

Terms & Conditions

1 Interpretation

1.1 the definitions and rules of interpretation in this condition apply in these terms.

Acquirer

the bank or the provider of bank processing services on behalf of the bank, with which you have a contract for the provision of your bank account.

Authorised Users

those of your employees, agents, independent contractors, pupils' parents and/or guardians and other persons who are authorised by you to use the Services and the Documentation as described in condition 3.2.

AWS

Amazon Web Services, Inc.

AWS's Acceptable Use Policy

the AWS acceptable use policy described in condition 13.3.

Business Day

any day which is not a Saturday, Sunday or public holiday in the UK.

Change Control Procedure

The procedure for making changes to the Services which you can find in condition 17 of the terms.

Confidential Information

information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in condition 10.5.

Content

software (including machine images), data, text, audio, video, images or other content and “your Content” means content of yours or of any of your Authorised Users.

Contract

the contract between you and us for the Services incorporating the Order Form and these terms.

Customer Data

the data input by you, Authorised Users, or by us on your behalf for the purpose of using the Services or facilitating your use of the Services.

Documentation

the documents made available to you on the Support Website and/or by such other method as we may from time to time deem appropriate which set out a description of the Services and the user instructions for the Services.

Effective Date

the date of the Contract.

Fees

the fees payable by you to us for the Subscription, which you can find on the Order Form.

GDPR Statement

Pebble’s public statement on GDPR.

Initial Subscription Term

the initial period of the Contract which you can find on the Order Form.

Normal Business Hours

8.30 am to 5.00 pm local UK time, each Business Day.

Order

your order for the Services, which you can find on the Order Form.

Order Form

our order form for the Services which is provided with or attached to or which otherwise refers to or incorporates these terms.

Password Policy

Our policy for Authorised Users' passwords (as described in section 3.2.1).

Payment Card Scheme Rules

the industry standard rules relating to the use of debit and credit cards.

Payment Processor

your payment processor (if you are using your own payment processor) or (if you are not using your own payment processor) our payment processor.

Privacy and Security Policy

our policy for the privacy of Customer Data (as updated by us from time to time) which you can find on our Support Website or which we provide to you by another route.

Prohibited Content

the type of Content described in condition 13.5.

Renewal Period

the period described in condition 15.1.

Services

the subscription services provided by us to you under these terms, as more particularly described in the Documentation available on the Support Website.

Software

the Pebble online software applications provided by us as part of the Services.

Subcontractor

a trusted third party that we work with to provide the Services, for example Isotoma (company no. 5171172) and/or AWS.

Subscription

the subscription bought by you under condition 8.1 which entitles Authorised Users to access and use the Services and the Documentation in accordance with these terms.

Subscription Term

has the meaning given condition 15.1.

Support Services Policy

our policy for supporting your use of the Software (as updated by us from time to time) which we will advise you of when purchasing a licence for the Software.

Transaction

a financial transaction conducted on the Internet using a debit or credit card or other payment token.

Transaction Data

the data relating to authorisation and settlement transaction messages in relation to a Transaction conducted using the Software on the Internet.

Virus

any thing or device (including any software, code, file or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by rearranging, altering or erasing the program

or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices.

We

SF Software Limited (t/a Pebble), a company incorporated and registered in England & Wales with company number 05580540 (VAT number 873 5186 95) whose registered office is at Media Exchange Three, Newcastle upon Tyne, NE1 2QB and “us” and “our” will have their corresponding meanings.

Website

the website for the Software Services at apps.talktopebble.co.uk or <https://apps.mypebble.co.uk>, <https://joinos.com>, <https://my.joinos.com> any other website address we tell you about from time to time.

You

the organisation specified on the Order Form as the customer, including any organisation to which you assign the Contract with our prior written consent under condition 21.1.

- 1.2 Condition headings shall not affect the interpretation of these terms.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person’s legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 Any reference to any gender is a reference to all genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.8 Where the words **include(s)**, **including** or **in particular** are used in this agreement, they are considered to have the words **without limitation** following them. Where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.
- 1.9 A reference to writing or written includes faxes, email or messaging.

1.10 References to conditions are to the conditions of these terms.

2 Basis of Contract

- 2.1 The Order constitutes an offer by you to buy the Services from us in accordance with these terms.
- 2.2 The Order shall only be considered to be accepted when we accept the Order in writing or, if earlier when we start to provide the Services, at which point and on which date the Contract will come into existence.
- 2.3 These terms apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4 Any quotation given by us shall not constitute an offer.

3 Subscriptions

- 3.1 Subject to you buying the Subscription in accordance with condition 8.1, the restrictions set out in this condition 3 and the other terms and conditions of the Contract, we hereby grant you a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for your internal operations.
- 3.2 In relation to the Authorised Users, you undertake that:
 - 3.2.1 each Authorised User will comply with our Password Policy.

Fund Manager and Arro:

Initially, passwords are provided by us to you. When you log on, you then set a secure password for the use of the Services (which must not be a password that is used anywhere else by you or by another).

Joinos for Parents:

Initially, you securely communicate the personal registration code generated by the Software to the Authorised User so they may register to use the Service. During registration, the Authorised User is required to select a password for the use of the Service (which must not be a password that is used anywhere else by them). You shall require all

All Authorised Users are required to change their password frequently and keep their password confidential.

You are responsible for all use of the Services using Authorised Users' login details, whether or not the use is with your or their permission;

- 3.2.2 each Authorised User will comply with our Privacy & Security Policy;

Fund Manager and Arro:

each Authorised User will lock their workstation when away from their desk even for short periods of time and will not log in to our Website other than from your premises or from a remote location in the UK which has been authorised by you;

- 3.2.3 Fund Manager and Arro:

you will maintain a written, up-to-date list of current Authorised Users and provide that list to us within 5 (five) Business Days of our written request at any time;

- 3.2.4 you will permit us to audit the Services so we can establish the name of each Authorised User. The audit may be conducted no more than once per quarter, at our expense, and we shall exercise this right with reasonable prior notice and in a way that does not substantially interfere with your normal operations; and

- 3.2.5 if any of the audits referred to in condition 3.2.4 reveal that any registration code or password has been provided to any individual who is not an Authorised User, then in addition to our other rights, you will promptly disable that registration code or password and deregister the individual as a user of the Services and we will not issue any new registration code or password to that individual.

- 3.3 You will not, and will ensure that the Authorised Users will not, access, store, distribute or transmit any Viruses, or any material during the course of your use of the Services that:

- 3.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

- 3.3.2 facilitates illegal activity;

- 3.3.3 depicts sexually explicit images;

- 3.3.4 promotes unlawful violence;

- 3.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or

- 3.3.6 causes damage or injury to any person or property and we reserve the right, without responsibility to you, to disable your access to any material that breaches this condition.
- 3.4 You shall not:
 - 3.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between us:
 - 3.4.1.1 and except to the extent expressly permitted under these terms, attempt to copy, modify, alter, tamper with, repair, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - 3.4.1.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software or apply any other process or procedure to derive the source code of the Software; or
 - 3.4.2 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
 - 3.4.3 use the Services and/or Documentation to provide services to third parties; or
 - 3.4.4 subject to condition 21.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users; or
 - 3.4.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this condition 3; or
 - 3.4.6 access or use the Services and/or Documentation in a way intended to avoid incurring fees or exceeding usage limits or quotas.
- 3.5 You shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any unauthorised access or use, promptly notify us.

- 3.6 The rights provided under this condition 3 are granted to you only, and shall not be considered granted to any related or federated organisation or to any local education authority or to any subsidiary or holding company of yours or theirs unless covered by a separate contract.

4 Services

- 4.1 We shall, during the Subscription Term, provide the Services and make available the Documentation to you on and subject to these terms.
- 4.2 We shall use commercially reasonable endeavours to make the Services available 24 (twenty-four) hours a day, 7 (seven) days a week, except for:
- 4.2.1 planned maintenance; and
 - 4.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that we have used reasonable endeavours to give you as much advance notice as we can.
- 4.3 We will, as part of the Services and at no additional cost to you, provide you with our standard customer support services during Normal Business Hours in accordance with our Support Services Policy in effect at the time that the Services are provided. You may buy enhanced support services separately at our then current rates.
- 4.4 We are entitled, at any time and in our absolute discretion, to amend the Services, or to amend the terms of this Contract by posting them on the Website in amended form or providing them in amended form to you with a note of the date on which the relevant document was last amended and the date when such amendment shall take effect. By continuing to use the Services and/or Documentation after the effective date of any modifications to the Services and/or the Contract, you agree to be bound by the amended terms. It is your responsibility to check the Website regularly for amendments to the Services and/or the Contract.

5 Customer data

- 5.1 You will own all rights, title and interest in and to all of your Customer Data and will have sole responsibility for the legality, reliability, integrity, accuracy and quality of your Customer Data.
- 5.2 If you choose to export Customer Data in order to keep backups **it is your responsibility to handle this in accordance with GDPR law.**

- 5.3. We will, in providing the Services, comply with our Privacy and Security Policy relating to the privacy and security of your Customer Data.
- 5.5 If we process any personal data on your behalf when performing our obligations under these terms, we each record our intention that you shall be the data controller and we shall be a data processor and in any such case:
- 5.5.1 you acknowledge and agree that if you or your Authorised Users are located outside the UK or EEA then we cannot provide the Services and carry out our other obligations under the Contract unless we transfer the personal data to your location, where those data may also be stored;
 - 5.5.2 you acknowledge and agree that AWS will store your personal data in its data centre in London and will not move data from there without notifying us, unless required to comply with law or requests of government entities; if we are notified of[WH3] a move by AWS, we will of course post that notice on the Website;
 - 5.5.2 you shall ensure that you are entitled to transfer the relevant personal data to us so that we may lawfully use, process and transfer the personal data in accordance with the Contract on your behalf;
 - 5.5.3 you shall ensure that the relevant third parties have been informed of, and have given their consent to, that use, processing, and transfer as required by all applicable data protection legislation, including GDPR legislation;
 - 5.5.4 we shall process the personal data only in accordance with the terms of the Contract and any lawful instructions given by you from time to time; and
 - 5.5.5 each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

6 Supplier's obligations

- 6.1 We undertake that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 6.2 The undertaking at condition 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to our instructions, or modification or alteration of the Services by any party other than

us or our duly authorised contractors or agents. If the Services do not conform to the undertaking, we will, at our expense, use all reasonable commercial endeavours to correct any non-conformance promptly, or provide you with an alternative means of accomplishing the desired performance. That correction or substitution constitutes your sole and exclusive remedy for any breach of the undertaking set out in condition 6.1. Notwithstanding the foregoing, we:

- 6.2.1 do not warrant that your use of the Services will be uninterrupted or error-free; nor that the Services, Documentation and/or the information obtained by you through the Services will meet your requirements; and
 - 6.2.2 are not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the Internet, and you acknowledge that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of those communications facilities; and
 - 6.2.3 do not warrant that the Services are compatible with all Internet browsers for all devices. You can check the Support Website to see the list of compatible browsers in the article, 'Configuring Browsers'.
- 6.3 These terms shall not prevent us from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Contract.
- 6.4 We warrant that we have and will maintain all necessary licences, consents, and permissions necessary for the performance of our obligations under the Contract.

7 Customer's obligations

- 7.1 You shall:
- 7.1.1 provide us with:
 - 7.1.1.1 all necessary cooperation in relation to the Contract; and
 - 7.1.1.2 all necessary access to information we may require in order to provide the Services, including Customer Data, security access information and configuration services;

