



UNIONCLOUD SOFTWARE AS A SERVICE TERMS AND CONDITIONS

These are the terms and conditions on which We will supply the Services (as defined below) to You. By ‘You’ or ‘Your’ we mean the student union, person, firm or company contracting for the Services as set out in the Order Form.

Where You are not a student union contracting for the Services any definitions and clauses set out in these Terms specifically relating to student unions do not apply.

By **We Our Us** and **UnionCloud** we mean OneVoice Digital Limited a company incorporated in England and Wales, whose registered number is 10842253 and whose registered office is at Snape Rd, Macclesfield SK10 2NZ.

1. THE MEANING OF THE WORDS USED IN THESE TERMS AND CONDITIONS

1.1 In these Terms, the following words have the following meaning (except where the context otherwise requires):
Agreement: means these Terms, the Order Form, the Functionality and any other document expressly relating to the Services;
Additional Services: shall mean such bespoke Services as specified in the Order Form;
Applicable Law: means any and all applicable laws, statutes, orders, rules, treaties, decree, regulations, directives, edicts, bye-laws, schemes, warrants, other instruments made under or to be made under any statute, any exercises of the royal prerogative and codes of conduct and regulatory rules or guidelines, whether local, national, international or otherwise existing from time to time, together with any other similar instrument having legal effect in the relevant circumstances;
Back-Up Policy: shall mean the policy that We will follow with respect to storage, redundancy and data security and may be amended by Us in Our sole discretion from time to time;
Business Day: means a day other than a Saturday, Sunday or bank or public holiday in England when banks in London are open for business;
Clubs and Societies Ecommerce: means transactions connected to a group that i) receives funding through the student union society/sports allocation funding process; ii) has its own constitution or code of conduct within the student union; iii) appears on the published list affiliated grants as per the Education Act; iv) requires a separate membership from that of the student union; and v) is managed by an elected committee of students, and where applicable is set out in the Order Form;
Commission: means the sum calculated as set out in the Order Form and payable in accordance with clause 7;
Confidential Information: means any and all confidential information, (whether in oral, written or electronic form) including technical or other information imparted in confidence or disclosed by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, know-how, Intellectual Property Rights, assets, strategy, products and customers, including information relating to management, financial, marketing, technical and other arrangements or operations of any person, firm or organisation associated with that party;
Control: has the meaning given in the Corporation Tax Act 2010, s 1124 and **Controls** and **Controlled** will be interpreted accordingly;
Customer Data: means the data inputted by Users, or generated as a result of the provision or use of the Services, and which may include Personal Data;
Data: means collectively Customer Data, Union Data and University Data;
Data Protection Requirements: (a) the Data Protection Act 2018 (b) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (*SI 2426/2003*) as amended; (c) the General Data Protection Regulation (*(EU) 2016/679*) (**GDPR**) and all applicable laws and regulations relating to the processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.
Direct Marketing Consent: means the request for express permission from Users in order for Us to process their Personal Data for Direct Marketing for purposes other than Our performance of Our obligations under this Agreement;
Direct Marketing: means the communication (by whatever means) of any advertising or marketing material which is directed to a particular individual;
Effective Date: means the commencement or performance of the Services or the date of signature of the Order Form, whichever is earlier;
Fees: means collectively the Licence Fee, Transaction Fee, fees for Additional Services and fees for Opt-In Services, as applicable and as more particularly described in the relevant Order Form. Except as otherwise expressly provided in the Order Form all fees are exclusive of value added tax (**VAT**);
Force Majeure: means acts, events, omissions, accidents or an event or sequence of events beyond Our reasonable control, including without limitation, strikes, lock-outs or other industrial disputes (whether involving Our workforce or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Us or sub-contractors.
the Functionality: sets out a description of the Services and the user instructions for the Services made available to You online at the web address notified by Us to You in the Order Form (or such other web address notified by Us to You from time to time) or such other written documentation provided by Us to You;
Group Company: means any holding company or subsidiary of either party, or any subsidiary of such holding company. A reference to holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee) by way of security or in connection with the taking of security, or (b) its nominee. Any reference to “Group” and “Group Companies” shall be interpreted accordingly;
Infringing Data: means information or data that: (i) infringes Applicable Law; or (ii) infringes any third party Intellectual Property Rights; or (iii) includes any material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing or blasphemous;
Initial Licence Term: means the initial licence term as more particularly set out in the Order Form;
Intellectual Property Rights: means copyright, patents, rights in inventions, rights in confidential information, know-how, trade secrets, trade marks, service marks, trade names, design rights, rights in get-up, database rights, rights in data, semi-conductor chip topography rights, mask works, utility models, domain names, rights in computer software and all similar rights of whatever nature and, in each case: (i) whether registered or not, (ii) including any applications to protect or register such rights, (iii) including all renewals and extensions of such rights or applications, (iv) whether vested, contingent or future and (v) wherever existing;
Licence Fee: means the licence fee payable by You to Us as more particularly set out in the Order Form;
Licence Term: means the Initial Licence Term together with any subsequent Renewal Period;
OneVoice Registered Users: means Users who have agreed to Us using information We collect through UnionCloud in accordance with Our privacy policy;
Opt-In Services: means Services or access You agree We may provide as more particularly set out in the Order Form;
Order Form: means the form completed by Us and sent to You for approval which sets out the commercial terms of the order forms part of the Agreement;
Payment Terms: means the payment terms as set out in the Order Form;
Personal Data: has the meaning ascribed to it in clause 12.2;
Renewal Period: has the meaning set out in clause 17.1;
the Services: means the services provided by Us to You under this Agreement as more particularly described in Order Form and the Functionality;
Service Hours: means 24 hours a day, seven days a week;
Software: means the online software applications provided by Us as part of the Services;
Standard Business Hours: means 9.00am to 5.00pm local UK time on each Business Day;
Support Services Hours: means Standard Business Hours;
Support Services Policy: means Our policy for providing support in relation to the Services as made available via the hyperlink as set out in the Order Form or such other hyperlink as may be notified to You from time to time;
Terms: means these terms and conditions;
Third Party(ies): means a third party with whom You deal, and authorised by Us to use the Services and the Functionality;
Transaction Fee: means the transaction fee payable by You to Us as more particularly set out in the Order Form;
Users: means individuals who access the Website. Users will include users who set up individual accounts and administrators who have access to passwords for Your Website and the Services;
Union Data: means data gathered by You, or on Your behalf, and provided to Us by You, or on Your behalf, for the purpose of using the Services or facilitating Your use of the Services which may include Personal Data;
University Data: means university related data gathered by You, or on Your behalf, and provided to Us by You, or on Your behalf, for the purpose of using the Services or facilitating Your use of the Services which may include Personal Data;
Union Registered Users: means Users who have agreed to You using information You collect through UnionCloud in accordance with the Your privacy policy;
VAT: means value added tax (if any) or any other locally applicable equivalent sales taxes;
Virus: means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data or adversely affect the user experience;
the Website: means the website operated by You using the Services and hosted by Us under the terms of this Agreement, the design of which is determined by You through a customised template and application of the Services;
Website Advertising: means the right for Us to advertise products and services on the W ebsite during the Licence Term;

