

SOFTWARE AS A SERVICE

TERMS AND CONDITIONS

These terms and conditions are the contract between Boomerang and the Customer and govern the provision of Boomerang's Services to the Customer.

These terms and conditions are entered into with effect from time and date recorded by Boomerang in the application as being the time and date on which the Customer accepted these terms and conditions.

In these terms and conditions from now on they are now referred to as "this Agreement".

Agreed terms

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

"Agreement"	these Terms and Conditions.
"Authorised Users"	those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in the Customer's UI account.
"Boomerang"	BOOMALERT LTD incorporated and registered in England and Wales with company number whose registered office is at Regina House, 124 Finchley Road, London NW3 5JS. a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
"Business Day"	
"Change of Control"	shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.
"Confidential Information"	information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 10.
"Communication Address"	means a code, telephone number, email and/or any other identifier and/or address from which a Message is sent and/or received;
"Credits"	means the monetary value paid by the Customer to Boomerang and from which Boomerang will deduct payment for messages sent by the Customer and service

components selected by the Customer at the rates stated in the Customer's UI;

"Customer"		means the customer who has registered for Boomerang's Services and who has accepted this Agreement.
"Customer Data"		the data owned and inputted by the Customer, Authorised Users, or Boomerang specifically on the Customer's behalf for the purpose of the Customer using the Services or facilitating the Customer's use of the Services.
"Customer's UI"		means the Customer's user interface.
"Data Protection Legislation"	Protection	the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).
"Documentation"		all and/or any documentation, manuals, information and/or data (and/or any part thereof including all updates and/or modifications) made available to the Customer by Boomerang from time to time in relation to and/or in connection with the Services and the user instructions in relation to the Services.
"Effective Date"		the date of this Agreement as recorded by Boomerang.
"Fees"		the fees payable by the Customer to Boomerang for the Services, as set out in the Customer's UI
"Intellectual Rights"	Property	all and/or any patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software and data, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.
"Messages"		means an MMS, SMS, email, instant message, voice message and voice calls, data transmission, social media message and/or any other message (including the content of that message) and/or messaging process conveyed by use of the Services.

"Normal Business Hours"	9.00 am to 5.00 pm local UK time, each Business Day.
"Plug In"	means a software module provided by Boomerang to the Customer which is designed to carry out certain functions and which can be installed by the Customer into the Customer's computer systems.
"Policy" or "Policies"	Boomerang's policies attached in Schedule 3 together with any other policies introduced by Boomerang of which the Customer is notified relating to the Services, as these may be updated or amended by notification to the Customer from time to time.
"Renewal Term"	means the 12 month period starting from the last day of the Subscription Term and then each 12 month period beginning on the anniversary of the last day of the Subscription Term.
"Services"	means the products, services and bolt-ons offered by Boomerang and which the Customer subscribes for from time to time as set out in the Customer's UI .
"Service Level Agreement"	means the service level agreement in Schedule 2;
"Software"	the software applications (including any Plug-Ins) provided by Boomerang as part of the Services.
"Subscription Term"	shall mean the period set out in the Customer's UI from and including the Effective Date together with any subsequent Renewal Terms.
"Third Party Suppliers"	means all and/or any third party suppliers including network operators who provide or supply goods and/or services to or for Boomerang's use in order to assist and/or facilitate Boomerang in Boomerang's provision of the Services.
"UK Data Protection Legislation"	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulations ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality). A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
- 1.6 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- 1.7 A reference to writing or written includes faxes and email provided that if any notices are given by the Customer under this agreement which relate to major circumstances or events regarding the operation of this Agreement including any claims relating to material breach of this Agreement and/or termination of this Agreement then any email notices shall also be confirmed at the same time by fax and/or letter.
- 1.8 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.
- 1.9 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms

2. Authorised Users

- 2.1 Subject to the Customer purchasing and using the Services in accordance with and subject to the terms and conditions of this Agreement, Boomerang hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.
- 2.2 The Customer undertakes that:
 - 2.2.1 it will not allow or suffer any user subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
 - 2.2.2 each Authorised User shall keep a secure password for his use of the Services and Documentation, that such password shall be changed no less frequently than monthly and that each Authorised User shall keep his password confidential;
 - 2.2.3 it shall maintain a written, up to date list of current Authorised Users and provide such list to Boomerang within 5 Business Days of Boomerang's written request at any time or times;
 - 2.2.4 it agrees that it and all Authorised Users will follow and comply with all instructions, guidelines and/or provisions of the Documentation in relation to the use of the Services;
 - 2.2.5 it agrees that Boomerang's records regarding Customer's use of the Services shall be accepted at all times as correct (save for manifest error) and that if there are any issues regarding the Services the Customer hereby consents to Boomerang accessing the Customer account through its admins to view and endeavour to resolve any such issue including permitting Boomerang to audit the use of the Services in order to gather information and establish the facts relating to such issues. Boomerang shall in any event have the right to

audit Customer's use of the Services provided that such audit may be conducted no more than once per quarter, at Boomerang's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;

2.2.6 if any of the audits referred to in clause 2.2.5 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Boomerang's other rights, the Customer shall promptly disable such passwords and Boomerang shall not issue any new passwords to any such individual; and

2.2.7 if any of the audits referred to in clause 2.2.5 reveal that the Customer has underpaid Fees to Boomerang, then without prejudice to Boomerang's other rights, the Customer shall pay to Boomerang an amount equal to such underpayment as calculated in accordance with the prices set out in the Customer's UI within 10 Business Days of the date of the relevant audit.

2.3 The Customer shall not access, store, distribute or transmit any material, information, documentation, messages and/or viruses (including any destructive and/or disabling code) during the course of its use of the Services that:

2.3.1 is used in any way for, in relation to and/or in connection with emergency services (including 999 and 112 calls and/or where there could be a risk of personal injury or death) except to the extent that such use is expressly and specifically agreed by Boomerang in writing;

2.3.2 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

2.3.3 facilitates illegal activity;

2.3.4 depicts sexually explicit images;

2.3.5 promotes unlawful violence;

2.3.6 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability;

2.3.7 is in breach of any agreement with any user, customer or client or any laws, regulations or other provisions that are applicable to the Customer, users, customers or clients in any territory; and/or

2.3.8 in a manner that is otherwise illegal or causes damage or injury to any person or property.

Boomerang reserves the right, without liability (of whatever nature and/or howsoever arising) and/or prejudice of whatever nature to any of its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

2.4 The Customer shall not except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:

2.4.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means;

2.4.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;

- 2.4.3 access all or any part of the Services and Documentation in order to build a product or service which competes (directly or indirectly) with the Services and/or the Documentation;
- 2.4.4 use the Services and/or Documentation to provide services to third parties;
- 2.4.5 subject to clause 21.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users; and/or
- 2.4.6 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; and
- 2.4.7 shall not use any Plug-Ins apart from expressly authorised by Boomerang and shall follow all of Boomerang's instructions and directions regarding use of such Plug-Ins including any restrictions set out in the Customer's UI or in any communications from Boomerang to the Customer.
- 2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Boomerang.
- 2.6 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

3. Additional Services

- 3.1 Subject to clause 3.2, the Customer may, from time to time during any Subscription Term, purchase additional services in excess of the Services originally ordered under this Agreement and Boomerang shall grant access to such additional services and/or any additional authorised users in accordance with and subject to the provisions of this Agreement.
- 3.2 The Customer may purchase additional Services or add additional Authorised Users on the Customer's UI and any such purchases of additional Services or the addition of Authorised Users shall continue in place for the remainder of the Subscription Term or Renewal Term as the case may be and any such additional Services and Authorised Users shall become Services and Authorised Users for the purposes of this Agreement.
- 3.3 **Services**
 - 3.3.1 Boomerang shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement. Details regarding the Services and how they will be performed are set out in the Service Level Agreement.
 - 3.3.2 Boomerang shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
 - 3.3.3 planned maintenance carried out during the maintenance window which is outside of Normal Business Hours. Where possible Boomerang will undertake planned maintenance between 2300 hours and 0100 hours;

- 3.3.4 unscheduled maintenance performed outside Normal Business Hours, provided that Boomerang has used reasonable endeavours to give the Customer at least 2 hours' notice in advance; and/or
- 3.3.5 in circumstances where Boomerang believes that Services need to be maintained and/or suspended due to urgent actions required by Boomerang to safeguard and/or secure the Services and/or ensure the continued proper operation of the Services (including any emergency situations, denial of service attacks and/or changes made by any Third Party Suppliers (including network operators) and in such circumstances Boomerang will give the Customer as much notice as reasonably practicable.
- 3.3.6 Boomerang reserves the right to restrict or throttle the number of Messages or the frequency of requests to retrieve data being sent by the Customer using its API where in Boomerang's opinion it is necessary to do so in order to ensure that the operation of its system is not adversely affected by the number of Messages being placed into the system at any time by the Customer.
- 3.3.7 Save where the Customer purchases Communication Addresses, Boomerang will allocate such Communication Addresses to the Customer as Boomerang deems necessary or desirable. This will depend (in part) upon the nature and type of Services that are required by the Customer, the availability of Communication Addresses, the business operations and practices of Third Party Suppliers (including network operators) and the directions and guidelines of regulators. The Customer hereby acknowledges and agrees that in certain circumstances Boomerang may need to change the Communication Addresses (for example telephone numbers) which it has allocated to the Customer including when Third Party Suppliers (including network operators) have issues regarding the transmission and/or receipt of Messages (for example texts) from Communication Addresses (for example telephone numbers) which have been allocated to the Customer. In such circumstances Boomerang will provide the Customer with as much notice as reasonably practicable regarding any such changes to Communication Addresses.
- 3.3.8 Boomerang will notify the Customer about significant updates to the Documentation that have been made no less frequently than the later of once every quarter and/or in the next version release of that Documentation. If Boomerang believes that there are significant and material issues that need to be notified to the Customer in relation to the Documentation then Boomerang will notify the Customer of such issues from time to time and as and when Boomerang deems necessary.
- 3.3.9 Boomerang will as part of the Services and subject to agreement regarding the terms, content and price of the services, provide the Customer with Boomerang's basic customer support services during Normal Business Hours in accordance with and subject to the provisions of the Service Level Agreement. The Customer may purchase enhanced support services separately at Boomerang's then current rates.

