

Agreed terms

1. Interpretation

1.1 The following definitions and rules of interpretation apply in this agreement.

"Acceptance Date": The date on which the Application or the Website is accepted by the Partner, or deemed to be accepted by the Partner, in accordance with clause 5.

"Additional Works": Any additional content, software or Intellectual Property Rights created, developed, produced, or procured by White Label Property in accordance with clause 7 or any variation or amendment to the Application or Specification.

"Administrative Charges": The charges to be deducted from the Turnover when calculating the Revenue Share and which may include:

- (a) All discounts applied to the Application or the Website including promotions, credits, rebates, refunds, repayments, adjustments or discounts granted, credited back or paid by or on behalf of White Label Property, returns, mark downs, price protection, retrospective or customer-based volume, timely payment, targets and other discounts or price adjustments, voucher and pre-paid card promotions;
- (b) Deduction of all relevant taxes including VAT and customs duties, withholding or other taxes;
- (c) Credit card and other payment processing fees incurred directly by White Label Property;
- (d) Direct costs incurred by White Label Property associated with applicable digital rights management software and systems and downloading or delivering the Application to the End-Users; and
- (e) Cost of administration and promotion and marketing of the Application or the Website.

"Agreed Proportions": The proportions in which the parties shall share the Revenue Share as set out in Schedule 2.

"Application": The application software comprised of White Label Property Software, Partner Materials, the Bespoke Software and any Additional Works and includes the Website.

"App Store": An online or remote-accessed location where the Application will be made available for downloading.

"Bespoke Software": Any software program developed by White Label Property specifically for the Partner, and which forms part of the Application or the Website, but excluding Modified Software.

"Business Day": A day other than a Saturday, Sunday, or public holiday in England when banks in London are open for business.

"Commencement Date": The date of this agreement.

"Confidential Information": Information of commercial value, in whatever form or medium, disclosed by the party to the other party, including commercial or technical know-how, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing and marketing and, for clarity, including (in the case of White Label Property' information) information relating to the Application, White Label Property Software or any of its constituent parts, the Source Code relating to White Label Property Software or any such parts.

"Documents": The operating manuals, user instruction manuals, technical literature and all other related materials in human-readable or machine-readable forms supplied by White Label Property.

"End Users": Anyone who downloads or accesses or is granted access to the Application or Website.

"End User Licence Agreement": An end user licence agreement setting out the terms on which the End Users may download, access and use the Application. An example form of an end user licence agreement is set out in Schedule 3.

"Emergency Maintenance": When a material or substantial part of the Application or the Website is not functioning or when in White Label Property' reasonable opinion consider there to be a likely risk to the continuing functionality of a material or substantial part of the Application.

"Hosting Services": The services that White Label Property provides or procures to allow End Users to access and use the Application or the Website, including hosting set up, third party hosting service provider and App Store management.

"Intellectual Property Rights": Patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection that subsist or will subsist now or in the future in any part of the world.

"Licence": The licence granted under clause 9.

"Licensed Software": White Label Property Standard Software, Modified Software, the Bespoke Software and Additional Works, including any New Releases and any New Versions taken and purchased by the Partner, including any Third Party Software or Open Source Software.

"Live Date": The date on which the Application is first made available for download by End Users on an App Store or when the Application or Website is first accessible by the public (or its intended users).

"White Label Property Software": White Label Property' Standard Software, the Third-Party Software, the Modified Software, the Open-Source Software and any tools and know-how developed, and methods invented, by White Label Property in the course of operating its business or as a result of carrying out the Services, whether or not developed or invented specifically or used exclusively to carry out the Services.

"White Label Property' Standard Software": The software programs proprietary to White Label Property which are used in the Application.

"Modified Software": The software programs proprietary to White Label Property, modified or to be modified by White Label Property and used in the Application.

"New Release": A new release of all or any part of White Label Property' Standard Software or Bespoke or Additional Works used in the Application in which previously identified faults have been remedied or to which any modification, enhancement, revision or update has been made, or to which a further function or functions have been added.

"New Version": A new version of the White Label Property' Standard Software released by White Label Property after the Acceptance Date which provides additional or improved functionality or performance.

"Open-Source Software": Any software licensed under any form of open-source licence meeting the Open Source Initiative's Open Source Definition (set out at www.opensource.org) or any libraries or code licensed from time to time under the General Public Licence (as described by the Free Software Foundation and set out at www.gnu.org), or anything similar, included or used in, or in the development of, the Application, or with which White Label Property Software is compiled or to which it is linked.

"Partner Materials": Any Intellectual Property Rights owned, held or developed by the Partner that is used or is required to be used by White Label Property for the purposes of this agreement, and shall include the Partner branding whether registered or unregistered intellectual property.

"Price": The aggregate price for the Services, including any set up fees management fee or additional services but excluding the Revenue Share, as specified in Schedule 2.

"Privacy Policy": A privacy policy setting out the terms on which the End Users' personal data shall be stored, used and processed whilst accessing the Website and the Application. An example of a privacy policy is set out in Schedule 5.

