

Commercial Business Communications



This Master Service Agreement (“MSA”) is entered into between Commercial Business Communications Ltd (“CBC”) and customer (“You”).

DEFINITIONS. For the purposes of this MSA, the following definitions apply:

“Acceptable Use Policy” means the document provided by CBC to You, as amended from time to time, setting out the acceptable use of the Services provided by CBC to You.

“Access Information” means information that alone or together with other information, can provide access to any portion of Your Account, including but not limited to, Your Account number, login names, passwords, credit card or other financial information, security questions and their respective answers, and any other similar information. For the avoidance of doubt, Your Access Information will include any similar information for each of Your Users.

“Account” means the account or accounts created with CBC in connection with this Agreement that relates to Your purchase of and subscription to Services and the use of Services by You and Your Users.

“Administrative User” means any of Your employees, consultants, independent contractors or customers to whom You grant administrative permission to access the Services in accordance with CBC’s entitlements and procedures and this Agreement where “administrative permission” includes, but is not limited to, the right to create, modify and delete User accounts, as well as the right to modify Your billing information.

“Applicable Law” means any applicable UK, foreign, federal, state, provincial or other laws, rules, regulations or interpretations of relevant Governmental Authorities or self-regulatory bodies.

“Base Package” means the sum of the licences as set out in the schedule of services section of the Order Acceptance document.

“Beta Offerings” means any portion of the Services offered on a “beta” basis, as designated by CBC or its parties, including but not limited to, products, plans, services, and platforms.

“CBC” means Commercial Business Communications Ltd whose registered number is 09751852 and whose registered office is Commercial House, 26 Hastings Road, Leyland, PR25 3SP

“CBC Parties” means CBC’s affiliates (including holding companies and subsidiaries), vendors, licensors and partners, and its officers, employees, agents, sub-contractors, and representatives.

“Contract” means the contract between CBC and You for the supply of Services in accordance with the following; Order Acceptance Document, MSA, Service Level Agreement and any relevant Schedule(s).

“Data” means all data submitted by Your Users to CBC or its partners in connection with the Services, including all content, material, IP and similar addresses, recordings, messages, software, Account Information and Account-related settings.

“GBP” means British pound sterling.

“Governmental Authority” means a government, regulatory organisation, self-regulatory organisation, court of competent jurisdiction or similar body.

“Minimum Cancellation Notice Period” means the minimum period of notice, being 90 days, that You must give to CBC to terminate the Contract.

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“Minimum Package Fee” means the monthly charge for Your Base Package excluding any additional items that You have purchased along with such base package.

“Order Acceptance Document” means the Order Acceptance Document containing, but not limited to, the contract start date, initial term, schedule of services, costs and any variations to the terms of the Contract.

“Schedule(s)” means documents and the order documentation that specifically describe the Services used by You under this Agreement, including product descriptions, the currency to be used for billing and payment, pricing, and other terms. Each Schedule shall be deemed a part of and incorporated into this Agreement.

“Services” means CBC’s, and CBC Parties unified communications, hosting and other services, software and products, as such services, software and products that are offered by CBC from time-to-time in its discretion and subscribed to, purchased by, or used by You as set forth in a Schedule.

“Service Level Agreement” means the document provided by CBC to You, as amended from time to time, setting out the level of service to be provided by CBC to You, and together forming the Terms and Conditions of the Contract for Services. “Third-Party Service” means any service or product offered by a party that is not CBC or CBC’s Parties.

“User” means any of Your employees, consultants, independent contractors or other individuals to whom You grant permission to access the Services in accordance with CBC’s entitlements procedures and this Agreement (including Administrative Users).

“VOIP Outage” means the loss of telephony services for more than 50% of users for a continuous period of 15 minutes or longer, where CBC or CBC Parties are at fault.

“You” and “Your” means the individual or entity on whose behalf this Agreement is accepted.

1. INTRODUCTION

- 1.1. The Order Acceptance Form shall be deemed to be accepted when You sign the Order Acceptance Form and on which date the Contract shall come into existence (**Commencement Date**).
- 1.2. The Contract shall be valid from the Commencement Date for a minimum period of 36 months, unless stated otherwise in the Order (**Minimum Contract Term**).
- 1.3. This Master Service Agreement and the Service Level Agreement, with the Order Acceptance Form, shall be the terms and conditions (**Terms and Conditions**) which apply to the Contract, as amended from time to time by CBC.
- 1.4. The Terms and Conditions shall apply to the Contract to the exclusion of any other terms that You seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2. SUPPLY OF SERVICES

- 2.1. The Service Level Agreement shall set out the level of Services provided by CBC.
- 2.2. **Access to Services.** Subject to and in accordance with the terms of this Agreement, including any Schedules, CBC grants You a non-exclusive, non-sublicensable, non-transferable, non-assignable, revocable license for the term of this Agreement, to access and use the Services.



