

The following terms apply to your use and receipt of the boost! Compatible Free of Charge service from channelcentral.net limited. By proceeding to place any order for or consume this Specified Programs you will be deemed to have accepted these terms in full. By submitting any order for services or Specified Programs you are warranting that you have all necessary power and authority to enter into a binding legal agreement on behalf of the organisation in whose name you place that order.

BETWEEN:

**channelcentral.net Limited** (Company No. 6276545) a company incorporated in England and Wales with registered office at Aquila House, Waterloo Lane, Chelmsford, Essex, CM1 1BN, United Kingdom (the "Seller").

and

the Buyer.

IT IS AGREED that:

- (A) The Seller is in the business of developing and providing specialist software;
- (B) The Buyer would like to enter into an agreement to licence certain specific software from the Seller;
- (C) The Seller has proposed the Specified Programs to the Buyer;
- (D) The Buyer has accepted the proposal to utilise the Specified Programs;
- (E) The Seller shall arrange for the Specified Programs to be provided to the Buyer in accordance with the terms of this Contract.

## 1. DEFINITIONS

"API" .....means an application programming interface provided by the Seller to the Buyer (including, for the avoidance of doubt the boost! Web Service detailed in Schedule 2).

"App" .....means a smartphone application created by the Seller.

"Buyer" .....means the entity which accepts these terms (or on whose behalf these terms are accepted by an employee or an authorised sub-contractor) to whom the Seller grants a licence for the Specified Programs under this Contract.

"Buyer Data" .....means all data processed by the Seller or provided to the Seller for processing or otherwise processed as part of the Specified Programs.

"Contract" .....means this agreement (including its schedules and appendices) between the Buyer and the Seller.

"Control" .....means the ownership, by way of shares or otherwise, of a company or similar legal entity.

"Country" .....means any single geographic country within the Territory.

"Data Controller" .....shall have the meaning of 'controller' set out in Article 4(7) of the GDPR.

"Data Processor" .....shall have the meaning of 'processor' set out in Article 4(8) of the GPDR.

"Data Protection Legislation" .....means, for such time as they are in force in England and Wales, the DPA, the GDPR and all related legislation which may supplement, amend or replace them and which relates to the protection of individual's rights in their personal data and the protection of their privacy.

"Data Subject" .....means an individual who is the subject of Personal Data.

"Distributor" .....means a third-party organisation that has an agreement to distribute Tier 1 Manufacturer's products or services in the normal course of its business, either directly or via Resellers, within the Territory.

"Downtime" .....means a period outside of a Maintenance Window during which the Specified Programs are inaccessible by the Buyer.

"DPA" .....means the Data Protection Act 2018.

- "Electronic Document(s)" ..... means, without limitation, any online or electronic communication between persons employed by the Buyer and Seller including but not limited to electronic signature, order, e-mail, acknowledgement, Invoice, notice and/or any online transaction.
- "Effective Date" ..... means the date of acceptance of these terms by the Buyer.
- "European Working Hours" ..... means 08:00 to 18:00 Monday to Friday, UK time (GMT or BST as the case may be), excluding UK Bank and Public Holidays.
- "GDPR" ..... means Regulation (EU) 2016/679 and/or such legislation as may give effect to its terms in England and Wales.
- "Initial Term" ..... means a period of twelve (12) months commencing on the Effective Date.
- "Intellectual Property Rights" ..... means patents, rights to inventions, registered designs, copyright and neighbouring and related rights, database rights and design 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, trademarks, service marks, logos, domain names, business names, trade names, moral rights, and all registrations or applications to register any of the aforesaid items in any country or jurisdiction.
- "Maintenance Window" ..... means 09:00 Saturday to 18:00 Sunday each week, UK time (GMT or BST as the case may be).
- "Material Breach" ..... means a breach of contract serious enough to destroy the value of the contract and to give a basis for a potential action for breach of contract.
- "Month" ..... means a continuous period commencing on the first day of any calendar month and ending on the last day of the same month.
- "Order Confirmation" ..... means, where any service or Specified Program is purchased remotely via electronic communications networks, the statement confirming the Buyer's order and setting out the commercial details of it; which shall be dispatched to the Buyer after transmission of that order to the Seller and dispatch of which shall indicate the Seller's acceptance of that order.
- "Outage" ..... means an instance of Downtime.
- "Planned Downtime" ..... means a period of essential works that cause the Specified Programs to be unavailable or degraded.
- "Personal Data" ..... has the meaning set out in Article 4(1) of the GDPR.
- "Processing" and "Process" ..... have the meaning set out in Article 4(2) of the GDPR.
- "Portal" ..... means the internet access to the Specified Programs.
- "Portfolio" ..... means the categories or products from each Tier 1 Manufacturer (including approved third-party products) that will be displayed or manipulated within the respective Specified Programs.
- "Quarter" ..... means a continuous three-month period commencing on the 1st day of the months of February, May, August or November of any year.
- "Renewal Term" ..... means a period of twelve months which commences at the end of the Initial Term or at the end of the previous Renewal Term.
- "Reseller" ..... means a third-party organisation that has an agreement to supply Tier 1 Manufacturer's products or services in the normal course of its business within the Territory.
- "Seller" ..... means channelcentral.net Limited or its successors and assigns.
- "Service Interruption" ..... means a period outside of a Maintenance Window during which there is partial loss of access to or functionality of the Specified Programs or they are otherwise unavailable or degraded.
- "Software" ..... means any computer program, API or App developed by the Seller, which may or may not be configured to specifications set by the Buyer and which may be delivered as an installed software deliverable or on a Software As A Service Basis.
- "Software As A Service Basis" ..... means the delivery of software functionality by way of remote communications technology, with the results of processing conducted by the Seller being delivered to the Buyer via the internet.
- "Specified Programs" ..... means the Software specified in the Schedule(s) individually or collectively as the case may be.

