

Dated 21 May 2018

## Software Services Terms and Conditions

**(1)Hpillars Limited T/A Telleroo**

**(2)Customer**



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Date: 21 May 2018

## Parties

- (1) Hpillars Limited, trading as Telleroo, incorporated and registered in England and Wales with company number 10175644 whose registered office is at WeWork c/o Telleroo, 115 Mare Street, London, England, E8 4RU (**Supplier**).
- (2) The business using Telleroo and its services (**Customer**).

## Introduction

- A. The Supplier has developed certain software applications and platforms which it makes available to subscribers via the internet on a pay-per-use basis for the purpose of business accounting and payment management.
- B. The Customer wishes to use the Supplier's service in its business operations.
- C. The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's service subject to the terms and conditions of this Agreement.
- D. The Supplier's service incorporates Financial Conduct Authority (**FCA**) and Prudential Regulation Authority (**PRA**) regulated third party services involving the issuing, holding and transferring of electronic money, other payment services and banking services (**Regulated Services**) which are carried out by a company authorised by the FCA to conduct the E-money Services (**Authorized Company**) or their third party banking partner (**the Bank**).

## Agreed terms

### 1. Interpretation

- 1.1. The definitions and rules of interpretation in this clause apply in this Agreement.

<b>Agreement</b>	this agreement and any Schedule(s) to it.
<b>Authorised Users</b>	those employees, officers, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation.
<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
<b>C o n f i d e n t i a l Information</b>	information relating to the business or affairs of a party to this Agreement, including, without limitation, as described in clause 12.6 or 12.7.
<b>Customer Data</b>	the data, including Payment Information, inputted by the Customer and/or its Authorised Users into the Service.
<b>Data Protection Law</b>	the Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any legislation and/or regulation which amends, replaces, re-enacts or consolidates them, including the General Data Protection Regulation (EU) 2016/679, as may be in force and applicable, from time to time.

<b>Documentation</b>	the documents made available to the Customer by the Supplier online via <a href="http://www.telleroo.com">www.telleroo.com</a> or such other web address notified by the Supplier to the Customer from time to time which set out a description of the Services, technical installation and support information, or user instructions for the Services.
<b>Effective Date</b>	the date of the last signature to this Agreement.
<b>E-Money Services</b>	has the meaning given in recital D to this Agreement.
<b>FCA</b>	has the meaning given in recital D to this Agreement.
<b>Normal Business Hours</b>	9.00 am to 5.00 pm local UK time, each Business Day.
<b>Payment Information</b>	information provided by Customer in relation to Payments, including without limitation payee account names, account numbers, sort codes, amount to be transferred, denominated currency, and payment date.
<b>Payment Processing Fees</b>	the payment processing fees payable by the Customer to the Supplier for Payments, as set out in Schedule 2.
<b>Payments</b>	payments by the Customer using the Service.
<b>Authorized Company</b>	has the meaning given in Schedule 3 to this Agreement.
<b>Services</b>	the services subscribed for under this Agreement, as described in Schedule 1 and the applicable Documentation.
<b>Software</b>	the online software applications provided by the Supplier as part of the Services.
<b>Sub-processor</b>	a person or entity subcontracted by the Company to process the Client Data in accordance with the Company's obligations under or in connection with this Agreement
<b>Subscription Term</b>	the term of this Agreement as set out in clause 15.
<b>Support Services Policy</b>	means the support services policy of the Supplier from time to time, as published on <a href="http://www.telleroo.com/">http://www.telleroo.com/</a> or provided to the Customer.
<b>Virus</b>	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 (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
<b>Wallet</b>	the Customer's electronic money account for the purpose of using the Service, including Payments, as provided by the Authorized Company.

- 1.2. Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
- 1.8. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- 1.9. A reference to writing or written includes email.
- 1.10. References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

## **2. Authorised Use**

- 2.1. Subject to the restrictions set out in this clause 2 and the other terms and conditions of this Agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicenses, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.
- 2.2. The Customer shall not use the Services for any purpose or in any manner that:
  - 2.2.1. is unlawful, harmful, threatening, defamatory, obscene, malicious, infringing, harassing or offensive;
  - 2.2.2. constitutes or facilitates illegal activity, money laundering or terrorism;
  - 2.2.3. is in breach of any applicable international sanctions;
  - 2.2.4. damages or is reasonably likely to damage the Services;
  - 2.2.5. is a denial-of-service attack or a distributed denial-of service attack;
  - 2.2.6. contravenes any applicable usage policy of the Supplier at the relevant time;