- 2.3. CBC reserves the right to amend the Terms and Conditions if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and CBC shall notify the Customer in any such event.
- 2.4. CBC will maintain all necessary statutory and regulatory licenses and permits to provide the Services within the Contract.
- 2.5. CBC and CBC Parties will install security patches, updates, upgrades and service packs ("Updates") as it determines in its sole discretion, and reserves the right, to roll back any Updates.
- 2.6. Updates may change system behaviour and functionality and as such may negatively affect the Services used by You.
- 2.7. CBC and CBC Parties cannot foresee nor be responsible or liable for service disruption or changes in functionality or performance due to Updates. CBC is not responsible or liable for issues that may arise from incompatibilities between Your Data and use of the Services and any Update or hardware or software change or configuration, regardless of whether discretionary or requested.
- 2.8. CBC shall maintain all necessary insurance cover in the sum of no less than £1,000,000 million for public liability and £5,000,000 million for employers liability.

3. CUSTOMER OBLIGATIONS

- 3.1. Services may only be used by Your Users for internal business purposes only and You agree to comply with the terms and conditions of this Agreement, including any Schedules, and with all applicable procedures and policies that further define use of the Services.
- 3.2. You acknowledge and agree that the actions of any of Your Users with respect to the Services will be deemed to be actions by You and that any breach by any of Your Users of the terms of this Agreement, including any Schedule, will be deemed to be a breach by You.
- 3.3. **Account Information and Ownership.** You acknowledge that Your failure to timely update Your Account information, including authorised Administrative Users, can result in unauthorised personnel having access to Your Account and potentially doing harm to You. Accordingly, You agree to maintain accurate Account information by providing updates to CBC promptly, but no later than three (3) business days, when any of Your Account information requires change, including any relevant Account contact information.
- 3.4. Failure by You, for any reason, to respond within three (3) business days to any inquiries made by CBC to determine the validity of information provided by You will constitute a material breach of this Agreement.
- 3.5. You acknowledge and agree, and expressly consent, that in the event of any dispute regarding access to or legal ownership of any account or any portion thereof, including Your Account, CBC will resolve such dispute in its sole discretion. In addition, in the event of such a dispute, CBC may immediately suspend, alter or terminate any relevant account, including Your Account, or any portion thereof.
- 3.6. You will indemnify CBC for any damage, loss, legal fees and other costs incurred with respect to any dispute regarding control or ownership of Your Account or Your Data or the same of another CBC customer. You acknowledge and agree that;

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- i the legal owner of all Data on the Account is You (the counterparty to this Agreement) and not any individual User, including any Account contact registered with CBC, regardless of any administrative designation (e.g., Administrator, Billing Contact, Owner, etc.);
- ii You will provide CBC with any documentation it reasonably requests to establish ownership and rights to Your Account and any related Data; and
- iii any User identified as an Administrative User with respect to Your Account has the authority to bind You to any amendments, modifications or acknowledgements regarding this Agreement or otherwise relating to the Services.

3.7. **Account Security and Activity.** You acknowledge and agree that You are solely responsible for;

- i maintaining the confidentiality and security of Your Access Information, and
- ii all activities that occur in connection with Your Account, whether initiated by You, by others on Your behalf or by any other means. You will notify CBC immediately of any unauthorised use of Your Account, Access Information or any other actual or potential breach of security. You acknowledge and agree that CBC will not be liable for any loss that You may incur as a result of any party using Your Access Information, either with or without Your knowledge and/or authorisation. You further agree that You may be held liable for losses incurred by CBC, or another party due to any party using Your Access Information. CBC strongly recommends that You keep Your Access Information in a secure location, take precautions to prevent others from accessing it and change it when necessary to maintain its confidentiality and security. CBC specifically disclaims all liability for any activity in Your Account, whether authorised by You or not.

3.8. **Failure of a Line Test.** With respect to voice services, if a specific site fails a “VoIP line test” as part of the installation process, and You are unable or unwilling to upgrade the data circuit, router, switch, or faulty component responsible for the failure, CBC reserves the right to cancel the order for such site.