1.2 In these Terms the following rules apply:
(a) a reference to a ‘party’ includes that party’s personal representatives, successors and permitted assigns;
(b) a reference to a ‘person’: includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person’s personal representatives, successors and permitted assigns;
(c) a reference to a gender includes each other gender;
(d) words in the singular include the plural and vice versa;
(e) any words that follow ‘include’, ‘includes’, ‘including’ ‘in particular’ or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
(f) a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time; and
(g) a reference to “writing” or “written” includes faxes and e-mail.

2. THE SERVICES AND AVAILABILITY

2.1 We shall make the Services and the Functionality available to You during the Service Hours excluding:
(a) scheduled maintenance which We shall use reasonable endeavours to undertake outside of Standard Business Hours;
(b) emergency maintenance; or
(c) downtime caused in whole or part by Force Majeure.
2.2 We will use reasonable endeavours to notify You in advance of scheduled maintenance but You acknowledge that You may receive no advance notification for emergency maintenance or downtime caused by Force Majeure.
2.3 As part of the Services and at no additional cost We will provide You support services in accordance with Our Support Services Policy. We may amend the support services in Our sole and absolute discretion from time to time.



2.4 Where the functionality is enabled, Student members of Union Cloud sites are provided with a TOTUM account at registration to enable them to access via TOTUM any events, clubs and societies and commercial offers that are hosted by their Students’ Union on UnionCloud
2.5 You acknowledge that We shall be entitled to modify the features and functionality of the Software as part of Our ongoing development of the Software. We shall use reasonable endeavours to ensure that any such modification does not adversely affect Your use of the Services.
3. OUR OBLIGATIONS
3.1 We warrant to You that:
(a) We have the right, power and authority to enter into this Agreement and grant to You the rights contemplated in this Agreement and to supply the Services; and
(b) the Services will be supplied:
(i) with reasonable care and skill; and
(ii) subject to clause 2.5, in accordance in all material respects with the description of the Services provided in the Functionality;
3.2 The undertaking at clause 3.1 shall not apply to the extent of any non- conformance which is caused by use of the Services contrary to Our instructions, or modification or alteration of the Services by any party other than by Us or Our duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, We will, at Our expense use all reasonable commercial endeavours to correct any such non- conformance promptly, or provide You with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes Your sole and exclusive remedy for any breach of the undertaking set out in clause 3.1 Notwithstanding the foregoing, We:
(a) do not warrant or represent that the Services will be uninterrupted or error-free; or that the Services, the Functionality and/or the information obtained by You through the Services will meet Your requirements; and
(b) are not responsible for any delays, delivery failures or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and You acknowledge that the Services and the Functionality may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
3.3 This Agreement shall not prevent Us from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.
3.4 The warranties in this clause are subject to You giving notice to Us as soon as You are reasonably able upon becoming aware of the breach of warranty. W hen notifying Us of a breach You shall use Your reasonable endeavours to provide Us with such documented information, details and assistance as We may reasonably request.
3.5 You acknowledge and agree that:
(a) We are not and cannot be aware of the extent of any potential loss resulting from any failure by Us to discharge Our obligations under this Agreement; and
(b) the Services have not been designed to meet Your individual requirements and cannot be tested in every operating environment.
4. YOUR OBLIGATIONS
4.1 You warrant and represent to Us that:
(a) You shall provide Us with all necessary co-operation in relation to this Agreement, and all necessary access to such information as may be required by Us to enable Us to render the Services, including but not limited to Union Data and/or University Data, security access information and configuration services;
(b) You shall co-operate with Us in all matters relating to the Services, and comply with all instructions from Us;
(c) You shall comply with all Applicable Laws, including all Disclosure and Barring Service checks (if relevant) and other legal duties to Users;
(d) You shall obtain and at all times maintain all necessary licences and consents, and comply with all Applicable Laws, regulations and the Data Protection Requirements;
(e) You shall obtain and maintain all necessary licences, consents, and permissions necessary for Us, Our contractors and agents to perform Our obligations under this Agreement, including without limitation the Services;
(f) You will carry out all other responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the provision of such assistance as agreed by the parties, We may adjust any agreed timetable or delivery schedule as reasonably necessary;
(g) You shall comply with the Data Protection Requirements;
(h) You shall ensure that the Users, and any Third Party(ies) authorised by Us pursuant to clause 5.3 use the Services and the Functionality in accordance with the terms of this Agreement and You shall be responsible for any User’s and Third Party(ies) breach of this Agreement;
(i) You shall ensure that Your network and systems comply with the relevant specifications provided by Us from time to time;
(j) You shall be solely responsible for procuring and maintaining Your network connections or telecommunications links from Your systems to Our data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Your network connections or telecommunications links caused by the internet.
(k) it is Your responsibility to ensure the facilities and functions of the Services meet Your requirements and will not cause any error or interruption in Your own software or systems; and
