

Interactive mobile information Services Agreement

This Agreement consists of the terms and conditions below, the statement of work ("SoW"), and the OneAccess outsourced services service level agreement ("SLA"), (collectively this "Agreement"). In the event of conflict between these terms and conditions, the SoW and the SLA, these terms and conditions shall take precedence.

1. Definitions and Interpretation

1.1 **Definitions:** In these terms and conditions the following terms shall have the following meanings:

"Client" means the customer specified on the SoW.

"Commencement Date" means the date specified on the SoW.

"Confidential Information" means all information (including oral and visual information, and all information recorded in writing, electronically or in any other medium disclosed by either party to the other for the purposes of this Agreement and without prejudice to the generally of the foregoing definition includes but is not limited to:

- (a) any information relating to BRITEYELLOW'S operations, processes, plans, intentions or product information;
- (b) any information relating to BRITEYELLOW's knowhow, designs, trade secrets, software, market opportunities, customers and business affairs;
- (c) information relating to the personnel, or policies or business strategies of either Parties;
- (d) information relating to the terms of this Agreement.

"Duration" means Minimum Contract Term as specified on the SoW.

"Helpline Times" 09:00hrs – 17:00 hrs Monday to Friday

"Intellectual Property Rights" means those intellectual property rights, including but not limited to patent, copyright, design right, trademark, service mark, trade secret, know-how, database right, whether these rights are registered or unregistered ("IPRs") that may subsist in (i) the programs, formats and layouts comprised in or relating to

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	the Service (ii) the text, data, information and branding relating to the Service.
“Maintenance Times”	means any time outside the hours of 08:00hrs - 18:00 hrs on weekdays
“Modifications”	any modification or amendment to the Services during a scheduled upload that includes bug fixes, upgrade or new versions of the Service; or any new release of the Service which (in either case) from time to time is publicly marketed and offered for access or use by BRITEYELLOW in the course of its normal business.
“Party/Parties”	means BRITEYELLOW Limited or the Client as the context dictates and includes their respective directors, employees, servants and agents.
“Permitted Purposes”	means to allow Users to use the Services in order to profile customers, manage campaigns, analyse campaign data or utilise other components of the Services.
“Response Criteria”	means the priority placed on a call made to the telephone helpline as detailed in the SLA
“Service/s”	means BRITEYELLOW’S OneAccess hosted Interactive mobile information services, an interactive mobile information system for broadcast SMS, e-mail and push-web campaigns for real time communications over the internet, mobile, and wireless networks and more particularly described in the SoW.
“Subscription period”	means the period of 24 months starting from the Commencement Date.
“Tenants”	means the tenants of the Clients at the address specified in the SoW.
“User”	means an employee of the Client (or any of its subsidiaries), tenants, or customers of the Client.
“User Fee”	means payment as specified on the SoW or its referred annexes or associated documents referenced within the SoW.

2. Licence to use the Service

- 2.1 BRITEYELLOW grants the Client a non-exclusive, non-transferable licence (without the right to sublicense) to use the Service in accordance with this Agreement. The Services shall at all times remain the sole and exclusive property of BRITEYELLOW.

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- 2.2 The Client is licensed to use the Service only for its own business purposes at the address specified in the SoW and for marketing services to or by [User's] and/or [the Client's Tenants].
- 2.3 The Client may not use any Confidential Information of BRITEYELLOW to develop or market any software which is substantially similar in its function or expression to the Service or any part of the Service; and shall not copy the whole or any part or parts of the IPRs relating to the Service, and shall not convert any part or parts of the Service from object code to source code (or directly or indirectly cause a third party to reverse assemble or reverse compile the whole or any part of the Service)
- 2.4 The Client must not through any act or omission damage or impair the source code to the Service. The Client must comply with all directions given to it by BRITEYELLOW regarding those security systems required to ensure the protection of the Service.

3 Duration

- 3.1 This licence commences on the date specified in the SoW and will subsist for the minimum period specified on the Sow, subject to the other termination provisions of this Agreement.

