

1. **Interpretation**

1.1 In these terms and conditions, the following capitalised terms shall have the meaning attributed to them below:

“Access Method” means the method provided by Boomerang to access the Services as specified on the relevant Order, which may be API, GUI, SMTP or such other methods of accessing the Services as Boomerang may from time to time make available;

“Access Terms” means any additional terms relating to use of the Access Method from time to time published on the Website;

“Affiliate” means 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;

“API” means the application program interface from time to time made available by Boomerang;

“Applicable Law” means all applicable local, federal, national and international statutes, laws, by-laws, regulations, regulatory requirements and codes of practice;

“Authorised User” means any employee or other person permitted to use the Services by Customer;

“Boomerang” in respect of a Service means whichever of the Boomerang Signatory or Boomerang Affiliate is providing the Service as detailed on the relevant Order;

“Boomerang Affiliate” means any Affiliate of Boomerang;

“Boomerang Equipment” means any equipment owned or operated by Boomerang and employed by it in the provision of a Service;

“Boomerang Marks” means any name, trade-mark, trade name, or other proprietary mark or symbol from time to time used by Boomerang or a Boomerang Affiliate;

“Branding Guide” means the guide from time to time published by Boomerang;

“Cascade” means the escalation of a business process executed through communication channels

“Charges” means the charges specified on the Order together with any other amounts chargeable by Boomerang hereunder as such amounts may from time to time revised in accordance with Clause 7;

“Commencement Date” in relation to any Service or Contract means the date determined in accordance with Clause 3.1;

“Communications Device” means any mobile phone, computer or other communications device used by an End User or by Customer to send or receive Messages;

“Confidential Information” in relation to the obligations of a party means all information of whatever nature and whether in written, oral or electronic format relating to the other Party or to that Party’s business or customers which is either stated to be may reasonably be assumed to be confidential and includes in relation to Boomerang the Access Terms and all information relating to the Services and Software;

“Contact Data” the mobile telephone, email and other contact information relating to an End User;

“Contract” means a contract created between Customer and Boomerang Signatory or a Boomerang Affiliate through acceptance of an Order as provided in Clause 2.2;

‘Customer’ means the business name provided during the trial registration process to which these terms and conditions apply or the individual name provided during the trial registration process to whom these terms and condition apply;

“Customer Data” means all Materials and Contact Data;

“Customer Portal” means any web-page through which Customer may access the Services;

“Dedicated Inbound Number” a number allocated by Boomerang and dedicated exclusively to Customer used to receive Messages in reply from an End User;

“Distributor” means a customer of Boomerang with the right subject to and as provided in Clause 6 to resell Services to its own end user customers and to Partners;

“End User” or “Recipient” means any person or entity receiving, replying to or sending an originating Message;

“Exclusive Originating Number” means a number allocated by Boomerang for the exclusive use of Customer and used to both receive Messages from and to send Messages to End Users;

“Extended Storage” means a feature that extends the period for which Customer Data is accessible as described in the relevant Service Description;

“FAUP” means the Boomerang Fair and Acceptable Use Policy as from time to time posted on the Website;

“Feature” means an optional additional feature or functionality from time to time available in respect of Services ordered by Customer including without limitation Extended Storage, Open Ticket, Exclusive Originating Numbers and Dedicated Inbound Numbers, voice communications, Facebook messaging, Twitter, messaging, push notifications, rich content instant messaging;

“Force Majeure Event” means an event beyond the reasonable control of Boomerang including without limitation acts of God, earthquakes, floods, fires, accidents, explosions, storms, lightening strikes, epidemics or pandemics, acts of terrorism, war or insurrection, riots or civil unrest, the imposition of sanctions or breaking off of diplomatic relations, changes in Applicable Laws, the acts or failure to act of governmental or public authorities, network outages, power failures, trade disputes, strikes, industrial action and lock-outs and non-performance by contractors or sub-contractors;

“GUI” means the graphical user interface for accessing the Services from time to time made available by Boomerang;

“Initial Term” means in relation to each Contract the period stated on the Order Form which period shall commence on the Commencement Date of the Service and if no period is stated means a period of twenty-four (24) months from such date;

“Intellectual Property Rights” means all patents, rights to inventions, copyright and related rights, moral rights, trade-marks and service marks, business 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, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications 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;

“Liability” means liability in contract, tort (including negligence and breach of statutory duty) and/or misrepresentation;

“LIBOR” means the average rate at which lending is offered for 6 months loans of sterling deposits on the London Inter-Bank Market;

“Materials” means all text, information, data, software, executable code, images, audio or video material or other data in whatever medium or form uploaded to or transmitted via the Services to, by or on behalf of Customer and includes without limitation all Messages to and from End Users;

“Message” means an MMS, SMS, e-mail, instant message, voice message, social media message or any other message conveyed by means of the Services;

“Message Bundle” means a prepaid volume of credits to be applied in respect of Customer’s use of the Services;

“Network Operator” means any network operator, message or traffic aggregator or service provider used to aggregate, convey, deliver or receive Messages;

“Numbers” means all telephone numbers used to send and receive Messages and includes without limitation Exclusive Originating Numbers, Dedicated Inbound Numbers and Virtual Numbers;

“Open Ticket” means a Feature that allows End Users to return multiple response messages to the same outbound message request for a defined message validity period, as described in the relevant Service Description;

“Open Source Software” means open-source Software as defined by the Open Source Initiative (<http://opensource.org>) or the Free Software Foundation (<http://www.fsf.org>);

“Order” means an order for the provision of Services accepted by Boomerang under Clause 2.2;

“Order Acceptance Date” means the date an order set out on an Order Form is accepted by Boomerang as provided in Clause 2.2;

“Order Form” means an order for the Services in the form from time to time required by Boomerang;

“Partner” means a customer of Boomerang with the right subject to and as provided in Clause 6 to resell the Services to end user customers, but with no right to appoint or resell to Partners;

“Plug-in” means software created by Boomerang to facilitate interoperability between the Services and third party software;

“Primary Number” means a default number allocated to Customer from which Messages are sent;

“Privacy Laws” means legislation regulating the use of personal data and delivery of Messages within an End User’s territory including where applicable and without limitation legislation implementing EU Directive concerning the processing of personal data and the protection of privacy in the electronic communications sector (2002/58/EC) and any legislation that replaces, supplements or amends the foregoing;

“Renewal Term” has the meaning given in Clause 8.2;

“Security Policy” means the Boomerang security policy as from time to time posted on the Website;

“Self-Hosted Software” means the Boomerang product whereby the Software is installed on customer equipment;

“Service” means a service stated on an Order, as described in the Service Description and includes any Features included, as stated on the Order;

“Service Credits” means such credits against the Charges (if any) as are provided in the SLA;

“Service Description” means the description of a Service from time to time set out on the Website;

“Service Level Commitments” means the commitments set out in the SLA;

“Service Specific Terms” means the additional terms applicable in respect of individual Services as set out together with the Service Descriptions;

“Service Schedules” means any schedules attached hereto or to any Order setting out additional terms that apply in respect of individual Services;

“SLA” means the service level agreement (if any) set out in the Support Plan;

“Software” means the proprietary software in machine-readable object code owned by Boomerang or a Boomerang Affiliate and used to give access to and provide the Services and includes without limitation the GUI and API;

“Subscription” means a right to access and use the Services;

“Subscription Fees” means the Charges stated as such as set out on each Order;

“Support Plan” means the Boomcare Standard or Boomcare Premium support arrangements from time to time in effect as published by Boomerang on the Website and selected on the Order;

“Taxes” means all taxes, fees, duties, charges or withholdings of any nature together with any penalties, fines, or interest thereon arising out of the transactions contemplated by these terms and conditions and/or imposed upon either Party hereto by any federal, state or local government or other public taxing authority of any country;

“Term” means the term of each Contract from the relevant Commencement Date until terminated in accordance with the terms of that Contract;

“Termination Charge” means at any date and in respect of any Service the Subscription Fees outstanding and payable during the remainder of the Initial Term or the then-current Renewal Term;

“Territory” means the country or territory specified on the Order in relation to which any right of resale is granted under Clause 6;

“Virtual Number” means a telephone number without a directly-associated phone line or the ability to carry voice traffic. A Virtual Number can be either a short or long number;

“Website” means www.boomcomms.com and/or the application site at www.boomerangi-comms.com and any successor or replacement site. Documents posted on the Website will usually be posted within the dedicated customer area located at http://www.boomcomms.com/legal_mgt or such other web address as is notified to customers; and

“Working Day” means any day which is not a Saturday, Sunday or public holiday in England.

1.2 **Control** shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression “**change of control**” shall be construed accordingly.

- 1.3 The headings in these terms and conditions are inserted for convenience only and shall not affect its construction or interpretation. Unless the context otherwise requires, reference to Clauses and Schedules are to the clauses of and schedules to these terms and conditions.
- 1.4 In these terms and conditions, references to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated whether before or after the date of these terms and conditions and to all regulations, statutory instruments, orders, rules and codes of practice made under it.
- 1.5 Each Order, the Schedules and all documents referenced herein form part of each Contract. In the event of a conflict or inconsistency between the terms set out in the body of these terms and conditions and those in the Schedules or in such documents they shall be accorded the following priority: (i) the terms of each Order; (ii) the Service Specific Terms and any terms set out in a Service Schedule; (iii) the terms set out in the body of these terms and conditions; and (iv) the terms of any documents referenced herein.

2 Ordering

- 2.1 Customer may from time to time order Services from Boomerang by delivering to Boomerang a completed Order Form.
- 2.2 Boomerang may accept or reject Order Forms in its sole discretion. An Order shall become binding only on acceptance by Boomerang as confirmed by the counter-signature by Boomerang of each Order Form or otherwise communicated to Customer in writing (which for the purposes of this Clause 2.2 includes email). Once accepted by Boomerang (i) each Order for a new or additional Service shall create a separate Contract between Customer and the Boomerang Signatory or Boomerang Affiliate named on the Order, which Contract shall incorporate the terms and conditions of these terms and conditions; and (ii) each Order requesting the addition or removal of a Feature shall be deemed an amendment to the existing Contract under which the associated Service is provided.
- 2.3 Boomerang may conduct a credit check of Customer at any time and Customer agrees to co-operate in the conduct of such check and to provide such financial information as Boomerang may reasonably require. Boomerang may require the payment of a deposit (i) as a pre-condition to Boomerang's accepting an Order; and/or (ii) where Customer fails to make payment of the Charges when due, as a pre-condition to Boomerang's continuing to provide the Services. A failure to provide a deposit under (ii) shall be deemed a material breach of the relevant Contract and/or of these terms and conditions. Any deposit paid shall be held by Boomerang as security for payment of the Charges and may be applied by it in satisfaction of overdue invoices. Where these terms and conditions or a Contract is validly terminated by Customer in accordance with the terms thereof, the balance of any deposit minus any Charges due to Boomerang shall be refunded to Customer.
- 2.4 Any terms and conditions contained in an Order Form, purchase order, letter or other document generated or managed by Customer shall be invalid with respect to the Services provided hereunder unless agreed to in writing by Boomerang.
- 2.5 Customer warrants and represents that it has obtained and shall maintain during the term of the relevant Contract all consents, licenses, authorisations, approvals and permissions necessary to enter into these terms and conditions, use the Service(s) and to carry out its obligations under these terms and conditions. Customer further warrants that shall use the Services only as a business customer and that it does not contract as a consumer.
- 2.6 Customer shall, as and when required by Boomerang, provide to Boomerang free of charge all such information and co-operation as Boomerang may reasonably from time to time require in order to enable Boomerang to perform its obligations and exercise its rights under these terms and conditions and to verify and/or monitor Customer's compliance with these terms and conditions. Customer hereby warrants and represents that all such information is accurate and complete in all respects and is not misleading.

3 Services

- 3.1 When a Service specified on an Order is ready for use, Boomerang shall notify Customer and such date shall be the Commencement Date.
- 3.2 Boomerang shall provide each Service from the Commencement Date for the Term on and subject to the terms of the relevant Contract. Provision of the Services shall be conditional on Customer making payment of the applicable Charges as provided in Clause 7. Boomerang shall not be obliged to provide Services where Customer purchases Message Bundles but has insufficient credit.
- 3.3 All dates supplied by Boomerang for commencement of the Services are estimates only and Boomerang shall have no Liability for a failure to achieve those dates.
- 3.4 Save as expressly agreed on any Order, all software, numbers, equipment and infrastructure used to provide the Services shall be shared and not dedicated exclusively to Customer. Customer agrees that the Services are not tailored to its requirements and it is Customer's responsibility to ensure that the Services ordered are sufficient for its purposes.

4 Use of the Services

- 4.1 Customer's access to the Services is via an Access Method. Use of each Access Method is permitted on and subject to the Access Terms. Customer shall be responsible for procuring internet access to the Customer Portal and for ensuring that its business applications interface and inter-operate correctly with the Services. Boomerang shall not have any Liability for nor shall any Contract be deemed terminated or frustrated due to Customer's failure to access or use the Service or its failure to comply with the foregoing.
- 4.2 Where Boomerang supplies a Plugin in connection with the Services, Customer acknowledges and agrees that: (i) the Plugin is intended to operate in connection with the version of the third party software in respect of which it is issued; (ii) Boomerang shall have no Liability in respect of any faults in the Plugin or in respect of any failure of the Plugin to operate with other versions of the third party software; and (iii) Boomerang may update a Plugin to take account of the release of a new version of the third party software but shall have no obligation to do so. Customer acknowledges that Boomerang may update, retire or replace the API, any Plugin or other Software at any time at its sole discretion.
- 4.3 Boomerang shall allocate to Customer password(s) permitting access to the Customer Portal as provided in the Security Policy and each of Customer and Boomerang shall comply with the terms of the Security Policy. Customer shall keep all password(s) and other unique identifiers providing access to the Customer Portal (including details of the API) confidential and shall not permit use of the same by anyone other than authorised employees and contractors. Customer shall be responsible for all access and use of the Services (i) by Authorised Users and any other persons to whom Customer or such Authorised Users have disclosed passwords or other access details; and (ii) using the password(s) and other unique identifiers allocated to Customer, whether by Authorised Users or otherwise. Customer shall notify Boomerang of any loss, theft or unauthorised disclosure of the passwords or unauthorised access to the Customer Portal immediately upon becoming aware of the same so that the relevant details can be amended.
- 4.4 Boomerang shall use commercially reasonable endeavours to keep the Services secure from unauthorised intrusion, but shall not otherwise have any Liability for the acts of unauthorised third parties gaining access to the same.
- 4.5 Customer hereby grants to Boomerang and to the Network Operators a non-exclusive, royalty-free licence during the term of each Contract to intercept, store and create back-up copies, modify, electronically reproduce and distribute, and publicly perform and display the Materials by means of the Services in any territory to which Messages are sent. Customer further agrees that Boomerang and the Network Operators shall be entitled to disclose and provide the Materials and Messages as required by any governmental body or court order, to exercise and/or defend Boomerang and any Network Operator's rights and/or as legally compelled by a third party.

- 4.6 Customer shall ensure that all Materials are compliant with and shall use the Services and shall ensure that all Authorised Users use the Services in compliance with: (i) the FAUP; (ii) with any applicable code of practice, direction or guidance from time to time given by any competent authority or by Boomerang; (iii) with any applicable licence, authorisation or permit granted to Boomerang or to a Boomerang Affiliate or to Customer; and (iv) in respect of any element of the Service provided or accessed in the USA or made available to any Authorised Users in the USA, with the terms set out in Schedule 1 as from time to time amended by Boomerang. Customer warrants that it owns all right, title and interest in all Materials or that it has obtained a valid licence in respect of the same that permits Customer to grant sub-licences to Boomerang and the Network Operators as provided hereunder.
- 4.7 Customer shall not upload to the Services any data identifying or personal to individual consumers other than data relating to consumers who have consented to receive Messages and, where applicable, direct marketing from Customer as required by Privacy Laws.
- 4.8 Customer hereby indemnifies the Boomerang Signatory and shall hold the same harmless and defend Boomerang from and against all Liability for all damages, losses, costs and expenses resulting from any claims, actions, proceedings and demands arising out of a breach by Customer of Clauses 4.6 and 4.7 or otherwise from the use by Customer of the Services including without limitation any claim from an End User.
- 4.9 Use of the Services may require Customer to configure or set alerts, escalation paths, Cascades and other configurations ("Service Configuration"). It is Customer's responsibility to set the Service Configuration and to verify that it is accurate and sufficient to meet its requirements. Customer is advised to set the Service Configuration to ensure that it takes account of the provisions of Clause 9.4.
- 4.10 Customer acknowledges that the Services do not permit 999 or 112 calls or access to any other emergency call numbers or to the emergency services. The Services are not intended to replace any service that provides such access.
- 4.11 All Messages conveyed by means of the Services have a fixed and limited validity period as stated on the Order. Customer accepts that replies sent outside the validity period may not be delivered as a threaded message or to the associated record. Customer acknowledges that its use of the Services is contingent upon Customer providing appropriate inputs including but not limited to those detailed in the applicable Service Specific Terms and relevant Service Description.
- 4.12 The following terms apply where Customer makes use of the Services as part of a free trial (the "Trial"): (i) Boomerang may allocate to Customer a Message Bundle which shall be provided free of charge; (ii) the Trial may be ended at any time in Boomerang's sole discretion in which event the Contract for the Trial shall be deemed terminated and any remaining credits cancelled or withdrawn; (iii) Boomerang may elect not to offer a Support Plan in respect of the Trial in its sole discretion; (iv) promptly in response to any request, Customer shall provide such feedback in respect of its participation in the Trial as Boomerang may reasonably require; and (v) subject only to Clause 9.5, Boomerang shall have no Liability whatsoever in respect of Services provided as part of any Trial.

5 Maintenance

- 5.1 Boomerang shall provide each Service with reasonable care and skill and shall use reasonable endeavours to maintain it in accordance with the Support Plan including any applicable SLA. Customer shall report any defect in or malfunction of any Service in accordance with the procedure set out in the Support Plan.
- 5.2 Boomerang may charge for the investigation and repair of any reported defect in or malfunction of a Service if Boomerang finds no such defect or malfunction to be present or if it determines that such defect or malfunction has occurred as a result of any defect in any Customer equipment or software or Customer's misuse of the Service or failure to connect to, operate or use or maintain the Service as instructed or Customer's failure, inability or refusal

to afford Boomerang the access or to provide the information or co-operation referred to in Clause 2. Such charges shall be calculated on the basis of Boomerang's standard hourly support rates.

- 5.3 Boomerang may from time to time in its sole discretion make changes to the Services. Where such changes include the introduction of additional functionality Boomerang may (but shall not be obliged to) offer these to Customer and may make the same subject to an additional charge. If Boomerang makes changes to the Services that significantly decrease the level of functionality provided, Customer may terminate any Contract relating to the Services affected by fourteen (14) days' notice to Boomerang, such notice to take effect within thirty (30) days of the relevant change taking effect.
- 5.4 Customer acknowledges that provision of the Services is reliant on performance by the Network Operators and that the Network Operators may apply restrictions to use of services that underlie the Services at any time including without limitation on the volume of Messages that may be transmitted and on geographical and carrier reach. Customer further acknowledges that access to and use of all or any Services may be suspended due to unscheduled downtime. In addition, Boomerang may suspend all or any Services (i) to allow Boomerang or a Network Operator to perform maintenance; and/or (ii) in the event of a denial of service or other attack that Boomerang or the Network Operator believes may pose a threat to the Services. Boomerang shall use reasonable commercial endeavours to avoid suspending the Services under this Clause 5.4 and to provide prior notice of any significant suspension of Services but shall otherwise have no Liability for a suspension hereunder.

6 Resale

- 6.1 Where stated on the Order, Customer may combine the Services only with such other products as may be stated on the Order and may resell the Services within the Territory (i) to its own end-user customers, where Customer is designated a Partner of Boomerang; and (ii) to end-user customers and other Partners, where Customer is designated a Distributor. In this Clause 6, the term "User" means each customer of a Partner and each customer of and/or Partner appointed by a Distributor. Customer shall not resell or otherwise permit access by a third party to any Services (i) unless consented to by Boomerang as stated on the relevant Order (and in accordance with the terms of such consent); and (ii) other than in accordance with this Clause 6. Customer acknowledges that its appointment as a Partner or Distributor is non-exclusive and that Boomerang may sell the Services and appoint third parties to sell the Services including within the Territory. The remainder of this Clause 6 applies to Customer only if and to the extent that Customer is appointed as a Partner or Distributor as stated on the Order.
- 6.2 Customer shall not in its resale of the Services or otherwise represent itself as acting on behalf of Boomerang or pledge the credit of Boomerang or assert that it has authority to provide or promote any products or service on behalf of Boomerang or otherwise bind Boomerang.
- 6.3 Customer shall ensure that all advertising, sales and promotional materials (including on-line and electronic materials) for any products or services using the Services include the "Powered by Boomerang" logo in the form specified in and otherwise in accordance with the Branding Guide.
- 6.4 Customer shall provide and enter details of all Users by means of the Customer Portal or as otherwise required by Boomerang and the acceptance by Boomerang or Orders and/or provision by Boomerang of the Services shall be conditional on such details being provided and on such information being compliant with Clause 2.6. Without limitation to Clause 2.2, Boomerang's acceptance of Order Forms delivered to it by a Distributor thereunder in respect of the appointment of a Partner may be conditional upon the Distributor providing sufficient information to enable Boomerang to verify the suitability of the prospective Partner. Where required by Boomerang, a Distributor shall provide visibility of its prospect list to enable Boomerang to conduct pre-order vetting checks. Customer acknowledges that the Charges (including without limitation the Subscription Charges and usage-based Charges) are payable on a per User basis, with each User requiring a separate Subscription.

- 6.5 Save as provided in and subject to Clause 6.6, Customer may sub-licence the rights granted under Clause 13 on condition that:
- (i) such sub-licence shall be on and subject to the terms of Clause 13 which shall be included and maintained in Customer's agreements with Users (each a "User Agreement"); and
 - (ii) Customer shall include in its User Agreements (a) an acknowledgment from the User that Boomerang shall have no Liability to User in connection with the Services; and (b) an irrevocable waiver from User of all current and future claims against Boomerang; and (c) an acknowledgement from User that any actions taken that are inconsistent with (a) and (b) shall result in termination of the sub-licence.
- 6.6 Notwithstanding anything else in this Clause 6 or otherwise contained in these terms and conditions or any Contract, Customer shall have no right to resell the Self-Hosted Software service or to grant any rights in such service.
- 6.7 Customer acknowledges that save where Customer is appointed as a Distributor, Users shall have no right to sub-licence the rights granted under Clause 13 and accordingly Customer: (i) shall sell the services only to end users and shall not appoint any sub-agents; and (ii) shall ensure that Users do not resell the Services by Customer's including appropriate restrictions in its User Agreements and enforcing the same as provided in Clause 6.8.
- 6.8 Customer shall ensure that each User Agreement shall contain terms that reflect the terms of these terms and conditions, provided that save as provided in Clause 6.10, such User Agreements shall exclude the provisions of this Clause 6. Customer shall diligently and properly enforce the terms of each User Agreement including without limitation those required by Clause 6.5(ii), it being agreed that compliance with this Clause 6.8 shall not release Customer from any Liability for a breach of these terms and conditions or any Contract caused by a User.
- 6.9 Boomerang shall be entitled to require disclosure and delivery to it of executed User Agreements as from time to time required by it to verify compliance with this Clause 6.
- 6.10 Where Customer is appointed as a Distributor, it shall ensure that the obligations set out in this Clause 6 and imposed on Customer are included in each User Agreement entered into by Customer with a Partner. For the avoidance of doubt, Partners (whether appointed by Boomerang or by Customer acting as Distributor) may not themselves appoint additional Partners or otherwise authorise resale of the Services.
- 6.11 Customer shall notify Boomerang promptly upon becoming aware of and shall provide full details in relation to: (i) any breach by a User of a User Agreement; and (ii) of any actual or suspected infringement by Customer, any User or a third party of the Intellectual Property Rights of Boomerang or a Boomerang Affiliate.
- 6.12 Customer agrees that for the purpose of Clauses 4.3 and 8.8.4, all Users and all persons using the Services on behalf of or through Users shall be considered Authorised Users. Customer shall remain liable for all use or mis-use of the Services by Users and for any breach or contravention of these terms and conditions.
- 6.13 Customer shall indemnify Boomerang and all Boomerang Affiliates: (i) in respect of any breach by Customer of this Clause 6 and any such breach shall be considered a material breach of these terms and conditions affecting all Contracts for the purposes of Clause 8.4 (but without limitation to the generality of such Clause); and (ii) in respect of any claims brought against Boomerang or any Boomerang Affiliate by a User.
- 6.14 Customer shall provide appropriate pre-and post-sales support of any products using the Services, which shall be no less responsive than support offered by Customer in respect of any other products. Boomerang shall provide training in respect of the use and/or support of the Services as set out in the Support Plan. Customer shall itself verify and attempt to resolve any issues raised by Users in relation to use of the Services (including of products using the Services) prior to reporting the matter to Boomerang under the Support Plan. Boomerang

shall have no responsibility for providing support to Users (other than second line support through Customer) and Customer shall not provide or offer to Users direct access to any support provided under the Support Plan.

6.15 In addition to the rights of termination set out in Clause 8, Boomerang shall be entitled to terminate these terms and conditions in the event of a change of control of Customer where such control is thereafter held by a competitor of Boomerang or where in Boomerang's opinion such change of control threatens Customer's ability to perform its obligations or otherwise comply with the terms of these terms and conditions or any Contract. Notwithstanding Clause 12.1.1, Boomerang may use Confidential Information provided to it in order to ensure continuity of service to Customer's own customers in any case where the Services are suspended or these terms and conditions or any Contract is terminated or where Customer otherwise ceases to provide service or adequate support to such customers.

6.16 On termination of these terms and conditions, Customer shall immediately cease its promotion and sale of the Services and shall remove all and any references to the Services and to Boomerang from its marketing and promotional materials (including any online or electronic resources).

7 Charges

7.1 Fixed Charges: Boomerang shall be entitled to invoice Customer: (i) for all connection or other one-off charges due in respect of a Service on or following the Order Acceptance Date; and (ii) for all recurring charges due in respect of a Service (including without limitation the Subscription Fees) with effect from the Commencement Date of that Service in advance with the frequency indicated on the Order.

7.2 Usage-based Charges: Usage-based charges are levied either in advance through the purchase of a Message Bundle or invoiced in arrears as indicated on the Order. Usage-based Charges may be calculated on a flat ('all destination') rate or by region or individual destination as detailed on the Order.

7.3 Message Bundles: Where Customer purchases a Message Bundle for any Service, Boomerang will allocate to Customer credits in respect of use of the relevant Service according to the Price Band selected at the time of purchase, subject as provided in Clause 7.11. Credits are valid only for the period in respect of which they are purchased and credits that remain unused at the end of such period shall expire and will not be refunded or carried across to subsequent periods. Customer is responsible for selecting the Message Bundle that meets its requirements. The charge for Message Bundles purchased by Customer shall be invoiced to it in advance on or following the date of the relevant Order.

7.4 Credit Customers: Use of any Service in respect of which Customer does not purchase a Message Bundle shall be invoiced to Customer monthly in arrears. The Price Band applicable shall be calculated monthly on the basis of the usage volume during the previous monthly invoicing period, subject as provided in Clause 7.11.

7.5 Customer accepts and agrees that the Charges due and/or credits used during any period are calculated on the basis of the Services provided by Boomerang and amounts invoiced to Boomerang by Network Operators. No discount or credit shall be applied in respect of Messages sent by Boomerang which do not reach the recipient due to factors outside Boomerang's control. Where the Materials transmitted in a Message exceed the maximum permitted Message length (which may vary by Network Operator and destination) and where Unicode is used and/or the Message script is other than US-Ascii, data may be spread across two or more Messages and Customer accepts that a charge will be levied in respect of each such Message. In some destination countries or territories Boomerang may not have arrangements with the operators of all networks (full 'network coverage') and messages sent to destinations or networks outside Boomerang's network coverage and undelivered may be charged to Customer.

7.6 Customer shall make payment of all amounts duly invoiced hereunder in full and in cleared funds and without any set-off, deduction or withholding whatsoever to such account(s)

designated by Boomerang, by electronic bank transfer, or by such other method as Boomerang may specify. Save as otherwise expressly provided invoices shall be payable within thirty (30) days from the date of invoice. All Charges shall be invoiced and payments made in the currency stated on the relevant Order.

