

Terms & Conditions Published 10 September 2020

1. Definitions 1.1 In this Agreement, except to the extent expressly provided otherwise: “Account” means an account enabling a person to access and use the Web Application; “Agreement” means this agreement including any Schedules, and any amendments to this Agreement from time to time; “Confidential Information” means all knowledge, information or materials of whatever nature and in whatever form (whether oral or written) relating to the disclosing party made available to the receiving party or otherwise received by the receiving party before, on and/or after the Effective Date and all analyses and other documents prepared by or for the receiving party which contain or otherwise reflect any such knowledge, information or materials. Confidential Information includes the terms of this Agreement and knowledge, information and materials relating to:

(i) any and all Intellectual Property Rights; (ii) the content of the Reports; and (iii) any other information that should be reasonably understood to be of a confidential nature “Merchant” means the legal entity that registers for a premium non-Individual-User Account by completing the necessary details and information required through sos.membership-benefits.uk “Data Protection Laws” means all applicable laws relating to the processing of Personal Data including, while it is in force and applicable to Merchant Personal Data, the General Data Protection Regulation (Regulation (EU) 2016/679); “Effective Date” means the date upon which the Merchant or Individual User registers for an account and acknowledges and accepts the terms of this Agreement; “Fees” means the amount payable by the Merchant for the Web Application as is expressly set out on a tiered basis and which can be found and reviewed on the Provider’s website (sos.membership-benefits.uk) prior to registering for an Account; “Force Majeure Event” means an event, or a series of related events, that is outside the reasonable control of the party affected (including but not limited to failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars); “Individual User” means the individual natural person who uses the Web Application, “Individual User Activity” means, in relation to an Individual User, the specific details and data that is made available to the Merchant by the Provider via the Web Application as Reports; “Intellectual Property Rights” means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off; “Maintenance Services” means the general maintenance of the Web Application, and the application of Updates and Upgrades; “Parties” means the Merchant, the Individual User and the Provider; “Personal Data” has the meaning given to it in the Data Protection Laws from time to time; “Provider” means Orangutan TM Ltd, Registered in England No. 4187854 at Lodene Southfields Road, Woldingham CR3 7BG; “Reports” means the digital and downloadable reporting made available by the Provider to the Merchant in respect of Individual User Activity.

“Schedule” means any schedule attached to the main body of this Agreement; “Services” means any services that the Provider provides to the Merchant, or has an obligation to provide to the Merchant, under this Agreement and as further set out at sos.membership-benefits.uk and/or as agreed and signed in writing between the parties; “Support Services” means standard support in relation to the use of the Web Application by the Merchant in accordance with the terms of this Agreement; “Term” means the term of this Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2; “Update” means a minor version update to the Web Application; “Upgrade” means a major version upgrade of the Web Application.

“User Personal Data” means the Individual User’s personal data that is processed by the Merchant on behalf of the Provider in relation to this Agreement.

“Web Application” means the Share-Me web-based application which will be made available by the Provider to the Merchant as a service via the internet in accordance with this Agreement and which includes the application, database, system and server software used to provide the application; “Web Application Defect” means a defect, error or bug in the Web Application having a material adverse effect on the operation, functionality or performance of the Web Application but excluding any defect, error or bug caused by or arising as a result of:

(a) any act or omission of the Merchant or Individual User or any person authorised by the Merchant or Individual User to use the Web Application; (b) any use of the Web Application contrary to the Documentation, whether by the Merchant or Individual User or by any person authorised by the Merchant or Individual User; (c) a failure of the Merchant or Individual User to perform or observe any of its obligations in this Agreement; and/or (d) an incompatibility between the Web Application and any other system, network, application, program, hardware or software not specified as compatible in the Web Application Specification; “Web Application Specification” means the specification for the Web Application as further set out at sos.membership-benefits.uk

2. Term 2.1 This Agreement shall come into force upon the Effective Date.

2.2 This Agreement shall continue indefinitely subject to termination in accordance with Clause 13 or any other provision of this Agreement.

3. Web Application 3.1 The Provider shall ensure that the Web Application will automatically generate an Account for the Merchant or Individual User and provide to the Merchant or Individual User login details for that Account.

3.2 The Provider hereby grants to the Merchant or Individual User a non-exclusive and revocable licence to use the Web Application in accordance with the Documentation and the further terms of this Agreement during the Term.

3.3 The licence granted by the Provider to the Merchant or Individual User under Clause 3.2 is subject to the Web Application only being used by appropriate senior management, officers and/or employees of the Merchant.