3.9. You agree to monitor and maintain Your Accounts within all CBC’s specified limits and in a manner that does not disrupt the activities of CBC, CBC Parties and other customers and users.

3.10. You will use the Services for Your own internal business, non-residential and non-personal use only. You acknowledge and agree that You will not allow any third party, including Your vendors and service providers, to access or use the Services unless such third party is allowed access for the purpose of providing authorised customer support services or in connection with Your appropriate use of the Services for Your own business purposes.

3.11. **Restricted Activities.** You will not;

- i use any Service for any purpose outside the Service’s intended scope, features, and function set;
- ii use any Service for third-party training;
- iii use any Service as an application service provider or service bureau, unless You have entered into a separate written agreement with CBC to provide such services;
- iv use any Service for timesharing or rental;

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- v use any Service to design software or other materials or services with similar or competitive functionality for any purpose, including distribution to third parties;
- vi except with respect to Your Data, duplicate any portion of the Services or display, distribute, publish, or otherwise disclose any Service;
- vii use any of the Services to interface with any other service or application that is outside the scope of intended use;
- viii decompile, disassemble, or otherwise reverse engineer any portion of the Services;
- ix make any modification or interface to any Service that is not specifically authorised by CBC without prior written consent of CBC; or
- x resell or sublicense any portion of the Services, and any purported resale or sublicense will be void.

3.12. You acknowledge and agree that access and use of the Services may be restricted or limited as a result of Applicable Laws and that You will not use, or allow the use of the Services in contravention of, and will comply with, any Applicable Law. You warrant that;

- i You and Your Users are not named on any Government Authority list of persons or entities prohibited from receiving exports, and
- ii You will not permit Users to access or use Services in violation of any export embargo, prohibition or restriction. You acknowledge and agree that that it is Your sole responsibility to use the Services in a lawful manner.

3.13. You are responsible for and must provide all hardware, software, services and other components necessary to access and use the Services. CBC makes no representations, warranties, or assurances that third party hardware, software, services and other components will be compatible with any Service. CBC reserve the right to change or upgrade any equipment or software used to provide the Services without notice to You.

4. TERM AND TERMINATION.

4.1. **Term.** This Agreement shall be effective from the Commencement Date and shall continue for the Minimum Contract Term.

4.2. After the Minimum Contract Term, plus any Renewal Term, You shall give the Minimum Cancellation Notice Period to terminate the Contract or any Service(s) supplied pursuant to it. The termination of the Contract will take place at the end of the calendar month three months after the date that the notice to terminate has been received by CBC. If no notice or less than three months' notice is given, the Contract and any Service(s) supplied pursuant to it shall continue for a period as agreed between CBC and You, or if not agreed for a period of 12 months (Renewal Term).

4.3. Either the Minimum Contract Term or the Minimum Cancellation Notice Period may be reduced at the CBC's sole and absolute discretion.

4.4. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:



- i the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within five days after receipt of notice in writing to do so;
- ii the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- iii the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- iv the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

4.5. Without affecting any other right or remedy available to it, CBC may terminate the Contract with immediate effect by giving written notice to You if:

- i You fail to pay any amount due under the Contract on the due date for payment;
- ii there is a breach of the Contract by You, including but not limited to violation of the CBC Acceptable Use Policy or any other CBC policy or procedure applicable to the Services as notified to You from time to time, and You fail to remedy within 30 days of being notified by CBC;
- iii your use of the Services results in, or is the subject of, actual or potential legal action or threatened legal action, against CBC or any of its affiliates, vendors, partners, representatives or customers, without consideration for whether such actual or potential legal action or threatened legal action is eventually determined to be with or without merit; or
- iv there is a change of control of You.

4.6. If the CBC terminates the Contract in accordance with clause 4.5 the full amount payable under the Minimum Contract Term shall immediately become payable to CBC.

4.7. Without affecting any other right or remedy available to it, CBC may suspend the supply of any of the Services under the Contract or any other contract between You and CBC if You fail to pay any amount due under the Contract on the due date for payment, You become subject to any of the events listed in clause 4.4(ii) to clause 4.4(iv), or CBC reasonably believes that You are about to become subject to any of them.

4.8. On termination of the Contract You shall immediately pay to CBC all of CBC's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, CBC shall submit an invoice, which shall be payable by the You immediately on receipt.

