which Recart seeks indemnification from You under this Section 11, Recart will promptly notify You in writing of the claim, cooperate with You in defending or settling the claim at Your expense, and allow You to control the defense and settlement of the claim, including the selection of attorneys.

## **12. ARBITRATION OF DISPUTES**

Recart and You agree that all disputes, controversies or claims which arise out of or relate in any way to the Service, Testing Tool, or this Agreement shall be finally resolved by arbitration held in San Francisco, California, and conducted by a single arbitrator according to the Commercial Arbitration Rules of the American Arbitration Association using expedited procedures. The arbitrator will have no authority to award any damages that are excluded by this Agreement. Any award by the arbitrator may be enforced in any court having jurisdiction. You expressly agree that Recart may seek injunctive relief by a court pending an award in arbitration and shall not, by doing so, be held to have infringed the powers of the arbitrator or breached its agreement to arbitrate.

## **13. CHANGES & AMENDMENTS**

Notwithstanding anything to the contrary contained in this Agreement, Recart may, from time to time and at its sole discretion, update these terms with or without notice to You. You are encouraged to review our site, our Terms of Service, and any notifications, messages and communications from us to ensure You are abreast of any changes as they are made. Ongoing use of the Services or Testing Tool implies Your consent to and acceptance of any changes. If you don't agree to be bound by the updated Agreement, then you may not use the Services or Testing Tool anymore. As our Services and Testing Tool are evolving over time we may change or discontinue all or any part of the Services or Testing Tool, at any time and without notice, at our sole discretion.

## **14. GENERAL PROVISIONS.**



This Agreement represents the entire agreement between Recart and You with respect to Your access to and use of the Service and Testing Tool. This Agreement shall be governed by the laws of the State of California and any controlling U.S. federal laws, exclusive of choice of law rules. If either party waives or modifies any term or condition of this Agreement, that will not void, waive or change any other term or condition. If either party waives a default by the other party, that does not mean that either party will waive future or other defaults.

You may not assign or otherwise transfer this Agreement or any rights granted under it without the prior written consent of Recart, which consent may be withheld at Recart's sole discretion, and any purported assignment without Recart's prior written consent shall be void. Each party's relationship to the other is that of an independent contractor, and neither party is an agent or partner of the other. If any part of this Agreement, for any reason, is declared to be invalid, it shall be reformed to the minimum extent necessary in order for such part to remain in effect and be enforceable in accordance with applicable law, and the remaining provisions of this Agreement shall remain in full force and effect. All notices under this Agreement must be delivered in writing by courier or by certified or registered mail (postage prepaid and return receipt requested) to the other party at the address set forth above, and will be effective upon receipt or three business days after being deposited in the mail, whichever occurs sooner. This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument.