

TERMS AND CONDITIONS

1. Definitions

1.1 In this Agreement, except to the extent expressly provided otherwise:

"Access Credentials" means [the usernames, passwords and other credentials enabling access to the Hosted Services, including both access credentials for the User Interface and access credentials for the API]

"Agreement" means this agreement including any Schedules, and any amendments to this Agreement from time to time

"API" means [the application programming interface for the Hosted Services defined by the Provider and made available by the Provider to the Customer];

"Business Day" means any weekday other than a bank or public holiday in England

"Business Hours" means the hours of 09:00 to 17:00 GMT/BST on a Business Day

"Charges" means the following amounts:

- (a) the amounts specified in Section 2 of Schedule 1 (Hosted Services particulars)
- (b) such amounts as may be agreed in writing by the parties from time to time; and

"Customer Confidential Information" means:

- (a) any information disclosed by [or on behalf of]the Customer to the Provider [during the Term] OR [at any time before the termination of this Agreement] (whether disclosed in writing, orally or otherwise) that at the time of disclosure:
 - (i) was marked or described as "confidential"; or
 - (ii) should have been reasonably understood by the Provider to be confidential; and
- (b) the Customer Data

"Customer Data" means all data, works and materials: uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Customer (but excluding analytics data relating to the use of the Platform and server log files);

"Customer Personal Data" means any Personal Data that is processed by the Provider on behalf of the Customer in relation to this Agreement, but excluding *personal data* with respect to which the Provider is a data controller

"Data Protection Laws" means all applicable laws relating to the processing of Personal Data including, while they are in force and applicable, the United Kingdom's Data Protection Act 2018 and the General Data Protection Regulation (Regulation (EU) 2016/679)

"Documentation" means the documentation for the Hosted Services produced by the Provider and delivered or made available by the Provider to the Customer.

"Effective Date" means the date of execution of this Agreement

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including 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)

"Hosted Services" means name of hosted services which will be made available by the Provider to the Customer as a service via the internet in accordance with this Agreement

"Hosted Services Defect" means a defect, error or bug in the Platform having an adverse effect on the appearance, operation, functionality or performance of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the Customer or any person authorized by the Customer to use the Platform or Hosted Service.
- (b) any use of the Platform or Hosted Services contrary to the Documentation, whether by the Customer or by any person authorized by the Customer
- (c) a failure of the Customer to perform or observe any of its obligations in this Agreement
- (d) an incompatibility between the Platform or Hosted Services and any other system, network, application, program, hardware or software not specified as compatible in the Hosted Services Specification

"Hosted Services Specification" means the specification for the Platform and Hosted Services in the Documentation

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs)

"Mobile App" means the mobile application that is made available by the Provider through the *Google Play Store* and the *Apple App Store*

"Personal Data" has the meaning given to it in the Data Protection Laws applicable in the United Kingdom from time to time

"Platform" means the platform managed by the Provider and used by the Provider to provide the Hosted Services, including the application and database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the computer hardware on which that application, database, system and server software is installed

"Schedule" means any schedule attached to the main body of this Agreement

"Services" means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under this Agreement

"Support Services" means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services, but shall not include the provision of training services

"Supported Web Browser" means the current release from time to time of Microsoft Edge, Mozilla Firefox, Google Chrome or Apple Safari or any other web browser that the Provider agrees in writing shall be supported

"Term" means the term of this Agreement, commencing in accordance with Clause 3.1 and ending in accordance with Clause 3.2 and

"User Interface" means the interface for the Hosted Services designed to allow individual human users to access and use the Hosted Services.

2. Credit

- 2.1 This document was created using a template from SEQ Legal (<https://seqlegal.com>).

3. Term

- 3.1 This Agreement shall continue in force until the expiry date, at the beginning of which this Agreement shall terminate automatically subject to termination in accordance with Clause 18 or any other provision of this Agreement.

4. Hosted Services

- 4.1 The Provider shall provide to the Customer the Access Credentials necessary to enable the Customer to access and use the Hosted Services.
- 4.2 The Provider hereby grants to the Customer a license to use the Hosted Services for the internal business purposes of the Customer in accordance with the Documentation during the Term.
- 4.3 The license granted by the Provider to the Customer under Clause 4.2 is subject to the following limitations:
- (a) the User Interface may only be used through a Supported Web Browser
 - (b) the User Interface may only be used by the officers, employees, agents and subcontractors of the Customer
 - (c) the User Interface may only be used by the named users identified in Schedule 1 (Hosted Services particulars) providing that the Customer may change, add or remove a designated named user in accordance with the user change procedure defined by the Hosted Services
 - (d) the User Interface must not be used at any point in time by more than the number of concurrent users specified in Schedule 1 (Hosted Services particulars), providing that the Customer may add or remove concurrent user licenses in accordance with the license change procedure defined by the Hosted Services
- 4.5 The Customer shall implement and maintain reasonable security measures relating to the Access Credentials to ensure that no unauthorized person or application may gain access to the Hosted Services by means of the Access Credentials.
- 4.6 The Provider shall use reasonable endeavour to maintain the availability of the Hosted Services to the Customer but does not guarantee 100% availability.
- 4.7 For the avoidance of doubt, downtime caused directly or indirectly by any of the following shall not be considered a breach of this Agreement:
- (a) a Force Majeure Event
 - (b) a fault or failure of the internet or any public telecommunications network
 - (c) a fault or failure of the Customer's computer systems or networks
 - (d) any breach by the Customer of this Agreement
 - (e) scheduled maintenance carried out in accordance with this Agreement.
- 4.8 The Customer must comply with Schedule 2 (Acceptable Use Policy), and must ensure that all persons using the Hosted Services with the authority of the Customer or by means of the Access Credentials comply with Schedule 2 (Acceptable Use Policy).
- 4.9 The Customer must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.
- 4.10 The Customer must not use the Hosted Services in any way that uses excessive Platform resources and as a result is liable to cause a material degradation in the services provided by the Provider to its other customers using the Platform; and the Customer acknowledges that the Provider may use reasonable technical measures to limit the use of Platform resources by the Customer for the purpose of assuring services to its customers generally.
- 4.11 The Customer must not use the Hosted Services:
- (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.

