

# EVALUATION LICENCE RELATING TO BOOMERANG UI SERVICES

DECEMBER 2017

## 1. EVALUATION SERVICE PROFILE

**Start date:** The date on which the Recipient completes the trial registration

**Services:** The trial Services set out in the Recipient's Organisation Settings located at <https://boomerangui.com/organisation-settings>

**Evaluation Fee:** The Evaluation Fee shall be GBP £0

**Duration:** The Trial Period shall be a period of 15 days

**Credits:** The amount of credit that the Recipient is granted is 10 messages for each Service

**Emergency Use:** Emergency use is not permitted

**Use Cases:** Digital Messaging

**Law:** The provisions of the governing law and jurisdiction shall be as set out in this agreement

## 2. DEFINITIONS

1.1 The definitions in this clause apply in this agreement.

**"Authorised Users"** those employees, agents and independent contractors of the Recipient who are authorised by the Recipient to use the Services and the Information, in accordance with and subject to the terms and conditions of this Agreement.

**"Credits"** means the fixed number of credits that Boomerang provides to the Recipient for the Recipient to use the Services and the number of credits and details about these credits is stated in the Evaluation Service Profile;

**Evaluation Fee:** means the fees stated in the Evaluation Service Profile.

**Information:** all and/or any part of the information, materials, Information and/or manuals (whether in writing or otherwise) owned and/or provided by Boomerang relating to and/or in connection with the Services.

**Intellectual Property Rights:** 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 Services 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.

**Objective:** evaluation of the Services by the Recipient to assess whether or not the Services are suitable for use in the Recipient's business regarding a specified Use Cases and whether or not the Recipient wishes to enter into a full agreement with Boomerang for use of the Services regarding any of those Use Cases.

**Policies** Boomerang's policies attached in Schedule 1 together with any other policies introduced by Boomerang of which the Recipient is notified relating to the Services, as these may be updated or amended by notification to the Recipient from time to time.

**"Recipient Data"** the data owned and inputted by the Recipient, Authorised Users, or Boomerang on the Recipient's behalf for the purpose of using the Services or facilitating the Recipient's use of the Services.

**Services:** all and/or any of the provision of services and licensing of software and/or plug-ins as listed in the Evaluation Service Profile.

**System:** means the Recipient's own computer system that is located at the Recipient's address as above and/or located any address that is expressly agreed with Boomerang;

**Terms of Use:** means the terms of use in Schedule 2.

**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.

**Trial Period:** means the period referred to in the Evaluation Service Profile.

**Use Cases:** means the use case or cases which are specifically agreed in writing between Boomerang and the Recipient which identify the specific scope and nature of the use of the Services that can be made by the Recipient and which are set out in the Evaluation Service Profile.

## 2.2 INTERPRETATION

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) Any words following the terms **including**, **include**, **in particular** 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.
- (c) A reference to writing or written includes faxes and email provided that if any notices are given by the Recipient 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.

## 3. LICENCE

- 3.1 In consideration of the payment by the Recipient of the Evaluation Fee, Boomerang hereby grants the Recipient a personal, non-transferable, non-exclusive licence to use the Services for the Recipient's own internal business purposes and on the Recipient's System during the Trial Period solely and only to the extent necessary for assessment of the Services in respect of performance of the Objective and subject always to the Recipient only being granted a certain number of Credits in respect of use of the Services. The Recipient expressly acknowledges and agrees that the Services will, or may, without any prior notice to the Recipient automatically "time out" (that is to say, cease to operate) on the earlier of when the Recipient has used all of their Credits or at the end of the Trial Period if the Recipient has not at that time accepted and entered into a full agreement with Boomerang to use the Services.
- 3.2 The Recipient will only use the Services for the Objective and in accordance with and subject to the Terms of Use and will comply with the Policies at all times. If the Customer wishes to continue receiving the Services following the Trial Period then the Customer will need to enter into a separate written agreement with Boomerang for the Services and in such an agreement the rights and obligations of the Customer and Boomerang will be set out in more detail. As part of any such agreement the Customer's account profile and settings (e.g. virtual numbers allocated) may be changed by Boomerang.
- 3.3 During the Trial Period this licence may be terminated immediately by Boomerang for any reason (without any liability and/or responsibility of whatever nature and howsoever arising) without notice being given to the Recipient.

- 3.4 If this Agreement is terminated by the Recipient during the Trial Period Boomerang will endeavour to provide seven days' written notice
- 3.5 The trial will terminated by the Recipient entering into a full agreement with Boomerang for the Services.
- 3.6 On termination of this Agreement for any reason: (i) all licences granted under this Agreement shall immediately terminate; (ii) each party shall return and make no further use of any equipment, property, software, Documentation and other items (and all copies of them) belonging to the other party; (iii) Boomerang may destroy or otherwise dispose of any of the Recipient Data in its possession unless Boomerang receives, no later than seven days after the effective date of the termination of this Agreement, a written request for the delivery to the Recipient of the then most recent back-up of the Recipient Data. Boomerang shall use reasonable commercial endeavours to deliver the back-up to the Recipient in such format and on such media as Boomerang selects within 30 days of its receipt of such a written request, provided that the Recipient pays Boomerang such fees as Boomerang may require in relation to the provision of such back up and information; and (iv) 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.

#### **4. LIMITATION OF LIABILITY**

- 4.1 Nothing in this Agreement excludes or limits the liability of Boomerang:
- (a) for death or personal injury caused by Boomerang's negligence;
  - (b) for fraud or fraudulent misrepresentation; and/or
  - (c) for any liabilities to the extent that they cannot be limited or excluded by law.
- 4.2 Boomerang shall have no liability in any circumstances whatever for any data loss, damage and/or corruption greater than the limit in clause 3.8 and the Recipient agrees that the Recipient has sole responsibility for protecting its data and System throughout the evaluation of the Services.
- 4.3 Except as expressly and specifically provided in this Agreement:
- (a) the Recipient assumes the entire responsibility for results and outcomes obtained from the use of the Services and the Documentation by the Recipient, including for benefits and/or conclusions drawn from such use;
  - (b) 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; and

- (c) Boomerang shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Boomerang by the Recipient in connection with the Services, or any actions taken by Boomerang at the Recipient's direction;

4.4 The Recipient hereby expressly accepts and acknowledges that Boomerang will not be liable or responsible (in whatever way and howsoever arising) for:

- (a) 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;
- (b) the correct operation of equipment, services and/or resources of recipients of Messages. The results of this may include Messages being delayed or not being transmitted to recipients and/or not being received by recipients;
- (c) Recipient and/or end user error, misuse (whether intentional or unintentional) and/or unauthorised use of the Services;
- (d) the Recipient selection and/or use of the Services including where Recipient's use of the Services is for purposes for which the Services were not designed; and/or
- (e) any losses of whatever nature (and whether direct and/or indirect) which relate to or are connected with the Recipient not achieving its anticipated benefits or advantages by using the Services.

4.5 The Services and the Documentation are provided to the Recipient on an "as is" basis. No representations, conditions, warranties or other terms of any kind are given in respect of the Services or the Information, and all statutory warranties and conditions are excluded to the fullest extent possible.

4.6 The Recipient must check and satisfy itself at all times that it is entitled to use the Services in its selected national, international and/or other jurisdictions in which it operates and/or uses the Services and/or for the purposes which it requires and the Recipient must ensure that it complies at all times with all rules and regulations regarding the purposes and ways in which it uses the Services in such selected jurisdictions (including all rules and regulations relating to data protection and privacy).

4.7 Subject to clause 3.1:

- (a) 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 or loss or corruption of data or information; and

- (b) Boomerang shall not be liable for any special, indirect and/or consequential loss, costs, damages, charges or expenses however arising under this Agreement

4.8 In the event that Boomerang shall be found liable to the Recipient for any reason other than death or personal injury caused by Boomerang's negligence and/or the extent to which Boomerang cannot limit or exclude its liability under law, the sums payable to the Recipient in respect of such liability and/or liabilities shall not in any circumstances exceed a total maximum aggregate amount of two times the Evaluation Fee and in the event that no Evaluation Fee was paid, the total maximum aggregate sum that may be payable to the Recipient shall not in any circumstances exceed GBP£10,000.

4.9 Boomerang and the Recipient hereby expressly agree that the terms and conditions of this Agreement are reasonable (including clause 3.8), 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.

4.10 The parties agree that neither of them will make any statements or take any action which conflicts with, is inconsistent with and/or contradicts clause 3.9.

4.11 All references to "Boomerang" in this clause 3 shall, for the purposes of this clause and clause 3 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 3.

## **5. NON-DISCLOSURE AGREEMENT**

5.1 In consideration of the disclosure by Boomerang to the Recipient of the Services and the Information for the purpose of the Objective, the Recipient undertakes that it will respect and preserve the confidentiality of the Information from and including the date of such disclosure (subject to clause 5.3 below). The Recipient shall not without the prior written consent of Boomerang:

- (a) communicate or otherwise make available the Information to any third party;
- (b) use the Information itself for any commercial, industrial or other purpose other than the Objective; and/or

- (c) copy, adapt, or otherwise reproduce the Information save as strictly necessary for the purposes of the Objective.
  
- 5.2 The Recipient may disclose the Services and Information or any part thereof, with the prior consent of Boomerang, to any employee of the Recipient who needs access to the Services and the Information for the Objective. In such an event, the Recipient agrees to ensure, before such disclosure, that the employee in question is made aware of the confidential nature of the Services and Information and understands that he/she is bound by conditions of secrecy no less strict than those set out here. The Recipient agrees to monitor the use of the Services and Information by these employees and to enforce their obligations of confidence at the request of Boomerang.
  
- 5.3 The obligations contained in this clause 4 shall not apply, or shall cease to apply, to such part of the Information as and to the extent that the Recipient can show to the reasonable satisfaction of Boomerang:
  - (a) has become public knowledge other than through the fault of the Recipient or an employee or director of the Recipient to whom it has been disclosed in accordance with clause 5.2 above;
  - (b) was already known to the Recipient prior to disclosure to it by Boomerang; and/or
  - (c) has been received from a third party who neither acquired it in confidence from Boomerang, nor owed Boomerang and/or any third party a duty of confidence in respect of it.
  
- 5.4 If the Recipient decides not to enter into a full agreement in relation to the Services, or otherwise at any time at the request of Boomerang, the Recipient shall return to Boomerang all of the Information and all copies of the Information which have been provided to the Recipient pursuant to this agreement, together with all analyses, studies and other materials produced by the Recipient which contain, or could reveal, all or any part of the Information, and any summaries (in whatever form) prepared by the Recipient of oral Information disclosed by Boomerang.
  
- 5.5 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 Recipient and this deal and/or transaction on Boomerang's website and/or in Boomerang promotional documentation and materials.

## **6. PROPERTY RIGHTS**

- 6.1 Boomerang owns all rights, title and interest (including all Intellectual Property Rights) in and relating to the Services, Information and all related information (and all modifications, updates and/or changes to the Services, Information and all related information). The Recipient acknowledges that any disclosure pursuant to this agreement shall not confer on the Recipient (and/or any third parties) any Intellectual Property and/or other rights in relation to the Services and/or the Information other than its right to use under clause 3.1 which is subject to the terms and conditions of this Agreement. All and/or any rights that are not expressly granted to the Recipient in this Agreement are hereby expressly reserved by Boomerang.
- 6.2 Ownership of all complete or partial copies of the Services and related Information and/or Information shall at all times remain with Boomerang. The Recipient agrees to mark any copies of the Services which it may make in any tangible medium with a notice that such copy belongs to Boomerang.
- 6.3 If a third party notifies the Recipient of any claim that the use of the Services infringes any right of a third party, the Recipient agrees to immediately notify Boomerang. If any such claim is made to the Recipient or Boomerang, the Recipient shall, at Boomerang's request, immediately cease use of the Services. If Boomerang is unable to allow the Recipient to continue evaluation of the Services, the provisions of clause 3.3 shall apply and Boomerang shall return the Evaluation Fee.

## **7. RECIPIENT DATA**

- 7.1 The Recipient shall own all right, title and interest in and to all of the Recipient Data and shall have sole responsibility for the legality, reliability, integrity, accuracy, quality, management and content of the Recipient Data.
- 7.2 If Boomerang processes any personal data on the Recipient's behalf when performing its obligations under this Agreement, the parties record and hereby agree their intention that the Recipient shall be the data controller and Boomerang shall be a data processor and in any such case:
- (a) the Recipient acknowledges and agrees that the personal data may be transferred or stored within the EEA or the country where the Recipient and the Authorised Users are located in order to carry out the Services and Boomerang's other obligations under this Agreement;
  - (b) the Recipient shall ensure at all times that the Recipient 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; and

(c) the Recipient shall ensure that the relevant third parties have been informed of, and have given their irrevocable and explicit consent to such use, processing, and transfer as required by all applicable data protection legislation. In particular, the Recipient agrees that Messages must only be delivered to recipients and third parties who have given their prior explicit consent to the quantity, frequency and type of Messages to be delivered via the Services. Recipient shall have informed third parties about their right at any time to opt-out of receiving Messages and will comply at all times with such instructions from third parties;

7.3 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 Recipient 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.

## **8. GENERAL**

8.1 The person signing this agreement on behalf of the Recipient confirms that he/she is authorised to enter into this agreement on the Recipient's behalf, and to bind the Recipient to its terms and conditions.

8.2 The Recipient will provide all reasonable co-operation, information and assistance to Boomerang in relation to this Agreement. In particular, it will appoint a representative who shall have the authority to contractually bind the Recipient on all matters relating to this Agreement.

8.3 The Recipient agrees and acknowledges that the Services provided are dependent upon the goods and/or services of Third Party Suppliers (including network operators) and, as such, if those Third Party Suppliers change the way that they operate, their terms and conditions 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 Recipient (including in relation to pricing) 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 Recipient of such changes.

8.4 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 Recipient, upon written notice to the Recipient, to forthwith terminate, suspend and/or disable the Recipient's access to the Services and/or Information if Boomerang believes that

the Recipient has attempted to breach, is likely to breach and/or has breached any of the terms and conditions of this Agreement.

- 8.5 Boomerang shall have no liability to the Recipient 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, 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 Recipient is notified of such an event and its expected duration. Nothing in this clause shall entitle the Recipient to delay, withhold and/or not pay any monies that may be due, owing and/or payable to Boomerang.
- 8.6 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.
- 8.7 No variation of this agreement shall be effective unless it is in writing and signed by or on behalf of both parties.
- 8.8 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.
- 8.9 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. Nothing in this Agreement shall exclude or limit any liability or responsibility in relation to any fraudulent misrepresentations.
- 8.10 Any terms and conditions contained in any Recipient 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. The terms

and conditions in this Agreement shall apply to use by the Recipient of the Services throughout the Trial Period and thereafter notwithstanding any termination or expiry of the Trial Period and/or this Agreement.

- 8.11 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.
- 8.12 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 provided that 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 for to the Recipient 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.
- 8.13 The Recipient hereby waives any and all existing and future set offs against any fees and/or charges (if any) and agrees to pay such fees and charges (if any) and any other sums due hereunder regardless of any set off or cross claim that the Recipient may have against Boomerang and/or third party.
- 8.14 The Recipient shall inform Authorised Users and/or third parties that Recipient is the provider of the Services to them as between Boomerang and Recipient, and hereby agrees that Recipient is solely responsible for any Messages that are originated from and/or transmitted to end users and/or third parties using the Services.
- 8.15 Recipient 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 Recipient's use of the Services and/or the services provided by Third Party Supplier (including network operators) to Recipients.
- 8.16 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.

8.17 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 Recipient and unless otherwise provided for in the Evaluation Service Profile.

This agreement has been entered into on the Start Date stated in the Evaluation Service Profile.

## Schedule 1 Policies

### BOOMERANG FAIR AND ACCEPTABLE USE POLICY

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.

This Fair and Acceptable Use Policy ("FAUP") applies to all users of Services provided by Boomerang, including third party services based on the 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.

#### 1. ACCEPTABLE USE

1.1 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, the CAP Code and PhonepayPlus Code concerning premium rate services).

1.2 In your use of our Services, you shall not:

- (a) 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;
- (b) infringe the rights (including Intellectual Property Rights, other proprietary rights or rights of publicity or privacy) of us or of a third party;
- (c) act or promote any action that is criminal, unlawful or fraudulent or do anything that has a criminal, unlawful or fraudulent effect;
- (d) violate any Applicable Laws including without limitation those regarding unfair competition, anti-discrimination or false advertising;
- (e) 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;

- (f) 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;
- (g) 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;
- (h) 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;
- (i) 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;
- (j) launch, promote or operate any illegal or unlicensed prize draws, lotteries or betting or gaming activities; or
- (k) create a false identity of 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.

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

- (a) 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;
- (b) Ensure that each Message identifies you as the sender and includes contact details;
- (c) 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 opt-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.

1.4 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.

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

## **2. EXCESSIVE USE**

- 2.1 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.
- 2.2 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.
- 2.3 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.

## **3. CHANGES TO THIS FAUP**

We may revise this FAUP at any time by posting the revised version on the Website. You are expected to check this page from time to time and to take note of any changes made.

# DATA PROTECTION & PRIVACY POLICY

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.

This policy explains how we collect, use, share and protect your personal information. If we update this policy, we'll post any changes on our Boomerang UI application and our company website. 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.

## 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

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.

## 2 UNDERSTANDING WHAT YOU WANT

We use cookies (small text files stored in your browser) and other techniques such as web beacons (small, clear picture files used to follow your movements on our website). These collect information that tells us how you use our websites, web-related products and services. 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 recognize 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. You can get more information about cookies including information on how to deactivate them [Here](#).

## 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, fax, 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 are sent
8. Our contact history with you (such as calls and emails), and details about your website browsing
9. When upgrading from a trial or free account, we may ask for company information, including a registered office, trading address, registration 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 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. Expected message volumes and service usage to ensure that the Service has the capacity support the required usage
6. 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

7. 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
8. 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 may use and analyse your information to:

1. Generally, we use all the data that you provide to us or that we collect from you to provide our products and services to you, to enable you to access and use our products and services, to deliver your communications to their intended destination, and to analyse our customers' use of our products and services, to improve our products and services, and to detect fraudulent or unlawful activity in connection with Boomerang accounts
2. Bill you for using our products or services
3. Respond to any questions or concerns you may have about using our products or services
4. Protect our systems and manage the volume of texts and other use of our systems
5. Understand how you use our products and services to help us develop more interesting and relevant products and services
6. Carry out research and statistical analysis including to monitor how customers use our products and services on an anonymous or personal basis
7. Prevent and detect fraud or other crimes, recover debts or trace those who owe us money
8. Keep you informed generally about new products and services (unless you choose not to receive our marketing messages)
9. Contact you with offers or promotions based on how you use our products and services
10. To send you service related notifications that relate to use of our products and services, such as low credit warnings, account expiration warnings and undelivered messages
11. Customer Content - We use customer content for the purposes that you allow us access to it, like conveying it to and from telecommunications carrier networks or

recording and transcribing it per your instruction. We may also use customer content stored on our systems to troubleshoot issues such as call quality concerns

12. Customer Account Information - We use your email address in connection with your account password to authenticate your account to allow you to access your account data through the Boomerang UI application
13. We will use publicly-available customer account data about your company, such as your industry, the size of your company, and your company's website URL, to help us understand our customer base better and to tailor information we send you about other Boomerang products, services, or events
14. If you provide us with a physical address in order to obtain a number for which Boomerang is required to have your physical address on file, we'll use that address so that we can confirm we can allow you to have that number. We may also check the physical address you provide and/or your billing address, as well as other information you provide or that we obtained from your use of our service about your identity such as your name, email address, and IP address, with our fraud prevention and identity validation providers (to confirm you have provided us with accurate details). We may also use your address information to calculate taxes. We may also have to share these addresses with the telecommunications provider from whom Boomerang obtained the phone number or local authorities upon their request. Unless prohibited from doing so by law, we'll let you know if we have to share your address information like this
15. We use your payment information so we can bill you and be paid for your use of our products and services.

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
9. 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](mailto: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 PRIVACY RIGHTS**

The Boomerang UI allows you to manage some of your customer account data to ensure it is up to date and accurate as well as providing access to customer content and usage data.

You can write to us at any time to get a copy of the personal information we hold about you and we will process your request as quickly as possible. If you believe we're holding inaccurate information about you, please contact us at [operations@boomcomms.com](mailto:operations@boomcomms.com)

If you no longer want to receive marketing messages from us please write to us at this address or use the unsubscribe option provided in the relevant email.

Please note that even if you opt out of promotional communications, we may still send you messages relating to access to and use of the services and products and things like updates to our terms of service or privacy notices, security alerts, and other notices.

To request deletion of your Boomerang account, email us at [operations@boomcomms.com](mailto: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.

## Schedule 2 Terms of Use

### 1. RECIPIENT RESPONSIBILITIES

1.1 The Recipient shall provide Boomerang with:

- (a) all reasonable co-operation in relation to this Agreement; and
- (b) all necessary access to such information as may be required by Boomerang in order to provide the Services, including but not limited to Recipient Data, security access information and configuration services;

1.2 The Recipient shall

- (a) comply with all applicable laws and regulations with respect to its activities under this Agreement;
- (b) carry out all other Recipient responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Recipient's provision of such assistance as agreed by the parties, Boomerang may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (c) ensure that the Authorised Users use the Services and the Information in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
- (d) 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;
- (e) obtain and shall maintain all 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;
- (f) 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; and
- (g) be entirely responsible for procuring and maintaining 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 Recipient's network connections or telecommunications links and/or issues caused by or arising from the Recipient's use of the internet.

1.3 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 set out and agreed in the Evaluation Service Profile. If, notwithstanding this prohibition (and even if such use is expressly permitted in the Evaluation Service Profile), the Recipient will be entirely responsible for such use and such use shall be at the Recipient's own risk and the provisions of clause 4 below shall also apply to such use.

1.4 The Recipient 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 Services and/or this Agreement provided that:

- (a) the Recipient is given notice of any such claim by Boomerang;
- (b) Boomerang provides reasonable co-operation to the Recipient in the defence and settlement of such claim, at the Recipient's expense; and
- (c) the Recipient 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.

1.5 The Recipient agrees that:

- (a) each Authorised User shall keep a secure password for his use of the Services and Information, that such password shall be changed no less frequently than monthly and that each Authorised User shall keep his password confidential;
- (b) 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;
- (c) it agrees that it and all Authorised Users will follow and comply with all instructions, guidelines and/or provisions of the Information in relation to the use of the Services;
- (d) it agrees that Boomerang's records regarding Recipient'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 then the Recipient shall permit 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 Recipient'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 Recipient's normal conduct of business;

- (e) if any of the audits referred to above 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 Recipient shall promptly disable such passwords and Boomerang shall not issue any new passwords to any such individual.

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

- (a) is used in any way for, in relation to and/or in connection with emergency services (including 999 and 112 calls);
- (b) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (c) facilitates illegal activity;
- (d) depicts sexually explicit images;
- (e) promotes unlawful violence;
- (f) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; and/or
- (g) is in breach of any agreement with any user, customer or client or any laws, regulations or other provisions that are applicable to the Recipient, users, customers or clients in any territory; and/or
- (h)
- (i) in a manner that is otherwise illegal or causes damage or injury to any person or property.

1.7 The Recipient 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;

- (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services and/or Information (as applicable) in any form or media or by any means;
- (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services;
- (c) access all or any part of the Services and Information in order to build a product or service which competes (directly or indirectly) with the Services and/or the Information;
- (d) use the Services and/or Information to provide services to third parties;

- (e) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Information available to any third party except the Authorised Users; and/or
  - (f) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Information, other than as expressly provided under this Agreement.
- 1.8 The Recipient shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Information and, in the event of any such unauthorised access or use, promptly notify Boomerang.
- 1.9 The rights provided under this Agreement are granted to the Recipient only, and shall not be considered granted to any subsidiary or holding company of the Recipient.