- 2.2.7. compromises any security measures of the Supplier or introduces onto the systems of the Supplier or transmits any Virus;
  - 2.2.8. causes damage or injury to any person or property; or
  - 2.2.9. is detrimental to the reputation of the Supplier.
- 2.3. The Customer shall not:
- 2.3.1. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:
    - (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
    - (b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
  - 2.3.2. access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
  - 2.3.3. use the Services and/or Documentation to provide services substantially the same as the Services to third parties; or
  - 2.3.4. subject to clause 23, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
  - 2.3.5. attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation.
- 2.4. If the Customer breaches clause 2.2 or 2.3 Supplier reasonably suspects that such a breach has occurred or is likely to occur, Supplier has the right without liability or prejudice to its other rights, to immediately disable the Customer's access to all or part of the Services and to suspend any pending Payments, and to remove any content on the Services in each case as it deems necessary in its absolute discretion to address the breach or anticipated breach.
- 2.5. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, shall promptly notify the Supplier. The Customer shall ensure that each Authorised User shall keep a secure password for use of the Services and Documentation, that such password shall be changed no less frequently than monthly and that each Authorised User shall keep his password confidential. The Customer shall be responsible for all uses of the Service via any access credentials issued to the Customer or any Authorised User.



- 2.6. The rights provided under clause 2.1 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer or any subsidiary of such holding company.
- 2.7. The Customer shall maintain records in accordance with good industry practice in connection with its performance of the Agreement and use of the Services and the Supplier the FCA shall be entitled to audit such records from time to time.

### **3. Services**

- 3.1. The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.
- 3.2. The Supplier may from time to time make modifications to the Services (including, without limitation, the Software) and deploy updates or upgrades to the Services, provided that the modified and updated services are of a substantially similar functionality to the Services as at the date of this Agreement.
- 3.3. The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, subject to the following: downtime may occur during planned maintenance undertaken by the Supplier, which the Supplier shall use reasonable endeavours to carry out during a daily maintenance window of 10.00 pm to 2.00 am UK time, or in the circumstances described in clause 4.5.
- 3.4. Save as otherwise agreed by the parties in writing, the Services shall not include any work by the Supplier to integrate the Customer's systems with the Services. The Supplier shall provide in the Documentation details of the application programming interface for the Services.
- 3.5. The Supplier will, as part of the Services, provide the Customer with the Supplier's standard customer support services during Normal Business Hours in accordance with the Supplier's Support Services Policy in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time.
- 3.6. The Supplier's sub-contractor, the Authorized Company, performs the E-Money Services provided as part of the Services. In the event of any incident or problem relating to the E-Money Services, the Supplier shall liaise with the Authorized Company and take reasonable steps to ensure that the Authorized Company resolves the incident or problem as soon as reasonably practicable and be directly responsible to the Customer.

### **4. E-Money Services**

- 4.1. Customer money deposited in Wallets for use of the Service is held in an account operated by the Supplier, with the Authorized Company. The Supplier does not physically hold any money belonging to the Customer at any time.
- 4.2. The Customer is not permitted to have a negative Wallet balance. The Service does not allow for any extension of credit to the Customer.
- 4.3. The Supplier shall comply at all times for the duration of this Agreement, with all applicable requirements and terms and conditions from time to

time of the applicable Authorized Company es in connection with the creation and use of Wallets. and will indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and all other professional costs and expenses) suffered or incurred by the Customer arising out of or in connection any action, dispute, enquiry or proceedings brought by the Authorized Company against the Customer.

- 4.4. The Customer warrants, represents and undertakes that all information provided to the Supplier in connection with the opening of any Wallet (including without limitation, any “know your business” information and whether such information is provided on, prior to or after the Effective Date) is true and accurate.
- 4.5. The Supplier may replace its provider of E-Money Services from time to time and, where this is the case, the Supplier will provide the Customer with at least 30 days’ advanced written notice of the identity of the relevant replacement E-Money Services provider and the steps that will be taken to implement the replacement.