"Revenue Share": The revenue to be paid to each party calculated in accordance with clause 6.5.

"Services": The services to be provided by White Label Property under this agreement, including the Hosting Services and all the works, duties and obligations to be carried out by White Label Property under this agreement.

"Source Code": The source code of the software to which it relates, in the language in which the software was written, together with all related flow charts and technical documents, all of a level sufficient to enable a suitably qualified and experienced person to understand, develop and maintain that software.

"Specification": The specification agreed between the parties setting out the Services to be provided as set out in Schedule 1.

"Terms of Use": Terms of use setting out the terms on which the End User may access the Website and the Application. An example of a terms of use is set out in Schedule 4.

"Third-Party Licences": Any and all licences relating to Third Party Software or any Open-Source Software.

"Third-Party Software": The software programs proprietary to third parties, including those programmes which may have been modified by White Label Property.

"Turnover": The aggregate of money received by White Label Property through the operation of the Application or the Website (but excluding the Price) in cleared non-refundable or repayable funds.

"Unscheduled Maintenance": When a part of the Application is not functioning or when in White Label Property's reasonable opinion it considers there to be a likely risk to the continued functioning of the Application or the Website, but shall exclude all Emergency Maintenance, planned maintenance or the installation or application of a New Release or New Version.

"Website": The website(s) created and developed as part of the Services to accompany the Application.

"VAT": Value Added Tax chargeable under the Value Added Tax Act 1994 and any similar additional tax or any other similar turnover, sales or purchase tax or duty levied in any other jurisdiction.

"Virus": Any thing or device (including any software, code, file or programme) which may:

- (a) 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;
 - (b) Prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or
 - (c) Adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
-
- 2. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders and unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
 - 3. Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
 - 4. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
 - 5. Except where a contrary intention appears, a reference to a clause, Schedule or annex is a reference to a clause of, or Schedule or annex to, this agreement.
 - 6. The Schedules to this agreement, together with any documents referred to in them, form an integral part of this agreement and any reference to this agreement means this agreement together with the Schedules and all documents referred to in them, and such amendments in writing as may subsequently be agreed between the parties.
 - 7. Clause and Schedule headings do not affect the interpretation of this agreement.
 - 8. **Writing** or **written** does not include faxes nor any other form of electronic communication (save for email), except where expressly provided to the contrary.
 - 9. If any conflict arises between the terms and conditions of this agreement and any provision of any Schedule, these terms and conditions shall prevail.
 - 10. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.

2. Development and scope

2.1 In consideration for the payment of the Price, White Label Property shall:

- (a) Design, develop and deliver and provide the Services to the Partner; and
- (b) Grant the Licence.

2.2 The supply under clause 2.1 and the Price are subject to the terms and conditions set out in this agreement.

3. Application Delivery

3.1 White Label Property shall carry out the Services with reasonable care and skill to provide the Application in accordance with the Specification and this agreement.

3.2 The Partner shall supply to White Label Property all information and assistance as White Label Property may reasonably request.

3.3 Any dates, timetables or milestones quoted for the delivery or performance of the Services are approximate only, and the time of delivery or performance is not of the essence. White Label Property shall not be liable for any delay in delivery or performance of the Services.

4. Hosting Services, support and maintenance

4.1 White Label Property shall use its reasonable endeavours to:

- (a) Perform the Hosting Services in accordance with this agreement; and
 - (b) Manage the listing and account of the Application at the relevant App Store(s).
2. The Partner acknowledges and agrees that the Application shall be listed on the relevant App Store(s) under the name of White Label Property unless otherwise agreed between the parties.
 3. White Label Property may at its sole discretion change the third party gateway provider or the third party Hosting Service provider used by the Application. Hosting Service providers, third party gateway providers or App Stores may also change their terms and conditions without the consent of White Label Property or the Partner and so the Partner acknowledges and agrees that this may affect the Revenue Share received by both parties.
 4. White Label Property may interrupt the Hosting Services to perform Emergency Maintenance at any time. White Label Property has sole discretion to determine whether an issue requires Emergency Maintenance and the method of resolution. White Label Property shall use reasonable endeavours to notify the Partner of any completed Emergency Maintenance as soon as reasonably practicable following the completion of such Emergency Maintenance. Such notice shall include a description of the issues, the steps taken to resolve the issue and any impact on the Services.
 5. White Label Property may interrupt the Hosting Services to perform Unscheduled Maintenance at any time. White Label Property has sole discretion to determine whether an issue requires Unscheduled Maintenance and the method of resolution. White Label Property shall notify the Partner within 8 hours of the issue arising, detailing the problems incurred, the impact of the Services and the resolution taken. White Label Property shall use reasonable endeavours to provide a further notification within 24 hours of resolving the issue.
 6. Subject to clauses 4.4 and 4.5, White Label Property shall at all times use its reasonable endeavour to minimise the interruptions to the use and availability of the Application to End Users. White Label Property shall not be liable for any losses, damages costs or expenses (whether direct or indirect) resulting from or in connection with any interruption of the Hosting Services through the performance of Emergency Maintenance or Unscheduled Maintenance.
 7. White Label Property shall be under no obligation to notify the Partner and shall not be liable to the Partner in any way in the event that an App Store is conducting maintenance or is expecting or experiencing downtime.
 8. White Label Property shall provide at least 99.9% uptime service availability level ("Service Availability"). Service Availability refers to the Application being available to end Users to use. It does not apply to the Partner's or End User's own internet access and devices.
 9. Service Availability measurement begins on the first day of the first calendar month following the Live Date. Service Availability measurement shall be carried out by White Label Property and is based on the monthly average percentage availability, calculated at the end of each calendar month as the total actual uptime minutes divided by the total possible up time minutes in that month. The measure of Service Availability does not include interruption through Emergency Maintenance or Unscheduled Maintenance, Partner or End User or third party caused outages or disruptions or outages or disruptions attributable in whole or in part to force majeure events within the meaning of clause 19.