- 7.7 If Customer fails to pay any sum when due in accordance with this Clause 7, Boomerang may charge interest on overdue amounts from the first day after the due date until the day on which it is paid (whether before or after judgment), such interest to be calculated on a daily basis at the rate of 5% per annum above the LIBOR rate. Failure by a Partner or Distributor to collect amounts owing in respect of its resale of the Services shall not justify non-payment of Charges incurred under these terms and conditions or any Contract.
- 7.8 In the event that Customer disputes any invoice, it shall provide full details of such dispute within a period of fourteen (14) days of the date of delivery to it of the invoice. In such case, Boomerang shall investigate such dispute and where applicable pursue the same with the relevant Network Operator. If a dispute is resolved in Customer's favour and charges refunded by the Network Operator, Boomerang shall refund Customer accordingly. Customer shall pay the full amount of any invoice notwithstanding that part of it may be disputed.
- 7.9 The Charges are exclusive of any Taxes as may be levied. Subject to the provisions of this Clause 7, all payments made by Customer under these terms and conditions shall be made without any deduction or withholding for or on account of any Taxes.
- 7.10 If Customer is or was required by law to make any deduction or withholding from any payment due hereunder to Boomerang, then Customer shall increase the amount paid to Boomerang such that, after any such deduction or withholding for Taxes, the net amount received by Boomerang shall not be less than the amount that Boomerang would otherwise have received but for such deduction or withholding and this Clause 7.10 shall apply notwithstanding anything in these terms and conditions to the contrary.
- 7.11 Customer agrees that the Charges are subject to revision as provided in the FAUP. In addition, Boomerang may at any time and from time to time, revise the Charges (including without limitation changing the method of calculating the Charges) by thirty (30) days' notice to Customer (an "Increase Notice"). In respect of Message Bundles, Charge increases shall take effect by reducing the number of credits available. In the event that the increase in the Charges applies in respect of a destination to which Customer has sent more than fifty percent (50%) of its Messages during the Term of the relevant Contract prior to such increase, Customer may within seven (7) days of the date of the Increase Notice terminate the Contract for the Services in question by notice to Boomerang in which event Boomerang shall refund to Customer (i) any unused credits forming part of a purchased Message Bundle at the rate applicable in respect of the relevant Price Band prior to the increase; and (ii) a proportion of the Subscription Charges relating to the unexpired period of the Initial Term or then-current Renewal Term as at the date the Increase Notice takes effect, in each case minus any amounts owed by Customer to Boomerang. Notwithstanding the foregoing, Subscription Charges may be increased only on the expiry of the Initial Term or any Renewal Term.

8 Term and Termination

- 8.1 These terms and conditions shall come into force on the Effective Date and shall continue unless terminated in accordance with Clause 6.15 or this Clause 8.
- 8.2 Each Contract shall come into effect on the relevant Order Acceptance Date and subject to termination in accordance with the following provisions of this Clause 8 shall continue (i) for the Initial Term; and (ii) on the expiry of the Initial Term for consecutive periods of twelve (12) months (each a "Renewal Term") unless terminated by either party on not less than thirty (30) days' notice to take effect at the end of the Initial Term or then-current Renewal Term.
- 8.3 Each Contract may be terminated:

- 8.3.1 By Boomerang forthwith on notice to Customer if Customer shall fail to make payment of any overdue invoice within a period of thirty (30) days following the date of a reminder notice;
- 8.3.2 by either Party forthwith on notice if the other Party is in material breach of its obligations thereunder which is either incapable of remedy or, if capable of remedy, has not been remedied within thirty (30) days of a written notice to that other Party requiring it to do so;
- 8.3.3 by Boomerang forthwith on notice to Customer if any licence or authorisation required to provide or use the Service is revoked, expires or is withdrawn;
- 8.3.4 as provided in Clause 7.11;
- 8.3.5 by Customer during the Initial Term or any Renewal Term of that Contract on thirty (30) days' notice and subject to payment of the Termination Charge; or
- 8.3.6 by either Party forthwith on notice if the Services provided thereunder have been suspended or a Force Majeure Event has prevented provision of such Services in each case for a continuous period of sixty (60) days.

8.4 These terms and conditions may be terminated:

- 8.4.1 by either Party forthwith on notice if the other Party is in material breach of its obligations affecting all Contracts which breach is either incapable of remedy or, if capable of remedy has not been remedied within thirty (30) days of a written notice to the other Party requiring it to do so;
 - 8.4.2 by either Party forthwith on notice upon (i) the making by the other Party of an arrangement, composition with or a general assignment for the benefit of creditors; (ii) the filing of an involuntary petition in bankruptcy or other insolvency protection against that other Party which is not dismissed within ninety (90) days of its filing or results in the issuance of an order for relief against the debtor; or (iii) the appointment of a receiver, administrative receiver, liquidator or like person over the other Party or presentation, resolution or petition to wind up the other Party (other than for the purpose of a solvent reconstruction or amalgamation) or if the other Party is no longer able to pay its debts as and when they become due or if any equivalent event occurs in any jurisdiction;
 - 8.4.3 in the event of a Force Majeure Event preventing provision of all Services for a continuous period of sixty (60) days.
- 8.5 Either Customer or the Boomerang Signatory may terminate these terms and conditions for convenience if all Contracts have expired or been terminated.
- 8.6 Termination of these terms and conditions shall automatically effect termination of all Contracts.
- 8.7 If any Contract is terminated by Boomerang under Clauses 8.3.1, 8.3.2, 8.4.1 or 8.4.2 Customer shall pay to Boomerang the Termination Charge, to be payable promptly on demand. Customer agrees that the Termination Charge represents a genuine pre-estimate of Boomerang's losses flowing from any such termination and is not onerous or a penalty.
- 8.8 Boomerang may, in its sole discretion and without Liability to Customer, suspend forthwith provision of some or all of the Services by notice to Customer if:
- 8.8.1 Boomerang is entitled to terminate these terms and conditions;
 - 8.8.2 Boomerang is instructed or requested to do so by the government, an emergency services organisation, or other competent authority or in the event that a Network Operator suspends or ceases to provide service;

- 8.8.3 continued provision of the Service(s) is in breach of Applicable Law or of applicable licences or authorisations or where Boomerang determines it is prudent to do so for legal or regulatory reasons;
- 8.8.4 Boomerang reasonably suspects that Customer or an Authorised User (i) has breached or is in breach of the Access Terms or the FAUP; or (ii) is committing or has committed fraud or misconduct in connection with the use of the Services.
- 8.9 Any suspension of the Services by Boomerang shall not exclude Boomerang's right subsequently to terminate these terms and conditions, if applicable, nor any other right or remedy to which Boomerang is entitled under these terms and conditions and is without prejudice to Customer's obligation to make payment of the Charges in respect of the Services already provided. Subject to the foregoing, Boomerang shall reinstate any Service suspended under Clause 8.8.2 as soon as reasonably practicable once the event giving rise to such suspension has been resolved or lifted. If Boomerang reinstates a Service suspended other than under Clauses 8.8.2 or 8.8.3, it may charge Customer and Customer shall pay a reconnection fee.
- 8.10 The termination of these terms and conditions shall not be deemed to be a waiver of a breach of any term or condition of these terms and conditions and shall be without prejudice to (i) either Party's rights, liabilities and obligations accruing prior to such termination; and (ii) the continuance in force of Clauses which by their nature may be intended to survive termination including without limitation Clauses 4.8, 6.13, 6.16, this Clause 8.10 and Clauses 8.11, 9, 12 and 17.
- 8.11 On termination of any Contract: (i) all Charges incurred thereunder shall become immediately due and payable; (ii) all Customer Data stored by means of such Services shall be deleted; and (iii) the licence granted to Customer under Clause 13 shall immediately and automatically cease and Customer shall cease its use of the Software in relation to the relevant Service.