- 7.1.2 provide information or other materials related to your Content as reasonably requested by us to verify your compliance with the Contract. We may monitor the external interfaces of your Content to verify your compliance with the Contract. You shall not block or interfere with our monitoring, but you may use encryption technology or firewalls to help keep your Content confidential. You shall cooperate with us to identify the cause of any problem with the Services that we reasonably believe may be attributable to your Content or any Authorised User materials that you control;
- 7.1.3 comply with all applicable laws and regulations with respect to your activities under the Contract;
- 7.1.4 carry out all other customer responsibilities set out in these terms in a timely and efficient manner. In the event of any delays in your provision of assistance, we may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 7.1.5 ensure that the Authorised Users use the Services and the Documentation in accordance with the Contract terms and shall be responsible for any Authorised User's breach of these terms;
- 7.1.6 ensure that the terms of your agreement with each Authorised User are consistent with this Contract. If you become aware of any breach of your obligations under this Contract by an Authorised User, you will immediately terminate that Authorised User's access to the Services and Website;
- 7.1.7 obtain and shall maintain all necessary licences, consents, and permissions necessary for us, our contractors and agents to perform their obligations under these terms, including the Services;
- 7.1.8 ensure that your network and systems comply with the relevant specifications provided by us from time to time; and
- 7.1.9 be solely responsible for procuring and maintaining your network connections and telecommunications links from your systems to our data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the internet;
- 7.1.10 Joinos for Parents:
 - 7.1.10.1 where you have your own Payment Processor, comply with that Payment Processor's terms;

- 7.1.10.2 not misuse the Services, including not make use of the Services in any manner whatsoever which constitutes a breach of any law or regulation or which may cause us or any Subcontractor to be subject to any investigation, prosecution or legal action or for any type of business which in our, or any Subcontractor's, opinion is unacceptable;
 - 7.1.10.3 describe accurately on the Website the procedure for Authorised Users entering into a Transaction by making clear what is being sold on the Website, the price and the action which must be taken in order to enter into a legally binding contract;
 - 7.1.10.4 comply with all applicable legal and regulatory requirements, including distance selling regulations, e-commerce regulations and data protection legislation;
 - 7.1.10.5 only use the Services to store, retrieve, query, serve and execute your Content that is owned, licenced or lawfully obtained by you; and
 - 7.1.10.6 comply with the current technical documentation applicable to the Services as posted by us and updated from time to time on the Website. If you wish to create technology that works with the Services, you must inform us in writing, and if we agree to you creating that technology, comply with the current technical documentation applicable to the Services which we provide to you.
- 7.2 You acknowledge and accept that the collation and accuracy of any Transaction Data submitted to us and/or the Payment Processor is your exclusive responsibility and you will procure that the Transaction Data provided by Authorised Users is accurate.

8 Customer's obligations

- 8.1 You shall pay us the Fees for the Subscription in accordance with this condition 8.
- 8.2 You shall by the Effective Date provide us with approved purchase order information acceptable to us and any other relevant valid, up-to-date and complete contact and billing details and we shall invoice you:

- 8.2.1 on or after the Effective Date for the Fees payable in respect of the Initial Subscription Term; and
 - 8.2.2 subject to condition 15.1, at least 30 (thirty) days prior to each anniversary of the Effective Date for the Fees payable in respect of the next Renewal Period, and you shall pay each invoice within 30 (thirty) days after the date of that invoice.
- 8.3 If we have not received payment within 30 (thirty) days after the due date, and in addition to any of our other rights and remedies:
- 8.3.1 we may, without responsibility to you, disable your password, account and access to all or part of the Services and we shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - 8.3.2 interest shall accrue on due amounts at an annual rate equal to 4% (four percent) over the then current base lending rate of the Bank of England at the date the relevant invoice was issued, starting on the due date and continuing until fully paid, whether before or after judgment.
- 8.4 All amounts and fees stated or referred to in these terms:
- 8.4.1 shall be payable in pounds sterling;
 - 8.4.2 are non-cancellable and non-refundable;
 - 8.4.3 are exclusive of value added tax, which shall be added to our invoice(s) at the appropriate rate.
- 8.5 We shall be entitled to increase the Fees, and/or the excess storage fees payable under condition 8.5 at the start of each Renewal Period on 90 (ninety) days' prior notice to you.