(l) it is Your responsibility to ensure the W ebsite complies with legal requirements, Applicable Laws including but not limited to ensuring that the Website is compliant with the Equality Act 2010.
4.2 If performance of Our obligations under the Agreement is prevented or delayed by any act or omission of You, We will not be liable for; a) any costs, charges or losses sustained or incurred by You that arise directly or indirectly from such prevention or delay; and b) any delays in providing the Services and/or deficiencies in providing the Services as a consequence of Your failure to provide accurate and complete information.
5. USE OF THE SERVICES
5.1 We grant You a non-transferable, non-exclusive right to allow You and the Users access to the Services and the Functionality during the Licence Term.
5.2 Subject to clause 5.3 You must not grant access to the Services and the Functionality to anyone other than a User during the Licence Term.
5.3 If a Third Party(ies) requires access to the Services and Functionality, you must let Us know in advance in writing, and in any event prior to the Effective Date. We may at Our discretion allow that Third Party(ies) access to the Services and Functionality. If we do allow that Third Party(ies) access to the Services and Functionality this will be specifically confirmed by Us and set out in the Order Form. In accordance with clause 4.1(h) You shall be responsible for any Third Party(ies) breach of Agreement and liable for all acts, errors or omissions of the Third Party(ies) as if they were the acts and omissions of You. You shall ensure that the Third Party(ies) shall comply with the provisions of this Agreement.
5.4 Except to the extent such activities are expressly agreed by the parties, Your rights to benefit from the Services does not permit You, the Users or the Third Party(ies) to:
(a) copy, cut and paste, email, reproduce, publish, distribute, redistribute, broadcast, transmit, modify, adapt, edit, abstract, create derivative works of, store, archive, publicly display, sell or in any way commercially exploit any part of the Services;
(b) except as otherwise expressly provided in the Order Form use the Services to provide outsourced services to third parties or make available to any third party or allow or permit a third party to do so;
(c) access all or any part of the Services and the Functionality in order to build a product or service which competes with the Services and/or the Functionality;
(d) attempt to decompile (as defined in section 50B of the Copyright, Designs and Patents Act 1988) the underlying software (or any part of it) that is used to provide the Services, except and only to the extent that such restriction is prohibited pursuant to section 50B of the Copyright, Designs and Patents Act 1988 or to amend or copy any parts of the software; and
(e) to observe, study or test the functioning of the underlying software (or any part of it) that is used to provide the Services, except and only to the extent that such restriction is prohibited pursuant to section 50B of the Copyright, Designs and Patents Act 1988.
5.5 You warrant and represent that You shall, and ensure that Users and Third Party(ies) shall, keep confidential and, except as provided for in this Agreement, not share with any third party their password or access details provided to facilitate access to the Services. You shall contact Us if updates to any list of Users given to Us are required, including when Users cease to be employed or engaged by You.
5.6 You shall not, and shall procure that the Users and Third Party(ies) shall not, introduce any Virus that may infect or cause damage to the Services or Our systems or otherwise disrupt the provision of the Services.
5.7 You shall not, and shall procure that Users and Third Party(ies) shall not, distribute or transmit any material during the course of the use of the Services that is Infringing Data.
5.8 We reserve the right to monitor usage by all Users and Third Party(ies) (by way of audits or otherwise) during the Licence Term for the purpose of (among others) ensuring compliance with the terms of this Agreement. Any audit may be carried out by Us or a third party authorised by Us. If any audit reveals that any password has been provided to an individual that is not a User, You shall, without delay, disable any such passwords and notify Us immediately.
5.9 In the event of unauthorised use of the Services by You, Users or a Third Party(ies), We reserve the right to deny You, Users or Third Party(ies) access to the Services, without prior notification.
5.10 You shall use all reasonable endeavours to prevent any authorised access to, or use of, the Services and/or the Functionality and, in the event of any such unauthorised access or use, promptly notify Us.
5.11 You shall take all reasonable steps to ensure that all Users and Third Party(ies) comply with their obligations under Applicable Law and the Data Protection Requirements.
5.12 The rights provided under this clause are granted to You only, and shall not be considered granted to Your Group Companies unless agreed by Us in writing in advance of any use by such entity.
6. THIRD PARTY PROVIDERS
You acknowledge that the Services may enable or assist You and Users to access the website content of, correspond with, and purchase products and services from, third parties via third party websites and such use is solely at Your own risk. We make no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, and such third party website, or any transactions completed, and any contract entered into by You, with any such third party. Any contract entered into and any transaction completed via any third party website is between You and the relevant third party. You are advised to refer to the third party’s website terms and conditions and privacy policy prior to using the relevant third party website. We do not endorse or approve any third party website nor the content of any of the third party website made available via the Services.
7. WEBSITE ADVERTISING
7.1 You acknowledge that during the Licence Term We have the right to advertise products and services on the Website provided always that You shall have the reasonable right to veto any advertisement that You consider contrary to Your objectives.
7.2 During the Licence Term We are permitted to utilise the percentage of the Website’s impressions at any time for the sole purpose of delivering advertising via the W ebsite on behalf of national clients. We shall pay You a Commission in respect of such advertising. Please see respective commission rates outlined below:

OneVoice web ad sales – where We sell advertisements on your Website	50%
Union web ad sales – where You sell advertisements on your Website	100%

7.3 During the Licence Term You are permitted to utilise the percentage of the Website’s impressions as more particularly set out in the Order Form for the sole purpose of delivering advertising via the W ebsite on behalf of regional clients provided always that such advertising is limited to a maximum of three advertising slots at any given time. You shall pay Us the Fees in respect of such advertising.
7.4 In the event You do not utilise the percentage of the Website’s impressions We shall be entitled in Our absolute discretion to use the unused impressions at any time during the Licence Term for the sole purpose of serving filler advertisements on the Website. For the avoidance of doubt no Commission is payable in these circumstances.
8. SUSPENSION OF ACCESS
8.1 We may disable the W ebsite and suspend access to the Services to You, all or some of the Users or Third Party(ies) if:
(a) We suspect that there has been any misuse of the Services or breach of this Agreement or the Functionality; or
(b) You fail to pay any Fees due to Us by the due date for payment.
8.2 We will notify You, the affected Users or Third Party(ies) as soon as possible after disabling the Website and suspending the Services.
8.3 Where the reason for disabling the Website and the suspension is suspected misuse of the Services or breach of this Agreement, without prejudice to our rights under clause 17, We will take steps to investigate the issue



and may restore or permanently suspend access at Our discretion. If We consider it appropriate to permanently suspend access to You, all Users and Third Party(ies) We will notify You in writing and this Agreement will terminate immediately on service of such notice.

8.4 In relation to suspensions under clause 8.1(b), access to the Services will be restored promptly after We receive payment in full and cleared funds.

8.5 The Fees shall remain payable during any period of suspension notwithstanding that You, some of the Users and Third Party(ies) may not have access to the Services.

9. CHARGES AND PAYMENT

9.1 You shall pay Us the Fees in accordance with this clause 9 and the Order Form. The Fees may include a discount offered to You for Your commitment to renew this Agreement for one or more Renewal Periods.

9.2 In respect of the Licence Fee, We shall invoice You 1/12th of the Licence Fee on the Effective Date and, thereafter, 1/12th of the Licence Fee on the anniversary day of each calendar month throughout the Initial Licence Period and each Renewal Term and You shall pay each invoice in accordance with the Payment Terms.

9.3 If You have discount pricing, as set out in clause 9.1, and You do not renew this Agreement for the agreed Renewal Periods, We will invoice You the difference between the discount price and the full price in respect of the Renewal Periods for which we do not provide the Services because You terminate this Agreement before the start of the Renewal Period(s). You agree to pay such invoice in accordance with the Payment Terms.