## **2. IN RELATION TO SOFTWARE**

In relation to scope of use of software which may be included as part of the Services:

- (a) use of the Software shall be restricted to use of the Services in object code form only in relation to sending and receiving Messages for the normal business purposes of the Recipient (which shall not include allowing the use of the Services by, or for the benefit of, any person other than an employee of the Recipient);
- (b) For the purposes of clause (a), "use of the Services" shall include loading the software into temporary memory or permanent storage on the relevant computer, provided that installation on a network server for distribution to other computers is not "use" if the software is licensed under this Agreement for use on each computer to which the Software is distributed;
- (c) the Recipient may not use the software other than as specified in (a) and (b) above without the prior written consent of Boomerang, and the Recipient acknowledges that additional fees may be payable on any change of use approved by Boomerang;
- (d) The Recipient must comply with the instructions and guidelines in the documentation that may be provided by Boomerang.
- (e) the Recipient may make as many backup copies of the software as may be necessary for its lawful use. The Recipient shall record the number and location of all copies of the software and take steps to prevent unauthorised copying;
- (f) except as expressly stated in this clause , the Recipient has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the software in whole or in part except to the extent that any reduction of the software to human readable form (whether by reverse engineering, decompilation or

disassembly) is necessary for the purposes of integrating the operation of the software with the operation of other software or systems used by the Recipient, unless Boomerang is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Recipient shall request Boomerang to carry out such action or to provide such information (and shall meet Boomerang's reasonable costs in providing that information) before undertaking any such reduction;

- (g) third-party Software shall be deemed to be incorporated within the software for the purposes of this Agreement (except where expressly provided to the contrary) and use of the third-party software by Recipient shall be subject to the third-party additional terms;
- (h) the Recipient shall indemnify and hold Boomerang harmless against any loss or damage which it may suffer or incur as a result of the Recipient's breach of any third-party additional terms howsoever arising; and
- (i) Boomerang may treat the Recipient's breach of any third-party additional terms as a breach of this Agreement.
- (j) The Recipient shall not:
  - (i) build a product or service which competes (directly or indirectly) with the Software and/or the Documentation;
  - (ii) use the Software and/or Documentation to provide services to third parties;
  - (iii) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software and/or Documentation available to any third party except the as expressly permitted in this Agreement;
- (k) the Recipient shall not attempt to obtain, or assist third parties to do any of the restricted acts under this Agreement.
- (l) The Recipient agrees and undertakes that:
  - (i) the maximum number of authorised users that it authorises to access and use the software and the documentation shall not exceed the agreed number of authorised users;
  - (ii) 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 software and/or documentation;
  - (iii) each authorised user shall keep a secure password for his use of the software and documentation, that such password shall be

changed no less frequently than monthly and that each Authorised User shall keep his password confidential;

- (iv) 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;
  - (v) 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 Software;
  - (vi) it agrees that Boomerang's records regarding Recipient's use of the software shall be accepted at all times as correct (save for manifest error) and that if there are any issues regarding the software then the Recipient shall permit Boomerang to audit the use of the Software in order to gather information and establish the facts relating to such issues. Boomerang shall in any event have the right to audit Recipient's
  - (vii) The Software 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 Software (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 with Boomerang in this Agreement. If, notwithstanding this prohibition (and even if such use is expressly permitted by Boomerang), the Recipient will be entirely responsible for such use of the software and such use shall be at the Recipient's own risk.
- (m) The Recipient 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 software that:
- (i) is used in any way for, in relation to and/or in connection with emergency services (including 999 and 112 calls) except to the extent expressly permitted by Boomerang in writing;
  - (ii) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - (iii) facilitates illegal activity;
  - (iv) depicts sexually explicit images;
  - (v) promotes unlawful violence;
  - (vi) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; and/or

- (vii) in a manner that is otherwise illegal or causes damage or injury to any person or property.
  
- (n) 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 Recipient, to disable the Recipient's use of the software and/or access to any material that breaches the provisions of this Agreement and/or the terms of use above.