4.9. If You wish to terminate the Contract before the Minimum Contract Term expires, then You shall pay all the monies due under the Contract up until the end of the Minimum Contract Term to CBC, including the Minimum Cancellation Notice Period.

4.10. Termination of the Contract shall not affect any rights, remedies, obligations and 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 Contract which existed at or before the date of termination.

4.11. Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

4.12 Notwithstanding the terms of clause 4 You may terminate this agreement without penalty at by giving 90 days written notice, if there is three VOIP Outages in a rolling 12 month period.

4.13 CBC may terminate this Agreement or any Schedule for any reason by providing 120 calendar days' notice. If CBC terminates this Agreement pursuant to this clause, then all Schedules will terminate at the end of the 120 day notice period. If CBC terminates any Schedule pursuant to this Section 2.3(a), then (i) for a Schedule with a monthly plan, if the effective termination date occurs prior to the end of the then-current Schedule Term, CBC will refund (or refrain from charging You) the pro rata monthly fees for the month in which Services terminate and (ii) for a Schedule with an annual plan, CBC will refund (or refrain from charging You) the monthly fees for the month in which Services terminate.

4.14 Upon termination, You must promptly uninstall all software provided by CBC in connection with the Services. All of Your Data will be irrevocably deleted promptly (as soon as fourteen (14) calendar days) following the termination of this Agreement or the applicable Schedule, including but not limited to, databases, contacts, calendars, e-mail, website content, and any Data hosted by CBC or CBC Parties. It will be solely Your responsibility to secure all necessary Data from Your Account prior to termination. CBC will not be responsible or otherwise liable for any loss of Your Data or any damages arising from the deletion of Your Data following termination of the Services.

5 CHARGES AND PAYMENT

5.1 The fees initially charged upon ordering any Service will be effective for the applicable Minimum Contract Period and each Renewal Term shall be set out in the Order Acceptance Document.

5.2 CBC reserves the right to increase these fees at any time upon thirty (30) calendar days' notice to You.

5.3 All payments made by You to CBC shall be in GBP.

5.4 **Billing and Payment Arrangements.** CBC will bill You monthly for all established and recurring fees, and any applicable one-time fees in that month, including but not limited to interest, declined payment fees. Pro rata billing may occur throughout the course of a billing cycle for feature add-ons that You enable on your Account during any given month.

5.5 Payment by Automated Means.

(a) CBC will provide a VAT invoice each month by email to your nominated accounts email address. On or about the 12th day of each month, CBC will apply the current monthly charges to Your automated payment method. Payment by automated means includes any form of automated payment accepted by CBC from time to time, including credit card, debit card, direct debit or other means.



(b) You must provide CBC with valid automated payment information as a condition to receive or use the Services. You are responsible for and agree to update CBC with any changes to Your billing and/or automated payment information (e.g., new or updated credit card, credit card expiration date or other payment account information). By providing CBC with the automated payment information, You authorise CBC to charge Your automated payment account for any amounts arising from or relating to the Services without further authorisation from You. It is Your responsibility to keep Your automated payment information up-to-date. If charges to Your automated payment account fail, CBC will call to discuss, or email a warning to Your Account billing contacts.

(c) If CBC is unable to successfully process Your monthly payment by automated means within 30 days after the first attempt, Your payment will be considered late and not paid in full. CBC may suspend or terminate Your Account in accordance with clause 4.7 for failure to timely pay in full.

5.7. Payment by Cheque.

(a) If You apply for and are accepted into CBC's cheque paying program, CBC will issue You an invoice each calendar month. Payment by cheque must be received within 30 days of the invoice date. Acceptance into and continued participation in CBC's cheque paying program will be at CBC's sole discretion.

(b) Should Your payment be declined, a returned cheque fee of £25.00 will be charged to Your Account.

(c) If CBC does not receive payment within 30 days after the invoice date, Your payment will be considered late and not paid in full. CBC may suspend or terminate Your Account in accordance with Section 2.3(b)(i) for failure to timely pay in full.

5.8. Late payments are subject to a late-payment charge of 2% plus the Bank of England Base Rate. Such interest will accrue daily from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You will pay the interest immediately on demand. You will indemnify CBC for all collection costs, damages, loss and any other costs incurred by CBC (including, without limitation, reasonable legal costs) arising from late payment.

