

# Comtube End User License Agreement

## IMPORTANT – PLEASE READ CAREFULLY

**No Emergency Calls:** Comtube services does not and does not intend to support or carry emergency calls.

**This Agreement:** This Agreement, and any new versions, between Comtube and You, covers all Your use of Comtube services by You or by third parties. You can accept this Agreement by clicking on the ACCEPT button or similar buttons or links as may be designated by Comtube.

**Additional Terms:** Your agreement with Comtube will also include the Additional Terms (as defined below). The Additional Terms shall include, but are not limited to, the terms and policies set out in paragraph 7 below. In order to use the Comtube Services, You must accept the Additional Terms. You can accept the Additional Terms by (i) clicking to accept or agree where this option is made available to You, or (ii) by actually using the Comtube Services, in which case You acknowledge and agree that Comtube will treat such use as acceptance of the applicable terms. You acknowledge and agree that by accepting this Agreement and the Additional Terms you are entering into a legally binding contract, which collectively is referred to below as the “Terms”. If there is any contradiction between the Additional Terms and this Agreement, then the Additional Terms shall take precedence in relation to the relevant Comtube Service. You should print off or save a copy of the Terms for your records.

**Electronic Signature(s):** You hereby agree to the use of electronic communication in order to enter into contracts, place orders and create other records and to the electronic delivery of notices, policies and records of transactions initiated or completed through the Comtube services. Furthermore, You hereby waive any rights or requirements under any laws or regulations in any jurisdiction which require an original (non-electronic) signature or delivery or retention of non-electronic records, to the extent permitted under applicable mandatory law.

**Jurisdiction’s Restrictions:** If the law of Your country prohibits You from downloading or using Comtube services because You are under the age limit or because the Comtube Services are not allowed in Your country, please don’t use it.

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## 1. Definitions

1.1 The following terms and expressions shall have the following meanings:

**Additional Terms:** the terms and conditions and policies applicable to Your use of the Comtube services and the Comtube Services, in addition to this Agreement.

**Agreement:** this End User License Agreement, as may be renewed and/or amended from time to time.

**Documentation:** any online or otherwise enclosed documentation provided by Comtube.

**Effective Date:** the date on which this Agreement is entered into by clicking on the ACCEPT button as stated above or upon use of the Comtube services by You, whichever occurs earlier.

**Emergency Service(s):** means services that connect a user to emergency services personnel or public safety answering points pursuant to applicable local and or national regulatory requirements.

**IP Rights:** means (i) patents, pending patent applications, designs, trade marks and trade names (whether registered or unregistered), copyright and related rights, database rights, knowhow and confidential information; (ii) all other intellectual property rights and similar or equivalent rights anywhere in the world which currently exist or are recognised in the future; and (iii) applications, extensions and renewals in relation to any such rights.

**Password:** refers to a code You select, which, in combination with the User ID, gives You access to Your User Account.

**Comtube:** refers to the company Comtube Ltd established under the laws of Israel, with its address at Israel Nahariya st. Dr.Suskin 11/3(Individual Number of taxpayer: 514391168)

**Comtube Online Material:** the Comtube buttons and widgets available for download on the Comtube Website at <http://www.Comtube.com>, as such may be changed from time to time by Comtube in its sole discretion.

**Comtube Promotional Materials:** any and all trademarks, names, signs, logos, banners, and any other materials, in whatever form, owned and/or used by Comtube for the promotion of its company, its products and activities, other than the Comtube Online Material.

**Comtube Services:** the Comtube Website and any other products and services made available to You by Comtube or its Affiliates, in addition to the Comtube services.

**Comtube services:** the software distributed by Comtube for internet communication applications, UI and Documentation, as well as any future versions, improvements, developments, programming fixes, updates and upgrades thereof.

**Comtube Staff:** the officers, directors, employees and agents of Comtube or its Affiliates, or any other persons hired by Comtube or its Affiliates.

**Comtube Website:** any and all elements, contents and the 'look and feel' of the website available under the URL, [www.Comtube.com](http://www.Comtube.com), – among other URL's –, from which website the Comtube services can be used.

**Terms:** has the meaning given in the "Additional Terms" preliminary term above.

**UI:** the user interface of the Comtube services.

**User Account:** refers to the account with User ID and Password that You create for Your use of the Comtube services.

**User ID:** refers to an identification code You selected, which in combination with the Password, gives access to Your User Account.