4. Customer data

- 4.1 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 4.2 In the event of any loss or damage to Customer Data, the Customer's exclusive remedy shall be for Boomerang to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Boomerang in accordance with the archiving procedure described in Boomerang's Policies. Boomerang

shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except to the extent that those third parties have been sub-contracted by Boomerang to perform services related to Customer Data maintenance and back-up).

4.3 Boomerang shall, in providing the Services, comply with its Policy relating to the privacy and security of the Customer Data. This Policy is available at the following URL: <https://boomerangmessaging.com/privacy/> and updates to this Policy will be notified to the Customer by email and/or via Boomerang UI as such document may be amended from time to time by Boomerang in its sole discretion.

4.4 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

4.5 Both parties acknowledge that:

4.5.1 if Boomerang processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the Customer shall be the data controller and Boomerang shall be a data processor;

4.5.2 Schedule 1 sets out the scope, nature and purpose of processing by Boomerang, the duration of the processing and the types of personal data and categories of data subject;

4.5.3 the personal data may be transferred outside the EEA or the country where the Customers and the Authorised Users are located in order to carry out the Services and Boomerang's other obligations under this Agreement.

4.6 Without prejudice to the generality of clause 4.4, the Customer shall ensure at all times that the Customer is entitled to process and transfer the relevant information and personal data to Boomerang and that Boomerang can lawfully use, process and transfer the relevant information and personal data in order to provide the Services and/or in relation to this Agreement.

4.7 The Customer shall ensure that the use, processing and transfer of Messages to the relevant third parties is permitted by law and that where legally required that such third parties have given their irrevocable and explicit consent to such use, processing, and transfer. To the extent required by law, Customer shall have informed recipients and/or third parties beforehand and on an ongoing basis about their right at any time to opt-out of receiving Messages and will comply at all times with such instructions from recipients and/or third parties; and

4.8 Each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage and the Customer will at all times keep the information and personal data which it uses in relation to the Services up to date and not keep it for any longer than is necessary under applicable data protection legislation.

5. Third party providers

5.1 The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, use, download and purchase products and services from third parties via third-party websites and applications and that the Customer does so solely at its own risk.

- 5.2 Boomerang makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with and/or downloading in relation to any such third-party website and/or applications, or any transactions completed, and any contract entered into by the Customer, with any such third party.
- 5.3 Any contract entered into and any transaction completed via any third-party website and/or application and/or download is between the Customer and the relevant third party, and not Boomerang. Boomerang recommends that the Customer refers to the third party's website and/or application related terms and conditions and privacy policy prior to using the relevant third-party website and/or application. Boomerang does not endorse or approve any third-party website, application and/or download nor the content of any of the third-party website, application and/or download made available via the Services.
- 5.4 The Customer agrees and acknowledges that the Services provided are dependent upon the goods and/or services of Third Party Suppliers and, as such, if those third party providers change the way that they operate, their terms and conditions, increase their charges and/or the structure or ways in which they charge for their services (for example by introducing different message lengths or storage volume restrictions etc.) then this will have an impact on the Services and, as such, Boomerang reserves the right to change, amend and/or update the way in which it provides the Services to the Customer or to increase the Fees in order to reflect the way that Boomerang has been impacted by such third party changes and in such circumstances Boomerang will provide no less than 7 days prior written notice to the Customer of such changes provided that in the case of immediate or changes at short notice by such Third Party Suppliers, Boomerang will provide the Customer with as much notice as reasonably practicable.
- 5.5 The Customer hereby agrees, acknowledges and accepts that Third Party Suppliers (including network operators) may apply service restrictions and limitations from time to time in relation to and/or in connection with the Services. Such restrictions and limitations may include:
- 5.5.1 imposing restrictions upon the length of a message (for example the number of characters). Where the Message content exceeds any limit the Message may be delivered and may be abbreviated based on the maximum characters allowed);
- 5.5.2 blocking Messages where the content of the Message is repeated across high volumes of messages or high volumes are submitted to the same recipient or recipients; and/or
- 5.5.3 blocking Messages based on the originating / sender id associated to or with the Message and/or amending the originating / sender Id associated to or with the Message, preventing any replies being returned to Boomerang;
- 5.5.4 Messages not being marked as delivered by Boomerang due to the fact that not all network operators provide delivery status updates;
- 5.5.5 specific registrations or configurations being in place in order for successful delivery of Messages to take place.
- 5.6 Pricing and payment terms and monies due, owing or payable to Boomerang shall be in accordance with this Agreement regardless of any restrictions and limitations that may be imposed by, relate to and/or be connected with Third Party Suppliers (including network operators).

5.7 The Customer hereby expressly agrees that it will indemnify Boomerang for all costs, charges, fees and losses (of whatever nature and howsoever arising) that are claimed by any Third Party Suppliers (including network operators) from and/or against Boomerang in relation to the Customer's use of the Services and/or the services provided by Third Party Supplier (including network operators) to the Customer.

6. Boomerang's obligations

6.1 Boomerang undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

6.2 The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Boomerang's instructions, or modification or alteration of the Services by any party other than Boomerang or Boomerang's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Boomerang will, at its expense, use its reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1. Notwithstanding the foregoing, Boomerang:

6.2.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-free and/or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet all and/or any of the Customer's requirements; and

6.2.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities; and

6.2.3 is not responsible for checking, advising upon, notifying and/or ensuring that the use of the Services by the Customer will achieve the benefits (of whatever nature) that the Customer is seeking to achieve and/or that use of the Services by the Customer is in accordance with and complies with any rules, regulations and/or codes which the Customer is subject to including any advertising, financial services and/or data protection laws and regulations.

6.3 This Agreement shall not prevent or hinder Boomerang from entering into similar agreements with third party customers or others, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

7. Customer's obligations

7.1 The Customer shall provide Boomerang:

7.1.1 with all reasonable co-operation, information and assistance in relation to this Agreement. In particular, it will appoint a representative who shall have the authority to contractually bind the Customer on all matters relating to this Agreement and the Customer shall use reasonable endeavours to ensure the continuity of the Customer's representative;

7.1.2 with all necessary access to such information as may be required by Boomerang in order to provide the Services, including but not limited to Customer Data, security access information and configuration services

- 7.2 The Customer shall at all times:
- 7.2.1 comply with all applicable laws and regulations with respect to its activities under this Agreement;
 - 7.2.2 comply the with Policies set out in this Agreement
 - 7.2.3 carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Boomerang may adjust any agreed timetable or delivery schedule as reasonably necessary;
 - 7.2.4 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and the Customer shall be responsible for any Authorised User's breach of this Agreement and/or misuse, unauthorised use and/or damage to the Services by Authorised Users.
 - 7.2.5 hereby grant Boomerang all licences, consents and permissions to process, store, transmit and/or copy information and data (including Messages) as Boomerang may require from time to time in relation to performing its obligations in relation to this Agreement;
 - 7.2.6 obtain and shall maintain all required and/or necessary licences, consents, and permissions that may be required for Boomerang, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services. This will include Customer obtaining permissions or consents from the relevant users and/or third parties where required and complying with local laws including in relation to data protection and privacy;
 - 7.2.7 ensure that its network and systems are fully operational and in proper working order and comply with the relevant specifications provided by Boomerang from time to time;
 - 7.2.8 be entirely responsible for procuring and maintaining and monitoring its network connections and telecommunications links from its systems to Boomerang's data centres and networks, and all problems, conditions, delays, delivery failures and all other loss or damage arising from and/or relating to the Customer's network connections or telecommunications links and/or issues caused by or arising from the Customer's use of the internet;
 - 7.2.9 be responsible for all processes they build and alterations they make to the Services and shall ensure they carry out testing for bugs and fixes before using the Services as altered or the processes built by the Customer with their end users and customers;
 - 7.2.10 be responsible for all unauthorised use made of the Messaging and for the costs incurred in respect of any spamming of a Communication Address provided by Boomerang save where such spamming or unauthorised use results from Boomerang's default; inform Authorised Users and/or third parties that Customer is the provider of the Services to them as between Boomerang and Customer, and Customer hereby agrees that Customer is solely responsible for any Messages that are originated from and/or transmitted to end users and/or third parties using the Services; and
 - 7.2.11 endeavour not to include non-GSM encoded characters in Messages save where it is necessary to do so and acknowledges that the inclusion of non-GSM encoded characters may result in additional charges for Messages due to the fact that a single Message may only include 70 non-GSM encoded characters.

8. Charges and payment

- 8.1 The Customer shall pay the Fees to Boomerang for the Services in accordance with this clause 8 and the Customer's UI.
- 8.2 Fees are based (in part) upon charges that are charged by Third Party Suppliers (including network operators) and so are not subject to discounts or credits. Third Party Suppliers (including network operators) will charge Boomerang for various services which Boomerang will in turn charge the Customer for which shall include: (i) Messages transmitted but not received for whatever reason; and (ii) long messages which are billed as separate Messages; (iii) Messages which are billed according to the encoding of the characters contained in the body of the Message and the network technology used by the destination Third Party Supplier (including network operators). For example, a single part, billable message, may contain a maximum of 160 GSM encoded characters and a multi-part message is billed in segments of 153 characters. A single part message containing Unicode characters may contain only 70 characters and (iv) Boomerang reserves the right to change the methods by which it charges for services (including billing in units for different types of Services).
- 8.3 The Customer acknowledges that Message rates vary depending on the destination in which a Message is received or responded to by the end recipient. A default account rate and the rates that apply to different destinations shall be those set out in the Customer's UI as updated from time to time.
- 8.4 The Customer shall on the Effective Date provide to Boomerang accurate, valid, up-to-date and complete payment details (which may include credit card, paypal, direct debit, standing order and/or any other payment method and process) and/or approved purchase order information acceptable to Boomerang and any other relevant accurate, valid, up-to-date and complete contact and billing details and, if the Customer provides
- 8.4.1 its payment details to Boomerang, the Customer hereby expressly authorises Boomerang to invoice the Customer in advance using such payment details:
- (a) on the Effective Date for the Fees payable in respect of the Subscription Term; and
 - (b) subject to clause 14.1, on each anniversary of the Effective Date for the Fees payable in respect of the next Renewal Term; and
- 8.4.2 its approved purchase order information to Boomerang, Boomerang shall invoice the Customer:
- (i) on the Effective Date for the Fees payable in respect of the Initial Subscription Term; and
 - (ii) subject to clause 13.1, prior to each anniversary of the Effective Date for the Fees payable in respect of the next Renewal Term, and the Customer shall pay each invoice according to the payment notice period set out in the Customer's UI.
- 8.5 If Boomerang has not received payment within 7 days after the due date, and without prejudice to any other rights and remedies of Boomerang:
- 8.5.1 Boomerang may after providing 5 Business Days' written notice to the Customer, without any liability (of whatever nature and howsoever arising) to the Customer, disable the Customer's password, account and access to all or part of the Services and Boomerang shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

- 8.5.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 5% over the then current base lending rate of HSBC Bank plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 8.6 All amounts and fees stated or referred to in this Agreement:
- 8.6.1 shall be payable in the currency set out in the Customer's UI;
- 8.6.2 are, subject to clause 13.4, non-cancellable and non-refundable;
- 8.6.3 are exclusive of value added tax (where applicable), which shall be added to Boomerang's invoice(s) at the appropriate rate.
- 8.7 If, at any time whilst using the Services, the Customer exceeds the amount of storage space specified in the Documentation and/or incurs additional charges by not complying with the Policies, Boomerang shall (at Boomerang's absolute discretion) charge the Customer, and the Customer shall pay, Boomerang's then current excess data usage, management and/or storage fees and fees due as a result of not complying with the Policies. Boomerang's excess data usage, management and/or storage fees current as at the Effective Date are set out in the Customer's UI.
- 8.8 Boomerang shall be entitled to increase and invoice the Customer in respect of the fees payable in respect of the additional Services purchased pursuant to clause 3 and where the Customer needs to be moved to a different usage band and to invoice and charge the Customer in advance for the remainder of the Subscription Term or Renewal Term as the case may be. The Customer acknowledges and agrees that during the Subscription Term the Customer shall not be entitled to downgrade the usage band selected at the beginning of the term and that the usage band may only be upgraded provided that where the Customer exceeds their usage band for a period of 60 days or more Boomerang may require the Customer to move to the appropriate usage band for the remainder of the Subscription Term.
- 8.9 All invoices will be compiled from Boomerang's records and will be deemed to be correct unless disputed by the Customer within 20 days of the date of the invoice with details of the reasons for the dispute.
- 8.10 In the event that Customer disputes any invoice in relation to any charges made by a Third Party Supplier (including a network operator) then Customer shall pay that invoice but Boomerang will investigate the nature of the dispute and raise this with the relevant Third Party Supplier (including a network operator) and if that Third Party Supplier (including any network operator) refunds any amounts then Boomerang will refund the appropriate amounts (less Boomerang fees and charges) to the Customer.
- 8.11 Where the Customer is a credit customer payment must be made for subscription fees, Message charges and any other charges or fees within 14 days of Boomerang's invoice or as otherwise specified in the Customer's UI. Where any inclusive credit is provided by Boomerang such inclusive credit shall be used prior to charges being issued to the Customer.
- 8.12 Where the Customer is a pre-payment customer: (i) the Customer shall pre-purchase Credits from the credit bundles available through the Customer's UI which Credits shall be non-refundable and Boomerang will allocate the corresponding number of Credits accordingly; (ii) the Credits are only valid for the Subscription Term and fees incurred over and above the pre-paid Credits will be paid by Customer to Boomerang and payable according to the payment notice period set out in the Customer's UI; (iii) Customer is solely responsible for pre-payment Credits purchased and must ensure it has sufficient Credits to for its requirements from time

to time and Boomerang shall not be liable or responsible if the Customer has insufficient Credits for its requirements and/or exceeds the number of pre-paid credits although Boomerang will notify the Customer from time to time by email or in the Customer UI when Credits are low; (iv) Boomerang may deduct from any pre-payment Credits any sums due to Boomerang from the Customer; (iv) Credits will only be redeemable against the Services in respect of which they have been purchased and to which they relate and cannot be used for other Services (v) where Boomerang has provided inclusive credits with any Service the inclusive credit will be used prior to any pre-purchased Credit being charged and (vi) if Customer changes its subscription it will be invoiced by Boomerang for the new subscription and this must be paid by Customer according to the payment notice period set out in the Customer's UI.

- 8.13 Customer hereby expressly agrees that it will indemnify Boomerang for all costs, charges and fees (of whatever nature and howsoever arising) that are claimed by any Third Party Suppliers (including network operators) from Boomerang in relation to Customer's use of the Services.
- 8.14 After the first 12 months of this Agreement Boomerang may increase any of the Fees on giving the Customer no less than 30 days' notice of any such increase and the Customer may terminate this Agreement within 30 days of receiving any such notice of any increase by giving notice to take effect no sooner than the date on which the increase in Fees was to become effective provided that notwithstanding the provisions of this clause 8.14, Boomerang shall be entitled to increase the Fees at any time in accordance with the provisions of clause 5.4.

9. Proprietary rights

- 9.1 The Customer acknowledges and agrees that Boomerang and/or its licensors own all right, title and interest (including all Intellectual Property Rights) in relation to and/or in connection with the Services (including the Communication Addresses) and the Documentation (and all modifications, updates and/or changes to all of the foregoing).
- 9.2 Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, any Intellectual Property Rights and/or or any other rights or licences in respect of the Services or the Documentation.
- 9.3 Boomerang confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

10. Confidentiality and compliance with policies

- 10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information to the extent that it:
- 10.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
- 10.1.2 was in the other party's lawful possession before the disclosure;
- 10.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- 10.1.4 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

- 10.2 Each party shall hold the other's Confidential Information in confidence and, unless and to the extent required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 10.4 Neither party shall be responsible and/or liable for any loss, destruction, alteration and/or disclosure (of whatever nature and howsoever arising) of Confidential Information caused (directly or indirectly) by the acts and/or omissions of any third party that is not under a written duty of confidentiality to the relevant party hereto.
- 10.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Boomerang's Confidential Information.
- 10.6 Boomerang acknowledges that the Customer Data is the Confidential Information of the Customer.
- 10.7 No party shall make, or permit any person to make, any public announcement and/or statement (whether in writing or otherwise) concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction provided that Boomerang may refer to the Customer and this deal and/or transaction on Boomerang's website and/or in Boomerang promotional documentation and materials.
- 10.8 The above provisions of this clause 10 shall survive termination of this Agreement, however arising.
- 10.9 In performing its obligations under this Agreement the Customer shall comply with the Policies.

11. Use of Services and indemnity

- 11.1 The Services must not in any circumstances be used for emergency services (e.g. 999 calls or 112 calls) and/or in circumstances where, should there be any issues with the Services (for example delays with Messages) any party or person could suffer death or personal injury provided that such use may be allowed by Boomerang where this is expressly and specifically set out and agreed in writing between Boomerang and the Customer. If, notwithstanding this prohibition (and even if such use is expressly permitted in writing between the parties), the Customer will be entirely responsible for such use and such use shall be at the Customer's own risk and the provisions of this clause 11 shall also apply to such use.
- 11.2 The Customer shall be entirely responsible for and shall defend, indemnify and hold harmless Boomerang against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with any claims brought against Boomerang by any third parties in relation to or in connection with the Customer's use of the Services and/or this Agreement (including the sending and/or receiving of any Messages and/or in relation to the content of any Messages) provided that:
- 11.2.1 the Customer is given notice of any such claim by Boomerang;

- 11.2.2 Boomerang provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- 11.2.3 the Customer is given sole authority to defend or settle the claim provided that the terms and/or consequences of settlement do not in any way adversely affect Boomerang.
- 11.3 Boomerang shall defend the Customer, its officers, directors and employees against any damages awarded against Customer as a result of any third party claim that the Services or Documentation infringes any third party Intellectual Property Rights provided that:
 - 11.3.1 Boomerang is given prompt written notice of any such claim;
 - 11.3.2 the Customer provides reasonable co-operation to Boomerang in the defence and settlement of such claim, at Boomerang's reasonable expense; and
 - 11.3.3 Boomerang is given sole authority to defend or settle the claim.
- 11.4 In the defence or settlement of any claim, Boomerang may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 14 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 11.5 In no event shall Boomerang, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
 - 11.5.1 a modification and/or change of the Services and/or Documentation by anyone other than Boomerang;
 - 11.5.2 the Customer's use of the Services and/or Documentation in a manner contrary to the instructions given to the Customer by Boomerang and/or in a manner contrary to any of the terms and conditions of this Agreement; and/or
 - 11.5.3 the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Boomerang or any appropriate authority.
- 11.6 The foregoing and clause 12.4 state the Customer's sole and exclusive rights and remedies, and Boomerang's (including Boomerang's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any Intellectual Property Rights.

12. Limitation of liability

- 12.1 This clause 12 sets out the entire liability of Boomerang (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
 - 12.1.1 arising under or in connection with this Agreement;
 - 12.1.2 in respect of any use made by the Customer of the Services and Documentation or any part of them; and
 - 12.1.3 in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 12.2 Except as expressly and specifically provided in this Agreement:

- 12.2.1 the Customer assumes the entire responsibility for results and outcomes obtained from the use of the Services and the Documentation by the Customer, including for benefits and/or conclusions drawn from such use;
- 12.2.2 Boomerang shall have no liability for delayed or failed delivery of any Message and/or any reply to any Message including where such delay or failure is due to user error, Third Party Suppliers (including network operators) and/or processing and/or transmission errors;
- 12.2.3 Boomerang shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Boomerang by the Customer in connection with the Services, or any actions taken by Boomerang at the Customer's direction;
- 12.2.4 the Customer hereby expressly accepts and acknowledges that Boomerang will not be liable or responsible (in whatever way and howsoever arising) for:
- (i) the operation and processing by Third Party Suppliers (including network operators) of Messages. The results of actions by Third Party Suppliers (including network operators) may include Messages being delayed, not being transmitted to recipients and/or not being received by recipients;
 - (ii) the correct operation of equipment, services, Communication Addresses and/or resources of senders and recipients of Messages (for example ensuring that user mobile phones and/or other devices are switched on). The results of this may include Messages being delayed or not being transmitted to and/or from recipients and/or not being received by recipients;
 - (iii) Customer and/or end user error, misuse (whether intentional or unintentional) and/or unauthorised use of the Services;
 - (iv) the Customer selection and/or use of the Services including where Customer's use of the Services is for purposes for which the Services were not designed and/or for which they were not intended to be used; and/or
 - (v) any losses of whatever nature (and whether direct and/or indirect) which relate to or are connected with the Customer not achieving its anticipated benefits or advantages by using the Services.
- 12.2.5 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
- 12.2.6 the Services and the Documentation are provided to the Customer on an "as is" basis. The Customer must check and satisfy itself that it is entitled to use the Services in its selected jurisdictions for the purposes which it requires and ensure that it complies at all times with all rules and regulations regarding the purposes and ways in which it uses the Services in its selected jurisdictions (including all rules and regulations relating to data protection and privacy).
- 12.3 Nothing in this Agreement limits and/or excludes the liability of Boomerang:
- 12.3.1 for death or personal injury caused by Boomerang's negligence;
 - 12.3.2 for fraud or fraudulent misrepresentation; and/or

- 12.3.3 for events or circumstances to the extent to which they cannot be excluded or limited by law.
- 12.4 The grant of service credits under the Service Level Agreement shall be Boomerang's entire total maximum aggregate liability in relation to the Services which those service credits cover and the parties hereby agree that such service credits are in full and final settlement of any claims relating to: (i) any failure of the Services to achieve the service level targets set out in the Service Level Agreement or any other failures or faults with the Service; and/or (ii) Boomerang's failure to remedy faults or failures within agreed repair times or otherwise in accordance with the Service Level Agreement.
- 12.5 Subject to clause 12.2, 12.3 and 12.4:
- 12.5.1 Boomerang shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits (whether direct and/or indirect), loss of business, loss of anticipated savings, depletion of goodwill and/or similar losses and/or loss or corruption of data or information;
- 12.5.2 Boomerang shall not be liable for any special, indirect and/or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
- 12.5.3 Boomerang's total maximum aggregate liability in contract (including in respect of the indemnity at clause 11.3), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to GBP£1 million.
- 12.6 The parties hereby expressly agree that the terms and conditions of this agreement (including those in clause 12) are reasonable and that each party has had the opportunity to negotiate these terms and take legal advice on them and the allocation of responsibility between the parties is reflected in the charges and that each party has entered into this agreement in its own respective commercial interests.
- 12.7 Neither party shall make any statements or claims which conflict with and/or are inconsistent and/or contrary to clause 12.6.
- 12.8 All references to "Boomerang" in this clause 12 shall, for the purposes of this clause and clause 13 only, be treated as including all employees, officers, subcontractors and agents of Boomerang, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause 12.

13. Term, Termination & Suspension

- 13.1 This Agreement shall, unless otherwise terminated as provided in this clause 13, continue for the Subscription Term and, thereafter, this Agreement be automatically renewed for successive Renewal Terms, unless:
- 13.1.1 either party notifies the other party of termination, in writing, at least 30 days before the end of the applicable Subscription Term or any applicable Renewal Term, in which case this Agreement shall terminate upon the expiry of the applicable Subscription Term or Renewal Term; or
- 13.1.2 otherwise terminated in accordance with the provisions of this Agreement;
- 13.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

- 13.2.1 the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than the payment notice period stated in the Customer UI after being notified in writing to make such payment;
- 13.2.2 the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- 13.2.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 and/or becomes insolvent and/or enters into any process or procedure which is similar to and/or equivalent to insolvency;
- 13.2.4 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2.3; and/or
- 13.3 Boomerang may (without any liability of whatever nature and howsoever arising), suspend forthwith some or all of the Services to the Customer upon notice to the Customer if:
 - 13.3.1 Boomerang is entitled to terminate this Agreement;
 - 13.3.2 Boomerang is instructed or requested to do so by any governmental body or agency, an emergency services organisation, any competent authority and/or Court;
 - 13.3.3 Any Third Party Supplier (including a network operator) ceases to provide services and/or changes the way it operates, does business and/or charges for its services;
 - 13.3.4 Boomerang believes that it is necessary or desirable to do so for legal or other regulatory reasons including in relation to any issues relating to data protection and/or privacy laws and regulations;
 - 13.3.5 The Customer is about to undergo any Change of Control; and/or
 - 13.3.6 Boomerang believes or becomes aware that Customer or an Authorised User has breached the terms of this Agreement, is attempting to breach the terms of this Agreement and/or is planning to do so and/or Boomerang believes that the Customer is using the Services in such a way that could lead to Boomerang suffering or incurring liability and/or losses.
- 13.4 Any suspension of the Services by Boomerang shall entitle Boomerang to terminate this Agreement. Any suspension of the Services by Boomerang shall not exclude or affect any other right or remedy to which Boomerang may be entitled under this Agreement and the Customer shall still be obliged to pay all charges and fees that may be due, payable and/or owing in relation to this Agreement.
- 13.5 If the Service is suspended then Boomerang shall reinstate such Service as soon as reasonably practicable after the event giving rise to such suspension has been resolved or lifted to Boomerang's reasonable satisfaction. If the Service is re-instated then Boomerang may charge a reconnection fee.
- 13.6 On termination of this Agreement for any reason:
 - 13.6.1 all licences granted under this Agreement shall immediately terminate;

- 13.6.2 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- 13.6.3 Boomerang may destroy or otherwise dispose of any of the Customer Data in its possession unless Boomerang receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Boomerang shall use reasonable commercial endeavours to deliver the back-up to the Customer in such format and on such media as Boomerang selects within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not these are due for payment at the date of termination). The Customer shall pay all reasonable expenses incurred by Boomerang in returning or disposing of Customer Data; and
- 13.6.4 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

14. Force majeure

Boomerang shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Boomerang or any other party), failure of a utility service or transport or telecommunications network, acts and/or omissions of Third Party Suppliers (including network operators), acts of God, war, riot, civil commotion, malicious damage, pandemic, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant, machinery and/or the internet, fire, flood, storm and/or acts or omissions of third parties, provided that the Customer is notified of such an event and its expected duration. Nothing in this clause shall entitle the Customer to delay, withhold and/or not pay any monies that may be due, owing and/or payable to Boomerang.

15. Conflict

If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.

16. Variation

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17. Waiver

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18. Rights and remedies

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

19. Severance

- 19.1 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 19.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

20. Entire agreement

- 20.1 This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous discussions, negotiations, proposals, product information, arrangements, agreements, understandings, and/or course of trade or conduct (whether in writing or otherwise) between them relating to the subject matter they cover.
- 20.2 Each of the parties expressly acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in writing in this Agreement.
- 20.3 Any terms and conditions contained in any Customer purchase order, agreement and/or document shall be invalid and shall not be relevant to this Agreement unless expressly agreed to in writing by Boomerang and signed by Boomerang.
- 20.4 All dates and times that are given in relation to the Services are estimates only and Boomerang shall have no liability in relation to meeting such times and dates.
- 20.5 Nothing in this clause shall exclude or limit any liability or responsibility in relation to any fraudulent misrepresentations.

21. Assignment

- 21.1 Subject to clause 21.2, neither party shall without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 21.2 Boomerang may at any time assign, transfer, sub-contract and/or deal in any other manner with all and/or any of its rights or obligations under this Agreement in respect of or to: (i) any Boomerang group company or connected company; and/or (b) to any successor or assignee of Boomerang through any merger or acquisition of assets, provided that Boomerang shall remain primarily liable to the Customer for the performance of Boomerang's obligations in this Agreement. A Boomerang group company shall include any other person controlling, controlled by or under common control with Boomerang where "control" and related terms means the ability to direct the affairs of Boomerang whether by means of the holding of shares, or the possession of voting power, by virtue of any powers conferred by its constitutional or corporate documents or otherwise.

22. No partnership or agency

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

23. Third party rights

This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

24. Notices

- 24.1 Any notice required to be given under this Agreement shall be in writing and shall be sent to the other party at the email address given by the Customer to Boomerang from time to time and to Boomerang to operations@boomcomms.com provided that where the sender does not receive a read receipt or an acknowledgement from the recipient that the notice has been received within two Business Days of sending the notice the sender shall send a copy of the notice by post or by hand to the Customer's address as set out in the UI or in the case of Boomerang to 11 St. Shad's Street, London, WC1H 8BG and delivery shall be deemed to have occurred on receipt of the notice by post or hand in accordance with clause 24.2 below..
- 24.2 This clause 24.2 sets out for each delivery method referred to in clause 24.1 above, the date and time when the notice is deemed to have been received or given (provided all the other requirements of this clause have been satisfied and subject to the provision of clause 24.3):
- 24.2.1 if delivered by hand at the time the notice is left at the address;
- 24.5.2 if sent by pre-paid first class post or other next working day delivery service, at 9.00am on the second Business Day after posting;
- 24.2.3 if sent by pre-paid airmail at 9.00am on the fifth Business Day after posting; or
- 24.2.4 if sent by email, at the time of transmission.
- 24.3 If deemed receipt under clause 25.2 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. In this clause 24.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 24.4 This clause does not apply to the service of proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 24.5 A notice delivered by email shall be deemed to have been receipt at the time of transmission hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

25. Set Off

The Customer hereby waives any and all existing and future set offs against any of the Fees and agrees to pay the Fees and any other sums due hereunder regardless of any set off or cross claim that the Customer may have against Boomerang and/or any third party.

26. Governing law and Jurisdiction

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales and each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims) and provided that Boomerang shall be entitled to enforce its rights and remedies (including its intellectual property rights) both within and/or outside England against the Customer.

This Agreement has been entered into on the Effective Date

Schedule 1GDPR PROCESSOR CLAUSES

1 DATA PROTECTION

- 1.1. Definitions: In this Clause, the following terms shall have the following meanings:
- (a) "**controller**", "**processor**", "**data subject**", "**personal data**" and "**processing**" (and "**process**") shall have the meanings given in Applicable Data Protection Law; and
 - (b) "**Applicable Data Protection Law**" shall mean: (i) prior to 25 May 2018, Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data; and (ii) on and after 25 May 2018, Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
- 1.2. Relationship of the parties: The Customer (the controller) appoints Boomerang as a processor to process the personal data that is the subject of this Agreement (the "**Data**"). Each party shall comply with the obligations that apply to it under Applicable Data Protection Law.
- 1.3. Purpose limitation: Boomerang shall process the Data as a processor as necessary to perform its obligations under this Agreement and strictly in accordance with the documented instructions of the Customer (the "**Permitted Purpose**"), except where otherwise required by any EU (or any EU Member State) law applicable to the Customer. In no event shall Boomerang process the Data for its own purposes or those of any third party.
- 1.4. International transfers: Boomerang shall not transfer the Data (nor permit the Data to be transferred) outside of the European Economic Area ("**EEA**") unless (i) it has first obtained the Customer's prior written consent; and (ii) it takes such measures as are necessary to ensure the transfer is in compliance with Applicable Data Protection Law. Such measures may include (without limitation) transferring the Data to a recipient in a country that the European Commission has decided provides adequate protection for personal data, to a recipient that has achieved binding corporate rules authorisation in accordance with Applicable Data Protection Law, or to a recipient that has executed standard contractual clauses adopted or approved by the European Commission.
- 1.5. Confidentiality of processing: Boomerang shall ensure that any person that it authorises to process the Data (including the customer's staff, agents and subcontractors) (an "**Authorised Person**") shall be subject to a strict duty of confidentiality (whether a contractual duty or a statutory duty), and shall not permit any person to process the Data who is not under such a duty of confidentiality. Boomerang shall ensure that all Authorised Persons process the Data only as necessary for the Permitted Purpose.
- 1.6. Security: The processor shall implement appropriate technical and organisational measures to protect the Data (i) from accidental or unlawful destruction, and (ii) loss, alteration, unauthorised disclosure of, or access to the Data (a "**Security Incident**"). Such measures shall have regard to the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons. Such measures shall include, as appropriate:
- (a) the encryption of personal data;

- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - (c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
 - (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
- 1.7. Subprocessing: The Customer agrees that Boomerang may engage third parties to process personal data in order to assist Boomerang to deliver the services on behalf of the Customer provided that: (i) Boomerang provides at least 30 days' prior notice of the addition or removal of any subprocessor (including details of the processing it performs or will perform), which may be given by posting details of such addition or removal at the following URL: <https://boomerangmessaging.com/sub-processors> (ii) Boomerang imposes data protection terms on any subprocessor it appoints that protect the Data to the same standard provided for by this Clause; and (iii) Boomerang remains fully liable for any breach of this Clause that is caused by an act, error or omission of its subprocessor. If the Customer refuses to consent to Boomerang's appointment of a third party subprocessor on reasonable grounds relating to the protection of the Data, then either Boomerang will not appoint the subprocessor or the Customer may elect to suspend or terminate this Agreement.
- 1.8. Cooperation and data subjects' rights: Boomerang shall provide all reasonable and timely assistance (including by appropriate technical and organisational measures) to the Customer to enable the Customer to respond to: (i) any request from a data subject to exercise any of its rights under Applicable Data Protection Law (including its rights of access, correction, objection, erasure and data portability, as applicable); and (ii) any other correspondence, enquiry or complaint received from a data subject, regulator or other third party in connection with the processing of the Data. In the event that any such request, correspondence, enquiry or complaint is made directly to Boomerang, Boomerang shall promptly inform the Customer providing full details of the same.
- 1.9. Data Protection Impact Assessment: If Boomerang believes or becomes aware that its processing of the Data is likely to result in a high risk to the data protection rights and freedoms of data subjects, it shall promptly inform the Customer and provide the Customer with all such reasonable and timely assistance as the Customer may require in order to conduct a data protection impact assessment and, if necessary, consult with its relevant data protection authority.
- 1.10. Security incidents: Upon becoming aware of a Security Incident, Boomerang shall inform the Customer without undue delay and shall provide all such timely information and cooperation as the Customer may require in order for the Customer to fulfil its data breach reporting obligations under (and in accordance with the timescales required by) Applicable Data Protection Law. Boomerang shall further take all such measures and actions as are necessary to remedy or mitigate the effects of the Security Incident and shall keep the Customer informed of all developments in connection with the Security Incident.
- 1.11. Deletion or return of Data: Upon termination or expiry of this Agreement, Boomerang shall (at the Customer's election) destroy or return to the Customer all Data (including all copies of the Data) in its possession or control (including any Data subcontracted to a third party for processing). This requirement shall not apply to the extent that Boomerang is required by any EU (or any EU Member State) law to retain some or all of the Data, in which event Boomerang shall isolate and protect the Data from any further processing except to the extent required by such law until deletion is possible.

- 1.12. **Audit:** Boomerang shall permit the Customer (or its appointed third party auditors) to audit Boomerang's compliance with this Clause, and shall make available to the Customer all information, systems and staff necessary for the Customer or its third party auditors) to conduct such audit. Boomerang acknowledges that the Customer (or its third party auditors) may enter its premises for the purposes of conducting this audit, provided that the Customer gives it reasonable prior notice of its intention to audit, conducts its audit during normal business hours, and takes all reasonable measures to prevent unnecessary disruption to Boomerang's operations. Boomerang reserves the right to charge a daily rate for professional services during an onsite audit. The Customer will not exercise its audit rights more than once in any twelve (12) calendar month period, except (i) if and when required by instruction of a competent data protection authority; or (ii) the Customer believes a further audit is necessary due to a Security Incident suffered by Boomerang.
- 1.13. **Indemnity:** Each party (the "**Indemnifying Party**") shall indemnify the other (the "**Indemnified Party**") from and against all loss, cost, harm, expense (including reasonable legal fees), liabilities or damage ("**Damage**") suffered or incurred by the Indemnified Party as a result of the Indemnifying Party's breach of the data protection provisions set out in this Clause, and provided that: (i) the Indemnified Party gives the Indemnifying Party prompt notice of any circumstances of which it is aware that give rise to an indemnity claim under this Clause; and (ii) the Indemnified Party takes reasonable steps and actions to mitigate any ongoing Damage it may suffer as a consequence of the Indemnifying Party's breach.

2 DETAILS OF PROCESSING

- 2.1 The Data processing activities carried out by Boomerang under this Agreement may be described as follows:
- 2.1.1 Subject matter of processing
The business operations of the Customer
- 2.1.2 Nature and purpose of processing
The transmission of messages using software applications and platforms for use by the Customer for its business operations
- 2.1.3 Categories of personal data
Name, email address, telephone number, address
- 2.1.4 Categories of data subjects
The Customer, the Authorised Users and customer of the Customer
- 2.1.5 Duration
The term of this Agreement

Schedule 2 – SERVICE LEVEL AGREEMENT

1. GENERAL

Capitalised terms used in this Service Level Agreement (“SLA”) but not defined shall have the meaning given in the Agreement to which this SLA forms part.

Boomerang shall use reasonable endeavours to maintain the System and manage fault reporting as described in this SLA. Certain parts of this SLA (including in particular the Target Service Levels) are applicable only to those Customers who subscribe for and are Boomcare Premium Customers.

The Target Service Levels set out in this Schedule apply only to the System (as defined below) and do not apply to any other Services or Features whether such Services and Features are available at the time of signature of the Agreement or acceptance by Boomerang of an Order unless Boomerang has expressly agreed in writing that such Target Service Levels will apply.

2. DEFINITIONS

2.1 In this SLA

- 2.1.1 “Boomcare Premium” has the meaning given in the section Boomcare Support Packages – Boomcare in below.
- 2.1.2 “Scheduled Maintenance” means planned maintenance of the System.
- 2.1.3 “Service Request “, is defined as any support-related request for assistance by a customer to Boomerang via email or a phone call to the provided support number.
- 2.1.4 “Solution Time” is the time from when a problem is reported to or identified by Boomerang until resolution of the problem.
- 2.1.5 “System” means the Service but limited to those parts of the Service which are under Boomerang’s direct control (this specifically excludes infrastructure, environments and underlying services provided by Network Operators or of customers).
- 2.1.6 “System Availability” means the availability of the System calculated as provided in section 6 below.
- 2.1.7 “Target Service Levels” means the target figures set out in the section Target Service Levels, that apply in respect of Boomcare Premium Customers.

3 OPERATION & MAINTENANCE

3.1 Operations Services

Boomerang will manage and operate the System and shall have sole discretion in respect of the same. Without prejudice to the foregoing, operations will consist of the following:

3.1.1 System Updates

Boomerang will implement all system updates (with same or higher functionality) to the System when in Boomerang’s determination, such updates are necessary to meet the target performance indicators outlined in Section 5. Boomerang will deploy additional hardware and software as it determines are required to address System performance measurements from time to time.

3.1.2 Performance Management

Boomerang will record performance of the System. This includes the retrieval and analysis of statistical data from the System to confirm whether the Target Service Levels are being met and the System is performing according to design. Boomerang will provide System support, monitoring and maintenance of the System in accordance with paragraph 4.1 of this SLA with the response time for such support depending on the level of support selected by each customer. Boomerang will provide customers with notice of any System service affecting issues or a suspected problem through agreed notification method such as e-mail, SMS or via the Boomerang website.

3.1.3 Fault Management

Boomerang will provide fault management and recovery of the System. This includes logging of alarms, acting on alarms, and resolving the cause or limiting the effect.

3.1.4 Data Management

Boomerang will provide data management for the System. The activities to be performed by the Service Provider include executing scheduled backups.

3.1.5 Maintenance

Boomerang will provide routine maintenance for the System in accordance with its determined requirements. The activities to be performed by Boomerang may include:

- Preventive Maintenance
- Validity testing of security backups
- Corrective Maintenance
- Replacement of faulty hardware units

4 SUPPORT ARRANGEMENTS

4.1 Operational Service Support overview and responsibilities

4.1.1 The Operational Service comprises of:

- Boomerang Messaging (API interfaces and messaging gateway)
- Boomerang UI (all products contained therewithin)
- Boommail

4.1.2 Boomerang is responsible for providing the following operational support:

4.1.2.1 Proactive Operational Support

- Service Monitoring
- Notification of planned outages

4.1.2.2 Reactive Operational Support

- Service Requests
- Support Requests

4.1.3 Where Boomerang's services are integrated with third party software solutions, the scope of support does not extend to issues relating to or questions regarding the third party software.

4.2 **Pro-active Operational Support: Service Monitoring**

4.2.1 The external service endpoints (APIs) and user interface are monitored from different geographical locations that are used to test connectivity to all services.

4.2.2 Availability and performance of all hardware components, critical application processes and connectivity to suppliers is monitored. This includes but is not limited to hardware resources utilised (e.g. CPU, RAM and disk space), network traffic, application performance, message transit times, processing capacity, message queues (internal), carrier queues and delivery and response success rates.