4 Fees and Payment

- 4.1 The Client will pay BRITEYELLOW the fees specified on the SoW. Payment is due within 30 days after the date of invoice.
- 4.2 Subject to clause 6 below, should BRITEYELLOW provide bespoke development work or additional modules/services to the Client, the details of Fees in the SoW will be amended on the following basis: One third on the signing the amended SoW, one third on delivery to the client of the additional modules/services and one third on acceptance by the Client of the bespoke work. The bespoke development Fee must be paid within 30 days of BRITEYELLOW's invoice to enable the Client to continue to use the Services under this licence.
- 4.3 In the event of late payment in respect of any sum due by the Client to BRITEYELLOW, BRITEYELLOW shall reserve the right to charge the Client interest at the rate of 4% over the prevailing base rate of Royal Bank of Scotland, such interest shall accrue from the due date until payment is made in full.
- 4.4 The fees specified on the SoW shall remain fixed for the Duration of the Agreement but thereafter BRITEYELLOW reserves the right to increase them at a reasonable rate at any time after the Duration but not more than once in any successive 12-month period and giving the Client not less than 30 days notice in writing.
- 4.5 All payments referred to in this Agreement exclude VAT and expenses which will be charged at the prevailing rate and cost respectively.

Interactive mobile information Services Agreement**3. Modifications**

- 3.1 BRITEYELLOW will inform the Client of any Modifications no later than 48 hours after they have been made.
- 3.2 BRITEYELLOW hereby grants permission to the Client to use any Modifications subject to the terms of this Agreement.

5. Support Services

- 5.1 BRITEYELLOW shall give such training to nominated Users as is agreed in the SoW with BRITEYELLOW.
- 5.2 With effect from the Commencement Date, BRITEYELLOW shall provide telephone and email support to the nominated Users relating to faults or enquiries in respect of the Services. This service will be provided during Helpdesk Times and subject to the Response Criteria.
- 5.3 Should the Client wish BRITEYELLOW to provide further support services, BRITEYELLOW will agree to do so as necessary in consideration of the payment of the relevant charges specified on the order form.
- 5.4 The additional charges shall be paid within 30 days of receipt of an invoice from BRITEYELLOW.

6. Intellectual Property Rights in the Service

- 6.1 All Intellectual Property Rights in the Service whether vested, contingent or future shall belong to BRITEYELLOW.
- 6.2 The Client understands that the Service contains proprietary Information and agrees that it will not provide or otherwise make use of the Services and any related IPR's of BRITEYELLOW otherwise than as permitted by this Agreement.
- 6.3 The Client shall ensure that all its relevant employees, agents [tenants], and [users] are advised that the Services constitutes the property of BRITEYELLOW.
- 6.4 Recognising that the Service has significant commercial value to BRITEYELLOW, the Client agrees to indemnify BRITEYELLOW in respect of any losses and expenses BRITEYELLOW incurs as a result of the unauthorised use of the Service by any third party, whether through misuse of the object code of the Services by the Client, or through the negligence of the Client, by any other breach of this Agreement by the Client or through any other cause.
- 6.5 For the avoidance of doubt all rights, title and interest subsisting any IPRs which arise or subsist or may come into existence in the future relating to any bespoke development work, additional modules/services or upgrade requested by the Client pursuant to clause 4.2 remain the full and exclusive property of BRITEYELLOW.

Interactive mobile information Services Agreement**7. BRITEYELLOW's warranties**

- 7.1 BRITEYELLOW warrants that it has good title or is otherwise authorised to license the Services to the Client.
- 7.2 The Service is designed to conform to the product specification in the SLA applicable at the time of the Clients order. However BRITEYELLOW does not warrant that the Service will work without interruption or that it is error free.
- 7.3 BRITEYELLOW's sole obligation in the event of non-conformity of the Service with the product specification set out in the SLA will be to remedy, or supply a corrected version to bring the Service in line with the specification set out in the SLA, provided that BRITEYELLOW has been notified of the non-conformity within [90] days of the Commencement Date. This obligation on BRITEYELLOW will apply only if the Services are used in accordance with the terms of this Agreement and is not altered, modified, or tampered with by the Client or Users, or TENANT.
- 7.4 The above constitutes the only warranties provided by BRITEYELLOW in respect of the Service. The obligations and liabilities set out in this Agreement are in lieu of and to the exclusion of any warranty, term, undertaking or representation of any kind, express or implied, statutory or otherwise relating to the Services provided under the Agreement including (without limitation) any warranty of satisfactory quality or fitness for a particular purpose which is the Client's responsibility to determine.