9 Limitation of Liability

- 9.1 Subject to Clause 9.5, Boomerang shall have no Liability to Customer for any indirect, special, punitive or consequential damages or for any of the following (whether the same are direct, indirect and whether or not reasonably foreseeable): loss of profit, business, contracts, data, anticipated savings or profits or claim from any third party for loss of services arising out of these terms and conditions or from any breach of any of the terms and conditions of these terms and conditions.
- 9.2 Subject to Clauses 9.5 and 9.7, Boomerang's Liability to Customer for all claims arising under any Contract in any twelve (12) month period shall be limited to the lesser of: (i) the total amount of Subscription Fees paid by Customer to Boomerang under such Contract during such period; and (ii) one million pounds (£1,000,000).
- 9.3 Boomerang's obligation in respect of the provision of the Services shall be to exercise the reasonable skill and care of a competent service provider. Boomerang does not warrant or represent that any Service is or will be fault-free and Boomerang's sole obligation in relation to any fault shall be to use reasonable endeavours to remedy faults in the Boomerang Equipment and Software as committed in the SLA.
- 9.4 Customer acknowledges that the timely and successful delivery and receipt of each Message is dependent on many factors including without limitation (i) performance by the relevant Network Operator; (ii) the End User being connected to a network which is reachable by means of the Services; (iii) the End User's Communications Device functioning correctly, being switched on, within network coverage and with space for messages; (iv) the number and all network and routing information being correct; and (v) in respect of Messages sent in reply, those Messages being successfully sent in the correct format and with correct network and routing information. Customer acknowledges and agrees that Boomerang does not represent or warrant that the Services will be uninterrupted or fault-free, that the Services are provided on an 'as is' basis and that Boomerang shall have no Liability for the delayed or failed delivery of any Message regardless of the reason for such delay or failure including

without limitation where such delay or failure is due to processing or transmission errors. In acknowledgement of the foregoing, Customer agrees and acknowledges that the Services are not intended for urgent emergency communications and Customer accepts full responsibility for any reliance placed on use of the Services for this or any other purpose.

- 9.5 Nothing in these terms and conditions excludes or restricts either Party's Liability (i) for death or personal injury resulting from that Party's negligence; or (ii) for fraud.
- 9.6 The grant of Service Credits under the SLA represents Boomerang's sole Liability and Customer's sole remedy in respect of and such service credits are granted in full and final settlement of any claims arising in respect of (i) any failure of any Service to achieve the service levels set out in the SLA or any other failure of 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 SLA.
- 9.7 Where an Order provides that Services are to be provided by more than one Boomerang Affiliate: (i) the liability of each Boomerang Affiliate shall be several and not joint and shall extend only to the Services expressed to be provided by that Boomerang Affiliate as set out on the Order; and (ii) the Liability of each Boomerang Affiliate for the Services provided by it during any twelve (12) month period shall be limited to the lesser of: (i) the total amount of Subscription Fees paid by Customer to that Boomerang Affiliate in respect of such Services during such period; and (ii) one million pounds (£1,000,000). Customer agrees that all and any claims it may have in relation to a Service shall lie solely against the Boomerang Signatory or Boomerang Affiliate contracted to provide that Service and Customer hereby irrevocably waives all current and future claims and other rights of action of whatever kind against the Boomerang Signatory and all other Boomerang Affiliates in respect of such matters.
- 9.8 Customer shall indemnify Boomerang in respect of any Liability of Boomerang to a Network Operator resulting from or in connection with a breach by Customer of these terms and conditions or of any Contract. Customer accepts and agrees that it may have a Liability to the Network Operator directly respect of such breach.
- 9.9 Customer agrees that the allocation of risk set out in this Clause 9 is reasonable and is reflected in the Charges.

10 Force Majeure

- 10.1 Boomerang shall not be deemed to be in breach of these terms and conditions or otherwise have any Liability to Customer in respect of any delay or failure in the performance of its obligations, if and to the extent that such delay or failure is caused by (i) a Force Majeure Event; or (ii) the acts, omissions or defaults of Customer.
- 10.2 Boomerang shall promptly notify Customer of the Force Majeure Event, shall use its reasonable endeavours to mitigate the effect of the same and upon cessation of the Force Majeure Event shall promptly resume the performance of its obligations.

11 Use of Numbers

- 11.1 Customer agrees that ownership of and all rights and interest in any Numbers shall remain with Boomerang or the relevant Network Operator. On termination of these terms and conditions or any Contract Customer's right to use any Numbers shall cease. Customer acknowledges that all Numbers are provided by the Network Operators on an "as available" basis and that they may become unavailable for continued use at any time.
- 11.2 The allocation and use of all Numbers shall be subject to applicable regulations, directions or instructions issued by or given on behalf of the relevant Supplier or regulator. The types of Numbers to be used in connection with any Service shall be as selected in the relevant Order, subject as provided in this Clause 11.

- 11.3 Where Customer purchases use of an Exclusive Originating Number and/or a Dedicated Inbound Number such Numbers shall be used to send and receive Messages for the exclusive use of Customer. Primary Numbers are not provided on an exclusive basis and Boomerang reserves the right to use any Primary Number as a secondary or tertiary number for other customers.
- 11.4 Customer acknowledges that the use of Numbers is subject to limitations as set out in the relevant Service Description and/or the Service Specific Terms. Without prejudice to the generality of the foregoing:
- 11.4.1 Where Customer uses Primary Numbers, Boomerang shall endeavour to send all Messages from such Primary Numbers provided that where this is not possible a different number will be used.
- 11.4.2 Where Customer purchases Exclusive Originating Numbers Boomerang will use reasonable endeavours to provide a sequential range of numbers. Messages shall be sent from the Exclusive Originating Numbers save where Customer has exhausted its range of Exclusive Originating Numbers, in which case Messages shall be sent from a non-exclusive pool of numbers.
- 12 Confidentiality**
- 12.1 Each Party shall:
- 12.1.1 Use Confidential Information only for the purpose of performing or enforcing the terms of these terms and conditions or any Contract;
- 12.1.2 Disclose Confidential Information only (i) to its professional advisers, staff, subcontractors and lenders on a need-to-know basis and provided such persons are bound by an equivalent duty of confidentiality; (ii) as required by a competent court of law or governmental or regulatory body, stock exchange or similar authority; and (iii) to a third party subject to the other party's prior written consent; and
- 12.1.3 protect any Confidential Information using no less than the highest degree of care that it applies to its own proprietary or secret information.
- 12.2 The obligations pursuant to this Clause 12 do not apply to any Confidential Information that: (i) is or comes into in a party's possession in each case legally; (ii) is or becomes publicly known other than as a consequence of a breach of this Clause12; or (iii) is developed independently by a Party.
- 12.3 This Clause 12 replaces any confidentiality or non-disclosure agreement executed by the Parties in respect of Confidential Information disclosed following the Effective Date, but such agreement shall survive signature of these terms and conditions in respect of information disclosed prior to the Effective Date.
- 12.4 All rights in any information provided by Boomerang relating to the Services shall remain the property of Boomerang and no rights therein are conferred on Customer.
- 12.5 Neither Party shall without the prior approval in writing of the other, such approval not to be unreasonably withheld or unduly delayed, directly or indirectly (other than pursuant to Clause 12.1.2(ii)), make any release or statement to the press, radio, television or other media in any way connected with these terms and conditions. Notwithstanding the foregoing, (i) Boomerang shall be entitled to include Customer's name on its client list and to use the same in its publicity and marketing; and (ii) Customer agrees to participate in case studies and to provide such input in relation to the same as Boomerang may reasonably require and further agrees that Boomerang may use the same in its publicity and marketing.
- 12.6 Customer agrees that Messages may be transmitted in unencrypted format and that Boomerang cannot guarantee the privacy of any Message. Customer accepts all risk of loss and Liability for any lack of privacy or security experienced through use of the Services.