- “Territory” ..... means the Country or Countries where Buyer contracts with Seller to display the Specified Programs.
- “Tier 1 Manufacturer” ..... means a technology vendor that has contracted with Seller for the purpose of carrying its products within one or more of the Specified Programs.
- “Total Period” ..... means the total period of time covered by the Initial Term and any subsequent Renewal Terms.
- “Working Day” ..... means any day which is not a Saturday or a Sunday, or a UK Bank or Public Holiday.
- “Working Hours” ..... means any period of time starting and finishing during European Working Hours.

## 2. GRANT OF LICENCE AND RIGHT TO CONNECT

- 2.1 The Seller hereby grants to the Buyer for the duration of the Total Period a non-transferable non-exclusive licence to, as applicable, use, display, connect to, receive the results of, and/or provide links to the Specified Programs in the Territory, as may be specified more particularly in the Schedules.
- 2.2 The Specified Programs are licenced solely for the purpose of the Buyer's own internal business use and the Buyer shall not sell, redistribute or licence the Software or Specified Programs, or any data inherent to them.
- 2.3 For the avoidance of doubt, the Buyer shall not be entitled to restrict the Seller's ability to provide or distribute to any third party, any enhancements, improvements or modifications to any Software which it develops which may subsequently become incorporated into the Specified Programs.
- 2.4 Nothing in this Contract shall have the effect of granting to the Buyer any right or title in or over the Specified Programs nor any other Software or App which the Seller may develop, licence or sell to third parties independently of this Contract.

## 3. DURATION & TERMINATION

- 3.1 The Contract shall commence on the Effective Date and shall run for the Initial Term.
- 3.2 At the end of the Initial Term, or any Renewal Term, the Contract shall, subject to the termination provisions of this Contract, be automatically renewed for a further Renewal Term.
- 3.3 The parties may terminate this Contract in whole and without notice at any time if they mutually agree to do so, any such agreement is to be agreed in writing and executed as a deed by both parties.
- 3.4 Either party may terminate this Contract in whole at any time by notice in writing if:
- 3.4.1 The other commits a Material Breach of its obligations relating to the Contract and if the breach is capable of remedy, fails to remedy that breach within thirty (30) days (or such other period as may be agreed) of receipt of the other's written notice specifying the breach or breaches; or
- 3.4.2 The other commits persistent breaches of its obligations relating to the Contract, including persistent minor breaches, which in all the circumstances do collectively result in a Material Breach of its obligations; or
- 3.4.3 Control of the other party should change, in which case the parties agree that this does not give either party any right to terminate any licence granted under the terms of this Contract if the change of Control does not adversely affect performance of the parties' respective obligations, but for the avoidance of doubt, does give the Seller the right to terminate if the change of Control of the Buyer is in favour of a company reasonably considered by the Seller to be a direct competitor of the Seller; or
- 3.4.4 The other becomes insolvent, is presented with a petition for bankruptcy and/or winding up, or in the reasonable opinion of the other is likely to go into bankruptcy, receivership or liquidation, in which case the other party may forthwith terminate the Contract without incurring any liability.
- 3.5 If a Tier 1 Manufacturer withdraws permission for, or otherwise prohibits the Seller to carry its products in any of the Specified Programs, then the Seller may, without liability, terminate this Contract in whole or part and cease to provide the respective Specified Programs to the Buyer if it reasonably considers that it is no longer able to fulfil its obligations as set out in this Contract with respect to that Tier 1 Manufacturer.
- 3.6 If the Buyer ceases to be an Authorised Distributor or Reseller of a Tier 1 Manufacturer's products, the Buyer shall terminate this contract in whole or part by notice in writing with respect to one or more Tier 1 Manufacturers.
- 3.7 The Buyer may terminate this Contract with effect from the expiry of its then current term by serving notice in writing to the Seller a minimum of ninety (90) days in advance of that date.
- 3.8 The Seller may terminate this Contract for any reason by serving a minimum of ninety (90) days' notice in writing to the Buyer.

- 3.9 Termination of this Contract shall, unless otherwise specifically set out herein, cause all licences granted pursuant to its terms to cease. Accordingly, on such termination:
- 3.9.1 the Buyer shall immediately cease all use of the Specified Programs and shall take all steps necessary to remove all versions of the Specified Programs from its systems;
- 3.9.2 the Seller shall, without liability or penalty, be entitled to do all things and to take all steps necessary to withdraw the Buyer's access from the Specified Programs.

#### 4. ELECTRONIC DOCUMENTS

- 4.1 The parties may implement and use for the purposes of effecting the terms of the Contract such Electronic Documents as may be agreed between them from time to time.
- 4.2 The parties shall keep copies of Electronic Documents for at least six years from the end of this Contract.

#### 5. SPECIFICATION

- 5.1 The standard specification, including the functionality, data flows and interfaces required for operation of the Specified Programs shall be defined by the Seller. The standard specification is suitable for all normal implementations.
- 5.2 The Seller shall be entitled, by providing at least thirty (30) days' written notice to the Buyer, to modify and/or replace the Specified Programs with others of a broadly equivalent specification without the consent of the Buyer, provided such modification is not detrimental to the provision of the Specified Programs.
- 5.3 The standard specification for the data flows and interfaces shall be provided to the Buyer after acceptance of these terms, to enable the Buyer to implement the Specified Programs.
- 5.4 The Buyer shall implement the Specified Programs using the Seller's standard data flows and interfaces. The Seller shall have no liability in respect of any configuration with the Seller's data flows implemented or created by the Buyer.
- 5.5 Should the Buyer request modifications or unique customisation to the standard specification, or of Seller's data flows and interfaces for the Buyer's benefit, then:
- 5.5.1 The work shall be undertaken at Buyer's cost;
- 5.5.2 The Buyer shall document their requirements and submit this to the Seller.
- 5.5.3 The Seller's Rate Card shall be used to calculate the cost of any modifications that the Buyer requires or requests.
- 5.5.4 The Seller shall provide a quotation to the Buyer for undertaking the work;
- 5.5.5 The Buyer has the option to accept the quotation and provide approval to the Seller to proceed, in which case the Seller shall deliver the work to the requirements as documented and for the price quoted. The Buyer shall then pay the Seller in advance and in full for the customisation work irrespective of whether or not implementation by the Buyer proceeds to completion.
- 5.6 Any modifications that may be required to the Buyers' own systems shall be undertaken at Buyer's expense.
- 5.7 No other specification, descriptive material, written or oral representation correspondence or statement, promotional or sales literature shall form part of or be incorporated by reference into the Contract unless specifically agreed in writing.