9.4 We will invoice you the Transaction Fee as set out in the Order Form.

9.5 If We have not received payment within 10 days after Our invoice due date, and without prejudice to any other rights and remedies of Us:

(a) We may, without liability to You disable the W ebsite and access to all or part of the Services and We shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

(b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of Our bankers in the UK from time to time, commencing on Our invoice due date and continuing until fully paid, whether before or after judgment.

9.6 All Fees stated or referred to in this Agreement:

(a) shall be payable in pounds sterling unless otherwise specified in the Order Form;

(b) are, subject to clause 16.5, non-cancellable and non-refundable; and

(c) are exclusive of VAT, which shall be added to Our invoice(s) at the appropriate rate.

9.7. Please refer to the below transaction fees you will incur in respect to Our management of the payment gateway on Your behalf.

Transaction Fee Note that We process all fees on Your behalf including payment of merchant fees, handling of refunds administration.	Gateway Fee £ Applies whether or not We process transactions on Your behalf	Processing Fee £ Only applies if We process transactions on Your behalf
Cash memberships / events	N/A	N/A
Club & Societies E-Commerce via Credit or Debit card	10p	1.1%
Club & Societies E-Commerce via Paypal (if enabled)	10p	20p + 1.4%
Non Club & Societies E-Commerce via Credit or Debit card	10p	3.5%
Non Club & Societies E-Commerce via Paypal (if enabled)	10p	20p + 3.8%
Funds transfer – twice monthly (if we process transactions on your behalf)		

10. INTELLECTUAL PROPERTY RIGHTS

10.1 You acknowledge and agree that We and/or Our licensors own all Intellectual Property Rights in the Services and the Functionality. Except as expressly stated herein, this Agreement does not grant You any rights in the Intellectual Property Rights or any other rights or licences in respect of the Services or the Functionality.

10.2 We confirm that We have all the rights in the Services and the Functionality that are necessary to grant all the rights We purport to grant under, and in accordance with the terms of this Agreement.

11. DATA

11.1 You shall not, and shall procure that Users and Third Party(ies) shall not use Infringing Data during the course of the use of the Services.

11.2 You hereby grant a perpetual, royalty-free licence to Us to use the Union Data and the University Data for the purpose of delivering the Services to You under the terms of this Agreement.

11.3 You warrant to Us that You have the permission and consent to grant to Us the licence at clause 11.2 in respect of the University Data.

11.4 You acknowledge that We have no control over any Data hosted as part of the provision of the Services and do not actively monitor the content of the Data.

11.5 We shall notify You immediately if We become aware of any allegation that any Data may be Infringing Data and We shall have the right to remove Data from the Services without the need to consult You.

11.6 You shall indemnify Us and Our Group Companies from and against all loss caused to Us as a result of Your use of Infringing Data on the Services.

12. DATA PROTECTION

12.1 Each party agrees that, in the performance of its respective obligations under this Agreement, it shall comply with the provisions of the Data Protection Requirements to the extent it applies to each of them.

12.2 For the purpose of this clause 'data controller', 'data processor', 'data subject', 'Information Commissioner', 'Personal Data' 'processing' and 'sensitive personal data' shall have the meanings given to them in the 2018 Act.

12.3 Subject to clause 12.10, You are the data controller in respect of any Personal Data that We process in the course of providing Services for You (other than business contact data processed by Us to allow Us to manage Your account).

12.4 Where We process Personal Data on behalf of You as data processor, We shall process the Personal Data in accordance with the requirements set out in Article 28 of the GDPR and this Agreement and this reference to the Article 28 and its incorporation in this Agreement shall be the contract between You and Us in respect of such Processing.

(a) only carry out processing of the Personal Data on Your lawful instructions from time to time, such instructions at the date of this Agreement are to process the Personal Data in order to provide the Services to the Users in accordance with the Functionality and to enable the Services to respond to automated requests by Users as part of their normal use of the Services;

(b) process the Personal Data only to the extent and in such manner, as is necessary for the provision of the Services to be provided and/or as is required by law or any regulatory body, having regard at all time to principles set out under the 1998 Act as amended or replaced by the GDPR;

(c) implement appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful processing and accidental destruction having regard to the state of technological development and the cost of implementing any measures;

(d) make available to You a list of any sub-contractors engaged in the processing of the Personal Data and include in any contract with any sub-contractors who shall process Personal Data directly or indirectly on Your behalf, provisions which are equivalent to those in this clause 12.4; and

(e) as soon as reasonably practicable refer to You any requests, notices or other communication from data subjects, the Information Commissioner or any other law enforcement authority, for You to resolve.

12.5 We shall not transfer Personal Data which We process on Your behalf to countries outside the European Economic Area without obtaining Your prior written consent, except that We may transfer Personal Data to our Group Companies provided that our Group Companies have entered into Binding Corporate Rules in accordance with Article 47 of GDPR.