5.9. **Fees for Excess Use.** If Your usage exceeds the limits for Your Account or may disrupt the activities of other customers and users, You agree that CBC at its sole discretion may immediately, in its sole discretion;

- i charge You for such excess usage via Your automated payment account, or by invoice if You have been accepted into CBC's cheque paying program;
- ii upgrade You to a plan or increase the limits on Your Account to address this excess usage; and/or
- iii suspend Your Account or terminate Your Account upon notice To You.

5.10. Usage and associated charges for excess usage will be determined based solely upon CBC and CBC Parties collected usage information. Unused monthly allotments will not accrue or carry over from one month to any other month. Upon any upgrade or increase on the limits of Your Account, You will be responsible for the new costs and fees.

5.11. **Taxes.** All sums due to CBC under the Agreement are exclusive of Value Added Tax or any other applicable tax which shall be charged to You.



5.12. **Fees for Additional Services.** You agree to pay CBC's then-current rates and expenses, including the cost of CBC's vendors, for any requests related to information retrieval, court summons, consulting and advisory services, or similar work.

5.13. **Invoice Disputes.** You will notify CBC of any dispute relating to charges billed to Your Account by emailing accounts@cbcommunications.co.uk within 30 days of the date the disputed charges appeared on Your Account, after which the invoice shall be deemed accepted by You. The existence of a dispute will not relieve You from paying any and all amounts billed hereunder. You waive all rights to dispute any charges not disputed by written notice in accordance with this clause.

5.14. **Electronic Billing and Documentation.** All billing and other documentation regarding the Services may be provided electronically ("Electronic Documentation"). You acknowledge and agree that You are able to view all Electronic Documentation and consent to receiving Electronic Documentation and decline to receive hard copies of any such materials. You agree to receive all such communications in the English language.

5.15. **Changes to the Number of User Licences.** You can increase the number of each user licence at any time. The cost of any additional licence will be added to CBC's monthly invoice to You. You can decrease the number of user licences at any time, subject to the number of any licence type not being lower than the quantities set out in the Schedule of Services in the Order Acceptance Document.

5.16. **Annual Price Increase.** All charges are subject to an annual price increase comprised of the Consumer Price Index (CPI) rate figure published by the Office for National Statistics in January of that year (excluding any negative figure), plus 3.9%. The increase will take effect on invoices dated 1st February of each year and use the CPI figure published in January of that year.

6. YOUR DATA

6.1. **Submission of Your Data.** Any Data You submit to CBC or CBC's Parties in connection with the Services must comply with the CBC Acceptable Use Policy. Attempting to place or transmit, or requesting placement or transmission, of Data that does not comply with the CBC Acceptable Use Policy will be a material breach of this Agreement. CBC may, in its sole discretion, reject or remove Data that You have used or attempted to use with respect to the Services.

6.2. Any Data used with respect to the Services by or through You will be free of any and all malicious code, including without limitation, disabling devices, drop dead devices, time bombs, trap doors, trojan horses, worms, computer viruses and mechanisms that may disable or negatively impact the Services or CBC or CBC Parties servers.

6.3. You hereby represent and warrant to CBC that You have the right to use any patented, copyrighted, trademarked, proprietary or other material in connection with Data that You use, post, or otherwise transfer or transmit with respect to the Services.

6.4. **Public Disclosure of Data.** You are solely responsible for ensuring that You do not accidentally make any private Data publicly available. Any Data made public may be publicly accessible through the internet and may be crawled and indexed by search engines or other third parties. By making any Data publicly available on any of the Services, You affirm that You have the consent, authorisation or permission, as the case may be, from every person who may claim any rights in such Data to make such Data available in such manner.

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- 6.5. **Data Takedown.** By making any Data publicly available in the manner aforementioned, You expressly agree that CBC and CBC Parties will have the right to block access to or remove such Data made available by You, if CBC and / or CBC Parties receive complaints, inquiries or notices concerning any illegality or infringement of rights in such Data. You expressly consent to determination of questions of illegality or infringement of rights in such Data by the agent designated by CBC for this purpose.
- 6.6. **Filtering.** CBC and CBC Parties may employ various filtering methods to reduce unwanted content, such as SPAM e-mail or calls, from reaching Your Account. You acknowledge and agree that such methods may prevent legitimate content or communications from reaching Your Account and that CBC will not be liable therefor.
- 6.7. **Control.** CBC and CBC Parties are not obligated to exercise control over the content of information, including Your Data, passing through CBC or CBC Parties network except any controls expressly provided in this Agreement.
- 6.8. **Feedback.** Any feedback, recommendations, enhancement requests, suggestions, testimonials, endorsements, information or materials conveyed to CBC by You or Your Users in connection with the Services shall be collectively deemed "Feedback." You agree to grant and hereby grant to CBC a perpetual, transferable, irrevocable, royalty-free, worldwide license (with the right to grant and authorise sublicenses) to make, have made, use, import, offer for sale, sell, reproduce, distribute, modify, adapt, prepare derivative works of, display, perform, and otherwise exploit such Feedback without restriction.