6. NOT USED

7. NOT USED

8. NOT USED

9. NOT USED

10. NOT USED

11. NOT USED

## 12. OUTAGES AND SERVICE INTERRUPTIONS

- 12.1 Where any of the Specified Programs are provided on a Software As A Service Basis (in whole or in part) then the following terms shall apply to their provision:
- 12.1.1 Outages or Service Interruptions may be made by the Seller when in its reasonable opinion they are necessary to facilitate improvements to or maintenance of the Specified Programs. Where this is the case the Seller will use reasonable endeavours to minimise the Outages or Service Interruptions that may be caused by a change.
  - 12.1.2 If Outages or Service Interruptions are required under Clause 12.1.1, the Seller will endeavour to schedule Planned Downtime so as to minimise impact on the use of the Specified Programs and will endeavour to notify the Buyer of the anticipated commencement time and its estimated duration.
  - 12.1.3 Buyer requested interruptions and interruptions initiated by the Seller pursuant to clause 12.1.1 will not be considered a breach in service and will not be a factor when calculating breaches of any applicable service levels for any purpose or give rise to any liability on the part of the Seller.
  - 12.1.4 If the Buyer becomes aware of an event that has caused or may cause an unscheduled Outage without having been previously notified thereof by the Seller, the Buyer shall promptly provide notice to the Seller.

## 13. WARRANTY

- 13.1 The Seller does not warrant uninterrupted or error-free operation of any API or Specified Program, or that the Seller will find or correct all defects inherent in the same, or that any information provided through an API or a Specified Program will be accurate or up-to-date.
- 13.2 Other than those contained within the Contract, there are no express or implied warranties, representations, undertakings or conditions made or given by the Seller, including but not limited to any implied warranty of satisfactory quality of the Specified Programs or of their fitness for a particular purpose.
- 13.3 The Seller hereby represents and warrants that:
- 13.3.1 The Seller shall discharge its obligations under the Contract with reasonable skill, care and diligence and according to normal industry standards;
  - 13.3.2 The Seller has all right, title, ownership interest and marketing rights necessary to enter into this Contract and to licence each of the Specified Programs to the Buyer pursuant to this Contract;
  - 13.3.3 The Seller has the rights necessary to provide third-party sourced data in each of the Specified Programs;
  - 13.3.4 The Specified Programs and the licensing and use of the Specified Programs do not infringe upon any Intellectual Property Rights of any third party of which the Seller is aware;
  - 13.3.5 There are no suits or proceedings, current, pending or threatened, of which the Seller is aware which allege that any of the Specified Programs or their licence or use infringe upon any Intellectual Property Rights of any third party;
  - 13.3.6 Each of the Specified Programs shall be free and clear of all third-party liens and encumbrances.
- 13.4 The Buyer acknowledges that each of the APIs and Specified Programs may contain or serve data sourced from third parties and over which the Seller may have no control. The Buyer accepts that data provided as part of the Specified Programs may not be accurate and accepts that the Seller makes no warranty or undertaking as to the accuracy or reliability of such data.
- 13.5 The Seller does not and cannot control the flow of data to or from its network and other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or omissions of such third parties can impair or disrupt connections to the Internet (or portions thereof). Although the Seller will use commercially reasonable efforts to take such actions it deems appropriate to remedy and avoid such events, the Seller cannot guarantee and does not warrant that such events will not occur. Accordingly, the Seller disclaims any and all liability resulting from or related to such events.
- 13.6 The Buyer undertakes at all times to exercise its own judgement in the use of the API and Specified Programs and all inherent third-party data and shall be solely liable for all configurations, pricing, opinions, recommendations, forecasts or comments made or actions taken in reliance on the Specified Programs.

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## 14. LIMITATION OF LIABILITY

### THE BUYER'S ATTENTION IS DRAWN IN PARTICULAR TO THE PROVISIONS OF THIS SECTION 14

- 14.1 The Seller's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to ten million pounds sterling (£10,000,000GBP).
- 14.2 In no event will the parties, or their employees, officers, and directors have any personal liability under this Contract, regardless of the basis on which the Seller or the Buyer is entitled to claim damages (including breach, misrepresentation, or other contract or tort claim), for any indirect loss, consequential loss, loss of profits, revenue, data or goodwill howsoever arising even if foreseeable or even if the party has been advised of the possibility of such damages.
- 14.3 These limitations of liability shall not apply to:
- 14.3.1 Any damages for bodily injury (including death) caused by the negligence of the Seller, or for any damages caused by fraud or fraudulent misrepresentation;
  - 14.3.2 Any damages associated with the Buyer's infringement or violation of Intellectual Property Rights of the Seller.
- 14.4 The Seller shall not be liable for any Service Interruptions or Outages arising directly or indirectly from:
- 14.4.1 interruptions to the flow of data to or from the Internet;
  - 14.4.2 any failure by the Buyer to properly configure its systems to receive the results of any Specified Program;
  - 14.4.3 changes, updates or repairs to the Specified Programs subject to the Seller striving to minimise the Service Interruptions or Outages that may be caused by such change;
  - 14.4.4 the effects of the failure or interruption of services provided by third parties;
  - 14.4.5 factors set out in Clause 18;
  - 14.4.6 any actions or omissions of the Buyer (including, without limitation, breach of the Buyers obligations set out in this Contract) or any third parties;
  - 14.4.7 problems with the Buyer's equipment and/or third-party equipment; or
  - 14.4.8 interruptions to the Specified Programs requested by the Customer.
- 14.5 The parties agree that the limitations on liability contained in the Contract have been subject to commercial negotiation and are reasonable in all the circumstances. The Buyer agrees that it is in a better position to foresee and evaluate any loss that it may suffer in connection with the Contract and that it will effect suitable insurance having regard to its particular circumstances and the risks to which it may become exposed as a result of entering into the Contract.
- 14.6 Both parties shall use their reasonable endeavours to mitigate any loss, damage, liability, expenses and costs.

## 15. INTELLECTUAL PROPERTY RIGHTS

- 15.1 The Buyer acknowledges that the Intellectual Property Rights, whether or not capable of registration, subsisting in or used in connection with each of the APIs and Specified Programs, including the manner in which the APIs and Specified Programs may be presented or appear, and all information, documentation and manuals relating to the APIs and Specified Programs, are the property of the Seller or of a third party.
- 15.2 The Intellectual Property Rights inherent in and subsisting in each of the APIs and Specified Programs shall remain the property of the Seller or the relevant third-party owner and shall not be exploited by the Buyer without the Seller's prior written consent.
- 15.3 The Buyer acknowledges that the Seller has spent and continues to spend considerable time and resources on the creation, development and maintenance of each of the APIs and Specified Programs as an original intellectual creation. Accordingly, without prejudice to the rights of any third party, the Seller shall own all Intellectual Property Rights which may arise in the APIs and Specified Programs at any time including, without limitation, all Intellectual Property Rights in the Apps and Software; this shall include any and all Intellectual Property Rights that may arise as a result of customisations and/or modifications of the APIs and Specified Programs which may be done at the Buyer's request.
- 15.4 Nothing in this Contract shall have the effect of transferring permanently any Intellectual Property Rights from the Seller to the Buyer. All Intellectual Property Rights inherent in each of the APIs and Specified Programs, or any software or process used in their creation or provision, shall remain the property of the Seller unless specifically transferred to the Buyer under the terms of a signed, written agreement between the two parties.

- 15.5 Subject to the provisos set out in Clause 15.6 the Seller undertakes to defend the Buyer from and against any claim or action that the possession and use of each of the APIs and Specified Programs by the Buyer or the development or modification of the APIs and Specified Programs by the Seller, infringes the Intellectual Property Rights of a third party.
- 15.6 Provided that the Buyer makes no statement, admission or offer to settle without the Seller's consent, that the Seller has control of the defence or of any action or such claim that may arise, and that the Buyer gives the Seller all reasonable assistance with defence or settlement proceedings as the Seller shall request; the Seller shall indemnify the Buyer from and against any losses, damages, costs (including all legal fees) and expenses incurred by or awarded against the Buyer as a result of any claim of the type set out in Clause 15.5.
- 15.7 The Buyer shall not during or at any time after the expiry or termination of the Contract in any way question or dispute the ownership by the Seller, or of a relevant third party of any of the Intellectual Property Rights subsisting in each of the APIs and Specified Programs, unless such Intellectual Property Rights have been specifically transferred to the Buyer under the terms of a signed, written agreement between the two parties.

## 16. PERSONNEL

- 16.1 For the duration of this Contract and for a period of six months after its termination, the parties to it shall not directly (either personally or by agent, or by letters, circulars or advertisements and whether for itself or on behalf of any other person) induce or seek to induce any employee or contractor of the other to leave the other's employment or to cease to be a contractor to such party.
- 16.2 Both parties shall use their reasonable endeavours to procure that their employees shall observe the terms of this Section 16 provided that nothing in this Section shall prevent either party from placing job advertisements in the general press or from making offers of employment in response to unsolicited enquiries.
- 16.3 Each party agrees that if it employs any person contrary to the provisions of this Section it shall be liable to pay to the other party liquidated damages (agreed to be a genuine and reasonable pre-estimate of loss and not of the nature of a penalty) equal to such person's annual salary at the time of leaving his or her former employer.

## 17. SECURITY

- 17.1 The Seller warrants that user IDs and passwords issued by Seller for access to the APIs and Specified Programs shall be unique to the Buyer.
- 17.2 The Buyer shall maintain adequate security measures to protect the integrity and security of user IDs and passwords issued by the Seller. This shall include (but not be limited to) the Buyer limiting access to those employees who either have a need to know or are engaged in the use of the Seller's IDs and passwords. The Buyer must impress upon such employees the fact that the user IDs and passwords are confidential information.
- 17.3 Under no circumstances should user IDs and passwords be written down or disclosed to any third party.
- 17.4 The Buyer will be liable for any abuse or misuse of user IDs and passwords or security breaches resulting from failure by the Buyer or its employees or agents to comply with the requirements of this Section 17.
- 17.5 If the Buyer becomes aware of or suspects any breach of security, they will inform the Seller immediately.
- 17.6 The Buyer is responsible for notifying the Seller of any relevant termination or reallocation of any of its employees or contractors who may have access to any IDs or Passwords relevant to the Specified Programs.

## 18. FORCE MAJEURE

- 18.1 The parties will not be liable for a default or delay in the performance of their respective obligations, to the extent that such default or delay:
- 18.1.1 Is caused by an event beyond the reasonable control of the Seller or the Buyer whichever is the entity unable to perform ("Nonperforming Party"), such as fire, flood, earthquake, elements of nature, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, organised strikes with the Seller or organised strikes with the Buyer; and
- 18.1.2 Could not have been prevented by reasonable efforts, precautions, alternative sources, workaround plans or other means.
- 18.2 A default or delay as described in Clause 18.1.1 and Clause 18.1.2 above is collectively called a force majeure event.
- 18.3 The Nonperforming Party will be excused from further performance of the obligations directly affected by such force majeure event for the duration of the force majeure event.
- 18.4 The Nonperforming Party will immediately notify the other party by telephone to be confirmed in writing within seven (7) days of the inception of such default or delay and describe the circumstances causing the force majeure.