9 Proprietary rights

- 9.1 You acknowledge and agree that we and/or our licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated in the Contract, these terms do not grant you any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

- 9.2 We confirm that we have all the rights in relation to the Services and the Documentation that are necessary to grant all the rights we purport to grant under, and in accordance with, the terms of the Contract.
- 9.3 During and after the Subscription Term, you will not assert, nor will you authorise, assist or encourage any third party to assert, against us or any of our Subcontractors, affiliates, customers, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding any Services and/or Documentation you have used.

10 Confidentiality

- 10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Contract. A party's Confidential Information shall not include information that:
- 10.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
 - 10.1.2 was in the other party's lawful possession before the disclosure;
 - 10.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - 10.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - 10.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 10.2 Each party shall hold the other's Confidential Information in confidence and (subject to condition 10.8), unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the performance of the Contract.
- 10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in breach of these terms.
- 10.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 10.5 You acknowledge that details of the Services, and the results of any performance tests of the Services, constitute our Confidential Information.

10.6 We acknowledge that your Customer Data is your Confidential Information.

Joinos for Parents

Our Payment Service Provider privacy policy can be found here [Nochex Privacy Policy](#)

10.7 Joinos for Parents

Your Customer Data will be disclosed to the Payment Processor to take card payments from Authorised Users. The Payment Processor will be entitled to disclose those Customer Data to law enforcement or government agencies, to the Acquirer, debit/credit card schemes and Authorised Users' issuing banks.

10.8 This condition 10 shall survive termination of the Contract, however arising.

11 Indemnity

11.1 You shall, subject to condition 11.6, defend, indemnify and hold us harmless against claims, actions, proceedings, losses, damages, expenses and costs (including court costs and reasonable legal fees) arising out of or in connection with (i) breach of this Contract or breach of applicable law by you or any Authorised User, (ii) your or any Authorised User's use of the Services and/or Documentation, (iii) a dispute between you and any Authorised User, (iv) your Content or the combination of your Content with other applications, content or processes, including any claim involving alleged infringement or misappropriation of third party rights by your Content, or by the use, development, design, production, advertising or marketing of your Content, provided that:

11.1.1 we give you prompt notice of the claim;

11.1.2 we provide you with reasonable cooperation in the defence and settlement of the claim, at your expense; and

11.1.3 we give you sole authority to defend or settle the claim.

11.2 We shall, subject to conditions 11.3 to 11.6 inclusive, defend you, your officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent which is valid and effective as at the Effective Date, copyright, trademark, database right or right of confidentiality, and shall indemnify you against any amounts awarded against you in judgment or settlement of those claims, provided that:

11.2.1 you give us prompt notice of any the claim;

- 11.2.2 you provide us with reasonable cooperation in the defence and settlement of the claim, at our expense; and
- 11.2.3 you give us sole authority to defend or settle the claim.
- 11.3 In the defence or settlement of any claim, we may obtain the right for you to continue using the Services, replace or modify the Services so that they become non-infringing or, if those remedies are not reasonably available, terminate the Contract on 2 (two) Business Days' notice to you without any additional responsibility, liability or obligation to pay liquidated damages or other additional costs to you.
- 11.4 In no event shall we, our employees, agents and Subcontractors be responsible or liable to you to the extent that the alleged infringement is based on:
 - 11.4.1 a modification of the Services or Documentation by anyone other than us; or
 - 11.4.2 your use of the Services or Documentation in a manner contrary to the instructions we have given to you; or
 - 11.4.3 any matter described in condition 11.1; or
 - 11.4.4 your use of the Services or Documentation after notice of the alleged or actual infringement from us or any appropriate person or authority.
- 11.5 This condition states your sole and exclusive rights and remedies, and our (including our employees', agents' and Subcontractors') entire obligations and liability, for infringement of any patent, copyright, trademark, database right or right of confidentiality.
- 11.6 Our liability to each other under this condition shall never be more than [£50,000 (fifty thousand pounds)] each.

12 Payment Processor conditions

- 12.1 This condition only applies where you use our Payment Processor rather than your own Payment Processor.
- 12.2 If we determine in our reasonable opinion that an unscheduled interruption to part or all of the Services resulted directly or indirectly from any action of a third party in response to an act or omission of you or an Authorised User, we may recover from you all reasonable costs incurred by us or on our behalf in connection with remedying that interruption.