4.2.3 Each component that is monitored will trigger a warning / critical state alarm based on breaching pre-defined metrics. These metrics are reviewed quarterly to ensure their accuracy, relevance and reliability

4.3 **Pro-active Operational Support: Planned maintenance**

4.3.1 All planned outages are scheduled where possible to minimise customer inconvenience. A Notification is sent by e-mail to the nominated customer contacts, the Operational Support team and Account Manager within Boomerang along with all designated supplier contacts. The maximum notice period possible is provided and correspondence will contain the following information:

- Date and time of the outage
- The scope of the work to be carried out
- Expected timeframe for service interruption

4.3.2 At the end of a Planned Outage a further notification will be sent by e-mail and will contain the following information:

- Date and time the outage ceased
- Results of the work carried out, stating whether further work may be required

4.3.3 Planned maintenance is scheduled for both software and hardware updates and is categorised as follows:

- Software:
 - Functional enhancements
 - Bug fixes
 - Platform updates and maintenance
- Hardware:
 - Equipment upgrade / maintenance
 - Relocation of hardware
 - System re-boot

4.4 **Reactive Support: Service Request**

4.4.1 Case management

4.4.1.1 Service requests are raised and monitored through our Technical Support case management system. Such requests can be raised directly by the customer or by Boomerang's Technical Support team.

4.4.2 Customer originated requests

4.4.2.1 Any customer representative raising a ticket is required to provide their own name, the name of the organisation and a description of the request. The description should contain as much relevant information as possible regarding the support request that will help the Support team to identify the root cause of the issue. Confirmation of the service request, including a unique reference is sent to the e-mail address provided, with status updates issued as action is undertaken.

4.4.3 Boomerang Support team request

4.4.3.1 Where service requests are made verbally by a customer or internally by Boomerang to the Support team, a ticket is raised by the team using the method described above and confirmed to the nominated e-mail address also containing a unique reference.

4.4.4 Severity levels

4.4.4.1 All service requests are assigned a priority level ranging from one to three, where Priority 1 = Level 1 (High), Priority 2 = Level 2 (Medium) and Priority 3 = Level 3 (Low). Attributing the priority/severity of a request should be based on the definitions provided in the table below:

Support request type	Definition	Support contact	Escalation point
Level 1 - HIGH	<p>The Service is down and inoperable. All work has stopped and the situation is causing a critical impact to the Customers service.</p> <p>Examples:</p> <ul style="list-style-type: none"> • A complete outage of critical service • A recurring temporary outage of a critical service • Inability to provision a critical service • Substantial loss of billing data • User Interface is not accessible • Messages not received by Boomerang's platform from the relevant Operator's network • Boomerang's platform unable to send messages to the relevant Operator's network • Customers are unable to connect to Boomerang's platform • Platform corrupts messages 	Support team	Operations Director
Level 2 - MEDIUM	<p>System is severely limited or degraded. The situation is causing a significant impact to certain portions of the Customer's service. The System is interrupted and recovered but has a high risk of reoccurrence)</p> <p>Examples:</p> <ul style="list-style-type: none"> • Servers connected to some of the operators have traffic disturbances, however not all operators affected 		

	<ul style="list-style-type: none"> • The performance of key functionality within the User Interface is impaired • Significant degradation of a critical service occurs • Results of critical services are materially different from those described in the product definition 		
Level 3 - LOW	<p>Problems or disturbances affecting a specific area of functionality, but not the whole system. Serious disturbance with impact given to end-user services. Examples:</p> <ul style="list-style-type: none"> • Congestion in the system causing the System to reject some messages. Degraded performance or incorrect behaviour of a specific area of functionality, but not the whole system. • General consultation and minor problems that have a minor effect on the functionality of the System. Problem encountered; irritant; minimal impact to business operation • Faults that do not disturb traffic or cause any loss of service such as incorrect System printouts, documentation faults, and minor design imperfections. Operational questions. • A small system delay occurred, but no loss of data is experienced • A minor application error occurred • Documentation errors. 		

4.5 Severity Level 1 – High Priority Service Request (incl. unplanned outages)

4.5.1 Where Boomerang identified or verifies a Level 1 severity support, the following course of action is undertaken:

4.5.1.1 A notification will be sent by e-mail to all the customer, including all nominated customer contacts, the Operational Support team and Account Manager within Boomerang, along with all designated supplier contacts, containing:

- A description of the fault
- Progress made towards a resolution
- Expected timeframe for service interruption (if known)

4.5.1.2 Progress updates are sent to all stakeholders.

4.5.1.3 A notification is sent to all stakeholders upon resumption of service.

4.5.1.4 A resolution notification detailing confirming when the incident was resolved and the steps taken to resolve it. It will also include an overall summary of the incident details.

4.5.1.5 A root cause analysis report (RCA) will be produced after root cause investigation has been undertaken. This report will describe the root cause, any temporary solution implemented and the long term remedial action that will be taken to address the root cause.

4.6 Reactive Support: Support Requests

4.6.1 The table below lists different types of support requests. These requests should be directed to Boomerang from the appropriate customer contact points, highlighted in the “Request initiation”

column. All requests should be made in writing, providing a detailed description of the issue. All verbal requests should be supported by a written request and submitted within 30 minutes.

Support request type	Definition	Request Initiation	Support contact	Escalation point
“How to” queries	Service integration or service administration queries/requests	Customer’s User	Customer’s Relationship Manager	Boomerang Support Team
Billing queries	1. Invoices/credits/statements 2. Payments 3. Billing information changes 4. Other	Financial Administrator	Boomerang Accounts Dept	Operations Director
Service change requests	Service change requests	Customer’s Relationship Manager	Boomerang Account Manager	Operations Director

5 BOOMERANG SUPPORT PACKAGES – BOOMCARE

5.1 Basic Support

Basic Support is provided at Boomerang’s discretion. Basic Support is provided by email only, between 9am and 6pm, Monday to Friday and offers no commitments around service availability, responses times or fix times.

5.2 Standard & premium support

There are two further support packages offered by Boomerang – Boomcare Standard and Boomcare Premium. These are chargeable at the rate set out in the customer’s agreement with Boomerang:

The table below summarises the level of support applicable to each package:

Support element	Boomcare Support*	Standard	Boomcare Support*	Premium
Support availability				
Support times	9am-6pm, Mon-Fri (UK)		24x7	
Support channel	Email		Email, Telephone	
System availability				
Target availability	No commitments		99.50%	
Issue response times				
Severity level 1	1 hour		1 hour	
Severity level 2	1 hour		1 hour	
Severity level 3	1 hour		1 hour	
Service Restoration Target				
Severity level 1	12 hours		3 hours	
Severity level 2	2 days		12 hours	
Severity level 3	1 week		2 days	
Scheduled Maintenance				
Notice period	5 days		5 days	

Actions per month	No commitments	Maximum of 2
Terms		
Minimum term	12 months	12 months
Payment terms	12 months in advance	12 months in advance

*Chargeable at contracted rate

6 TARGET SERVICE LEVELS

6.1 Applicability

6.1.1 The target Service Levels shown in the table below are applicable in respect of Boomcare Premium customers only. Boomerang shall use reasonable endeavours to achieve these target Service Levels but shall have no Liability for a failure to meet them, other than through the grant of Service Credits as provided in this section 5 below.

6.2 Measurements

6.2.1 System Availability is expressed as a percentage and calculated on a calendar month basis as follows: System Availability = $\frac{\text{Available Time} - \text{Outages}}{\text{Available Time}} \times 100$

Available Time

6.2.2 Where:

6.2.2.1 "Available Time" means the total number of minutes in the month

6.2.2.2 "Outages" means any period measured in minutes during the monthly measuring period during which faults or problems with the System preclude processing of more than 25% of Messages sent by or to Customer by means of the Services and where the same is not attributable to Scheduled Maintenance, events of Force Majeure or acts or omissions of the Customer.

	Service Item	Service Subcomponents	Service Description	Target SLA*	Success Criteria
1	Service Availability	1. Boomerang Messaging (APIs and gateway) 2. Boomerang UI 3. Boommail	Boomerang Service Provision	99.50%*	No more than 223 minutes of accumulative recorded service disruption per calendar month.
2	Support	Boomerang response to customer	Time taken to acknowledge support request by email or telephone	1 Hour*	Time taken for Boomerang to contact the customer is within the target
3	Support	Fix Time Level 1	Critical Global Customer affecting issues.	3 hour total fix time.*	Customer support response should not exceed defined Fix

			Both Service & Administrative functions.		times based on support severity.
4	Support	Fix Time Level 2	Customer specific issue, affecting a single customer. If more than two customers report issue, this should be defined as a Level 1 incident.	12 hours total fix time*	Customer support response should not exceed defined Fix times based on support severity.
5	Support	Fix Time Level 3	Specific customer function that does not impact on core customer end to end services.	2 day total fix time. Notification to customer on completion*	Fix time should not exceed 2 days.

*SLAs above are applicable to customers taking Boomcare Premium support. Please note that unavailability of services caused by an issue relating to plug-ins or apps installed or used by third party applications are not covered by this SLA

6.3 Service Credits – Boomcare Premium

- 6.3.1 Boomcare Premium customers are entitled to Service Credits based on a failure to meet the monthly System Availability of 99.95%. Where Boomerang fails to meet this target in respect of any calendar month, subject to the paragraph below, Boomcare Premium customers will be entitled to claim a Service Credit of 1/12th of the annual value of the service subscription paid in respect of the Service affected (being one twelfth of the total annual amount paid). Service Credits are not provided against any other annual or monthly charges (including but not limited to message credits) nor in respect of any other metrics or performance measurements.
- 6.3.2 To receive a Service Credit, the Customer must submit a claim by email to Boomerang at operations@boomcomms.com, including sufficient detail to allow Boomerang to validate the claim, within 30 days following the end of the month in respect of which the Service Credit is claimed. Service Credits will be applied at the end of the Initial Term for the Service in respect of the Renewal Period and will not be exchanged for monetary compensation. The aggregate maximum Service Credits to be issued against all System Availability during any calendar year in respect of any Service shall not exceed 30% of the annual service subscription fees paid in respect of that Service.
- 6.3.3 A Customer is not entitled to Service Credits if it is in breach of its agreement with Boomerang, including without limitation where the Customer is not up-to-date with its payments when the relevant Outage occurred or Service Credits are claimed.