8. Client's Warranties

- 8.1 The Client will not in any way make representation or warranties regarding the Service other than those from time to time agreed by BRITEYELLOW in writing, and comply with all reasonable requirements, procedures, policies and regulations of BRITEYELLOW (issued by BRITEYELLOW from time to time) in relation to the use or operation of the Service.
- 8.2 The Client undertakes not to resell or offer in any manner to a third party the use of or access to the Service.

9. Indemnities and Limits of Liability

- 9.1 BRITEYELLOW is either the sole and exclusive owner or an authorised licensee of all the IPR's relating to the Service. Because of this value to BRITEYELLOW, BRITEYELLOW will at its own expense defend or at its option settle, any claim or action brought against the Client on the issue of infringement of any United Kingdom IPR by the Services ("Claim"). Subject to the other conditions of this clause, BRITEYELLOW will fully indemnify the Client in respect of the costs and expenses (except the Clients own costs and fees of legal representation) relating to the Claim provided that the Client:

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- i. Notifies BRITEYELLOW in writing of the Claim immediately on becoming aware of it;
- ii. Grants sole control of the defence of the Claim to BRITEYELLOW and gives full assistance to enable BRITEYELLOW to defend the Claim.

BRITEYELLOW will have no liability under this clause 9.1 for any infringement arising from the combination of the Services with material or products not supplied by BRITEYELLOW ;
or

- (i) failure by the Client to comply with the terms of this Agreement; or
- (ii) any authorised modification of the Services by the Client and its Users and Tenants.

THE FOREGOING STATES THE ENTIRE REMEDY OF THE CLIENT IN RESPECT OF ANY CLAIMS BY THIRD PARTIES OF IPR infringement by the Services.

- 9.2 BRITEYELLOW will indemnify the Client for direct physical injury or death caused solely by the negligence of its employees acting within the course of their employment;
- 9.3 BRITEYELLOW will indemnify the Client for direct damage to property caused solely by the negligence of its employee's acting within the course of their employment. The total liability of BRITEYELLOW under this Sub-Clause will be limited to the total price paid or due to paid to the LICENSEE under this Agreement];
- 9.4 Subject to the express exclusions elsewhere in this Agreement, any liability of BRITEYELLOW for breach of this Agreement will not exceed per claim (or in the aggregate during any twelve month period) the total net payments paid by Client or due to be paid under this Agreement;
- 9.5 Except as otherwise expressly stated in this Agreement, BRITEYELLOW disclaims all liability to the Client, whether such liability or obligation would otherwise arise in contract, tort, negligence or under statute, in connection with BRITEYELLOW's performance of this Agreement, and in no event will BRITEYELLOW be liable to the CLIENT for special, indirect or consequential damages, loss of profits, or losses arising from loss data or unfitness for the Client's purposes;
- 9.6 The Client will indemnify and defend BRITEYELLOW in respect of any losses or expenses incurred by BRITEYELLOW as a result of the Client's failure to license its own [USER'S] and [Tenants] in accordance with the terms of the licence Agreement and to facilitate the enforcement of these licences.

10. Confidential Information

- 10.1 Both parties agree to treat as secret and confidential and not at any time for any reason disclose to any third party or make use of any Confidential Information of the other party. All such Confidential Information which is either marked "Confidential" or stated at the time of disclosure and subsequently confirmed in writing to be confidential constitutes Confidential Information. This obligation will survive the termination of this Agreement for an indefinite period from the date of signature hereof.

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10.2 Upon termination of this Agreement for whatever reason, each party will return to the other any property, written material, belonging to the party, together with all working papers, computer disks and tapes or other matter including lists of customers and clients and information relating to them and any other material or copies provided to or prepared by that party in connection with this Agreement.