3.4 Except to the extent expressly permitted in this Agreement or required by law on a nonexcludable basis, the licence granted by the Provider to the Merchant under Clause 3.2 is subject to the following prohibitions:

(a) the Merchant must not sub-license its right to access and use the Web Application;

(b) the Merchant must not permit any unauthorised person to access or use the Web Application; (c) the Merchant must not use the Web Application to provide services to third parties; (d) the Merchant must not republish or redistribute any content or material from the Web Application (which includes any and all Reports); (e) the Merchant must not make any alteration to the Web Application; and (f) the Merchant must not use any sub-processors of its obligations towards User Personal Data as further outlined in Clause 8 of this Agreement.

3.5 The Merchant shall use best endeavours, including enhanced security measures relating to Account access details, to ensure that no unauthorised person may gain access to the Web Application using an Account.

3.6 The Provider shall use reasonable endeavours to maintain the availability of the Web Application to the Merchant but does not guarantee 100% uptime and/or availability. The Merchant shall not be liable to the Provider for any claim arising from the failure of the Web Application to be live, fully functional and operational.

3.7 The Merchant must not use the Web Application in any way that causes, or may cause, damage to the Web Application or impairment of the availability or accessibility of the Web Application .

3.8 The Merchant must not use the Web Application:

(a) in any way that is unlawful, illegal, fraudulent or harmful; or (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

3.9 For the avoidance of doubt, the Merchant has no right to access the software code (including object code, intermediate code and source code) of the Web Application, either during or after the Term.

3.10 The Provider may suspend the provision of the Web Application if any amount due to be paid by the Merchant to the Provider under this Agreement is overdue.

4. Maintenance Services 4.1 The Provider shall provide the Maintenance Services and Support Services during the Term to the Merchant.

4.2 The Provider shall where practicable give to the Merchant prior written notice of scheduled Maintenance Services that are likely to affect the availability of the Web Application or are likely to have a material negative impact upon the Web Application , without prejudice to the Provider's other notice obligations under this main body of this Agreement.

4.3 The Provider shall give to the Merchant prior written notice of the application of an Upgrade to the Platform.

4.4 The Provider shall provide the Maintenance Services and the Support Services with reasonable skill and care.

5. No assignment of Intellectual Property Rights 5.1 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Merchant, or from the Merchant to the Provider.

6. Fees 6.1 The Merchant shall pay the Fees to the Provider in accordance with this Agreement.

6.2 All amounts stated in or in relation to this Agreement are, unless the context requires otherwise stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Merchant to the Provider.

6.3 The Provider may elect to vary the Fees by giving to the Merchant not less than 30 days' written notice of the variation.

6.4 The Fees are payable in advance through the purchase of credits via the Account section of the Web Application, via the online method(s) as made available to the Merchant (and as may be changed from time to time).

7. Confidentiality 7.1 Each party shall at all times keep strictly confidential all Confidential Information.

7.2 Neither party shall disclose to any third party without the express written consent of the other party any Confidential Information obtained from the other party or use Confidential Information otherwise than as contemplated under this Agreement.

7.3 The obligations of confidentiality set out in Clause 7.2 shall not apply or (as the case may be) shall cease to apply to Confidential Information solely to the extent that such Confidential Information:

7.3.1 has lawfully come into the public domain other than by breach of this Clause 7 or any other duty of confidence; and/or 7.3.2 is obtained from a third party without breach of this Clause 7 or any other duty of confidence; and/or 7.3.3 is disclosed to the professional advisers of either party, provided that such advisers are under an obligation of confidentiality no less onerous than that contained in this Clause 7; and/or 7.3.4 is required to be disclosed by a government body or court of competent jurisdiction or by operation of law 7.4 Without prejudice to any other rights or remedies that the disclosing party may have, the receiving party acknowledges and agrees that the disclosing party shall, without proof of special damage, be entitled to an injunction, specific performance or other equitable relief for any threatened or actual breach of the provisions of this Clause 7 in addition to any damages or other remedy to which it may be entitled.

8. Data protection 8.1 Each party shall comply with its obligations and requirements pursuant to the Data Protection Laws and the terms of this Agreement.

8.2 The Provider is the data controller (as defined in the Data Protection Laws) of the User Personal Data and the Merchant shall be a processor of the User Personal Data. The Merchant shall receive the User Personal Data for the sole and only reason to satisfy its legal obligations pursuant to government-stated reporting initiatives.

8.3 The Provider shall only supply to the Merchant, and the Merchant shall only process, in each case under or in relation to this Agreement, the User Personal Data of data subjects falling within the categories specified in Part 1 of Schedule 1 (Data processing information) and of the types specified in Part 2 of Schedule 1 (Data processing information); and the Merchant shall only process the User Personal Data for the purposes specified in Part 3 of Schedule 1 (Data processing information), subject specifically to the type of Account that the Merchant benefits from which accords with the extent of the User Personal Data processed.

8.4 The Merchant shall only process the User Personal Data during the Term subject to the other provisions of this Clause 8.

8.5 The Merchant shall only process the User Personal Data on the documented instructions of the Merchant (including with regard to prohibited transfers of the User Personal Data to any place outside the European Economic Area), as set out in this Agreement.

8.6 The Merchant shall ensure that persons authorised to process the User Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality. The Merchant shall ensure that only a limited number of persons shall be authorized to process the User Personal Data, such persons being officers of the company or members of senior management.

8.7 The Provider and the Merchant shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the User Personal Data. The Merchant commits to providing the same level of security that it applies to confidential and/or sensitive data that it holds in respect of its own business. The Merchant agrees that the Provider may specify technical, informational security and other security-related requirements that the Merchant must follow when processing the User Personal Data. The Merchant acknowledges and agrees to only download Reports where deemed strictly necessary, to ensure that no hard-copy of Reports are produced, and that all digital copies of Reports are adequately and securely protected (such as by way of password or

8.8 The Merchant must not engage any third party to process the User Personal Data without the prior specific written authorisation of the Provider.

8.9 The Merchant shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Provider with the fulfilment of the Provider's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.

8.10 The Merchant shall assist the Provider in ensuring compliance with the obligations relating to the security of processing of personal data, the notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject, data protection impact assessments and prior consultation in relation to high risk processing under the Data Protection Laws. The Merchant shall report any Personal Data breach relating to the User Personal Data to the Provider within immediately following the Merchant becoming aware of the breach.

8.11 The Merchant shall make available to the Provider all information and evidence necessary to demonstrate the compliance of the Merchant with its obligations under this Clause 8 and the Data Protection Laws.

8.12 The Merchant shall, at the choice of the Provider, delete or return all of the User Personal Data to the Provider after the provision of services relating to the processing, and shall delete existing copies save to the extent that applicable law requires storage of the relevant User Personal Data for a period of time.

8.13 The Merchant shall allow for and contribute to audits, including inspections, conducted by the Provider or another auditor mandated by the Provider.

8.14 If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under this Agreement, then the parties shall use their best endeavours promptly to agree such variations to this Agreement as may be necessary to remedy such non-compliance.

9. Warranties 9.1 The Provider warrants to the Merchant that:

(a) the Provider has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement; (b) the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under this Agreement; and (c) the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement.

9.2 The Provider warrants to the Merchant that the Web Application will conform in all material respects with the Web Application Specification.

9.3 The Provider warrants to the Merchant that the Web Application, when used by the Merchant in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person.

9.4 If the Provider reasonably determines, or any third party alleges, that the use of the Web Application by the Merchant in accordance with this Agreement infringes any person's Intellectual Property Rights, the Provider may at its own cost and expense:

(a) modify the Web Application in such a way that they no longer infringe the relevant Intellectual Property Rights; or (b) procure for the Merchant the right to use the Web Application in accordance with this Agreement.

9.5 The Merchant warrants to the Provider that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement, and that it shall comply with all applicable legal and regulatory requirements applying to the exercise of the Merchant's rights and the fulfilment of the Merchant's obligations under this Agreement.

9.6 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

10. Acknowledgements and warranty limitations 10.1 The Merchant acknowledges that software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Web Application will be wholly free from defects, errors and bugs.

10.2 The Merchant acknowledges that software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Web Application will be entirely secure.

10.3 The Merchant acknowledges that the Provider will not provide any professional advice under this Agreement or in relation to the Web Application; and the Provider does not warrant or represent that the Web Application or the use of the Web Application by the Merchant will not give rise to any legal liability on the part of the Merchant or any other person.

11. Limitations and exclusions of liability 11.1 Nothing in this Agreement will:

(a) limit or exclude any liability for death or personal injury resulting from negligence; (b) limit or exclude any liability for fraud or fraudulent misrepresentation; (c) limit any liabilities in any way that is not permitted under applicable law; or (d) exclude any liabilities that may not be excluded under applicable law.