6.3.4 The Service Credits set out in this section represent Customer's sole remedy and Boomerang's sole Liability for Service and System failures, as provided in the agreement with Boomerang.

Schedule 3 – POLICIES

To download the current version of Boomerang's Policies, select the links below or the policies attached. Please note that Boomerang may update these policies from time by time by updating these links.

[1. Privacy Policy](#)

[2. Fair & Acceptable Use Policy \(FAUP\)](#)

DATA PROTECTION & PRIVACY POLICY

Updates to this Policy are published at <https://boomerangmessaging.com/privacy/>

This policy explains how we collect, use, share and protect your personal information. There may be other privacy policies that apply to certain services we provide. You will find such policies in the terms of your contract with Boomerang.

CONTACT DETAILS

If you have any questions about this privacy policy or our privacy practices, please contact us in the following ways:

Full name of legal entity: Boomerang I-COMMS LTD

Email address: operations@boomcomms.com

Postal address: 11 St. Chad's Street, London WC1H 8BG

1 COLLECTING YOUR PERSONAL INFORMATION

We can get your personal information when you:

1. Buy a product or service from us
2. Register in order to get information for a specific product or service
3. Subscribe to newsletters, alerts or other services from us
4. Ask us for more information about a product or service, or contact us with a question or complaint
5. Use our products or services
6. Visit our website
7. We may also collect information about you from other organizations, if this is appropriate. These include fraud-prevention agencies, business directories and credit reference agencies. We may also collect information about you from other companies and our business partners.

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2 UNDERSTANDING WHAT YOU WANT

We use cookies (small text files stored in your browser) and other techniques such as Cookies collect information that tells us how you use our websites, web-related products and services, providing us with information that helps us improve the user's experience.

This, in turn, helps us make our website relevant to your interests and needs. We may use a persistent cookie (a cookie that stays linked to your browser) to record your details so we can recognise you if you visit our website again.

You can choose to refuse cookies or set your browser to let you know each time a website tries to set a cookie. Information regarding how to manage cookies is provided within the Boomerang website or Boomerang UI application.

3 THE PERSONAL INFORMATION WE COLLECT

The information we collect about you depends on the products and services you use and the way you navigate our website. It includes (but isn't limited to) the following:

1. Standard contact details, such as your name, work address, email, and contact phone numbers including a mobile number which is used to receive an authorisation code when creating a new Boomerang UI account
2. Social media contact details, such as Facebook, Twitter, and LinkedIn
3. Your role in the business you work in, including seniority and decision-making rights
4. The name and contact details of any assistant that you delegate work through
5. Your interest in receiving marketing, product, or technical alerts
6. Contact details to which billing information is sent
7. Contact details to which support or service related notifications maybe sent
8. Our contact history with you (such as calls, SMS and emails), and details about your website browsing
9. When upgrading from a trial or free account, we may ask for company information, including but not limited to a registered office, trading address, registration number and VAT number
10. When you upgrade your account from a trial or free account, we'll ask you to provide our payment processor with your payment method data such as your bank details, credit card information or your Paypal account information, and/or your billing address. Our payment processor, acting on our behalf, gathers this so that we can bill you for your use of our products and services
11. Specific product related information relating to your intended use of the service that may be required in order to provision that service (e.g. dedicated SMS short-codes).

4 SERVICE RELATED DATA WE COLLECT

1. We collect and store the API credentials (username, password and licence key) that are used to authenticate your requests to our APIs
2. We will collect data relating to any service specific issues you have encountered to help us resolve any issues as quickly as possible. This may include information relating to how and why you are using the service, technical specifications and configurations that are local to your environment and business applications. Some of this information may be used for our internal 'knowledge base' that is used to help inform and train customer service representatives
3. Boomerang communication functions used by your business applications and IP addresses for those applications communicating with Boomerang
4. A username (email address) and password used to access the Boomerang UI online applications
5. We allow you to add and / or import your customer data into Boomerang UI. This includes but is not limited to communication addresses (including email addresses, mobile telephone numbers and landline telephone numbers) and other custom data which may be used for personal data. Access to such data can be controlled using permission features within the application itself, to ensure that any sensitive data is only available on a need to know basis. Any such data will not be accessed or used by Boomerang.
6. Expected message volumes and service usage to ensure that the Service has the capacity support the required usage
7. Transactional message data used for reporting that includes (but not limited to); message content, the recipient's communication address, the communication method, any associated identifiers, frequency of usage, the delivery status and any response messages associated to

those transactions. Boomerang's Service Agreements define content that is deemed as not acceptable when processing transactional message data through the Services

8. Activity by carried out by individual system users including a record of when users accessed Boomerang's applications and activities performed within the application so that an audit trail of user behaviour is available to the customer
9. We may gather publicly-available information about companies that are our customers or competitors, such as where they are located, their website URL, their industry, and their size. Sometimes this type of customer account data is obtained through third-party service providers that specialize in pulling together publicly-available information about companies.

5 USING YOUR PERSONAL INFORMATION

We have set out below, in a table format, a description of all the ways we plan to use your personal data, and which of the legal bases we rely on to do so. We have also identified what our legitimate interests are where appropriate.

Note that we may process your personal data for more than one lawful ground depending on the specific purpose for which we are using your data. Please contact us if you need details about the specific legal ground we are relying on to process your personal data where more than one ground has been set out in the table below.

Purpose/Activity	Type of data	Lawful basis for processing including basis of legitimate interest
To register you as a new customer	(a) Identity (b) Contact	Performance of a contract with you
To provide our products and services to you including: (a) Manage payments, fees and charges (b) Collect and recover money owed to us (c) To detect fraudulent and unlawful use of our products and services (d) to provide you with access to your account data through our UI	(a) Identity (b) Contact (c) Financial (d) Transaction (e) Marketing and Communications	(a) Performance of a contract with you (b) Necessary for our legitimate interests (to recover debts due to us)
To manage our relationship with you which will include: (a) Notifying you about changes to our terms or privacy policy (b) Asking you to leave a review or take a survey	(a) Identity (b) Contact (c) Profile (d) Marketing and Communications	(a) Performance of a contract with you (b) Necessary to comply with a legal obligation (c) Necessary for our legitimate interests (to keep our records updated and to study how customers use our products/services)
To enable you to partake in a prize draw, competition or complete a survey	(a) Identity (b) Contact (c) Profile (d) Usage (e) Marketing and Communications	(a) Performance of a contract with you (b) Necessary for our legitimate interests (to study how customers use our products/services, to develop them and grow our business)
To administer and protect our business, our UI and website (including troubleshooting, data analysis, testing, system	(a) Identity (b) Contact (c) Technical	(a) Necessary for our legitimate interests (for running our business, provision of administration and IT services, network security, to prevent fraud and in the

maintenance, support, reporting and hosting of data)		context of a business reorganisation or group restructuring exercise) (b) Necessary to comply with a legal obligation
To deliver relevant website content and advertisements to you and measure or understand the effectiveness of the advertising we serve to you	(a) Identity (b) Contact (c) Profile (d) Usage (e) Marketing and Communications (f) Technical	Necessary for our legitimate interests (to study how customers use our products/services, to develop them, to grow our business and to inform our marketing strategy)
To use data analytics to improve our website, products/services, marketing, customer relationships and experiences	(a) Technical (b) Usage	Necessary for our legitimate interests (to define types of customers for our products and services, to keep our website updated and relevant, to develop our business and to inform our marketing strategy)
To make suggestions and recommendations to you about goods or services that may be of interest to you	(a) Identity (b) Contact (c) Technical (d) Usage (e) Profile (f) Marketing and Communications	Necessary for our legitimate interests (to develop our products/services and grow our business)

We'll store your information for as long as we have to by law. If there's no legal requirement, we'll only store it for as long as we need it. We'll also keep some personal information for a reasonable period after the provision of products and services has finished – just in case you decide to use our services again.

6 SHARING YOUR PERSONAL INFORMATION

Unless you give us your permission, we won't share your customer content, customer account data, or customer usage data with third parties, except as described below:

1. Message carriers and operators as necessary for proper routing and connectivity. Therefore, customer content and certain customer usage data is shared with and received from telephony operators to the extent necessary to route and connect those communications from the sender to the intended recipient. How those telephony operators handle your customer content and customer usage data is generally determined by those operators' own policies and local regulations.
2. Other communications service providers for proper routing and connectivity. Boomerang may also allow you to use its products and services to send or receive communications through communications service providers that do not use the PSTN, such as Telegram, Facebook Messenger (often referred to as Over-the-Top (OTT) communications service providers). If you choose to use Boomerang's products and services to send or receive communications by way of these providers, Boomerang will share and receive customer content and customer usage data with these providers to the extent necessary to route and connect those communications from the sender to the intended recipient. How those communications service providers handle your customer content and customer usage data is determined their own policies.
3. Third-party service providers or consultants. We may share your data stored on our systems with third-party service providers or consultants who need access to the data to perform their work on Boomerang's behalf, like sharing relevant customer account data with our payment processor so it can process payments on our behalf, or our storage provider for storing your

data on our behalf. These third-party service providers are limited to only accessing or using this data to provide services to us and must provide reasonable assurances that they will appropriately safeguard the data.

4. Compliance with Laws. We may disclose your data stored on our systems to a third party if (i) we believe that disclosure is reasonably necessary to comply with any applicable law, regulation, legal process or a government request (including to meet national security or law enforcement requirements), (ii) to enforce our agreements and policies, (iii) to protect the security or integrity of our services and products, (iv) to protect ourselves, our other customers, or the public from harm or illegal activities, or (v) to respond to an emergency which we believe in good faith requires us to disclose data to assist in preventing a death or serious bodily injury. If Boomerang is required by law to disclose any of your data that directly identifies you, then we will use reasonable efforts to provide you with notice of that disclosure requirement, unless we are prohibited from doing so by statute, subpoena or court or administrative order. Further, we object to requests that we do not believe were issued properly.
5. Affiliates. We may share your data with our affiliates. We all will only use the data as described in this notice.
6. Business transfers. If we go through a corporate sale, merger, reorganization, dissolution or similar event, customer data we gather from you may be part of the assets transferred or shared in connection with the due diligence for any such transaction. Any acquirer or successor of Boomerang may continue to use your data as set forth in this notice.
7. Credit reference, fraud prevention or business scoring agencies, or other credit scoring agencies
8. Debt collection agencies or other debt recovery organizations

We do not share your data (including, but not limited to, the personal data of your end users) with third parties for their direct marketing purposes, unless you give us your consent to do so

7 STORAGE AND TRANSFER OF DATA

Please note that all Boomerang customer account data is stored on servers and equipment located in the UK. In performing its duties as a service provider Boomerang may need to pass customer content (transactional message data) to suppliers located outside of the UK.