- 12.3 We shall have no liability for any failure or delay in performing our obligations under the Contract if that failure or delay is caused by your acts or omissions or results from actions taken by us or our Subcontractor(s) in good faith to avoid breaching a law, rule or regulation of any government authority.
- 12.4 You agree and undertake to fully indemnify and keep us indemnified from and against all losses, actions, costs, claims, demands and proceedings and all expenses including reasonable legal expenses incurred by us and/or the Payment Processor resulting directly or indirectly from or relating to any:
- 12.4.1 transaction between you and us; and any legal action relating to that transaction; and/or
 - 12.4.2 Transaction between you and any Authorised User; and any legal action relating to that Transaction; and/or
 - 12.4.3 your breach of and non-compliance with this Contract; and/or
 - 12.4.4 your breach of any procedures and instructions resulting in additional work for the Payment Processor.
- 12.5 For the purposes of condition 12.4 (and in addition to the indemnity contained in condition 12.4) you agree that we and/or the Payment Processor shall be entitled in each of our entire discretion to accept, dispute, compromise or otherwise deal with any claim, alleged claim, loss or liability, which is made against either or both of us.
- 12.6 From time to time the payment functionality may be closed down for routine repair or maintenance work.
- 12.7 We may terminate the Contract or remove the payment functionality from the scope of the Services with immediate effect if any Acquirer declines to offer or continue to provide you with services for any reason whatsoever.
- 12.8 We reserve the right to suspend or terminate payment functionality if the Payment Processor suspends the payment functionality or our contract with the Payment Processor terminates.

13 Hosting conditions

13.1 Temporary suspension

- 13.1.1 We may suspend your right to access or use any portion or all of the Services and/or Website immediately upon notice to you if we (or AWS) determine your (or an Authorised User's) use of the Services or

Website (i) poses a security risk to the Services, Website or any third party, (ii) may adversely impact the services or the systems or Content of any customer of AWS, (iii) may subject AWS, its affiliates, or any third party to liability, or (iv) may be fraudulent.

- 13.1.2 If we suspend your right to access or use any portion or all of the Services and/or Website, you remain responsible for all fees and charges you have incurred prior to the date of suspension and you remain responsible for any applicable fees and charges for any portion of the Services and/or Website to which you continue to have access, as well as applicable charges and fees and charges for in-process tasks completed after the date of suspension.
- 13.2 We may change, discontinue or deprecate any of the Services or change or remove features or functionality of the Services from time to time (to the extent reasonably necessary as a result of permitted change, discontinuation or deprecation by a Subcontractor). We will notify you of any material change to or discontinuation of the Services.
- 13.3 You shall comply with AWS's "Acceptable Use Policy" which is currently available at <http://aws.amazon.com/aup> , as it may be updated from time to time.
- 13.4 You warrant that the Authorised Users' use of the Services and Documentation will not breach AWS's Acceptable Use Policy.
- 13.5 If we reasonably believe any of your Content breaches the law, infringes or misappropriates the rights of any third party or otherwise breaches the Contract (**Prohibited Content**), we may request that such content be removed from the Services or access to it be disabled. If you do not remove or disable access to the Prohibited Content within 1 (one) Business Day of our request, in addition to our other rights under this Contract, we may remove or disable access to the Prohibited Content or suspend the Services to the extent we are not able to remove or disable access to the prohibited Content.
- 13.6 In addition to our rights to remove or disable access to Prohibited Content detailed in condition 13.5, we may remove or disable access to any Prohibited Content without prior notice in connection with illegal Content, where the Content may disrupt or threaten the Services, or as required to comply with law or any judicial, regulatory or other governmental order or request.