7. CONFIDENTIALITY AND PRIVACY.

- 7.1. **Confidential Information.** "Confidential Information" is all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure.
- 7.2. Your Confidential Information includes Your Data.
- 7.3. CBC's Confidential Information includes the Services (and any portion thereof), the Terms and Conditions of this Agreement and any Schedules, and all related Services, Order Acceptance Documents, as well as CBC and CBC Parties business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by CBC or CBC Parties.
- 7.4. Confidential Information does not include any information that;
 - i is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party;
 - ii was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party;
 - iii is received from a third party without breach of any obligation owed to the Disclosing Party;
or
 - iv was independently developed by the Receiving Party.

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7.5. The Receiving Party may disclose Confidential Information to the extent required to comply with binding orders of governmental entities that have jurisdiction over it provided however that, to the extent legally permitted by law to do so, the Receiving Party gives the Disclosing Party;

- i reasonable written notice to allow the Disclosing Party to seek a protective order or other appropriate remedy, discloses only such Confidential Information as is required by the governmental entity; and
- ii uses commercially reasonable efforts to obtain confidential treatment for any Confidential Information disclosed.

7.6. You acknowledge that CBC and CBC Parties, and its licensors, retain all intellectual property rights and title, in and to, all of their Confidential Information and/or other proprietary information. This shall include, but not be limited to: products, services, and the ideas, concepts, techniques, inventions, processes, software or works of authorship developed, embodied in, or practiced in connection with the Services provided by CBC and CBC Parties hereunder.

7.7. **Protection of Confidential Information.** Except as otherwise permitted by this Agreement or in writing by the Disclosing Party;

- i the Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement; and
- ii the Receiving Party will limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who are bound by confidentiality obligations at least as protective of Disclosing Party and its Confidential Information as the provisions of this Agreement.

7.8. **Use and Disclosure by CBC.** Notwithstanding the foregoing, CBC may use or disclose Your Data as follows;

- i as expressly permitted in writing by You; and
- ii as expressly provided in this Agreement, including but not limited to;
 - a in accordance with the Privacy Policy (as if such Data were “Information” as defined under the Privacy Policy); and
 - b to access Your Data to provide the Services or prevent or address service or technical problems, or at Your request in connection with customer support matters. You expressly consent to the foregoing use and disclosure.

8. BETA OFFERINGS.

8.1. The Service Level Agreement does not apply to any Beta Offerings.

8.2. Notwithstanding anything else set forth in this Agreement, CBC does not make any representations or warranties regarding any Beta Offering or the integrity of any data stored in connection with any Beta Offering.



8.3. CBC takes no responsibility or accepts no liability for You using any Beta Offering in connection with sensitive data.

8.4. CBC may, in its sole discretion, change or terminate any Beta Offering without notice and does not provide any warranty for the result of any such action.

8.5. CBC may, in CBC's sole discretion, convert any Beta Offering to a paid service upon notice to You. To avoid incurring increased charges following such a conversion, You must terminate;

- i the individual converted service (if possible) by contacting CBC as directed in the conversion notice; or
- ii if You subscribe to no other services under Your Account, the entire Account, pursuant to clause 4 of this MSA.

9. DISCLAIMER OF WARRANTIES & LIMITATION ON LIABILITY

9.1. CBC and CBC Parties provide the Services and any related products on an "as is" basis, except as otherwise specifically set forth in the applicable Service Level Agreement.

9.2. You expressly agree that use of the Services is at Your sole risk.

9.3. To the fullest extent permitted by applicable law, CBC and CBC Parties expressly disclaim all warranties of any kind, whether express, implied, statutory, or otherwise, oral or written, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose and non-infringement.

9.4. You hereby agree that the terms of this Agreement, including any Schedule, will not be altered due to custom or usage or due to the parties' course of dealing or course of performance under this Agreement, including any Schedule.

9.5. Nothing in these Terms and Conditions shall limit or exclude CBC's liability for:

- i death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- ii fraud or fraudulent misrepresentation;
- iii breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- iv breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- v defective products under the Consumer Protection Act 1987.