10. White Label Property may from time to time produce or develop New Releases of all or part of the Application. White Label Property may apply the New Releases to the Application at no cost to the Partner and without notification to the Partner.
11. White Label Property shall notify the Partner promptly in writing of the availability of any New Version, specifying the fees payable for delivery and installation of the New Version.
12. Technical support to be provided by White Label Property to End Users shall be limited to the provision of written support by e-mail to End Users to provide assistance and advice on the use of the Application.
13. White Label Property may provide first line telephone technical support to the Partner to assist the Partner use the Application and the Website management tools provided by White Label Property to the Partner.
14. If refunds or repayments are requested by end users and accepted as valid by White Label Property and the Partner, as a result of a lack of Service Availability caused by White Label Property (in accordance with clause 4.9), and the Partner and White Label Property have agreed a Refund Policy, the refund amount will be taken in accordance with the Refund Policy.

5. Acceptance

- 5.1 Once White Label Property regards the Application or the Website or Additional Works as being complete it shall deliver to the Partner or grant access to the Partner to the Application or the Website or Additional Works ("Draft Works"). If the Partner notifies White Label Property of any errors in the Draft Works White Label Property shall rectify such errors and resubmit the Draft Works to the Partner. If the Partner wishes to make any amendments or variation, these shall be dealt with in accordance with clause 7.
- 5.2 Subject to clause 5.1, if the Partner accepts the form of the Draft Works, it shall provide White Label Property with written confirmation of its acceptance of the Draft Works.
- 5.3 Acceptance of the Draft Works by the Partner shall occur or shall be deemed to have occurred on whichever is the earliest of:
 - (a) The confirmation by the Partner that it accepts the Draft Works;
 - (b) The Partner granting authority to White Label Property to make the Application or the Website or Additional Works live and available for download by End Users or the employees or third parties of the Partner;
 - (c) The Partner granting White Label Property with authority to place the Application in an App Store or to make the Application or Website accessible to the public (or intended user); or
 - (d) The Partner granting authority to White Label Property to apply the Additional Works to the Application.

6. Payment and Revenue Share

- 6.1 White Label Property may within 30 days of the end of the calendar month in which such Services were provided or such costs or expenses incurred submit an invoice or a payment request to the Partner for any Services or Additional Works or costs or expenses incurred in accordance with this agreement or otherwise.

- 6.2 All invoices or payment requests issued by White Label Property shall include any additional and reasonable out-of-pocket expenses which may be charged by White Label Property on production of reasonable evidence of expenditure to the Partner.
- 6.3 The Partner shall make payment of each invoice or payment requests within 30 days of receipt of the same.
- 6.4 White Label Property shall within 15 days of the end of each calendar month following the Live Date provide the Partner with a statement setting out the calculation of the Revenue Share in accordance with clause 6.5.
- 6.5 The Revenue Share shall be calculated by deducting from the Turnover the Administrative Charges and then by applying the Agreement Proportions to the resulting value.
- 6.6 White Label Property shall pay to the Partner the Partner's Agreed Proportion of Revenue Share within the number of days given in Schedule 2 following the end of the calendar month to which it applies.
- 6.7 Subject to clause 6.8, White Label Property may set off any Revenue Share payable to the Partner against any invoice or request for payment issued by White Label Property which has not been paid within the period specified by clause 6.3.
- 6.8 If either party fails to make any payment due to the other by the due date for payment, then, without limiting other party's remedies, the defaulting party shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. Such party shall pay the interest together with the overdue amount.
- 6.9 Subject to clause 4.3, the parties agreed and acknowledge that the Administrative Charges may be subject to reductions or increases by operation of the Application, the demands of End Users or by third party providers. Each party agrees and accepts that this may effect the value of the Revenue Share and that such changes are not subject to the consent of both parties.
- 6.10 All sums payable under this agreement are exclusive of any applicable VAT and other sales tax which shall be payable at the rate and in the manner prescribed by law against submission of a valid tax invoice.
- 6.11 Subject to the obligation of the Partner to market and promote the Application and the Website in accordance with clause 10, neither party guarantees to the other any minimum level of Revenue Share.