13 Software and Intellectual Property

- 13.1 Customer is authorised during the Term of each Contract on a non-exclusive basis to access the Software using the agreed Access Method and in accordance with the Access Terms and to use the Software to the extent required to use the relevant Services. Use of the Software under this Clause 13.1 shall be restricted to use in object code form and as installed on the Boomerang Equipment for the purpose of processing Customer's data for the normal business purposes of Customer. Save as expressly provided in Clause 6 the foregoing shall not include allowing the use of the Software by, or for the benefit of, any person other than the Customer entity named on the Order, including that party's employees and contractors.
- 13.2 Subject to Clause 13.3, Customer undertakes that it shall not whether itself or through an Affiliate or third party and shall not permit any Authorised User to copy, adapt, reverse engineer, decompile, disassemble, modify, develop, enhance adapt or make error corrections to the Software in whole or in part or decompile, disassemble, reverse engineer, or otherwise manipulate any portion of the Software or attempt to discover any source code or underlying ideas of algorithms of any Software save to the extent that such acts may not be excluded under Applicable Law.
- 13.3 Boomerang hereby authorises Customer to copy, adapt, reverse engineer, decompile, disassemble, modify, develop, enhance adapt or make error corrections to any Plugin on the condition that Customer (i) supplies to Boomerang and keeps Boomerang supplied with the source code of the enhanced, developed or adapted version of the Plugin together (the "Customer Version") with such developers' notes as Boomerang may require to enable it to make use of the same; and (ii) Customer hereby grants to Boomerang at no cost to Boomerang a royalty-free licence to use the Customer Version, to copy, adapt, reverse engineer, decompile, disassemble, modify, develop, enhance, adapt or make error corrections to such Customer Version and to distribute and grant sub-licences in the Customer Version to Boomerang's other customers on the terms of this Clause 13.3. Where a Plugin is accessed by employees, contractors or developers acting on behalf of Customer, Customer shall procure compliance by such persons with this Clause 13.
- 13.4 Customer may not use any information or Software provided by Boomerang or obtained by Customer to create any software whose expression is substantially similar to that of the Software or which competes with the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.
- 13.5 All Intellectual Property Rights in the Software and in the Boomerang Marks shall remain with Boomerang or a Boomerang Affiliate. Customer is granted no rights in the same other than to use the Software as provided in Clause 13.1. Customer may not use the Software other than as expressly permitted herein without the prior written consent of Boomerang and Customer acknowledges that additional fees may be payable if Boomerang consents to any change of use.
- 13.6 If any claim is brought against Customer is made or in Boomerang's reasonable opinion is likely to be brought against Customer alleging that use of the Software in accordance with Clause 13.1 infringes the Intellectual Property Rights of a third party (a "Claim"), Boomerang shall indemnify Customer in respect of any damages awarded and may at its sole option and expense: (i) procure for Customer the right to continue using the Software in accordance with the terms of this Clause 13; (ii) modify the Software so that it ceases to be infringing; (iii) replace the Software with non-infringing Software; or (iv) terminate any Contract affected by written notice to Customer and refund any credits purchased by Customer which remain unused as at the date of such notice. The indemnity set out in this Clause 13.6 shall be subject to (i) Customer notifying Boomerang immediately upon becoming aware of a Claim; (ii) Boomerang having sole conduct of such Claim and Customer not making any admission or taking any other action in relation thereto. The indemnity shall not apply to Claims based on (i) use of the Software together with any software or equipment not supplied by Boomerang; (ii) use of the Software other than as authorised by these terms and conditions; or (iii) continued use of the Software after the date the Customer was notified of or otherwise became aware of the infringement. Customer agrees that this Clause 13.6 is Customer's sole remedy and

Boomerang's sole Liability in respect of any Claim. This Clause 13.6 shall not apply (i) in respect of any Plugin or any part of a Plugin not developed by Boomerang; or (ii) to any Open Source Software, both of which shall be deemed "Excluded Software". Customer hereby accepts that Boomerang has no Liability in respect of Excluded Software and shall indemnify Boomerang and hold Boomerang harmless in respect of any claims arising in connection with the same.

- 13.7 Customer shall not (i) sub-license, assign or novate the benefit or burden of the licence provided in this Clause 13 in whole or in part, save to the extent permitted by Clause 6; or (ii) allow the Software to become the subject of any charge, lien or encumbrance.
- 13.8 Customer shall not export, directly or indirectly, the Software or any technical data acquired from Boomerang in breach of any applicable laws or regulations, including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.
- 13.9 The Boomerang Signatory or a Boomerang Affiliate retains all right, title and interest in all marks, logos, text, designs, images, documents and materials published, posted or displayed on the Website or on any social media pages or feeds set up on behalf of Boomerang ("Boomerang Materials"). Customer may view the Boomerang Materials but may not down- or upload the same or copy, reproduce, display, republish, publicly perform or display, distribute or create derivative works of the Boomerang Materials without the express prior written consent of the Boomerang Signatory or the relevant Boomerang Affiliate.
- 13.10 Customer acknowledges that title in the Software is owned by a Boomerang Affiliate and agrees that this Clause 13 shall be enforceable by such Boomerang Affiliate. The Parties acknowledge that damages may not be an adequate remedy for any breach of Clauses 12 and 13 and agree that the Boomerang Signatory or a Boomerang Affiliate shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach without proof of special damages.
- 13.11 Any Open Source Software provided to Customer by Boomerang is deemed incorporated in the Software for the purposes of these terms and conditions (save as provided in Clause 13.6) and is subject to the additional terms of the licence under which it is provided.

14 Data

- 14.1 Customer agrees that Boomerang may come into possession of personal data relating to Customer or its employees. Customer agrees that the Boomerang Signatory and Boomerang Affiliates may process and use such data as required (including incorporating the same into databases): (i) to provide the Services or otherwise administer these terms and conditions and to detect fraud; (ii) to comply with any statutory or regulatory requirement or with the order of a court or public authority with power to order its disclosure; (iii) for product development, customer and market analysis and reporting; and (iv) to communicate with Customer by voice, SMS, email, letter or fax in relation to products or services of the Boomerang Signatory or any Boomerang Affiliate. Customer warrants it has all consents required to authorise such use and processing. Customer may withdraw its consent to use and processing as described in (iii) and (iv) by notice to Boomerang.
- 14.2 In respect of all Contact Data, Customer agrees that Customer acts as data controller and Boomerang as data processor, as such terms are defined in the Data Protection Act 1998 (the "Act").
- 14.3 Customer shall ensure that all use of the Contact Data as contemplated by these terms and conditions or otherwise instructed by Customer is authorised by the Act, Privacy Laws and by all associated guidelines, guidance notes, regulations, orders and similar instruments and enactments (**Associated Enactments**). Customer warrants that it has obtained all consents that are required to process the Contact Data by means of the Services (which may include, where data is outside the UK, transferring it to the UK for processing) and shall indemnify

Boomerang in respect of any claims, actions, proceedings or demands brought or threatened by End Users or otherwise arising from a breach of the foregoing warranty.

- 14.4 Boomerang shall (i) process Contact Data in accordance with Customer's reasonable instructions, including as set out in each Contract; (ii) take appropriate technical and organisational measures against the accidental loss or destruction of or unauthorised or unlawful processing of Contact Data having regard to the cost and state of technological advancement; and (iii) may appoint sub-contractors to perform data processing. Customer shall ensure that all Contact Data is maintained up-to-date and not retained for longer than reasonably required. Each party shall comply with the Act, the Regulations and the Associated Enactments.
- 14.5 Customer agrees that Customer Data is stored on the Services and accessible only for the period detailed in the Service Specific Terms or specified on the Order (the "Storage Period"). Following the expiry of the relevant Storage Period, Boomerang shall delete such Customer Data. Where available, Customer may purchase Extended Storage as a Feature of a Service. Customer agrees that it shall at all times retain a back-up of the Customer Data.