12.6 You consent to Our use of sub-contractors in accordance with clause 12.4(d). We shall notify You in the event of a change in the list of sub- contractors and, in the event that You do not agree to a proposed change, either party shall be entitled to terminate this Agreement immediately on the service of notice in writing.

12.7 In relation to the Union Data You warrant that:

(a) You own all rights, title and interest in and to all of the Union Data and agree that We shall have no responsibility for the legality, reliability, integrity, accuracy and quality of the Union Data;

(b) You are entitled to transfer the Personal Data contained in the Union Data to Us so that We may lawfully use, process and transfer the Personal Data in accordance with this Agreement on Your behalf;

(c) You are the data controller in relation to all Personal Data contained in the Union Data that You make available to Us as a data processor in connection with Our provision of the Services;

(d) all relevant data subjects whose Personal Data in the Union Data You have supplied to Us have given their informed consent for Us to process the Personal Data in the Union Data for the purposes of Us supplying the Services to; i) disclose the Personal Data in response to any subject access request relating to this Agreement; and ii) retain the Personal Data for as long as is necessary in relation to the Services;

(e) any Personal Data stored or transferred will be appropriately classified and protected through suitable encryption; and

(f) You are registered with all relevant data protection authorities to process all Personal Data in relation to the Services;

12.8 In relation to the University Data You warrant and represent that:

(a) to the best of Your knowledge and belief You are able to provide to Us, and have agreement from third parties as appropriate to provide to Us, all of the University Data and agree that We shall have no responsibility for the legality, reliability, integrity, accuracy and quality of the University Data;

(b) You are entitled to transfer the Personal Data contained in the University Data to Us so that We may lawfully use, process and transfer the Personal Data in accordance with this Agreement on Your behalf;

(c) You have a data handling agreement in place with the relevant third parties in relation to all Personal Data contained in the University Data that You make available to Us in connection with Our provision of the Services;

(d) You are the data controller in relation to all Personal Data contained in the University Data that You make available to Us as a data processor in connection with Our provision of the Services;

(e) to the best of Your knowledge and belief the third parties have obtained from the relevant data subjects their informed consent for Us to process the Personal Data in the University Data for the purposes of Us supplying the Services to i) disclose the Personal Data in response to any subject access request relating to this Agreement; and ii) retain Personal Data for as long as is necessary in relation to the Services;

(f) any Personal Data stored or transferred will be appropriately classified and protected through suitable encryption; and

(g) You and the third parties are registered with all relevant data protection authorities to process all Personal Data in relation to the Services.

12.9 You shall indemnify Us and Our Group Companies for any cost, claim or expense arising as a result of You:

(a) breaching the Data Protection Requirements, Applicable Laws or any statutory or regulatory requirements;

(b) causing Us to be in breach of the Data Protection Requirements, Applicable Laws or any statutory or regulatory requirements; or

(c) breaching any of the warranties in clause 12.7 and 12.8.

12.10 We are the data controller in respect of OneVoice Registered Users and we agree to comply with Data Protection Requirements.

12.11 We may wish to use the Users' Personal Data for the purposes of Our Direct Marketing. To comply with the Data Protection Requirements as part of the Services We shall provide data collection statements to ensure that Users may choose whether to permit their Personal Data to be used by Us for Direct Marketing.

12.12 You shall ensure that Users that access both the general and more especially the administrative areas of UnionCloud are fully aware of their obligations in respect of the Data Protection Requirements. Each User that accesses the administrative areas of UnionCloud is to be trained in data protection before they are permitted access to the UnionCloud platform.

12.13 You agree not to amend or modify any data collection statements or the privacy policy appearing on the W ebsite which refer to Us. This does not affect Your ability to determine data collection statements as between You and Users provided such statements do not prevent or inhibit Us from processing the Data or being the data controller of Users Personal Data.

13. INFORMATION SECURITY



13.1 You shall be responsible for taking reasonable and prudent measures to safeguard the security of the Data in Your possession, including maintaining appropriate firewalls, encryption and anti-virus protection.

13.2 We shall notify You as soon as possible upon discovery of any data security incident impacting the Data.

13.3 We shall follow Our Back-Up Policy for Data. In the event of any loss or damage to the Data, Your exclusive remedy shall be for Us to use reasonable commercial endeavours to restore the lost or damaged Data from the latest back-up of such Data maintained by Us in accordance with the archiving procedure described in the Back-Up Policy.

13.4 We shall not be responsible for any loss or damage to Data to the extent that such loss or damage was caused by You or a third party (other than a sub-contractor or representative of Us).

14. CONFIDENTIALITY

14.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:

(a) is or becomes publicly known other than through any act or omission of the receiving party;

(b) was in the other party's lawful possession before the disclosure;

(c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

(d) is independently developed by the receiving party, which independent development can be shown by written evidence; or

(e) is required to be disclosed by law, by any competent jurisdiction or by any regulatory or administrative body.

14.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party (apart from any consultants appointed by Us to fulfil the Service), or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

14.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

14.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

14.5 You acknowledge that details of the Services, and the results of any performance tests of the Services, constitute Our Confidential Information.