14 Limitation of liability

14.1 Condition 11 deals with your liability to us for your use of the Services and Documentation and our liability to you for infringement of intellectual property rights. This condition 14 sets out our entire financial liability (including any liability for the acts or omissions of our employees, agents and Subcontractors) to you in respect of other matters namely:

- 14.1.1 any breach of the Contract;
- 14.1.2 any use made by you of the Services and Documentation or any part of them; and
- 14.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

14.2 Except as expressly and specifically provided in the Contract:

- 14.2.1 you assume sole responsibility for results obtained from your use of the Services and the Documentation, and for conclusions drawn from your use. We shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts we have provided to you in connection with the Services, or any actions we have taken at your direction;
- 14.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Contract; and
- 14.2.3 the Services and the Documentation are provided to you on an “as is” basis.

14.3 Nothing in the Contract excludes our liability:

- 14.3.1 for death or personal injury caused by our negligence; or
- 14.3.2 for fraud or fraudulent misrepresentation.

14.4 Subject to condition 14.2 and condition 14.3:

- 14.4.1 we and our Subcontractors, affiliates or licensors shall not be responsible or liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure

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economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract;

- 14.4.2 we and our Subcontractors, affiliates or licensors shall not be responsible for any compensation, reimbursement or damages arising in connection with:
- 14.4.2.1 your or any Authorised User's inability to use the Services and/or the Documentation including as a result of any (i) termination or suspension of this Contract or your use of or access to the Services, (ii) our Subcontractor's discontinuation of any or all of the Services, or (iii) any unanticipated or unscheduled downtime of all or a portion of the Services for any reason, including as a result of power outages, system failures or other interruptions;
 - 14.4.2.2 the cost of procurement of substitute services;
 - 14.4.2.3 any investments, expenditures or commitments by you in connection with this Contract or your use of or access to the Services and/or Documentation; or
 - 14.4.2.4 any unauthorised access to, alteration of or the deletion, destruction, damage, loss or failure to store any of your or any Authorised User's Content or other data; and
- 14.4.3 our 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 the total Fees paid for the Subscription during the 12 (twelve) months immediately preceding the date on which the claim arose or [£5,000 (five thousand pounds)], whichever is the greater sum. This is separate from, and in addition to, our liability under condition 11.

15 Term and termination

- 15.1 The Contract shall start on the Effective Date and shall, unless otherwise terminated under this condition 15, continue for the Initial Subscription Term and after that, the Contract shall be automatically renewed for successive periods of 12 (twelve) months (each a **Renewal Period**), unless:

- 15.1.1 either party notifies the other party of termination, in writing, at least 60(sixty) days before the end of the Initial Subscription Term or any Renewal Period, in which case the Contract shall terminate on the expiry of the applicable Initial Subscription Term or Renewal Period; or
 - 15.1.2 otherwise terminated in accordance with the Contract and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the Subscription Term.
- 15.2 In addition to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:
- 15.2.1 the other party commits a material breach of any of the terms of the Contract and (if the breach is remediable) fails to remedy that breach within 30 (thirty) days of that party being notified in writing of the breach; or
 - 15.2.2 an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or
 - 15.2.3 an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
 - 15.2.4 a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
 - 15.2.5 the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
 - 15.2.6 the other party ceases, or threatens to cease, to trade; or
 - 15.2.7 the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

15.3 Joinos for Parents

We may terminate the Contract with immediate effect in the event that:

- 15.3.1 the circumstances described in condition 12.7 or condition 12.8 apply;
or
- 15.3.2 you wish to use the Services to support a business which is contrary to any applicable laws or prohibited under the Payment Card Scheme Rules or is considered likely to harm the brand or reputation of us or a Subcontractor; or
- 15.3.3 any act or omission by you or an Authorised User results in suspension described in condition 13.1.1; or
- 15.3.4 our relationship with a third party (including a Subcontractor) who provides software or other technology we use to provide the Services expires, terminates or requires us to change the way we provide the software or other technology as part of the Services.