- 18.5 The Nonperforming Party will use all reasonable endeavours to recommence performance.
- 18.6 If the force majeure event materially hinders or delays the Seller's performance of the Specified Programs for more than thirty (30) consecutive days, then the Buyer may either procure such Specified Programs from an alternative Seller until the Seller is able to provide the Specified Programs or the Buyer may terminate this Contract for convenience whilst paying all the sums due under the Contract.

## 19. CONFIDENTIALITY

- 19.1 "Confidential Information" means information provided by one party to the other that:
- 19.1.1 Is marked confidential; or
  - 19.1.2 If disclosed orally or not marked confidential, is identified prior to disclosure as Confidential Information or is reasonably known to be Confidential Information; or
  - 19.1.3 Contains the discloser's customer lists, customer information, account information, information regarding business planning and business operations, and/or administrative, financial, or marketing activities, provided:
    - 19.1.3.1 The discloser treats such information as confidential; or
    - 19.1.3.2 Such information is reasonably considered to be confidential based upon the nature of the information.
- 19.2 The parties to this Contract agree that the following terms apply when the Seller or Buyer (the "Discloser") discloses Confidential Information to the other (the "Recipient") under the Contract.
- 19.3 The parties' mutual objective under this Section 19 is to provide appropriate protection for Confidential Information while maintaining their ability to conduct their respective business activities.
- 19.4 Each party undertakes that it will:
- 19.4.1 Keep confidential the other party's Confidential Information;
  - 19.4.2 Use the Confidential Information solely for performance within the scope of this Contract;
  - 19.4.3 Limit access to Confidential Information to those of its employees, agents, contractors or sub-contractors ("Representatives") who either have a need to know or are engaged in their use to carry out the business relationship between the parties; and
  - 19.4.4 Not disclose the Confidential Information or any part thereof in any format or medium to any other third party, unless required to do so by a court governmental or administrative authority, applicable law or with the disclosing party's written consent.
- 19.5 The parties shall notify all persons or entities that receive the Confidential Information of the provisions of this Contract and direct such persons or entities to maintain the confidentiality of the Confidential Information in accordance with terms and conditions no less protective than as set forth in this Contract.
- 19.6 The recipient of Confidential Information shall be responsible for any failure of its Representatives to treat the Confidential Information as confidential in accordance with the terms and conditions of this Contract.
- 19.7 Residual Information
- 19.7.1 The Recipient may disclose, publish, disseminate, and use the ideas, concepts, know-how, and techniques which are related to the Recipient's business activities, retained in the memories of individuals, and contained in the Discloser's Confidential Information or developed, provided, or accessed by the Seller or the Buyer individually or jointly, under this Contract ("Residual Information"), except to the extent such disclosure, publication, dissemination, or use infringes the other's patent rights or copyrights;
  - 19.7.2 Nothing contained in this Clause 19.7 gives the Recipient the right to disclose, publish, or disseminate the source of Residual Information, the Discloser's financial, statistical, or personnel data, or the Discloser's business plans, other than as set forth in this Contract.
- 19.8 Exclusions
- 19.8.1 The Recipient may disclose, publish, disseminate, and use the Discloser's Confidential Information that is:
    - 19.8.1.1 Already in its possession without obligation of confidentiality;
    - 19.8.1.2 Developed independently;
    - 19.8.1.3 Obtained from a source other than the Discloser without obligation of confidentiality;



19.8.1.4 Publicly available when received, or thereafter becomes publicly available through no fault of the Recipient; or

19.8.1.5 Disclosed by the Discloser to another entity without obligation of confidentiality.

19.9 The Recipient may disclose Confidential Information to the extent required by law, or regulation, the requirement of any stock-exchange or any order of any court of competent jurisdiction or any competent judicial governmental or regulatory body provided the Recipient gives the Discloser prompt written notice of such legally-required disclosure to allow the Discloser a reasonable opportunity to obtain a protective order.

## 20. DATA PROTECTION

### Controller and Processor

20.1 The Seller and the Buyer agree that for the Purposes of Data Protection Legislation that the Buyer is and shall remain the Data Controller and that Seller shall be a Data Processor in respect of any Personal Data which is transferred to it from the Buyer as part of the Buyer Data during its performance of its obligations pursuant to this Contract.

20.2 As a Data Processor, the Seller shall Process the Personal Data only in accordance with the Buyer's instructions from time to time and shall not Process the Personal Data for any purpose other than enabling it to fulfil its obligations pursuant to this Contract or to perform any other activity which may be expressly authorised by the Buyer from time to time.

20.3 For the avoidance of doubt, the Software provided by Seller may use Personal Data entered into it by the Buyer to perform functions of the following nature (the precise nature of which will depend on the configuration of the Software):

20.3.1 the facilitation of data entry and the management of records;

20.3.2 enable the sending by the Buyer of correspondence to identified Data Subjects (the content of which shall be determined solely by the Buyer);

20.3.3 enable the generation of reports by the Buyer and the Seller and the Tier 1 Manufacturers; and

20.3.4 such other operations as the Buyer may configure and require from time to time.

20.4 The Seller shall take steps to ensure that its employees are informed of their obligations in relation to Personal Data and that they hold, and shall process such information in confidence and in accordance with all relevant Data Protection Legislation.

### Data Protection Warranties

20.5 Each party warrants to the other that it will comply with all applicable Data Protection Legislation.

20.6 For the avoidance of doubt the Buyer warrants that the Buyer Data, and in particular all Personal Data inherent therein, has been collected and stored in compliance with all applicable law, and that it has all necessary consents, permissions and authorisations to provide it to the Seller for the purposes contemplated by this Contract and all further purposes that the Buyer may instruct from time to time.