14.6 We acknowledge that the Union Data is the Confidential Information of You.

14.7 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 (such consent not to be unreasonably withheld or delayed), 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.

15. INDEMNITY

15.1 You shall defend, indemnify and hold harmless Us and Our Group Companies against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with Your use of the Services and/or the Functionality, provided that:

(a) You are given prompt notice of any such claim;

(b) We provide reasonable co-operation to You in the defence and settlement of such claim, at Your expense; and

(c) You are given sole authority to defend or settle the claim.

15.2 We shall indemnify You from and against all losses which are suffered by You in the event that Your use of the Services of the Functionality infringes the Intellectual Property Rights of any third party (**UnionCloud IPR Claim**) provided that We, Our employees, agents and sub-contractors shall have no such liability if You:

(a) have caused or contributed in any material way to the UnionCloud IPR Claim by not using the Services in accordance with this Agreement or the Functionality;

(b) do not notify Us in writing setting out full details of any UnionCloud IPR Claim of which You have notice as soon as is reasonably possible;

(c) have used the Services and or Documentation after notice of the alleged or actual infringement from Us or any appropriate authority;

(d) have caused a modification of the Services or the Functionality by anyone other than Us;

(e) make any admission of liability or agree any settlement or compromise of the relevant UnionCloud IPR Claim without the prior written consent of Us;

(f) do not let Us at Our request and own expense have the conduct of or settle all negotiations and litigation arising from the relevant UnionCloud IPR Claim; or

(g) do not, at Our request and own expense, give Us all reasonable assistance in the circumstances described above.

15.3 If any UnionCloud IPR Claim is made or is reasonably likely to be made against You, We shall promptly and at Our own expense either:

(a) procure for You the right to continue using the Services; or

(b) modify or replace the infringing part of the Services, and without adversely affecting the Functionality of the Services as set out in this Agreement so as to avoid the infringement or alleged infringement, provided that if We, having used Our reasonable endeavours, neither of the above can be accomplished on reasonable terms, We shall (without prejudice to the indemnity above) terminate the Agreement and refund the Licence Fee paid by You in respect of the Services.

15.4 The foregoing and clause 15.3 states Your sole and exclusive rights and remedies, and Our (including Our employees', agents' and sub-contractors') entire obligations and liability in respect of the Services infringing Intellectual Property Rights.

15.5 You shall indemnify Us and Our Group Companies against all liabilities, costs, expenses, damages and loss (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Us arising out of or in connection with any claim made against Us for actual or alleged infringement of a third party's Intellectual Property Rights, actual or alleged defamation, or otherwise arising out of or in connection with use of the Data by Us in the course of providing the Services.

16. LIMITATION OF LIABILITY

16.1 This clause sets out the entire liability of Us (including any liability for the acts or omission of its employees, agents and sub-contractors) to You:

(a) arising under or in connection with this Agreement;

(b) in respect of any use made by You of the Services and the Functionality or any part of them; and

(c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

16.2 Except as expressly and specifically provided in this Agreement:

(a) You assume sole responsibility for the results obtained from the use of the Services and the Functionality by You, and for conclusions drawn from such use. We shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided by Us to You in connection with the Services, or any actions taken by Us at Your direction;

(b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and

(c) the Services and the Functionality are provided to You on an "as is" basis.

16.3 Notwithstanding any other provision of this Agreement, the liability of the parties shall not be limited in any way in respect of death or personal injury caused by negligence; fraud or fraudulent misrepresentation and any other losses which cannot be excluded or limited by applicable law.

16.4 Subject to clause 16.2 and 16.3 We shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any of the following (whether direct or indirect) loss of profit; loss of data; loss of use; loss of production; loss of contract; loss of opportunity; loss of savings, discount or rebate (whether actual or anticipated) or harm to reputation or loss of goodwill.

16.5 Subject to clause 16.2, 16.3 and 16.4 Our total aggregate liability in contract (including in respect of the indemnity at clause 15.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement shall be limited to 100% of the total License Fee paid during the 12 months immediately preceding the date on which the claim arose subject to a maximum figure of £10,000.;

17. TERM AND TERMINATION

17.1 This Agreement will begin on the Effective Date and, unless terminated earlier in accordance with the provisions of this Agreement, continue for the Initial Licence Term and, thereafter shall automatically renew for successive periods of 12 months (each a **Renewal Period**), unless either party notifies the other party of termination, in writing, at least 90 days before the end of the Initial Licence Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Licence Term of Renewal Period.

17.2 Without prejudice to any other rights or remedies, We may have We may terminate this Agreement at any time by giving notice in writing to You if:

(a) You or any User commits a material breach of this Agreement and such breach is not remediable;

(b) You or any User commits a material breach of this Agreement which is not remedied within 30 days of receiving written notice of such;

(c) You fail to pay any amount due under this Agreement on the due date and such amount remains unpaid within 30 days after You have received notification that the payment is overdue;

(d) any consent, licence or authorisation held by You is revoked or modified such that You are no longer able to comply with Your obligations under this Agreement or access and use the Services; or

(e) there is a change of Control by Us.