**You:** You, the end user of the Comtube services, also used in the form “Your” where applicable.

**1.2** References to the singular include the plural and vice versa, and references to one gender include the other gender.

**1.3** Any phrase introduced by the expressions “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## **2. License and Restrictions**

**2.1 License:** Subject to the terms of this Agreement, Comtube hereby grants You a limited, personal, non-commercial, non-exclusive, non-sublicensable, non-assignable, free of charge license to use the Comtube services on Your computer, phone or PDA for the sole purpose of personally using the internet communication applications provided by Comtube and any other applications that may be explicitly provided by Comtube. You are allowed to use the Comtube services at university or any other educational institution, subject to paragraph 4.4 below and in accordance with this Agreement and any applicable Additional Terms. You are allowed to use the Comtube services at work to make communications relating to Your business in accordance with this Agreement and any applicable Additional Terms (such as the Terms of Service referred to in paragraph 7 below if You use the payable VoIP products and/or are a Member or an Administrator of a Business Control Panel).

**2.2 No Granting of Rights to Third Parties:** You will not sell, assign, rent, lease, distribute, export, import, act as an intermediary or provider, or otherwise grant rights to third parties with regard to the Comtube services or any part thereof.

**2.3 No Modifications:** You will not undertake, cause, permit or authorize the modification, creation of derivative works, translation, reverse engineering, decompiling, disassembling or hacking of the Comtube services or any part thereof except to the extent permitted by law.

**2.4 Third Parties:** The Comtube services may be incorporated into, and may incorporate itself, software and other technology owned and controlled by third parties. Any such third party software or technology that is incorporated in the Comtube services falls under the scope of this Agreement. Any and all other third party software or technology that may be distributed together with the Comtube services will be subject to You explicitly accepting a license agreement with that third party. You acknowledge and agree that You will not enter into a contractual relationship with Comtube or its Affiliates regarding such third party software or technology and you will look solely to the applicable third party and not to Comtube or its Affiliates to enforce any of your rights.

**2.5 Exclusive Ownership:** Any and all IP Rights in the Comtube services, the Comtube Website, the Comtube Online Material and the Comtube Promotional Materials are and shall remain the exclusive property of Comtube and/or its licensors. Nothing in this Agreement intends to transfer any such IP Rights to, or to vest any such IP Rights in, You. You are only entitled to the limited use of the IP Rights granted to You in this Agreement. You will not take

any action to jeopardize, limit or interfere with Comtube's IP Rights. Any unauthorized use of Comtube's IP Rights is a violation of this Agreement as well as a violation of intellectual property laws and treaties, including without limitation copyright laws and trademark laws. All title and IP Rights in and to any third party content that is not contained in the Comtube services, but may be accessed through use of the Comtube services, is the property of the respective content owners and may be protected by applicable copyright or other intellectual property laws and treaties.

**2.6 No Removal of Notices:** You agree that You will not remove, obscure, make illegible or alter any notices or indications of the IP Rights and/or Comtube's rights and ownership thereof, whether such notice or indications are affixed on, contained in or otherwise connected to any materials.

## **2.7 Use of Comtube API.**

2.7.1 You may make use of the Comtube API provided that:

(i) Your use of the Comtube API is for legitimate purposes only and shall not adversely affect the functionality or performance of the Comtube services or services provided by Comtube; and

(ii) You will monitor the Comtube Website in order to ensure that You are aware of any changes in the Comtube API Terms of Use. If such changes are not acceptable to You, You will immediately stop using the Comtube API and, where applicable, the Comtube services.

2.7.2 If You are interested in using the Comtube API for a purpose which is not permitted under this Agreement or the Comtube API Terms of Use, You will have to obtain Comtube's prior written consent and explicitly agree upon any further commercial terms.

**2.8 Comtube Promotional Materials:** Nothing in this Agreement will give You any right to use the Comtube Promotional Materials.

## **3. What You should and should not expect from Comtube**

**3.1 No Warranties:** Usage of Comtube services enables You to communicate with other people. Comtube cannot guarantee that You will always be able to communicate with other people, nor can Comtube guarantee that You can communicate without disruptions, delays or communication-related flaws or that all Your communications shall always be delivered to other people.

**3.2 Content of Communications:** The content of the communication spread by the use of the Comtube services is entirely the responsibility of the person from whom such content originated. You understand, therefore, that by using the Comtube services and the Comtube Services You may be exposed to content that is offensive, harmful to minors, indecent or otherwise objectionable, and that You use the Comtube services and the Comtube Services at Your own risk.