20.7 In accordance with its function as a Data Processor pursuant to this Contract the Seller warrants that:

20.7.1 having regard to the current state of technological development, the nature of the Processing in question, and the material risk to the rights of affected Data Subjects, it shall take appropriate and reasonable technical and organisational measures to secure relevant Personal Data against the unauthorised or unlawful Processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data;

20.7.2 to the extent that the Software does not enable the Buyer to extract such information independently, it will assist the Buyer, insofar as reasonably possible and at the Buyer's expense, in responding to any requests made by any relevant Data Subject which concern the exercise of that Data Subjects rights under Data Protection Legislation;

20.7.3 it shall report to the Buyer any suspected data breach concerning the Personal Data and shall assist the Buyer to inform the relevant regulator and affected Data Subjects; and

20.7.4 it shall, on reasonable request and with adequate notice, demonstrate to the Data Controller, to the extent that is reasonable given the nature of the Processing in question, that it complies with Data Protection Legislation. Where any such demonstration requested by the Buyer is unduly burdensome or involves the completion of documentation supplied by the Buyer, Seller reserves the right to charge the Buyer a fee to cover the necessary time to be incurred.

## Data Protection Indemnity

- 20.8 Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations pursuant to this Section 20. In order to avail itself of this indemnity the claiming party must: promptly notify the indemnifier of any relevant claim of which the indemnified party becomes aware; not make any admission of liability or offer to settle in respect of any relevant claim without the prior written permission of the indemnifier; grant the indemnifier full control of all relevant proceedings on request, and; provide the indemnifier with such assistance in dealing with such claims as it may reasonably request.
- 20.9 The parties acknowledge that the Seller is reliant on the Buyer for direction as to the extent to which the Seller is entitled to use and process Personal Data which it receives from the Buyer. Consequently, the Seller will not be liable to the Buyer for any claim brought by a Data Subject arising from any action or omission by the Seller, to the extent that such action or omission resulted directly from the Buyer's instructions.

## 21. ASSIGNMENT

- 21.1 The rights and obligations of the Buyer under the Contract may not be assigned or transferred in whole or in part without the prior written consent of the Seller (such consent not to be unreasonably withheld or delayed) save for circumstances whereby the proposed assignee is reasonably considered by the Seller to be a direct competitor of the Seller in which case the Seller withholding its consent will be deemed reasonable by the parties.
- 21.2 The Seller may without obtaining the consent of, or giving notice to the Buyer, assign or sub-contract all or any of its rights and obligations under the Contract, unless the proposed assignee is in direct competition to the Buyer in the Territory, in which case the written consent of the Buyer must be obtained (such consent not to be unreasonably withheld or delayed).

## 22. NO PARTNERSHIP

- 22.1 Nothing in this contract shall:
- 22.1.1 Be deemed to constitute a partnership in law between the parties; or
  - 22.1.2 Constitute either party the agent of the other for any purpose; or
  - 22.1.3 Entitle either party to commit or bind the other (or any member of its respective group) in any manner.

## 23. DISPUTE RESOLUTION

- 23.1 The parties may attempt to resolve any dispute arising out of or relating to the Contract through negotiations between senior executives of the parties, who have authority to settle the same.
- 23.2 If the matter is not resolved by negotiation within fourteen (14) days of receipt of a written 'invitation to negotiate', the parties may attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (ADR) procedure, or in default of agreement, through an ADR procedure as recommended to the parties by the President or the Deputy President, for the time being, of the Chartered Institute of Arbitrators.
- 23.3 If the matter has not been resolved by an ADR procedure within sixty (60) days of the initiation of that procedure, or if any party will not participate in an ADR procedure, the dispute may be referred to arbitration by any party. The seat of the arbitration shall be England and Wales. The arbitration shall be governed by both the Arbitration Act 1996 and Rules as agreed between the parties.
- 23.4 Should the parties be unable to agree on an arbitrator or arbitrators or be unable to agree on the Rules for Arbitration, any party may, upon giving written notice to other parties, apply to the President or the Deputy President, for the time being, of the Chartered Institute of Arbitrators for the appointment of an Arbitrator or Arbitrators and for any decision on rules that may be necessary.
- 23.5 Nothing in this Section 23 shall be construed as prohibiting either party from applying to a court for interim injunctive relief.

## 24. GENERAL

- 24.1 A reference to any statute or statutory instrument shall be construed as including a reference to any modification, extension or re-enactment thereof from time to time.
- 24.2 If any provision of this Contract is held to be invalid, illegal, or unenforceable:
- 24.2.1 The remaining provisions of this Contract will not in any way be affected or impaired; and

24.2.2 The invalid, illegal, or unenforceable provision will be restated to reflect the original intentions of the parties under this Contract as nearly as possible in accordance with applicable laws.

24.3 Not affecting any obligations to undo as a result of dissolution, any terms of this Contract that by their nature extend beyond its expiration or termination remain in effect until fulfilled, including confidentiality, governing law and jurisdiction, intellectual property rights, liability, limitations period, charges, payments, survival, and warranty.

24.4 The exercise or waiver in whole or in part, of any right remedy or duty provided for in this Contract will not constitute the waiver of any prior, concurrent, or subsequent right remedy or duty within this Contract.

## 25. TRANSLATIONS

25.1 Where the Contract, or any part of it, is translated into any language other than English, then the terms of the original English version shall prevail of the terms of the translated version irrespective of the language of the version of the Contract signed by either party.

## 26. DEEMED AGREEMENT

26.1 In the event that the Contract is not formally signed and executed by both parties, but the parties proceed to act in accordance with its terms, then the Contract shall be deemed to have been accepted by both parties in the same fashion as if it had been signed by them. In such circumstances the Initial Term shall be considered to have begun on the day that the Specified Programs were first made available for use by the Buyer.

## 27. ENTIRE AGREEMENT

27.1 The Contract may not be amended except in writing signed by the authorised representatives of both the Seller and the Buyer.