7. Variation and Additional Works

- 7.1 The Partner may request a change to the Specification (if before the Acceptance Date) or the existing form of the Application or the Website (if after the Acceptance Date).
- 7.2 Within 14] Business Days of receipt of such notice, White Label Property shall prepare for the Partner a written estimate for any increase or decrease in the Price or Agreed Proportions or Administrative Charges or additional costs and expenses (as the case may be) to meet or satisfy the requested change.
- 7.3 Within 14 Business Days of receipt of the written estimate referred to in clause 7.2, the Partner shall inform White Label Property in writing of whether or not the Partner accepts the written estimate. If the written estimate is accepted, White Label Property shall not commence work on any additional work until the parties have agreed in writing the work to be completed, specifying, in particular, full details of the work to be completed by White Label Property, the price to be paid by the Partner and details of any changes to the Specification and the Price or Agreed Proportions or Administrative

Charges. The parties hereby agree that the same terms as set out in this agreement shall apply to any additional work agreed between the parties.

8. Ownership

- 8.1 The Partner grants to White Label Property a non-exclusive, royalty-free, perpetual, transferable, sub-licensable, worldwide licence to use the Partner Materials for the purposes of and in connection with this agreement.
- 8.2 The Intellectual Property Rights in the Application and the Website (other than the Open-Source Software, the Third-Party Software or Partner Materials) are, and shall remain, the property of White Label Property (or the appropriate third-party rights-owner(s), if any). The Partner shall use best endeavours to prevent any infringement of the Intellectual Property Rights in the Partner Materials and shall promptly report to White Label Property any such infringement that comes to its attention or any circumstances which may lead to such infringement
- 8.3 The Partner acquires no rights in or to the White Label Property Software, Bespoke Software or Additional Works or the Documents other than those expressly granted by this agreement.
- 8.4 Each party shall do, and execute or arrange for the doing and executing of, each necessary act, document and thing that the other party may consider necessary or desirable to perfect the right, title and interest of that party in and to the Intellectual Property Rights in accordance with this agreement.

9. Software licence and documents

- 9.1 White Label Property grants, subject to the terms of this agreement, the Partner a non-exclusive, revocable, non-transferable, non-sub-licensable licence to use the Licensed Software and the Documents for the specific purposes of this agreement.
- 9.2 The Partner shall comply with the Third-Party Licences and shall indemnify and shall keep indemnified White Label Property against all damages, liabilities, losses, costs and expenses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all other reasonable professional costs and expenses) as a result of any action or claim made against White Label Property for actual or alleged breach of the terms of those licences.
- 9.3 White Label Property may treat the Partner's breach of any Third-Party Licence as a breach of this agreement.
- 9.4 The Partner shall not:
- (a) Modify, create derivative works from or distribute all or any portion of the Licenced Software or Documents except to the extent expressly allowed by this agreement;
 - (b) Attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Licenced Software except to the extent expressly allowed by this agreement or permitted by law;
 - (c) Access all or any part of the Licenced Software or Services or Documents in order to build a product or service which competes with the Application and/ the Services;
 - (d) Attempt to obtain or assist third parties in obtaining access or grant access to the Application or the Website or Licenced Software to achieve any action set out in clauses 9.4(a) to (c);
 - (e) Sub-license, rent, lend, assign or transfer in any other way this agreement or the Licensed Software or Documents to any person without the prior written consent of White Label Property; and

- (f) Give access to the Licensed Software through any network of computers to users who are not employees or agents of the Partner.

10. Advertising and marketing

- 10.1 The Partner shall from no later than the Live Date, promote, advertise and use its best endeavours to;
- (a) Achieve maximum downloads of the Application and the Website;
 - (b) Achieve maximum sales and to maximise other revenue generating activities through Application and the Website;
 - (c) Ensure that all content on the Application is marketed, promoted and offered for sale.
2. The Partner undertakes to ensure that its advertising and marketing of the Application and the Website shall not reduce or diminish the reputation, image and prestige of White Label Property or the Application or the Website.
3. The Partner shall bear all the costs of advertising and promoting the Application and the Website.

11. Site Content

- 11.1 The Partner must use and put in place an End User Licence Agreement, Terms of Use and Privacy Policy and provide such to White Label Property prior to the Live Date. The Partner shall not put in place or use or make changes to the End User Licence Agreement, Terms of Use or Privacy Policy without the prior written consent of White Label Property. The

Partner acknowledges that many terms of the End User Licence Agreement, Terms of Use or Privacy Policy are relevant to White Label Property and its interests.

- 11.2 The Partner shall ensure that any materials it provides for or uploads to the Application or Website are in compliance with the End User Licence Agreement, Terms of Use and Privacy Policy and is at least not content which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous or in breach of or likely to be in breach of any third party Intellectual Property Rights.