**3.3 Utilization of Your Computer:** Comtube services may utilize the processor and bandwidth of the computer (or other applicable device) You are utilizing, for the limited purpose of facilitating the communication between You and third parties. Comtube will use its commercially reasonable efforts to protect the privacy and integrity of the computer resources (or other applicable device) You are utilizing and of Your communication, however Comtube cannot give any warranties in this respect.

**3.4 New Versions of the Comtube services:**Comtube, in its sole discretion, reserves the right to add additional features or functions, or to provide programming fixes, updates and upgrades, to the Comtube services. Comtube has no obligation to make available to You any subsequent versions of the Comtube services. You may have to enter into a renewed version of this Agreement, in the event you want to or use a new version of the Comtube services.

**3.5 Suspension:** Comtube may, in its sole discretion and to the maximum extent permitted within Your jurisdiction, modify or discontinue or suspend Your ability to use any version of the Comtube services, and/or disable any Comtube services You may already have accessed or installed without any notice to You, for the repair, improvement, and/or upgrade of the underlying technology or for any other justifiable reason, including but not limited to, circumstances where You, at Comtube's discretion, are in breach of the Terms, creating problems, possible legal liabilities, or engaging in fraudulent, immoral or illegal activities, or for other similar reasons.

**3.6 No Emergency Calls:** The Comtube services is not intended to support or carry emergency calls to any type of hospital, law enforcement agency, medical care unit or any other kind of Emergency Service. You acknowledge and agree that: (i) Comtube is not required to offer access to Emergency Services under any applicable local and/or national rules, regulation or law; (ii) You must make additional arrangements to access Emergency Services and it is Your responsibility to purchase (separately from the Comtube services), traditional wireless or landline telephone services to obtain such access; and (iii) Comtube is not a replacement for Your primary telephone service.

## **4. What we expect from You**

**4.1 Lawful purposes:** You will use the Comtube services solely for lawful purposes. In this respect You may not, without limitation (a) intercept or monitor, damage or modify any communication which is not intended for You; (b) use any type of spider, virus, worm, trojan-horse, time bomb or any other codes or instructions that are designed to distort, delete, damage or disassemble the Comtube services or the communication; (c) send any unsolicited commercial communication not permitted by applicable law; (d) expose any third party to material which is offensive, harmful to minors, indecent or otherwise objectionable in any way; (e) use the Comtube services to cause or intend to cause embarrassment or distress to, or to threaten, harass or invade the privacy of, any third party; or (f) use any material or content that is subject to any third party proprietary rights, unless you have a licence or permission from the owner of such rights.

**4.2 Representations:** You represent and warrant that You are authorized to enter into and comply with the Terms. Furthermore, You represent and warrant that You will at any and all times meet with Your obligations under the Terms, as well as any and all laws, regulations and policies that may apply to the use of the Comtube services and/or the Comtube Services.

**4.3 Indemnification:** YOU AGREE TO INDEMNIFY, DEFEND AND HOLD COMTUBE HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED BY SUCH PARTIES, IN CONNECTION WITH OR ARISING OUT OF YOUR (A) VIOLATION OR BREACH OF ANY TERM OF THIS AGREEMENT OR ANY APPLICABLE LAW OR REGULATION, WHETHER OR NOT REFERENCED HEREIN, OR (B) VIOLATION OF ANY RIGHTS OF ANY THIRD PARTY, OR (C) USE OR MISUSE OF THE COMTUBE SERVICES, OR (D) COMMUNICATION SPREAD BY MEANS OF THE COMTUBE SERVICES.

**4.4 Utilization of Your Computer:** If Your use of the Comtube services is dependant upon the use of a processor and bandwidth owned or controlled by a third party, You acknowledge and agree that Your licence to use the Comtube services is subject to You obtaining consent from the relevant third party for such use. You represent and warrant that by accepting this Agreement and using the Comtube services, You have obtained such consent.

## **5. Term, Termination, Updates**

**5.1 Term:** This Agreement will be effective as of the Effective Date and will remain effective until terminated by either Comtube or You as set out below. The Additional Terms will be effective as of the date upon which they are accepted by You or You use the relevant Comtube Service (as applicable), and will remain effective until terminated by either Comtube or You as set out below and/or in the applicable terms.