9.6. Subject to clause 9.5, CBC will not be liable to You, whether in contract tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for;

- i pure economic loss;
- ii for any direct, indirect, incidental, special, punitive or consequential damages;
- iii loss of or damage to goodwill;
- iv loss of profits or revenue;



- v loss of systems availability or access to systems;
- vi loss of connectivity or degradation of network bandwidth;
- vii loss of sales, business or business opportunity
- viii loss of agreements or contracts;
- ix loss of anticipated savings;
- x loss of use, information, software or corruption of data; or
- xi claims by any third party licensors of You or Your systems and networks (including without limitation the systems).

9.7. CBC and CBC Parties will not be liable for any harm that may be caused by Your access to application programming interfaces or the execution or transmission of malicious code or similar occurrences, including without limitation, disabling devices, drop dead devices, time bombs, trap doors, trojan horses, worms, viruses and similar mechanisms.

9.8. Subject to clause 9.5, You agree that the total liability of CBC and any CBC Party and Your sole remedy for any claims is;

- i regarding the Services for which a remedy is set forth in the applicable Service Level Agreement is limited to the credits set forth in such Service Level Agreement; and

- ii regarding the Services, other than those specifically described in clause (i) of this clause 9.10, is limited to the lesser of;

- a One Thousand Pounds (£1,000.00); and

- b the prior 1 month of Service fees paid under this Agreement by You to CBC.

9.9. None of the CBC Parties is responsible to You for any warranty provided by CBC.

9.10. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

9.11. You acknowledge that it has read and understood this clause 9 and that it set out in this clause.

9.12. This clause 9 shall survive termination of the Contract.

10. DATA PROTECTION

The parties shall comply with their data protection obligations under the Data Protections Act 2018.

11. INTELLECTUAL PROPERTY

11.1. Except for rights expressly granted in this Agreement, including any Schedules, CBC do not transfer any intellectual or other property or proprietary right to You. All right, title, and interest in any Service provided to You, including without limitation any copyright, trade secret and vested or potential trademark and patent rights, is solely the property of CBC, CBC Parties, its vendors and licensors.

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- 11.2. As between You and CBC, all materials distributed by CBC and CBC Parties in connection with the Services will at all times remain the property of the owner of the materials, and upon the request of the owner or upon termination of this Agreement or any Schedule, You will promptly return any and all such materials.
- 11.3. CBC and CBC Parties will have full control over, and reserve the right at any time to make changes to, the configuration, appearance, content and functionality of the Services.
- 11.4. CBC reserve the right, at any time, without prior notice, to the exercise of its sole discretion to suspend or terminate any Service for the protection of the security and integrity of the Services or other business, technical or financial considerations as determined by CBC or CBC Parties.

12. INDEMNIFICATION.

You agree to indemnify and hold CBC and CBC Parties harmless from any and all demands, liabilities, losses, costs, and claims, including reasonable legal costs, asserted against them that may arise or result from Your use of the Services, Your breach of this Agreement (or any Schedule), or Your negligence or wilful misconduct.

13. MODIFICATION OF TERMS.

- 12.1. CBC may update, amend, modify or supplement the terms and conditions of this Agreement, including any Schedules, any Service Level Agreement, and the CBC Acceptable Usage Policy, from time to time by giving You notice, and at CBC's sole discretion. Such changes will take effect immediately. Any such modification may be made without the consent of any third party beneficiaries of this Agreement.
- 12.2. Your continued use of Your Account or the Services after CBC provides a new version of the Agreement will be conclusively deemed to be acceptance by You of any such new version, subject to a 10 day grace period.
- 12.3. Within 28 days of receipt of us giving You notice, if the new terms are not acceptable to You, You may terminate this Agreement or any Schedule by providing 120 calendar days' notice. If You terminate this agreement then all Schedules will terminate at the end of the 120 day notice period.