## **5. Customer data**

- 5.1. The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 5.2. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except any third parties sub-contracted by the Supplier to enable it to provide the Services to Customer).
- 5.3. For the purposes of this Agreement, "Personal Data", "data controller", "data processor", "data subject" and "process" shall have the meaning given by the Data Protection Law.
- 5.4. The Parties agree and acknowledge that the Supplier may be a data processor or a sub-processor in respect of the Customer Data.
- 5.5. The Supplier will process the Customer Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments, including but not limited to the Data Protection Law.
- 5.6. The Supplier will process the Customer Data only to the extent, and in such a manner, as is necessary for this Agreement and in accordance with Customer’s written instructions from time to time and will not process the Customer Data for any other purpose. Where the Supplier is required by law to process the Customer Data, the Supplier will promptly inform Customer of such legal requirement prior to carrying out the processing, unless it is prohibited from doing so by law.
- 5.7. The Supplier will ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of the Customer Data and against accidental loss or destruction of, or damage to, the Customer Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss,

destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting the Customer Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to the Customer Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it.

- 5.8. The Supplier will ensure that all personnel who have access to and/or process the Customer Data have undertaken training in the laws relating to handling Personal Data and are obliged to keep the Customer Data confidential.
- 5.9. The Supplier will not transfer the Customer Data outside the European Economic Area unless the following conditions are fulfilled:
  - 5.9.1. the Supplier has provided appropriate safeguards in relation to the transfer;
  - 5.9.2. the data subject has enforceable rights and effective legal remedies;
  - 5.9.3. the Supplier complies with the Data Protection Law by providing an adequate level of protection to any of the Customer Data that is transferred; and
  - 5.9.4. the Supplier complies with reasonable instructions notified to it in advance by Client with respect to the processing of the Customer Data.
- 5.10. Where the safeguards referred to in clause 5.9 above, cease to be valid under the Data Protection Law, the Supplier will work with Customer to put in place an alternative solution.
- 5.11. Supplier shall be entitled to provide Customer Data to its Sub-processors as necessary to facilitate the provision of the Services and the conduct of regulatory compliance checks (including anti-money laundering checks by the provider of the E-Money Services.) The Supplier may only appoint a Sub-processor to process the Customer Data:
  - 5.11.1. For new Sub-processors receiving Customer Data after the date of this Agreement, upon 30 days' prior written notice of such Sub-processor to Customer. The Parties agree that where Customer objects to such Sub-processor, Customer may terminate this Agreement with immediate effect and without penalty, and the Supplier will refund Client any pre-paid Fees or other amounts notwithstanding anything to the contrary in this Agreement;
  - 5.11.2. Provided that the Sub-processor's contract is on terms which are substantially the same as those set out in this Agreement;
  - 5.11.3. Provided that, as between Customer and the Supplier, the Supplier remains fully liable for all acts or omissions of any Sub-processor appointed by it in connection with this Agreement;

- 5.11.4. Provided that the Sub-processor's contract to process the Customer Data terminates automatically on termination of this Agreement for any reason.
- 5.12. Supplier will promptly notify Customer if it receives any complaint, notice or communication which relates to the processing of the Customer Data, or any request from a data subject for access to that person's personal data. The Supplier shall provide Customer with full cooperation and assistance in relation to any such complaint, notice communication, or request and shall not disclose any of the Customer Data to any data subject or to a third party other than at the request of Customer, or as provided for in this Agreement.
- 5.13. Supplier will promptly notify Customer if it becomes aware of any unauthorised or unlawful processing, loss of, damage to, disclosure of, access to or destruction of the Customer Data ("**Data Breach**") and provide Customer with full co-operation, information and assistance in respect of any Data Breach, at the Supplier's own expense.
- 5.14. Supplier will promptly comply with any request from Customer requiring the Customer to amend, transfer, return or delete the Customer Data, unless otherwise required by law. For the avoidance of doubt, where this Agreement is terminated by either Party, the Supplier will, upon Customer's request, return or irretrievably delete (at Customer's sole option) all of the Customer Data, and delete all copies of the Customer Data and provide written confirmation to Customer of the same.
- 5.15. Supplier will maintain complete and accurate records and information to demonstrate its compliance with this Section 5.
- 5.16. At the Customer's sole expense and no more than one (1) time every twelve (12) months, Supplier will allow Customer and any of its third party auditors on behalf of Customer to access the Supplier's premises housing Customer Data, the Supplier's personnel and relevant data and records as may be reasonably required in order to undertake verification that the Supplier has complied with this Section 5. As a condition of each such audit, Customer shall provide no less than ten (10) days' written notice to Supplier and shall keep, and ensure that its designated agent agrees to keep, Supplier's Confidential Information in confidence. Customer's audit shall not unreasonably interfere with the operation of Supplier's business, and Supplier employees shall be present at all times. Customer shall not have unsupervised access to Supplier systems at any time.
- 5.17. If the Supplier processes any personal data on the Customer's behalf when performing its obligations under this Agreement:
  - 5.17.1. the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to the Supplier so that the Supplier may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf;
  - 5.17.2. the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
- 5.18. The responsibility for monitoring and verifying the accuracy of Payment Information belongs solely to the Customer. The Supplier shall have no

liability as a result of any Payment duly processed out in accordance with the Payment Information provided by the Customer.