27.2 Neither party has entered into the Contract in reliance upon any representation, warranty or undertaking of the other party that is not expressly set out or referred to in this Contract.

27.3 The Contract contains the entire understanding and agreement between the Seller and the Buyer in respect of the subject matter of the Contract and supersedes all prior oral or written communication, undertakings and any practice or course of dealing applying between the Seller and the Buyer.

27.4 No other agreement, representation, promise, undertaking or understanding of any kind unless expressly confirmed in writing by an authorised representative of the Seller shall add, vary or waive any of the conditions of the Contract.

## 28. OTHER AGREEMENTS

28.1 Both parties agree that this Contract shall replace and supersede all previous agreements entered into between them relating to its subject matter. Accordingly, the parties agree that all such agreements shall be deemed to be terminated by mutual agreement on the Effective Date and that all obligations owed by either party to the other under the terms of those agreements shall cease on that date, save for where those obligations are explicitly intended to endure beyond the termination of the agreement from which they derive (such as those relating to confidential information and the payment of outstanding fees).

## 29. COUNTERPARTS AND ELECTRONIC SIGNATURES

29.1 This Contract may be executed in counterparts. Each counterpart will be deemed an original, but all counterparts together will constitute one and the same Contract.

29.2 This Contract may be delivered by electronic transmission, and may be executed by means on an online acceptance, or using an electronic signature using DocuSign or similar.

## 30. GOVERNING LAW

30.1 This Contract will be governed, interpreted and construed in accordance with the laws of England and Wales.

30.2 Any proceeding regarding the rights, duties, and obligations arising under, or relating in any manner to, the subject matter of this Contract will be brought in a competent Court of England. The parties waive any objections to such jurisdiction, including venue and inconvenient forum.

## SCHEDULE 2 – boost! Compatible

### 1. THE SPECIFIED PROGRAM

1.1 The Seller will licence the following Specified Program on a Software As A Service Basis to the Buyer.

1.1.1 **boost! Compatible**, which is Seller's free-of-charge multi-tenanted API which provides simple, quick option-compatibility information for channel stockable product systems; in respect of which the Buyer is granted a licence to use the API and its results.

1.1.2 The **boost! Compatible** service consists of the web service and the related databases hosted by the Seller which underpin its function; the Buyer shall receive no licence in respect of those databases and is entitled only to make use of the results of queries submitted to those databases via the API.

1.1.3 The broad set of features and services offered at this subscription level are as set out in the following table:

Coverage	Key Features
All available Tier 1 Manufacturers are included.	<p>The boost! Compatible service returns data in a specified data format that facilitates the use by the Buyer in its own UI.</p> <p>Returns only options that are compatible with the current system unit.</p> <p>Supports calls for a single system SKU, or a batch of system SKUs.</p> <p>Returns a limited number of options per option category, where the categories included are up to 10 categories per distinct product family.</p>

1.2 The Seller hereby undertakes to the Buyer that for the duration of the Total Period it will use its reasonable endeavours to ensure that the API and each component thereof will, subject to Clauses 14.4 and 18 of the main Contract, be provided to the levels of performance specified in Schedule A save where otherwise expressly provided for by this Contract.

### 2. BOOST! COMPATIBLE OPTIONS

2.1 Where the Buyer purchases a Compatible Options subscription to the API it shall, as part of that subscription, be granted access to the Seller's standard catalogue of product options (drawn from products in the Portfolio) as part of the standard data flows of the API.

### 3. LIMITATIONS AS TO USE

3.1 The web service and its data are expressly licensed for use by the Buyer inside its own web store only, the Buyer shall be prohibited from providing direct access to the API (or any of the functionality enabled by the same) to any third party or from operating the API on a bureau basis.

3.2 Usage capping. The web service may be called by Buyer's systems as follows, imposing a requirement on the Buyer's system to cache the responses:

3.2.1 A maximum of once per day per SKU per country;

3.2.2 A limit of 500 calls per 24 hours.

3.3 The Seller shall not be responsible for any configuration of the Buyer's servers or online presences (such as Webstores and/or UI design) and the Seller accepts full responsibility for making such configurations in order to enable it to receive the results served by the API.

### 4. TIER 1 MANUFACTURER COVERAGE

4.1 The data returned by the web service shall have the following characteristics:

4.1.1 Provides coverage of each in-scope Tier 1 Manufacturer's channel stockable product system units that are currently being modelled by the Seller for inclusion in its systems.

4.1.2 Is extracted from data provided by, or public data relating to, the Tier 1 Manufacturers and from data enhanced by the Seller, and which is updated in alignment with changes to data modelled by the Seller.

4.1.3 Is re-generated at most once per day, and within 5 business days of any substantive updates to the underlying product model in the Seller's core systems.

4.1.4 Supported system families, system unit SKUs and option SKUs are limited to those products and SKUs otherwise already enabled by the respective Tier 1 Manufacturer via its data portfolio maintenance services, or otherwise selected for modelling by the Seller.

4.1.1 Are made available by the Tier 1 Manufacturer for ex-inventory sales.

4.2 Each Portfolio is subject to change, driven by the market and the product strategies of the Seller, the in-scope Tier 1 Manufacturer(s) and of the Buyer.

## 5. ADDITIONAL TIER 1 MANUFACTURER AND / OR PORTFOLIO

5.1 Seller may from time to time be able to offer products from one or more additional Tier 1 Manufacturer(s) in the Specified Programs.

5.2 If at any time Seller already offers products from an additional Tier 1 Manufacturer in the Specified Programs, then Buyer may (subject to the terms of this Contract) request to extend its service to include that additional Tier 1 Manufacturer for the remainder of the then-current Term and any Renewal Term.

## 6. TAILORED COVERAGE

6.1 If Buyer wishes the Seller to augment its service in order to offer products from any other Tier 1 Manufacturer, or to customise the Portfolio offered to Buyer in the Specified Programs, then Buyer may request this of the Seller.