15 Assignment & Sub-Contracting

- 15.1 Save as expressly permitted by Clause 6, Customer may not assign, sub-contract, sub-licence or otherwise dispose of all or any of its rights or obligations under these terms and conditions (including without limitation the licence granted under Clause 13), without the prior written consent of Boomerang.
- 15.2 Boomerang may (i) transfer any of its rights and obligations under these terms and conditions to any Boomerang Affiliate (or its or their successors, through merger or acquisition of substantially all of their or its assets); and (ii) sub-contract any or all of its obligations under these terms and conditions to a third party or an Affiliate, provided that Boomerang shall remain liable to Customer for the performance of those obligations.

16 Notices

- 16.1 Any notice or other communication required or permitted to be given under these terms and conditions shall, save where otherwise expressly provided, be in writing and in the English language. Such notices may be (i) personally delivered, in which case it shall be deemed to have been given upon delivery at the relevant address; or (ii) sent by reputable international courier requiring signature on receipt, in which case it shall be deemed to have been given five (5) Working Days after the date of posting.
- 16.2 Notices to Boomerang (i) in respect of any Service shall be given to the Boomerang Affiliate providing that Service at the address detailed on the Order or otherwise from time to time notified to Customer; and (ii) in respect of any Contract relating to more than one Service, shall be given to all Boomerang Affiliates detailed on that Order.
- 16.3 Notices to Customer may be delivered to it and shall be deemed served if sent to the email or postal address stated on the Order. Customer may notify Boomerang of any change in such address details by not less than seven (7) days' notice. If Boomerang sends notices by email, it shall prompt Customer to check its email by SMS (provided that Customer has provided a mobile phone number for such purpose).

17 General

- 17.1 Each Party represents, warrants and undertakes to the other Party that it has full power and authority to carry out the actions contemplated by these terms and conditions and that its entry into and performance under the terms of these terms and conditions and each Contract will not cause it to be in breach of any obligations to a third party or, to the best of its knowledge and belief, infringe the rights of any third party.

- 17.2 No failure to exercise nor any delay in exercising any right, power, privilege, or remedy under these terms and conditions shall in any way impair or affect the exercise thereof or operate as a waiver thereof in whole or in part. No single or partial exercise of any right, power, privilege or remedy under these terms and conditions shall prevent any further or other exercise of any other right, power, privilege or remedy.
- 17.3 Nothing in these terms and conditions shall be deemed to constitute a partnership or joint venture between the Parties nor shall these terms and conditions authorise either Party to act as agent or representative of the other or to authorise any such Party to assume or create an obligation on behalf of the other.
- 17.4 Customer agrees that these terms and conditions and each Contract is entered into by Boomerang for the sole benefit of Customer. Save as expressly provided, no person who is not a Party to these terms and conditions shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these terms and conditions.
- 17.5 It is agreed that it is intended to confer a benefit on Boomerang and its Affiliates by making the exclusions and limitations of liability available to them in accordance with these terms and conditions, provided that the rights of such Affiliates under these terms and conditions shall only be enforceable by Boomerang. Boomerang will owe no duty to them to enforce such rights and it may conduct or compromise any relevant proceedings as it sees fit.
- 17.6 These terms and conditions constitutes the whole agreement between the Parties relating to its subject matter and supersedes all prior and contemporaneous drafts, agreements and undertakings, whether in writing or oral, relating to such subject matter except to the extent the same are repeated in these terms and conditions.
- 17.7 Customer acknowledges that it has not entered into these terms and conditions in reliance on any representation, statement, warranty, promise or assurance save as expressly set out herein and all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to fitness for purpose) are hereby excluded to the extent permitted by law.
- 17.8 Neither Party shall have any remedy in respect of any untrue statement made by the other upon which that Party relied in entering into these terms and conditions (unless such untrue statement was made fraudulently) and that Party's only remedies shall be for breach of contract as provided in these terms and conditions.
- 17.9 No variation of these terms and conditions shall be effective unless agreed in writing between the Parties and signed by each Party save (i) that Boomerang may at any time revise these terms and conditions in so far as it relates to future Orders by circulating the revised terms to any email address provided by Customer; (ii) that Boomerang may revise, modify, amend or vary these terms and conditions and each Contract where the same is required to take account of legislation, regulatory changes or changes proposed by any Network Operator by notice to Customer and by posting the revised terms on the Website; and (iii) in respect of any document referenced herein that is stated to be as from time to time notified to Customer or published on the Website.
- 17.10 These terms and conditions may be executed in any number of counterparts which shall together constitute one agreement. Either Party may enter into these terms and conditions by signing any such counterpart.
- 17.11 The Parties shall do and procure to be done all such acts, matters and things and shall execute and deliver all such documents and instruments as shall be required to give full effect to the licences granted and transactions contemplated under these terms and conditions.
- 17.12 These terms and conditions shall be governed the laws of England and Wales and the Parties hereby submit to the exclusive jurisdiction of the English courts. Where Customer is established outside England and Wales, it hereby appoints the third party stated on each Order as its agent to receive on its behalf service of proceedings in England and Wales. Such service shall be deemed completed on delivery to such agent (whether or not it is

forwarded to and received by Customer and shall be valid until such time as Customer has received prior written notice that such agent has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, Customer shall forthwith appoint a substitute acceptable to Boomerang and shall deliver to Boomerang the new agent's name and address and fax number within England and Wales.

Where required by Clause 4.6, Customer agrees that it shall comply with the following:

You represent, warrant and covenant that (i) you will provide complete and accurate information to us in connection with your application for and use of the U.S. Short Code Services as reasonably requested from time to time; (ii) you will not use the short codes in any manner inconsistent with any keywords approved by Boomerang for your use case or information you provide, use the short codes provided outside of the permitted functionality of our platform, or otherwise circumvent the input restrictions or other limitations of our U.S. Short Code Services; (iii) your use of the U.S. Short Code Service (including, without limitation, all messages sent using such Service) shall comply with the [Mobile Marketing Association Code Of Conduct, Industry Best Practices](#), and other policies and guidelines as updated from time by the Mobile Marketing Association ("[MMA Guidelines](#)"), the [CTIA Guidelines and Acceptable Use Policy](#), applicable wireless carrier requirements (including, but not limited to, with respect to our dedicated short codes, all requirements applicable to user opt-ins, opt-outs and consents to receive messages), the [Telephone Consumer Protection Act](#), the [Federal Communication Commission's Customer Proprietary Network Information rules and regulations](#), all other applicable laws, rules, and regulations, and, if applicable, the [Neustar Registrant Sublicense Agreement V.6](#); (iv) you shall not resell, sublicense or otherwise use primarily for the benefit of a third party the short code Services; (v) all short code messages must advise of any applicable charge rates; (vi) you must have and abide by an appropriate privacy policy with your users (including, without limitation, the owner of any telephone number you submit to us in connection with these Services), and your privacy policy must disclose the use of our Services and how personal information is treated in compliance with all applicable laws, rules and regulations; and (vii) your use of our short codes must be in compliance at all times with these terms and conditions and our [FAUP](#). You acknowledge and agree that you shall not submit any personally identifiable information to us owed by any person who has not agreed to the treatment of such information, and you shall be solely responsible for any non-compliance with these Supplemental Terms. In addition to any other available remedies at law or equity, Boomerang may suspend your account, block or suspend your traffic, and/or terminate these Supplemental Terms in the event of any violation of these Supplemental Terms.