11.2 The limitations and exclusions of liability set out in this Clause 11 and elsewhere in this

Agreement:

(a) are subject to Clause 11.1; and (b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

11.3 The Provider shall not be liable to the Merchant in respect of:

(a) any losses arising out of a Force Majeure Event; and/or (b) any loss of profits or anticipated savings; and/or (c) any loss of revenue or income; and/or (d) any loss of use or production; and/or (e) any loss of business, contracts or opportunities; and/or (f) any loss or corruption of any data, database or software and/or (g) any special, indirect or consequential loss or damage.

11.4 The liability of the Provider to the Merchant under this Agreement in respect of any event or series of related events shall not exceed the greater of the total amount paid and payable by the Merchant to the Provider under this Agreement in the 12 months period preceding the commencement of the event or events.

11.5 The Merchant shall fully indemnify and hold harmless the Provider against all liabilities, costs, expenses, damages and all other professional costs and expenses suffered or incurred by the Provider arising out of or in connection with:

1. any breach of the Merchant's obligations and/or warranties pursuant to this Agreement;
2. non-performance and/or negligent performance of the Merchant's obligations pursuant to this Agreement; and 3. any claim arising from the Merchant's obligations under Data Protection Laws and, further specifically, the Merchant's obligations as set out in Clause 8 of this Agreement in respect of its processing the End User Data.

12. Force Majeure Event 12.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

12.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:

(a) promptly notify the other; and (b) inform the other of the period for which it is estimated that such failure or delay will continue.

12.3 A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

13. Termination 13.1 Either party may terminate this Agreement by giving notice to the other party. For the avoidance of doubt, the Provider shall not issue any refund of the Fees paid by the Merchant. The Merchant shall have full access to its Account up to the date that the next monthly payment for the Fees would have been due and payable. After this date, the Merchant shall no longer have any access to its Account and/or the Web Application.

13.2 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if the other party commits a material breach of this Agreement.

13.3 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

(a) the other party:

(i) is dissolved; (ii) ceases to conduct all (or substantially all) of its business; (iii) is or becomes unable to pay its debts as they fall due; (iv) is or becomes insolvent or is declared insolvent; or (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors; (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party; (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement).

14. Effects of termination 14.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): 5, 7, 8, 11, 17.

14.2 Except to the extent that this Agreement expressly provides otherwise, the termination of this Agreement shall not affect the accrued rights of either party.

15. Notices 15.1 Any notice from one party to the other party under this Agreement must be given by email. The Provider shall use the email address associated with the Account and the Merchant must use the following email address for the Provider: info@share-me.

uk 16. Subcontracting 16.1 The Provider may subcontract any of its obligations under this Agreement provided that it shall remain responsible to the Merchant for the performance of any subcontracted obligations.

16.2 The Merchant shall not subcontract any of its obligations under this Agreement.

17. General 17.1 No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.

17.2 If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

17.3 This Agreement may be varied by the Provider. If the Merchant fails to accept any such variation, then this Agreement shall immediately terminate. The Merchant, in this instance, is not entitled to any refund of the Fees or any other remedy pursuant to this Agreement.

17.4 The provider may without the prior written consent of the Merchant assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.

17.5 This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.

17.6 This Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

17.7 This Agreement shall be governed by and construed in accordance with the law of England and Wales.

17.8 The courts of England and Wales shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

18. Interpretation 18.1 In this Agreement, a reference to a statute or statutory provision includes a reference to:

(a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and (b) any subordinate legislation made under that statute or statutory provision.

18.2 The Clause headings do not affect the interpretation of this Agreement.

18.3 In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

Schedule 1 1. Categories of data subject Individual Users 2. Types of User Personal Data Identification and contact (name, email address, telephone number) 3. Purposes of processing As necessary to provide the services pursuant to this Agreement 4. Subprocessors of User Personal Data This is strictly prohibited.

19.1 Awards are as described and subject to change without notice. The provider reserves the right to substitute awards with ones of similar nature or value. There is no cash alternative.

19.2 Awards are subject to the providers terms and conditions, risk assessments and health and safety policies. The provider and the merchants accept no liability for any accident or damage to persons or property as a result of the resulting award selected.

19.3 No liability is accepted, where such may exist for any income tax payable on awards - if earned as part of your employment you should make a declaration on your tax return at a cost to provider of £36.

19.4 Employees should get their line managers permission prior to claiming any award.