- 11.3 The Partner acknowledges that White Label Property has no control over any content placed, submitted, transmitted or created on the Website or the Application by an End User or other user of the Website or Application and that White Label Property does not and has no obligation to monitor the content of the Website or the Application, including users' private inboxes.

- 11.4 White Label Property reserves the right to remove any content from the Website or Application where, in its opinion, it considers such content is or is likely to be content which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous or in breach of any third party Intellectual Property Rights.

- 11.5 The Partner shall indemnify and shall keep indemnified White Label Property against all damages, liabilities, losses, costs and expenses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all other reasonable professional costs and expenses) as a result of any action or claim made against White Label Property as a result of or in connection with:

- (a) Any content provided, upload or submitted by or on behalf of the Partner to the Application or the Website; and
- (b) Any content placed, submitted, transmitted or created on or through the Website or the Application by an End User or other user of the Website or Application.

6. The Partner acknowledges and agrees that the enclosed End User Licence Agreement, Terms of Use and Privacy Policy have been provided by White Label Property to the Partner as an example of terms that it may wish to use in its dealings with End Users. The Partner further acknowledges and agrees that White Label Property does not warrant the fitness for purpose of the enclosed End User Licence Agreement, Terms of Use or Privacy Policy and that the Partner must take its own professional advice as to the adequacy of and the use of such terms provided. White Label Property shall not be liable for any reliance the Partner places upon the use of the enclosed End User Licence Agreement, Terms of Use or Privacy Policy and nor shall White Label Property be liable for any damages, liabilities, losses, costs and expenses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all other reasonable professional costs and expenses) suffered or incurred by the Partner as a result of or in connection with the use of the enclosed End User Licence Agreement, Terms of Use or Privacy Policy or such terms as incorporated by the Partner.
7. The Partner acknowledges and agrees that White Label Property is not under any obligation to and shall not update or provide updated versions or provide any advice in relation to the enclosed End User Licence Agreement, Terms of Use and Privacy Policy.

12. Confidentiality and publicity

12.1 Each party undertakes not to use the Confidential Information otherwise than in the exercise and performance of its rights and obligations under this agreement ("Permitted Purposes").

12.2 In relation to the Partner's Confidential Information:

- (a) White Label Property shall treat as confidential all Confidential Information of the Partner supplied under this agreement. White Label Property shall not divulge any such Confidential Information to any person, except to its own employees and then only to those employees, third parties or sub-contractors who need to know it for the Permitted Purposes and, where required to do so, an App Store. White Label Property shall ensure that its employees are aware of, and comply with, this clause 12; and
- (b) White Label Property may provide any subcontractor authorised under clause 17 with such of the Partner's Confidential Information as it needs to know for the Permitted Purposes.

12.3 In relation to White Label Property' Confidential Information:

- (a) The Partner shall treat as confidential all Confidential Information of White Label Property contained or embodied in the Application, Services and Documents, or otherwise supplied to the Partner during the performance of this agreement;
- (b) The Partner shall not, without the prior written consent of White Label Property, divulge any part of White Label Property' Confidential Information to any person except its own employees who need to know it for the Permitted Purposes; and
- (c) The Partner undertakes to ensure that its employees are made aware, before the disclosure of any part of White Label Property' Confidential Information, that the same is confidential and that they owe a duty of confidence to White Label Property in terms similar to clause 12.3(a) which the Partner shall ensure is adhered to.

12.4 The restrictions imposed by clauses 12.1, 12.2 and 12.3 shall not apply to the disclosure of any Confidential Information which:

- (a) Is now in, or subsequently comes into, the public domain otherwise than as a result of a breach of this clause 12;
- (b) Before any negotiations or discussions leading to this agreement was already known by the receiving party and was obtained or acquired in circumstances under which the receiving party was not bound by any form of confidentiality obligation; or

- (c) Is required by law or regulation to be disclosed to any person who is authorised by law or regulation to receive the same (after consultation, if practicable, with the disclosing party to limit disclosure to such authorised person to the extent necessary).
- 5. If legally permitted to do so, each party shall notify the other party if any of its staff connected with the provision or receipt of the Services becomes aware of any unauthorised disclosure of any Confidential Information and shall afford reasonable assistance to the other party, at that other party's reasonable cost, in connection with any enforcement proceedings which that other party may elect to bring against any person.
- 6. No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties, except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 7. This clause 12 shall remain in full force and effect, despite any termination of the Licence or this agreement.