4.12 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.

4.13 The Provider may suspend the provision of the Hosted Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider has given to the Customer at least 7 days' written notice, following the amount becoming overdue, of its intention to suspend the Hosted Services on this basis.

5. Scheduled maintenance

5.1 The Provider may from time to time suspend the Hosted Services for the purposes of scheduled maintenance to the Platform, providing that such scheduled maintenance must be carried out in accordance with this Clause 5.

5.2 The Provider shall where practicable give to the Customer at least 5 Business Days' prior written notice of scheduled maintenance that will, or is likely to, affect the availability of the Hosted Services.

5.3 The Provider shall ensure that, during each calendar month, the aggregate period during which the Hosted Services are unavailable as a result of scheduled maintenance or negatively affected by scheduled maintenance to a material degree, does not exceed 12 hours.

6. Support Services

6.1 The Provider shall provide the Support Services to the Customer during the Term.

6.2 The Provider shall make available to the Customer a helpdesk in accordance with the provisions of this main body of this Agreement.

6.3 The Provider shall provide the Support Services with reasonable skill and care

6.4 The Customer may use the helpdesk and the Customer must not use the helpdesk for any other purpose.

6.5 The Provider shall respond promptly to all requests for Support Services made by the Customer through the helpdesk.

6.6 The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider has given to the Customer at least 14 days' written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.

7. Customer Data

7.1 The Customer hereby grants to the Provider a non-exclusive license to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under this Agreement.

7.2 The Customer warrants to the Provider that the Customer Data will not infringe the Intellectual Property Rights or other legal rights of any person in any jurisdiction and under any applicable law.

8. Mobile App

8.1 The parties acknowledge and agree that the use of the Mobile App, the parties' respective rights and obligations in relation to the Mobile App and any liabilities of either party arising out of the use of the Mobile App shall be subject to separate terms and conditions, and accordingly this Agreement shall not govern any such use, rights, obligations or liabilities.

9. No assignment of Intellectual Property Rights

9.1 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

10. Charges

- 10.1 The Customer shall pay the Charges to the Provider in accordance with this Agreement.
- 10.2 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 Customer to the Provider.
- 10.4 The Provider may elect to vary any element of the Charges by giving to the Customer not less than 14 days' written notice of the variation if no such variation has occurred, since the date of execution of this Agreement, in the Retail Prices Index published by the UK Office for National Statistics.

11. Payments

- 11.1 The Provider shall issue invoices for the Charges to the Customer in advance of the period to which they relate.
- 11.2 The Customer must pay the Charges to the Provider following the receipt of an invoice issued in accordance with this Clause 11, providing that the Charges must in all cases be paid before the commencement of the period to which they relate.
- 11.3 The Customer must pay the Charges by using such payment details as are notified by the Provider to the Customer.

12. Provider's confidentiality obligations

- 12.1 The Provider must:
- (a) keep the Customer Confidential Information strictly confidential.
 - (b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent.
 - (c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care
 - (d) Always act in good faith in relation to the Customer Confidential Information
- 12.2 Notwithstanding Clause 12.1, the Provider may disclose the Customer Confidential Information to the Provider's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Customer Confidential Information for the performance of their work with respect to this Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the Customer Confidential Information.
- 12.3 This Clause 12 imposes no obligations upon the Provider with respect to Customer Confidential Information that:
- (a) is known to the Provider before disclosure under this Agreement and is not subject to any other obligation of confidentiality
 - (b) is or becomes publicly known through no act or default of the Provider; or
 - (c) is obtained by the Provider from a third party in circumstances where the Provider has no reason to believe that there has been a breach of an obligation of confidentiality.
- 12.4 The restrictions in this Clause 12 do not apply to the extent that any Customer Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of the Provider on any recognized stock exchange.

12.5 The provisions of this Clause 12 shall continue in force for a period of 1 year following the termination of this Agreement, at the end of which period they will cease to have effect.