**5.2 Termination:** You may terminate the Terms with immediate effect at any time. Without limiting other remedies, Comtube may limit, suspend, or terminate this license and Your use of Comtube services and Comtube Services, prohibit access to the Comtube Website and delete Your User Account and/or User ID, with immediate effect, automatically and without recourse to the courts, if we think that You are in breach of the Terms, creating problems, legal liabilities (actual or potential), infringing someone else's intellectual property rights, engaging in fraudulent, immoral or illegal activities, or for other similar reasons. Comtube shall effect such termination by providing notice to You to the email address You have provided, and/or by preventing Your access to Your User Account. We reserve the right to cancel User Accounts that have been inactive for more than one (1) year.

**5.3 Consequences of Termination:** Upon termination of this Agreement and the Additional Terms: (a) all licenses and rights to use the Comtube services and the Comtube Services shall immediately terminate; (b) You will immediately cease any and all use of the Comtube services and Comtube Services; and (c) You will immediately remove the Comtube services from all hard drives, networks and other storage media and destroy all copies of the Comtube services in Your possession or under Your control.

**5.4 New Versions:** Comtube reserves the right to change this Agreement at any time by publishing the revised Agreement on the Comtube Website. The revised Agreement shall become effective within thirty (30) days of such publication, unless You expressly accept the revised Agreement earlier by clicking on the accept button. Your express acceptance or Your continued use of the Comtube services after expiry of the notice period of thirty (30) days, shall constitute Your acceptance to be bound by the terms and conditions of the revised Agreement.. Comtube reserves the right to change any of the Additional Terms from time to time and such changes shall become effective either within thirty (30) days of publication of the revised version on the Comtube Website (unless You expressly accept the revised terms earlier by clicking on the accept button if this option is made available), or within the timeframe set out in the applicable terms if different.

## **6. Disclaimer of Warranties and Limitation of Liability**

**6.1 No Warranties:** THE COMTUBE SERVICES IS PROVIDED "AS IS" WITH NO WARRANTIES WHATSOEVER; COMTUBE DOES NOT, EITHER EXPRESSED, IMPLIED OR STATUTORY, MAKE ANY WARRANTIES, CLAIMS OR REPRESENTATIONS WITH RESPECT TO THE COMTUBE SERVICES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OR CONDITIONS OF QUALITY, PERFORMANCE, NON-

INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR USE FOR A PARTICULAR PURPOSE. COMTUBE FURTHER DOES NOT REPRESENT OR WARRANT THAT THE COMTUBE SERVICES WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE AND ERROR-FREE OR WILL OPERATE WITHOUT PACKET LOSS, NOR DOES COMTUBE WARRANT ANY CONNECTION TO OR TRANSMISSION FROM THE INTERNET, OR ANY QUALITY OF CALLS MADE THROUGH THE COMTUBE SERVICES.

**6.2 Specific Disclaimer Of Liability For Emergency Services:** COMTUBE DOES NOT PROVIDE CONNECTIONS TO EMERGENCY SERVICES VIA THE COMTUBE SERVICES. NEITHER COMTUBE NOR ITS OFFICERS, EMPLOYEES OR AFFILIATES MAY BE HELD LIABLE FOR ANY CLAIM, DAMAGE, OR LOSS, (AND YOU HEREBY WAIVE ANY AND ALL SUCH CLAIMS OR CAUSES OF ACTION), ARISING FROM OR RELATING TO YOUR INABILITY TO USE THE COMTUBE SERVICES TO CONTACT EMERGENCY SERVICES, AND YOUR FAILURE TO MAKE ADDITIONAL ARRANGEMENTS TO ACCESS EMERGENCY SERVICES IN ACCORDANCE WITH PARAGRAPH 3.6 ABOVE.

**6.3 Your own Risk:** You acknowledge and agree that the entire risk arising out of Your use of the Comtube services remains with You, to the maximum extent permitted by law.

**6.4 No Liability:** YOU ACKNOWLEDGE AND AGREE THAT COMTUBE, ITS AFFILIATES, ITS LICENSORS AND THE COMTUBE STAFF WILL HAVE NO LIABILITY IN CONNECTION WITH OR ARISING FROM YOUR USE OF THE COMTUBE SERVICES, AS SET FORTH BELOW. YOUR ONLY RIGHT OR REMEDY WITH RESPECT TO ANY PROBLEMS OR DISSATISFACTION WITH THE COMTUBE SERVICES IS TO IMMEDIATELY DEINSTALL AND CEASE USE OF SUCH COMTUBE SERVICES.