13. Data protection

- 13.1 The following definitions apply:
 - (a) The terms "data controller", "data processor", "personal data", "data subject" and "processing" bear the respective meanings given them in the Data Protection Act 2018, and "data protection principles" means the eight data protection principles set out in Schedule 1 to that Act;
 - (b) "Data" includes personal data and the data inputted into the information fields of the Application by the End Users; and
 - (c) "Data Protection Laws" means all applicable data protection law and regulations in any jurisdiction.
- 2. White Label Property acknowledges that it will be the data controller of the Data. As between the Partner and White Label Property, the Partner owns the data.
- 3. White Label Property shall:
 - (a) Only carry out processing of any Data in accordance with the Data Protection Act 2018; and
 - (b) Implement appropriate technical and organisational measures to protect any Data against unauthorised or unlawful processing and accidental loss or damage.
- 4. Except as expressly provided otherwise, this agreement does not transfer ownership of, or create any licences (implied or otherwise) in, any Intellectual Property Rights in any Data.
- 5. If the Partner is transferred or granted access to any Data by White Label Property and the Partner is acting as data processor the Partner shall:
 - (a) Only act upon the instructions of White Label Property from time to time when processing the Data and promptly comply with any request from White Label Property requiring it to amend, transfer or delete the Data;
 - (b) Act in accordance with the Data Protection Laws, laws, enactments, regulations, orders, standards and other similar instruments;

- (c) Keep and maintain an accurate record of any processing of Data it carries out and notify White Label Property of any unauthorised process, loss of, damage or corruption or destruction of Data;
 - (d) At the request of White Label Property provide White Label Property with a copy of all Data held by it in the format and on the media specified by White Label Property;
 - (e) Implement appropriate technical and organisational measures to protect any Data against unauthorised or unlawful processing and accidental loss or damage;
 - (f) Not transfer or permit any Data to countries outside of the European Economic Area;
 - (g) Only contact End Users or allow third parties to contact End Users upon prior written consent from White Label Property;
 - (h) Not disclose Data to any data subject or third party other than at the request of White Label Property or as provided or in this agreement;
 - (i) Only process the Data in accordance with this agreement, the Privacy Policy and the End User Licence Agreement; and
 - (j) Ensure that access to the Data is limited to those employees who need access to the Data to meet the obligations of the Partner under this agreement and who are informed of the confidential nature of the Data, have undertaken and successfully completed any training in the Data Protection Laws related to handling personal data and are aware of the Partners obligations under Data Protection Laws and this agreement.
6. The Partner shall notify White Label Property within 3 Business Days of it receiving a request from a data subject for access to that person's Data.
 7. The Partner shall provide White Label Property with full co-operation and assistance in relation to any request made by a data subject to have access that person's Data.
 8. Upon termination of this agreement, the Data shall be transferred to the Partner and the Partner shall own such rights, title and interest in the Data that White Label Property may transfer.
 9. The Partner shall indemnify and keep indemnified White Label Property against all damages, liabilities, losses, costs and expenses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all other reasonable professional costs and expenses) as a result of any action or claim made against White Label Property due to any failure by the Partner or its employees, third parties, contractors or agents to comply with any of its obligations under this clause 13 or following or as a result of any transfer of the Data to the Partner upon termination of this agreement or in accordance with clause 13.8.

14. Warranties

14.1 White Label Property warrants that:

(a) White Label Property' Standard Software is proprietary to White Label Property and that it has the right to license all Intellectual Property Rights in and to the White Label Property' Standard Software for the purposes of this agreement; and (b) It will perform the Services using reasonable care and skill.

14.2 The sole remedies for breach of the warranty in clause 14.1(a) is set out in clause 15.3.

14.3 The warranties given by White Label Property in this agreement do not apply to the extent that any failure to perform its obligation or any failure of the Application, Services is caused by the Partner, End Users, the Partner Materials or an event of force majeure in accordance with clause 19.

14.4 The warranties set out in clause 14.1 are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to this agreement. Except as expressly provided by this agreement White Label Property excludes all conditions, warranties and terms and undertakings express or implied statutory or otherwise in respect of the Application and the Services and shall not be liable for any loss of profit, goodwill or any type of special, indirect or consequential loss even if such loss was reasonably foreseeable or the Partner had been advised of the possibility of incurring the same.

14.5 Any Third Party Software or Open-Source Software provided by White Label Property may be used according to the terms and conditions of the specific licence under which the relevant Third Party Software or Open-Source Software is distributed, but is provided "as is" and expressly subject to the disclaimer in clause 14.3.

14.6 The Partner:

- (a) Warrants and represents to White Label Property that it will at all times comply with all applicable laws and regulations with respect to its activities under this agreement and any part of the Services or Application;
- (b) Warrants and represents that it is and will remain the sole and exclusive originator of the Partner Materials;
- (c) Warrants and represents that the Partner Materials or anything requested in the Specification or otherwise will not contain any matter which is injurious to White Label Property or any other person or which is scandalous, libellous, obscene or otherwise in a manner unlawful;
- (d) Warrants and represents that there is no litigation, proceeding or claim pending or threatened against the Partner or any other party relating to the Partner Materials;
- (e) Warrants and represents that any information or data it provides shall be accurate and complete and provided in a timely manner;
- (f) Shall not access, store, distribute or transmit or cause, suffer or allow to be accessed, stored, distributed or transmitted any Virus; and
- (g) Shall indemnify White Label Property against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by White Label Property arising out of any non-compliance by the Partner with clauses 14.6(a) to (f)).