13. Data protection

13.1 Each party shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data.

13.2 The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with this Agreement.

13.3 The Customer shall only supply to the Provider, and the Provider shall only process, in each case under or in relation to this Agreement:

- (a) the Personal Data of data subjects falling within the categories specified in Section 1 of Schedule 3 (Data processing information) and
- (b) Personal Data of the types specified in Section 2 of Schedule 3 (Data processing information).

13.4 The Provider shall only process the Customer Personal Data for the purposes specified in Section 3 of Schedule 3 (Data processing information).

13.5 The Provider shall only process the Customer Personal Data during the Term subject to the other provisions of this Clause 13.

13.6 The Provider shall only process the Customer Personal Data on the documented instructions of the Customer (including with regard to transfers of the Customer Personal Data to any place outside the United Kingdom).

13.7 The Customer hereby authorizes the Provider to make the following transfers of Customer Personal Data:

- (a) the Provider may transfer the Customer Personal Data internally to its own employees, offices and facilities.
- (b) the Provider may transfer the Customer Personal Data to its sub-processors in the jurisdictions identified in Section 5 of Schedule 3 (Data processing information), providing that such transfers must be protected by any appropriate safeguards identified therein; and
- (c) the Provider may transfer to a country, a territory or sector to the extent that the competent data protection authorities have decided that the country, territory or sector ensures an adequate level of protection for Personal Data.

14. Warranties

14.1 The Provider warrants to the Customer 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.

14.2 The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with this Agreement, will not breach any laws, statutes or regulations applicable under English law.

- 14.3 The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.
- 14.4 The Customer 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.
- 14.5 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.

15. Acknowledgements and warranty limitations

- 15.1 The Customer acknowledges that complex 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 Hosted Services will be wholly free from defects, errors and bugs.
- 15.2 The Customer acknowledges that complex 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 Hosted Services will be entirely secure.
- 15.3 The Customer acknowledges that the Hosted Services are designed to be compatible only with that software and those systems [specified as compatible in the Hosted Services Specification]; and the Provider does not warrant or represent that the Hosted Services will be compatible with any other software or systems.
- 15.4 The Customer acknowledges that the Provider will not provide any legal, financial, accountancy or taxation advice under this Agreement or in relation to the Hosted Services; and, except to the extent expressly provided otherwise in this Agreement, the Provider does not warrant or represent that the Hosted Services or the use of the Hosted Services by the Customer will not give rise to any legal liability on the part of the Customer or any other person.

16. Limitations and exclusions of liability

- 16.1 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.
- 16.2 The limitations and exclusions of liability set out in this Clause 16 and elsewhere in this Agreement:
- (a) are subject to Clause 16.1; 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.
- 16.3 Neither party shall be liable to the other party in respect of any loss of profits or anticipated savings.
- 16.4 Neither party shall be liable to the other party in respect of any loss of revenue or income.
- 16.5 Neither party shall be liable to the other party in respect of any loss of use or production.
- 16.6 Neither party shall be liable to the other party in respect of any loss of business, contracts or opportunities.

16.7 Neither party shall be liable to the other party in respect of any special, indirect or consequential loss or damage.

17. Force Majeure Event

17.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement, that obligation will be suspended for the duration of the Force Majeure Event.

17.2 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.

17.3 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.

18. Termination

18.1 Either party may terminate this Agreement by giving to the other party at least 14 days' written notice of termination.

18.2 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.

18.3 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.

19. Effects of termination

19.1 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: Clauses 1, 4.12, 8, 11.2, 12, 13, 16, 19, 22 and 23.

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

19.3 Within [30 days] following the termination of this Agreement for any reason:

- (a) the Customer must pay to the Provider any Charges in respect of Services provided to the Customer before the termination of this Agreement; and

- (b) the Provider must refund to the Customer any Charges paid by the Customer to the Provider in respect of Services that were to be provided to the Customer after the termination of this Agreement,

without prejudice to the parties' other legal rights.

20. Notices

20.1 Any notice from one party to the other party under this Agreement must be given by one of the following methods using the relevant contact details set out in Clause 20.2

- (a) sent via electronic mail in which case the notice shall be deemed to be received upon response

providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.

20.2 The Provider's contact details for notices under this Clause 20 are as follows: *info@fioste.co.uk*

20.3 The addressee and contact details set out in Clause 20.2 may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 20.

21. Subcontracting

21.1 Subject to any express restrictions elsewhere in this Agreement, the Provider may subcontract any of its obligations under this Agreement

21.2 The Provider shall remain responsible to the Customer for the performance of any subcontracted obligations.

21.3 Notwithstanding the provisions of this Clause 21 but subject to any other provision of this Agreement, the Customer acknowledges and agrees that the Provider may subcontract to any reputable third party hosting business the hosting of the Platform and the provision of services in relation to the support and maintenance of elements of the Platform.

22. General

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

22.2 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).

22.3 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.

22.4 Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.

22.5 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.

22.6 Subject to Clause 16.1, 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.

22.7 This Agreement shall be governed by and construed in accordance with English law.

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

23. Interpretation

23.1 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.

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

23.3 References in this Agreement to "calendar months" are into which a year is divided.

23.4 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.

EXECUTION

The parties have indicated their acceptance of this Agreement by clicking the acceptance button.