17.3 Either party may terminate this Agreement at any time by giving notice in writing to the other party if that other party:

(a) stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;

(b) is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the non-defaulting party reasonably believes that to be the case;

(c) becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;

(d) has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;

(e) has a resolution passed for its winding up;

(f) has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;

(g) is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within 7 days of that procedure being commenced;

(h) has a freezing order made against it;

(i) is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;

(j) is subject to any events or circumstances analogous to those in clauses 17.3 (a) to 17.3 (j) in any jurisdiction;

(k) takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 17.3 (a) to 17.3 (i) including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.

17.4 The right of a party to terminate the Agreement pursuant to clause 17.3 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) where the amalgamated, reconstructed or merged party agrees to adhere to this Agreement.

17.5 If a party becomes aware that any event has occurred, or circumstances exist, which may entitle the other party to terminate this Agreement under clause 17.3, it shall immediately notify the other party in writing.

17.6 Termination of this Agreement shall not affect any accrued rights and liabilities of either party at any time up to the date of termination.

17.7 Any provision that is expressly or by implication intended to survive termination shall survive termination of this Agreement.

18. EXIT AND RETURN OF DATA

18.1 In the event of termination of this Agreement for any reason:

(a) the right to access the Services and the Functionality provided under this Agreement shall terminate immediately;
(b) all licences granted under this Agreement shall terminate immediately;
(c) You shall within 7 days return or destroy (at Our option) all Our Confidential Information or the Functionality in Your possession or under Your control and all copies of such information; and
(d) all provisions of this Agreement shall cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue shall continue in full force and effect.
18.2 On the termination of this Agreement, We may destroy or otherwise dispose of any of the Data in Our possession unless we receive, no later than ten days after termination of this Agreement, a written request for the delivery to You of the then most recent back-up of the Data. We shall use reasonable commercial endeavours to deliver the back-up to You within 30 days of Our receipt of such a written request, provided that You have, at that time, paid all Fees outstanding at and resulting from termination or expiry (whether or not due at the date of termination). You shall pay all reasonable expenses incurred by Us in returning or disposing of Data.

19. GENERAL

19.1 You must pay all sums that You owe to Us under this Agreement without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.
19.2 Nothing in these Terms is intended to or shall be deemed to establish any partnership or joint venture of any kind between 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.
19.3 If any provision of these Terms (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, unenforceable or illegal the other provisions shall remain in force.
19.4 You may not transfer any of Your rights or obligations under these Terms to another person without Our prior written consent. We shall be entitled at any time to assign, novate, mortgage, charge, sub-contract or otherwise dispose of Our rights and/or obligations under this Agreement; or may act through any Group Company from time to time.
19.5 We shall have no liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from Force Majeure. We shall promptly notify You in writing when such an event causes a delay or failure in performance and when it ceases to do so. If the Force Majeure continues for a continuous period of more than 3 months, We terminate this Agreement by written notice to You.
19.6 The Agreement constitutes the entire agreement and understanding between the parties with respect of the matters contained herein and supersedes any and all previous agreements, written or oral, express or implied between the parties with respect to it.
19.7 No third party has any right to enforce the terms of the Agreement under the Contracts (Rights of Third Parties) Act 1999.
19.8 Notices, including notices of termination, given under the Agreement must be in writing and sent, or delivered by hand, to the parties at their usual address or sent by email to the address specified in the Order Form (or such other email address as may be notified by a party to the other in writing). Notices will be deemed delivered on the second day after sending, if sent by post, or immediately, if delivered by hand or, if sent by fax or email, at the time of transmission, or if this time falls outside of Standard Business Hours in the place of receipt, when Standard Business Hours resume.
19.9 Clause 19.8 does not apply to the service of proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. A notice given under this Agreement is not valid if sent by email.
19.10 No delay, act or omission by either party in exercising any right will be deemed to be a waiver of that, or any other right.
19.11 Subject to clause 19.12 these Terms cannot be varied except in writing signed by both parties.
19.12 We may from time to time modify these Terms by publishing any changes online at <https://help.unioncloud.org/support/solutions/folders/47000767355> No signing will be required for changes made under this section Any changes will apply immediately subject to the provisions of this clause. We will notify You of all changes (and when the changes are effective) provided that such changes shall apply irrespective of non-receipt of any notification. If changes are material and adversely affect You then You may terminate this Agreement on giving 30 days' notice, such notice to be received by Us within 30 days after the relevant change is effective.
19.13 If there is an inconsistency between any of the provisions in the Order Form, the Terms and the Functionality, the following order of priority shall apply: a) the Order Form; b) the Terms; and c) the Functionality.
19.14 This Agreement and any dispute or claim arising out of, or in connection with, it, 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.
19.15 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation (including non- contractual disputes or claims).