14.7 Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter into and perform this agreement and that those signing this agreement are duly authorised to bind the party for whom they sign.

15. Intellectual property rights indemnity

15.1 Subject to the application of clauses 15.2 and 16, White Label Property shall indemnify the Partner against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Partner arising out of or in connection with any claim made against the Partner for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with use of the White Label Property' Standard Software, provided that, if any third party makes a claim, or notifies an intention to make a claim, against the Partner which may reasonably be considered likely to give rise to a liability under this indemnity ("Claim"), the Partner:

- (a) As soon as reasonably practicable, gives written notice of the Claim to White Label Property, specifying the nature of the Claim in reasonable detail;
- (b) Does not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of White Label Property;

- (c) Gives White Label Property and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Partner, so as to enable White Label Property and its professional advisers to examine them and to take copies (at White Label Property' expense) for the purpose of assessing the Claim; and
 - (d) Shall take such action as White Label Property may reasonably request to avoid, dispute, compromise or defend the Claim.
- 15.2 White Label Property shall have no liability for any claim of infringement of Intellectual Property Rights:
 - (a) Caused or contributed to by the Partner's or End Users' or the Partner's employees, third parties or contractors use of the Application;
 - (b) Based on use of any release or version of any part of the Application other than the latest release or version supplied or made available by White Label Property, if such claim could have been avoided by the use of such supplied release or version; or
 - (c) Where the claim for infringement arises in respect of a feature of the Application that was specified by the Partner or in relation to the use of the Partner Materials in accordance with this agreement.
- 15.3 If use of the Application or receipt of the benefit of the Services becomes, or in the opinion of White Label Property is likely to become, the subject of any such Claim, White Label Property may at its sole discretion and expense and in any combination and using reasonable endeavours:
 - (a) Replace all or part of the Application so that it ceases to infringe;
 - (b) Modify the Application or any part of it so that it ceases to be infringing;
 - (c) Procure for the Partner a right to continue using, developing, modifying or maintaining the Application (or any part of it) in accordance with the purposes of this agreement; or
 - (d) Terminate this agreement or any part of it immediately on notice to the Partner.
- 4. Notwithstanding any other provision in this agreement, clause 15.1 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession, use, development, modification or maintenance of any Open-Source Software or through the breach of any Third-Party Licence by or requested by the Partner.
- 5. If a payment due from White Label Property under this clause 15 is subject to tax (whether by way of direct assessment or withholding at its source), the Partner shall be entitled to receive from White Label Property such amounts as shall ensure that the net receipt, after tax, to the Partner in respect of the payment is the same as it would have been were the payment not subject to tax.
- 6. Nothing in this clause 15 shall restrict or limit the Partner's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.
- 7. The Partner shall indemnify and keep indemnified White Label Property against all damages, liabilities, losses, costs and expenses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all other reasonable professional costs and expenses) as a result of any action or claim made against White Label Property for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with any use of the Partner Materials.

16. Limitation of liability

- 16.1 Neither party excludes or limits liability to the other party for fraud or fraudulent misrepresentation, death or personal injury caused by negligence, a breach of any terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982, any matter for which it would be unlawful for the parties to exclude liability.
- 16.2 White Label Property shall not in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
- (a) Any loss (whether direct or indirect) of profits or anticipated profits, business, business opportunities, revenue, turnover, reputation or goodwill;
 - (b) Any loss or corruption (whether direct or indirect) of data or information;
 - (c) Loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
 - (d) Any loss or liability (whether direct or indirect) under or in relation to any other contract.
- 16.3 Subject to clauses 16.1 and 16.2, White Label Property' total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement or any collateral contract shall be limited to the Price paid by the Partner to White Label Property during the 12 month period immediately before the date on which the cause of action first arose or, if the cause of action arose during any period before 12 months had elapsed from the Commencement Date, during that shorter period.

17. Assignment and subcontracting

- 17.1 The Partner shall not assign, transfer, mortgage, charge, subcontract, licence, sub-licence, declare a trust of or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of White Label Property.
- 17.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 17.3 The parties hereby acknowledge and agree and the Partner consents to White Label Property' use and engagement of any App Store or any third party Hosting Service provider or gateway service provider to provide the Services without the need to obtain prior written consent from the Partner. At White Label Property sole discretion White Label Property may change any third party provider or amend the terms of engagement with any App Store without requiring consent from the Partner.