5.19. The Supplier reserves the right to maintain Customer Data as is required by applicable law or regulation after any end of term or termination pursuant to clause 15.

5.20. The Supplier shall be entitled to monitor usage of its Services by the Customer and its Authorised Users for the purposes of performing and monitoring compliance with this Agreement, and also to generate aggregated information about the usage of the Services which the Supplier may use to improve the Services and for other business purposes.

## **6. Registration**

6.1. Registration for the Service must be completed by the Customer on the registration page of <http://www.telleroo.com/> or by such other method as directed by the Supplier prior to the Customer being granted access to the Services. All information provided is Customer Data. The Supplier may, in its sole and absolute discretion, refuse access to the Service because of inadequacy or incompleteness in the Customer Data provided (including, without limitation, any inadequacy of any “know your business” information provided) or if the Supplier determines that provision of the Services to the Customer may constitute a breach of applicable law or regulation or adversely affect the reputation of the Supplier. The Customer must provide current, complete and accurate information for all required elements. If any Customer Data provided for registration or “know your business” purposes change, the Customer must notify the Supplier of such change as soon as possible.

## **7. Third party providers**

7.1. The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

## **8. Supplier's obligations**

8.1. The Supplier undertakes that the Services will be provided substantially in accordance with the Documentation and with reasonable skill and care.

8.2. The undertaking at clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any person other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking at clause 8.1, Supplier will, at its expense, use reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance, provided that such alternative means are substantially similar to the Services. Such correction or substitution constitutes the Customer's

sole and exclusive remedy for any breach of the undertaking set out in clause 8.1. Notwithstanding the foregoing, the Supplier:

- 8.2.1. does not warrant, represent or undertake that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- 8.2.2. is 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 the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 8.3. This Agreement shall not prevent the Supplier 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.
- 8.4. The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

## **9. Customer's obligations**

- 9.1. The Customer shall:
  - 9.1.1. provide the Supplier with:
    - (a) all necessary co-operation in relation to this Agreement; and
    - (b) all necessary access to such information as may be required by the Supplier;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
  - 9.1.2. comply with all applicable laws and regulations with respect to its activities under this Agreement;
  - 9.1.3. carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
  - 9.1.4. ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
  - 9.1.5. obtain and shall maintain all necessary licences, consents, and permissions necessary for it to lawfully receive the Services from the Supplier;

- 9.1.6. ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- 9.1.7. be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

## **10. Charges and payment**

- 10.1. The Customer shall pay the Payment Processing Fees to the Supplier in accordance with this clause 10 and Schedule 2.
- 10.2. The Customer shall on the Effective Date provide to the Supplier valid, up-to-date and complete approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details as necessary to facilitate invoicing of the Payment Processing Fees. The Supplier shall invoice the Customer in arrears at the end of each calendar month in respect of the Payment Processing Fees accruing for such calendar month, and the Customer shall pay each invoice within 30 days after the date of such invoice.
- 10.3. If the Supplier has not received payment within 14 days after the final due date for payment, and without prejudice to any other rights and remedies of the Supplier:
  - 10.3.1. the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
  - 10.3.2. interest shall accrue on a daily basis on such overdue amounts at an annual rate equal to 5% over the then current base lending rate of the Supplier's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 10.4. All amounts and fees stated or referred to in this Agreement:
  - 10.4.1. shall be payable in pounds sterling;
  - 10.4.2. are non-cancellable and non-refundable;
  - 10.4.3. are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 10.5. The Supplier shall be entitled to increase the Payment Processing Fees upon 90 days' prior written notice to the Customer and Schedule 2 shall be deemed to have been amended accordingly upon the expiry of such notice.