14. MISCELLANEOUS.

- 14.1. **Governing Law.** The Contract shall be governed by and construed and interpreted in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts, as regards any claim, matter or dispute arising out of or relating to the Contract or any document entered into pursuant to the Contract.
- 14.2. **Written Communications and Notice.** You accept that communication from CBC may be electronic. CBC may contact You by e-mail or provide You with information, by posting notices on CBC's website or to Your Account. You agree to receive all such communications in the English language.
- 14.3. You agree to this electronic means of communication and You acknowledge that all contracts, notices, information and other communications that CBC provides to You electronically are acceptable and effective as notice.
- 14.4. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder will be in writing and will be deemed to have been given;

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- i immediately upon personal delivery;
 - ii the second (2nd) business day after mailing;
 - iii the second (2nd) business day after sending by confirmed facsimile; or
 - iv the first (1st) business day after sending by email or, if from CBC to You, online posting.
- 14.5. Notices to may be addressed by CBC to any e-mail address, postal address or facsimile number registered with CBC, or through means of online posting through the Services.
- 14.6. Notices to CBC that are not expressly authorised by administrative control panel under this Agreement shall be written in English and mailed to Commercial Business Communications Ltd, Commercial House, 26 Hastings Road, Leyland, PR25 3SP, or such other address as designated on CBC's website from time to time.
- 14.7. **Authority, Age and Capacity.** The individual accepting this Agreement on behalf of You represents and warrants that he/she has the authority to bind You to this Agreement. You hereby represent and warrant that each User has reached the age of eighteen (18), and that You are not subject to a limitation on Your ability to enter into this Agreement.
- 14.8. **Severability.** If any one or more of the provisions contained herein will, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any of the other provisions of this Agreement, and this Agreement will be construed as if such provision(s) had never been contained herein, provided that such provision(s) will be curtailed, limited, or eliminated only to the extent necessary to remove the invalidity, illegality, or unenforceability.
- 14.9. **Waiver.** No waiver by either party of any breach by the other party of any of the provisions of this Agreement will be deemed a waiver of any preceding or succeeding breach of this Agreement. No such waiver will be effective unless it is in writing signed by the parties hereto, and then only to the extent expressly set forth in such writing.
- 14.10. **Remedies.** The rights and remedies of the parties hereunder shall not be mutually exclusive, i.e., the exercise of one (1) or more of the provisions hereof shall not preclude the exercise of any other provision hereof.
- 14.11. The parties acknowledge, confirm and agree that damages may be inadequate for a breach or a threatened breach of this Agreement and, in the event of a breach or threatened breach by You or Your Users of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction or other equitable remedy.
- 14.12. Nothing contained in this Agreement shall limit or affect any rights at law or statute or otherwise for a breach or threatened breach of any provision hereof, it being the intent of this provision to clarify that the respective rights and obligations of the parties shall be enforceable in equity as well as at law or otherwise.
- 14.13. **No Assignment.** No benefit or duty of You under this Agreement will, without the consent of CBC, be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to do so will be void. CBC may assign this Agreement without Your consent and without notice.
- 14.14. **Force Majeure.** Except for monetary obligations, neither party shall be liable to the other for failure or delay in the performance of a required obligation hereunder if such inability or delay is caused by reason of Force Majeure Event. "Force Majeure Event" is any cause beyond

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a party's reasonable control or anticipation, including, without limitation, acts of war, acts of god, terrorism, earthquake, hurricanes, flood, fire or other casualty, embargo, riot, sabotage, labour shortage or dispute, governmental act, insurrections, epidemics, quarantines, inability to procure materials or transportation facilities, failure of power, restrictive governmental laws or regulations, condemnation, acts of third parties, failure of the Internet or other reason that is beyond a party's reasonable control or anticipation.

- 14.15. **Survival.** The Terms and Conditions of this Contract shall survive termination, as far as applicable by law.
- 14.16. **Independent Parties.** Notwithstanding anything to the contrary herein, it is acknowledged, confirmed, and agreed that You shall be, and shall be deemed to be, an independent entity for all intents and purposes. You shall pay all expenses in connection with performing Your obligations hereunder and shall not incur any indebtedness on behalf of CBC in connection with such expenses. Neither party shall have or hold itself out as having any right, authority nor agency to act on behalf of the other party in any capacity or in any manner, except as be specifically authorised in this Agreement.
- 14.17. **Entire Agreement** The Contract , including any Schedules, constitutes the entire agreement for provision of the Services to You and supersedes all other prior agreements and understandings, both written and oral, between You and CBC with respect to the Services.
- 14.18. **Dispute Resolution.** In the event of a dispute arising other than non-payment of an invoice from the Supplier, the parties agree to engage in good faith to resolve the dispute and if it cannot be resolved then the parties shall after 60 days refer the matter to mediation for resolution and before issuing court proceedings. Proceedings may only be issued once mediation has taken place.
- 14.19. **Language.** The parties confirm that they have requested that this Agreement and all related documents be drafted in English.