18. Termination and Duration

- 18.1 This agreement shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 18.2 or otherwise.
- 18.2 Either party may terminate this agreement by giving the other not less than 30 days notice to terminate expiring no earlier than 6 months after the Live Date.
- 18.3 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may at any time terminate this agreement and/or the Services or any part of it with immediate effect by giving written notice to the other party if:
- (a) The other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;

- (b) The other party commits a material breach of any term of this agreement (other than failure to pay any amounts due under this agreement) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - (c) The other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
 - (d) One of the following occurs: (i) a party fails to pay, or such party acknowledges that it is unable to pay, its debts as they become due; (ii) the filing of an application for or the consenting to or directing the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of all or substantially all of a party's property, whether tangible or intangible, wherever located; (iii) the making of a general assignment of a party's assets for the benefit of creditors; or (iv) the filing of or the intent to file a petition by or on behalf of a party seeking to take advantage of any other law providing for the relief of debtors; or
 - (e) A party shall commit any act of bankruptcy, shall have a receiving order made against it, shall make or negotiate for any composition or arrangement with or assignment for the benefit of its creditors or if a party being a body corporate, shall present a petition or have a petition presented by a creditor for its winding up or shall enter into any liquidation (other than for the purpose of reconstruction or amalgamation), shall call any meeting of its creditors, shall have a receiver of all or any of its undertakings or assets appointed, or shall cease to carry on business; or
 - (f) Any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 18.3(d) and (e);
 - (g) The other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
 - (h) Any warranty given in clause 14 is found to be untrue or misleading.
 - (i) Upon termination, all data, contact details and relationships held by the partner shall be passed to White Label Property within 7 days of termination.
4. The parties acknowledge and agree that any breach of clauses 3.4, 6, 9, 10, 12 and 13 shall constitute a material breach of a term for the purposes of this clause.
 5. Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement, including clauses 1, 6, 8, 9, 12, 13, 15, 16, 17, 20 and 21 shall remain in full force and effect.
 6. Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
 7. Notwithstanding its obligations in this clause 18, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other party's Confidential Information, it shall notify the other party in writing of such retention, giving details of the documents and/or materials that it must retain.
 8. On termination of this agreement for any reason and subject to any written agreement between the parties, the Partner's right to receive and White Label Property' obligation to perform the Services shall cease automatically and each party shall as soon as reasonably practicable:
 - (a) Return, destroy or permanently erase (as directed in writing by the other party) any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the other party containing, reflecting, incorporating or based on Confidential Information belonging to the other party. If required by the other party, it shall provide written evidence (in the form of a letter signed by its directors) no later than 14 days after termination of this agreement that these

have been destroyed and that it has not retained any copies of them (except for one copy that it may use for audit purposes only and subject to the confidentiality obligations in clause 12);

- (b) Permanently delete any proprietary software belonging to the other party and not the subject of a current licence granted by the other party from its IT network and hard disks or other storage means associated with any computer equipment owned or controlled by the other party. Each party shall provide written confirmation (in the form of a letter signed by its directors) no later than 14 days after termination of this agreement that this software has been deleted; and
 - (c) Subject to clause 18.8(a), return all of the other party's equipment and materials, failing which, the other party may enter the relevant premises and take possession of them, provided, regarding the Partner's rights under this clause 18.8(c), that the Partner has (if appropriate) paid White Label Property in full for such equipment and materials. Until these are returned or repossessed, the party in possession shall be solely responsible for their safe-keeping.
9. On termination of this agreement for any reason, the Partner shall immediately pay any outstanding unpaid invoices or payment requests and interest due to White Label Property and White Label Property shall submit invoices or payment requests for any Services that it has supplied, but for which no invoice or payment requests has been submitted, and the Partner shall pay these invoices or payment requests immediately on receipt.
10. Within 15 days of termination of this agreement for any reason White Label Property shall confirm to the Partner the Revenue Share payable to the Partner up to the date of termination and, subject to White Label Property' right in clause 6.7, shall pay such Revenue Share.
11. On termination of the agreement for any reason the Licence shall also terminate.
12. Both parties agree to use reasonable endeavours to reduce the impact on end users and the service in the event this contract is terminated and the Partner wishes to continue operating the service.

19. Force majeure

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 3 months, the party not affected may terminate this agreement by giving 30 days' written notice to the affected party.

20. Notices

- 20.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:
- (a) Delivered by hand or by pre-paid first-class post or other next Business Days delivery service at its registered office (if a company) or its principal place of business (in any other case) or such other address as notified to either party in writing from time to time; or
 - (b) Sent by email to the address specified by either party from time to time.
- 20.2 Any notice shall be deemed to have been received:
- (a) If delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

- (b) If sent by pre-paid first-class post or other next Business Days delivery service, at 10.00 am on the second Business Day after posting or at the time recorded by the delivery service; or
- (c) If sent by email, at 10.00 a.m. on the next Business Day after transmission.

20.3 This clause 20 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

21. General

21.1 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

21.2 Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

21.3 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

21.4 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

21.5 Subject to clauses 6.9 and 17.3, no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

21.6 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 21.6 shall not affect the validity and enforceability of the rest of this agreement.

21.7 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

21.8 A person who is not a party to this agreement shall not have any rights under the Contracts (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.

21.9 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement is not subject to the consent of any person that is not a party to this agreement.

21.10 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

- 21.11 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 21.12 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.
- 21.13 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).