15.4 On expiry or termination of the Contract for any reason:

- 15.4.1 all licences granted under the Contract shall immediately terminate;
- 15.4.2 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- 15.4.3 we may destroy or otherwise dispose of any of your Customer Data in our possession unless we receive, no later than 10 (ten) days after the effective date of the termination of the Contract, a written request for access to the Customer Data. We shall use reasonable commercial endeavours to provide access to the data within 30(thirty) days of our receipt of a written request, provided that you have, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). You shall pay all reasonable expenses incurred by us in returning or disposing of Customer Data; and
- 15.4.4 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

16 Force majeure

We shall have no responsibility or liability to you under the Contract if we are prevented from or delayed in performing our obligations, or from carrying on our business, by acts, events, omissions or accidents beyond our reasonable control, including strikes, lockouts or other industrial disputes (whether involving our workforce or that of any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or Subcontractors, provided that we inform you of the event (which we may do by email or Intercom message) and its expected duration.

17 Change control (Joinos for Parents)

In addition to our right to change the Services under conditions 4.4 and 13.2, if either party wishes to change the scope or execution of the Services it shall use the Change Control Procedure as described here:

17.1 The parties shall discuss any material change to the agreement proposed by the other and that discussion shall result in either:

- a written request for a Change by you; or
- a written recommendation for a Change by us.

If neither of us wishes to submit a request or recommendation, the proposal for the Change will not proceed.

17.2 Where we receive a written request for a change from you, we shall, unless otherwise agreed, submit a Change Control Note (CCN) to you within the period agreed between us or, if no period is agreed, within 5 (five) Business Days from the date of receipt of your request for a change, or inform you that we are not able to comply with your written request for a change.

17.3 We shall submit any written recommendation for a change as a CCN direct to you.

17.4 Each CCN may be in the form annexed and shall contain:

17.4.1 the title of the change;

17.4.2 the originator and the date of the request or recommendation for the change;

- 17.4.3 the reason for the change;
 - 17.4.4 the full details of the change, including any specifications and user facilities;
 - 17.4.5 the price, if any, of or associated with the change;
 - 17.4.6 a timetable for implementation, together with any proposals for acceptance of the change;
 - 17.4.7 the impact, if any, of the change on other aspects of the agreement, including:
 - 17.4.7.1 the Fees;
 - 17.4.7.2 the contractual documentation; and
 - 17.4.7.3 staff resources;
 - 17.4.8 the date of expiry of validity of the CCN (which must be 10 (ten) Business Days or more from its date); and
 - 17.4.9 provision for signature of the CCN by the parties.
- 17.5 For each CCN submitted, you shall, within the period of validity of the CCN as set out in paragraph 17.4.8 this Change Control Procedure:
- 17.5.1 allocate a sequential number to the CCN;
 - 17.5.2 evaluate the CCN, and as appropriate either:
 - 17.5.2.1 request further information; or
 - 17.5.2.2 approve the CCN; or
 - 17.5.2.3 notify us of the rejection of the CCN; and
 - 17.5.3 if approved, arrange for two copies of the approved CCN to be signed for and on behalf of you and us.
- The signing of the CCN shall signify acceptance of a change by both parties.
- 17.6 Once signed by the parties in accordance with paragraph 17.5 of this Change Control Procedure, the change shall be immediately effective and you and we shall perform our respective obligations on the basis of the agreed amendment.

18 Waiver

- 18.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 18.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

19 Severance

- 19.1 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 19.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

20 Entire agreement

- 20.1 The Contract, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 20.2 Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.

21 Assignment

- 21.1 You shall not, without our prior written consent, assign, transfer, charge, subcontract or deal in any other manner with all or any of your rights or obligations under the Contract.
- 21.2 We may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of our rights or obligations under the Contract.

22 No partnership or agency

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

23 Third party rights

The Contract does not confer any rights on any person or party (other than the parties to the Contract and, where applicable, their successors and permitted assigns) under the Contracts (Rights of Third Parties) Act 1999.

24 Notices

- 24.1 Any notice required to be given under the Contract shall be in writing and shall be delivered by hand or sent by prepaid first-class post or recorded delivery post to the other party at its address set out in the Order Form, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's main fax number.
- 24.2 A notice delivered by hand shall be considered to have been received when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by prepaid first-class post or recorded delivery post shall be considered to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be considered to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

25 Governing law and jurisdiction

- 25.1 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England & Wales.
- 25.2 The parties irrevocably agree that the courts of England & Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in

connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).