6.2 This shall be known as "Tailored Coverage".

6.3 The Seller is under no obligation to agree to any such request, but for clarity the parties will confer to understand the requirements and limitations that may apply, to agree the approach to be taken, and to agree the pricing that will apply.

## 7. UPGRADES

7.1 Seller offers a range of paid upgrades to the boost! Compatible service, each of which requires the payment by the Buyer of an annual subscription fee, levied per Country in which Buyer wishes to offer or consume the service..

7.2 If Buyer wishes to upgrade its boost! Compatible service to any of the Seller's paid plans, then it may request this of the Seller at any time.

7.3 Seller will prepare a quotation for Buyer's acceptance, upon which a new set of terms and a payment schedule will be provided that will supersede this Contract.

## 8. ADDITIONAL TERMS & CONDITIONS

8.1 The following additional Terms and Conditions shall apply. In the case of conflict between the provisions of this Schedule and the main body of the Contract, the Schedule shall prevail.

8.1.1 The Seller warrants that reasonable care is taken to ensure that the information held in or served by the Specified Program is accurate. The Seller cannot be held responsible for any errors or omissions that appear in the Specified Program, except where those errors or admissions are attributable to any negligence on the part of the Seller.

8.1.2 The Specified Program is designed to provide the user with valid options for commonly sold configurations. Users should always obtain technical sign off for any complex quotation.

8.1.3 The Buyer acknowledges that sales & marketing rights for the Specified Program belong to the Seller.

8.1.4 Other than is set out in the Service Level Agreement, the Seller makes no warranty with reference to the availability or the performance of the Specified Program.

8.1.5 The Seller reserves the right to use summary data extracted from the Specified Program for management reporting purposes.

8.1.6 The Seller reserves the right to share utilisation statistics and product trend information with its respective Tier 1 Manufacturers as part of the contractual arrangements in place between each Tier 1 Manufacturer and the Seller.

8.1.7 All decisions relating to the Specified Program will be made by the Seller and are final.

8.1.8 The Buyer agrees to share with the Seller periodic, aggregated usage statistics derived from end-user usage of the Buyers web store features which make user of the Specified Program.

8.1.9 The Buyer grants the Seller permission to use the delivered aggregated statistics for its own purposes such as to derive SKU popularity data that will shape the future data responses of the Specified Program for the Buyer as well as any other subscriber of the Specified Program.

9. PROFESSIONAL SERVICES RATE CARD

- 9.1 General consultation, bespoke development of the Specified Program, or tailored customisation of its integration with the Buyer's Data Connection Service to meet Buyer's specific requirements, will be considered by the Seller upon request from the Buyer.
- 9.2 The costs for any such work undertaken shall be based upon the Seller's then current rate card as may be updated from time to time.

10. AVAILABILITY & SUPPORT SCHEDULE

- 10.1 The Seller will maintain and support the Specified Program defined in this Schedule as set out in **Schedule A - Service Level Agreement**.

## SCHEDULE A

### Service Level Agreement

The service levels that apply to those Specified Programs associated with this Schedule A shall be as follows:

1. The Seller will maintain an average availability for the Specified Programs at 99% per month, with the exception of Planned Downtime. Loss of availability, Outages, Service Interruptions or faults of any type caused by problems with Buyer's data, networks, web services, systems, hardware, internet access, or other issues not directly under the control of the Seller, are excluded.
2. A period of Planned Downtime may be communicated via email and/or a notice within the Specified Programs and/or on the Seller's website, and is usually but not always performed during the Maintenance Window.
3. Creation of support requests:
  - 3.1 The Buyer may log a fault support request with the Seller:
    - 3.1.1 In English, using the support or feedback feature embedded in the Specified Programs where available; or
    - 3.1.2 In English, by eMail to the dedicated support mailbox address.
  - 3.2 Fault support requests properly submitted in English via the online feedback form or by email to the dedicated support mailbox, are monitored and triaged by Seller and /or Seller's service providers on a 24/7 basis. Action may be 24/7 or during European Working Hours.
  - 3.3 Support requests notified to the Seller by any other means, or in any other language, shall fall outside the provisions of this service level agreement.
4. Fault support requests received will be classified and actioned according to the following service levels:
  - 4.1 Priority 1: More than 50% of the Buyer's user base cannot access the Specified Programs; or a data fault in Supplier's data results in all responses created being materially inaccurate. Targets: 12-hour response, 24-hour resolution where fault lies within Seller's direct control. 24/7 coverage.
  - 4.2 Priority 2: Defined as any other fault. Targets: next working day response; 10 working days resolution where fault lies within Seller's direct control. European Working Hours coverage.
  - 4.3 Option(s) for resolution might consist of one or more of the following: an operational workaround has been identified; a solution has been identified that does not require development; or a solution has been identified that requires development. Development time shall fall outside any targets.
5. New product requests received will be classified and actioned according to the following service levels:
  - 5.1 Requests will be assessed by the Seller and the respective Tier 1 Manufacturer for technical and operational viability before acceptance. Accepted requests will be categorised and processed as follows:
  - 5.2 Simple request: Add up to five new systems and/or options to an existing product family. Target: 10 working days from date Seller confirms acceptance of the request to the Buyer.
  - 5.3 Complex request: Add a new product family; or add more than five new systems and/or options to an existing product family. Target: 20 working days from date Seller confirms acceptance of the request to the Buyer.

## APPENDIX: Business Information

### channelcentral.net Limited

#### Company Details

Business Name: channelcentral.net Limited

Known as: channelcentral

Company Registration: 06276545

Registered in England and Wales.

Registered Office: Aquila House, Waterloo Lane, Chelmsford, Essex CM1 1BN, United Kingdom.

VAT No. GB 91 8761 103

#### Contact Details

Trading Address: 2 Freeport Office Village, Century Drive, Braintree, Essex CM77 8YG, United Kingdom.

[www.channelcentral.net](http://www.channelcentral.net)

Tel: +44 (0) 845 217 8914