**6.5 Limitation of Liability:** IN NO EVENT SHALL COMTUBE BE LIABLE, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER FORM OF LIABILITY, FOR:

6.5.1 ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION ANY LOSS OF OR CORRUPTION TO DATA, INTERRUPTION, COMPUTER FAILURE OR PECUNIARY LOSS) ARISING OUT OF THE USE OR INABILITY TO USE THE COMTUBE SERVICES; AND

6.5.2 ANY LOSS OF INCOME, BUSINESS OR PROFITS (WHETHER DIRECT OR INDIRECT) ARISING OUT OF THE USE OR INABILITY TO USE THE COMTUBE SERVICES;

6.5.3 ANY LOSS OR DAMAGE WHICH MAY BE INCURRED BY YOU AS A RESULT OF;

(I) ANY DISRUPTIONS OR DELAYS IN ANY COMMUNICATION WHEN USING THE COMTUBE SERVICES;

(II) THE SUSPENSION OR TERMINATION OF THIS AGREEMENT BY YOU OR BY COMTUBE FOR ANY REASON; AND

(III) THE RELEASE OR THE DECISION NOT TO RELEASE NEW VERSIONS OF THE COMTUBE SERVICES TO YOU.

**6.6 THE LIMITATIONS ON COMTUBE'S LIABILITY TO YOU IN PARAGRAPH 6.5 ABOVE SHALL APPLY WHETHER OR NOT COMTUBE, ITS AFFILIATES OR THE COMTUBE STAFF HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES ARISING.**

**6.7 NOTHING IN THIS AGREEMENT IS INTENDED TO EXCLUDE OR RESTRICT OR SHALL BE CONSTRUED AS EXCLUDING OR RESTRICTING THE LIABILITY OF COMTUBE FOR (I) THE DEATH OR PERSONAL INJURY CAUSED BY THE NEGLIGENCE OF COMTUBE, THE COMTUBE STAFF OR ITS AGENTS, OR (II) ANY LIABILITY WHICH CANNOT BE LIMITED OR EXCLUDED BY LAW.**

**6.8 Jurisdiction's Limitations:** As some jurisdictions do not allow some of the exclusions or limitations as set forth above, some of these exclusions or limitations may not apply to You. In such event the liability will be limited to the maximum extent possible within the applicable legislation.

## **7. Additional Terms**

**7.1 Any other exceptions:** If You are interested in doing anything which is not permitted under this Agreement or by one of the above Additional Terms, You will have to obtain Comtube's prior written consent and explicitly agree upon any further terms.

## **8. Miscellaneous**

**8.1 Entire Agreement:** The terms and conditions of the Terms constitute the entire agreement between You and Comtube with respect to the subject matter hereof and will supersede and replace all prior understandings and agreements, in whatever form, regarding the subject matter. Nothing in this clause shall exclude or restrict the liability of either You or Comtube arising out of fraud or fraudulent misrepresentation.

**8.2 Partial Invalidity:** If any provision of the Terms, or any part of a provision, is found by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable, and the provision (or part-provision) in question is not of a fundamental nature to the Terms as a whole, the legality, validity or enforceability of the remainder of the Terms (including the remainder of the term which contains the relevant provision) shall not be affected.

**8.3 No waiver:** The failure to exercise, or delay in exercising, a right, power or remedy provided by the Terms or by law shall not constitute a waiver of that right, power or remedy. If Comtube waives a breach of any provision of the Terms this shall not operate as a waiver of a subsequent breach of that provision, or as a waiver of a breach of any other provision.

**8.4 Assignment:** You are not allowed to assign the Terms or any rights hereunder. Comtube is allowed at its sole discretion to assign the Terms or any rights hereunder to any third party, without giving prior notice.

**8.5 Applicable Law and Competent Court:** The Terms shall be governed by and interpreted in accordance with the laws of Israel and shall be subject to the jurisdiction of the courts of the district of Israel.



**8.6 Language:** The original English version of the Terms may have been translated into other languages. In the event of inconsistency or discrepancy between the English version and any other language version, the English language version shall prevail.

**YOU EXPRESSLY ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND UNDERSTAND THE RIGHTS, OBLIGATIONS, TERMS AND CONDITIONS SET FORTH HEREIN. BY CLICKING ON THE ACCEPT BUTTON AND/OR CONTINUING TO USE THE COMTUBE SERVICES, YOU EXPRESSLY CONSENT TO BE BOUND BY ITS TERMS AND CONDITIONS AND GRANT TO COMTUBE THE RIGHTS SET FORTH HEREIN.**