8 INFORMATION FROM CHILDREN

We do not knowingly collect any personal information directly from children. If we discover we have received any personal information from a child in violation of this policy, we will take reasonable steps to delete that information as quickly as possible. If you believe we have any information from or about anyone a child, please contact operations@boomcomms.com.

9 HOW WE SECURE YOUR DATA

We work to recognised security standards and constantly review and improve our measures to protect your personal information from unauthorized access, accidental loss, disclosure or destruction.

We work with suppliers who have the appropriate security controls in place to protect your data from unauthorized access, accidental loss, disclosure or destruction. These organisations won't be entitled to use your personal information for their own purposes.

We use appropriate measures to protect your data based on the sensitivity of the information that we collect, process and store and the current state of technology. Please note though that no service is completely secure. So, while we strive to protect your data, we cannot guarantee that unauthorized access, hacking, data loss or a data breach will never occur.

We work to help our customers protect their data, by providing access confidential data such as usernames and passwords securely and we provide access to security controls within the Boomerang UI application and across the Boomerang messaging gateway that allows customers to overwrite any sensitive data such as messages content and communication addresses.

Communications over the Internet (such as emails) are not secure unless they've been encrypted. Your communications may go through a number of countries before being delivered – as this is the nature of the Internet. We can't accept responsibility for any unauthorized access or loss of personal information that's beyond our control.

10 CHANGES TO THIS POLICY

Should we elect to change our privacy policy we will publish these changes on our Boomerang UI application and our company website. Where the changes are significant, we may also choose to email all customers with the new details. Where required by law, will we obtain your consent to make these changes.

11 YOUR RIGHTS

You have the right to:

Request access to your personal data (commonly known as a "data subject access request"). This enables you to receive a copy of the personal data we hold about you and to check that we are lawfully processing it.

Request correction of the personal data that we hold about you. This enables you to have any incomplete or inaccurate data we hold about you corrected, though we may need to verify the accuracy of the new data you provide to us.

Request erasure of your personal data. This enables you to ask us to delete or remove personal data where there is no good reason for us continuing to process it. You also have the right to ask us to delete or remove your personal data where you have successfully exercised your right to object to processing (see below), where we may have processed your information unlawfully or where we are required to erase your personal data to comply with local law. Note, however, that we may not always be able to comply with your request of erasure for specific legal reasons which will be notified to you, if applicable, at the time of your request.

Object to processing of your personal data where we are relying on a legitimate interest (or those of a third party) and there is something about your particular situation which makes you want to object to processing on this ground as you feel it impacts on your fundamental rights and freedoms. You also have the right to object where we are processing your personal data for direct marketing purposes. In some cases, we may demonstrate that we have compelling legitimate grounds to process your information which override your rights and freedoms.

Request restriction of processing of your personal data. This enables you to ask us to suspend the processing of your personal data in the following scenarios:

- If you want us to establish the data's accuracy.
- Where our use of the data is unlawful but you do not want us to erase it.
- Where you need us to hold the data even if we no longer require it as you need it to establish, exercise or defend legal claims.
- You have objected to our use of your data but we need to verify whether we have overriding legitimate grounds to use it.

Request the transfer of your personal data to you or to a third party. We will provide to you, or a third party you have chosen, your personal data in a structured, commonly used, machine-readable format.

Note that this right only applies to automated information which you initially provided consent for us to use or where we used the information to perform a contract with you.

Withdraw consent at any time where we are relying on consent to process your personal data. However, this will not affect the lawfulness of any processing carried out before you withdraw your consent. If you withdraw your consent, we may not be able to provide certain products or services to you. We will advise you if this is the case at the time you withdraw your consent.

To request deletion of your Boomerang account, email us at operations@boomcomms.com. Deleting your Boomerang account will result in you permanently losing access to your account and all customer data to which you previously had access through your account. Please note that certain data associated with that account may nonetheless remain on Boomerang's servers in an aggregated or anonymized form that does not specifically identify you. Similarly, data associated with your account that we are required by law to maintain will also not be deleted.

If you are an end user of an application that uses Boomerang's services, you should direct requests for access and/or deletion of your data associated with that application to the relevant service provider in accordance with that application provider's own privacy policy.

Fair & Acceptable Use Policy (FAUP)

1 Purpose

The obligations in this policy are (and in each case will be interpreted as being) placed upon the Customer and Authorised Users and end users and the Customer and Authorised Users and end users must comply with the obligations in this policy.

1.1 Summary of changes

This section records the history of significant changes to this document. Only the most significant changes are described here.

Version	Date	Author	Description of change
1.0	12-11-19	Andrew Allen	Initial version extracted from SaaS to become stand-alone policy linked from SaaS
1.1	6-2-20	Andrew Allen	Update to reflect PSA and Ofcom

Where significant changes are made to this document, the version number will be incremented by 1.0.

Where changes are made for clarity and reading ease only and no change is made to the meaning or intention of this document, the version number will be increased by 0.1.

Updates to this policy should be reflected in the following Boomerang legal agreements:

- SaaS Agreement
- Evaluation Agreement
- Reseller Agreement

2 Policy

This Fair and Acceptable Use Policy (“FAUP”) applies to all users of Services provided by Boomerang, including third party services. References to “us”, “we” and “our” are to any company within the Boomerang group of companies that provides those Services. The FAUP sets out certain rules and requirements governing use of the services provided by Boomerang. Capitalised terms used but not defined in this FAUP shall have the meaning given in this Agreement.

2.1 In relation to Software

You may use our Services only for lawful purposes in compliance with (i) all Applicable Laws; (ii) all applicable licences and authorisations required to be held by you or us; and (iii) all directives of competent authorities and applicable codes of conduct applicable in any country where the services are provided and/or to or from which messages are sent (including without limitation the Mobile Marketing Association Code, Ofcom, the CAP Code and Phone-paid Services Authority (PSA) concerning premium rate services).

In your use of our Services, you shall not:

act maliciously or upload or transmit any material that is false, misleading or likely to mislead or deceive, defamatory, trade libellous, sexually suggestive or explicit, indecent, obscene, offensive, harmful to minors, coercive, hateful, inflammatory, unlawfully threatening, unlawfully discriminatory or unlawfully harassing or which are excessive in quantity or transmission of which could diminish or harm our reputation or that of any Network Operator;

infringe the rights (including Intellectual Property Rights, other proprietary rights or rights of publicity or privacy) of us or of a third party;

act or promote any action that is criminal, unlawful or fraudulent or do anything that has a criminal, unlawful or fraudulent effect;

violate any Applicable Laws including without limitation those regarding unfair competition, anti-discrimination or false advertising;

transmit any junk mail, chain letters or unsolicited or unauthorised advertising or promotional materials or other similar form of solicitation (spam) or to harvest or collect information about others without their consent (phishing) or conduct social engineering activities;

launch denial of service attacks or engage in mail bombing or flooding or transmit or disseminate any signal or impulse that could cause electrical, magnetic, optical or other technical harm to our equipment and facilities of those of any third party;

knowingly or negligently upload, transmit or disseminate any viruses, Trojan horses, worms, time bombs, keystroke loggers, spyware, adware, cancel bots or other malware or computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or appropriate any system, data or personal information;

collect, harvest or mine any information or data from any Service, our systems or other networks or systems connected to our systems or attempt to decipher any transmissions to or from the servers running any Service;

access any part of the Services to which you do not have access rights or use any Service in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users or in a manner that is in any way prejudicial to the image of Boomerang and/or the Services;

launch, promote or operate any illegal or unlicensed prize draws, lotteries or betting or gaming activities;
or

create a false identity or forged speed mail, mobile phone address or header or misrepresent or attempt to mislead others as to the identity of the sender or origin of the message.

Where the Services are used to send Messages for marketing, solicitation or promotional purposes you must:

Ensure you have valid current opt-in consent from each End User as required by Applicable Laws in the country or territory where such End User is located and verify Contact Details against any preference service operating in the destination country or territory;

Ensure that each Message identifies you as the sender and includes contact details;

Provide End Users with an easy method of opting-out of the receipt of Messages (which shall be at standard and not premium rate charges), implement all out-out requests promptly (and in any event no

later than two (2) calendar days following their receipt) and record such opt-out requests using suppression.

We may require proof that you have opt-in consents and/or proof that opt-out requests are being processed and honoured as required above. We may also investigate and/or suspend Services to you if we consider that the number of opt-out requests received in respect of any Numbers allocated to your account is excessive.

Upon our request, you agree to cooperate with us in identifying the source of and/or reasons for the excessive opt-out rate. For purposes of this section, your cooperation includes, but is not limited to, providing us with proof of opt-ins and sharing content of sample Messages sent to End Users (by you or an Authorised User).

We may terminate any Contract with you with immediate effect and/or withdraw your use of the Services without further notice to you if we cannot determine the cause of the excessive rate, or if the cause is or appears to be due to conduct in breach of this FAUP or otherwise a breach of our Agreement. We may, in our sole discretion, allow you to continue using our Services should you make suitable changes such that the opt-out rate is not excessive.

We may (but are not obliged to) monitor your use of our Services with regard to messaging behaviour and content for operational purposes.

2.2 Excessive Use

Our Excessive Use policy as detailed in this section 2 has been implemented so that we can provide so far as possible a single pricing structure for customers in each territory which allows customers to use the Services and to pay a flat-rate charge for each Message sent regardless of its end destination.

Your use of our Services assumes an even distribution of Messages which is not 'groomed' or discriminated against based on time of day, geographic area or any other factor.

Some destinations are more expensive to send Messages to than other destinations. If you send a volume of Messages to expensive destinations that we consider excessive given your use of the Services, we may notify you and ask you to revert to an even distribution. If you continue such behaviour we may at our option either levy additional charges reflecting the increased cost of delivering Messages to such destinations which shall take effect from the date we first notified you of excessive use or suspend your use of the Services either to that destination or generally.

We may revise this FAUP at any time by updating the master version of this FAUP stored in our document repository. Any links to this FAUP should be checked periodically.