11. Termination

11.1 This Agreement may be terminated immediately by notice in writing:

- i. by BRITEYELLOW if the Client fails to pay any sums payable under this Agreement by the due date without prejudice to any other provisions relating to late payment in this Agreement; or
- ii. by either party if the other party is in material breach of any provisions of this Agreement and fails to remedy the breach (if capable of remedy) for a period of 30 days after written notice by the other party;
- iii. by either party if the other party is declared insolvent or bankrupt, or ceases trading, or is involved in any legal proceedings concerning its solvency, or if a liquidator, receiver administrator, receiver, trustee or similar officer is appointed over any of the assets of the other party.

If notice is given to the Client pursuant to clause 11.1, BRITEYELLOW may, in addition to terminating the Agreement:

- 11.1.1 erase the Services and any copies of part of the Service to ensure that the Client has no ability to reproduce the Service in any way;
- 11.1.2 repossess any of its property, documentation or other tangible things in the possession, custody or control of the Client;
- 11.1.3 retain any moneys paid and collect any moneys due;
- 11.1.4 be regarded as discharged from any further obligations under the Agreement; and
- 11.1.5 pursue any additional or alternative remedies provided by law.

12 Force Majeure

12.1 Neither Party shall be liable for any failure or delay in performance of the Agreement which is caused by circumstances beyond the reasonable control of a Party (including, without limitation any strike, lock out or other industrial action, act of God, war, prohibition or restriction by governments or other legal authority).

12.2 Where a party claims that it is unable to perform its obligations under these conditions or the Agreement (either on time or at all) as a result of the circumstances set out in clause 12.1, it must immediately notify the other party of the nature and extent of the circumstances in question.

Interactive mobile information Services Agreement**13 Waiver**

13.1 No right under this Agreement shall be deemed to be waived except by notice in writing signed by each party.

13.2 A waiver made by either party pursuant to clause 13.1 will not prejudice its rights in respect of any subsequent breach of the Agreement by the other party.

Subject to clause 13.1, any failure by either party to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by the one party to the other, will not be construed as a waiver of the other party's rights under this Agreement.

14. Severability

14.1 If any provision of this Agreement is held invalid unenforceable or illegal for any reason, the Agreement shall remain otherwise in full force apart from such provisions which shall be deemed deleted.

15 Amendments

15.1 Any amendment or variation of this Agreement shall not be binding on the parties unless set out in writing, expressed to amend this Agreement and signed by or on behalf of each of the parties.

16. Notices

16.1 Any notice, consent or the like required or permitted to be given under this Agreement shall not be binding unless in writing. Notices can only be sent by recorded mail, fax, e-mail or hand delivery and must be sent to the address set out for each Party in this Agreement.

17. Severability

17.1 The provisions of this Agreement are severable, and if one or more provisions are judicially determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions or portions of this Agreement shall nevertheless be binding on and enforceable by and between the parties.

18. Assignment

18.1 Neither party will assign this Agreement without the prior written consent of the other party which will not be unreasonably withheld or delayed.

19. Binding Effect

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19.1 This Agreement shall be binding on the parties hereto and on their respective heirs, administrators, executors, successors, and assigns.

20. Entire Agreement

20.1 This Agreement and any documents attached or otherwise referred to herein contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to the subject matter.

21. Governing law and Jurisdiction

21.1 This Agreement shall be governed by and construed in accordance with English law and each party hereby submits to the non-exclusive jurisdiction of the English Courts.

Contracts (Rights of Third Parties) Act 1999

A person who is not party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

IN WITNESS whereof this Agreement has been executed by the parties hereto the day and year written below.

SIGNED FOR AND ON BEHALF OF BRITYELLOW LIMITED

Authorised Signature

Name

Title

In the presence of:-

Interactive mobile information Services Agreement

Signature of Witness

Name

Title

Date

SIGNED FOR AND ON BEHALF OF THE CLIENT

Authorised Signature

Name

Title

In the presence of:-

Signature of Witness

Name

Title

Date