## **11. Proprietary rights**

- 11.1. The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this Agreement does not

grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

- 11.2. The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.
- 11.3. The Supplier shall be entitled to use any feedback or suggestions regarding the Services provided by the Customer, and develop and commercialise its services to the Customer and third parties on the basis of such feedback and suggestions, without any liability or restriction or obligation to make any payment to the Customer or any third party.

## 12. Confidentiality

- 12.1. 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:
  - 12.1.1. is or becomes publicly known other than through any act or omission of the receiving party;
  - 12.1.2. was in the other party's lawful possession before the disclosure;
  - 12.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
  - 12.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence.
- 12.2. Subject to clauses 12.4 and 12.5 and, 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, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 12.3. 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.
- 12.4. The Supplier may disclose Confidential Information to its sub-contractors, agents and other representatives (including, without limitation, the provider of the E-Money Services) as reasonably required to provide the Services.
- 12.5. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority (including, without limitation, the FCA) or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as reasonably possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 12.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.



- 12.6. The Customer acknowledges that details of the Services (including the applicable Payment Processing Fees), and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 12.7. The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 12.8. 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.
- 12.9. The above provisions of this clause 12 shall survive termination of this Agreement, however arising.

### **13. Indemnity**

- 13.1. The Customer shall defend, indemnify and hold harmless the Supplier 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 the Customer's use of the Services and/or Documentation, provided that:
  - 13.1.1. the Customer is given prompt notice of any such claim;
  - 13.1.2. the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  - 13.1.3. the Customer is given sole authority to defend or settle the claim.
- 13.2. The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any third party's intellectual property rights or right of confidentiality, and shall indemnify the Customer for all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with such claims, provided that:
  - 13.2.1. the Supplier is given prompt notice of any such claim;
  - 13.2.2. the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
  - 13.2.3. the Supplier is given sole authority to defend or settle the claim.
- 13.3. In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 30 days written notice to the Customer without any additional liability or obligation to pay damages or other additional costs to the Customer.

- 13.4. In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer under clause 13.2 or otherwise to the extent that the alleged infringement is based on:
- 13.4.1. a modification of the Services or Documentation by the Customer that is not authorised by the Supplier or is contrary to the Supplier's instructions; or
  - 13.4.2. the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier or the Documentation or in breach of this Agreement; or
  - 13.4.3. the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 13.5. Clauses 13.2 to 13.4 (inclusive) states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, in connection with any actual or alleged infringement of any patent, copyright, trade mark, database right or right of confidentiality or any other intellectual property right.

#### **14. Limitation of liability**

- 14.1. Except as expressly and specifically provided in this Agreement:
- 14.1.1. the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services;
  - 14.1.2. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
  - 14.1.3. the Services and the Documentation are provided to the Customer on an "as is" basis.
- 14.2. Nothing in this Agreement excludes the liability of the Supplier and Customer:
- 14.2.1. for death or personal injury caused by the Supplier's negligence; or
  - 14.2.2. for fraud or fraudulent misrepresentation; or
  - 14.2.3. any other liability which cannot be excluded under applicable law.
- 14.3. Subject to clause 13.2, 14.1 and clause 14.2:
- 14.3.1. Each party shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or pure economic loss, or for any special, indirect or consequential loss,

costs, damages, charges or expenses however arising under this Agreement; and

- 14.3.2. each party's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Payment Processing Fees paid by the Customer during the twenty-four (24) months immediately preceding the date on which the claim arose.

## 15. Term and termination

- 15.1. This Agreement shall commence on the Effective Date and shall continue until terminated by either party:
  - 15.1.1. on thirty (30) days' written notice to the other; or
  - 15.1.2. as provided in clause 15.2.
- 15.2. Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
  - 15.2.1. the other party fails to pay any amount due under this Agreement on the final due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
  - 15.2.2. the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - 15.2.3. the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
  - 15.2.4. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - 15.2.5. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - 15.2.6. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - 15.2.7. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to

- appoint an administrator is given or if an administrator is appointed, over the other party;
- 15.2.8. the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
  - 15.2.9. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - 15.2.10. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
  - 15.2.11. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2.4 to clause 15.2.10 (inclusive);
  - 15.2.12. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
  - 15.2.13. the Customer is in breach of Clause 4.4.
- 15.3. The Supplier shall be entitled to terminate or temporarily suspend performance of this Agreement immediately upon written notice to the Customer in the event that the Supplier's agreement with the Authorized Company (or any replacement supplier of the E-Money Services) is terminated or the continued performance of this Agreement would result in a breach of any applicable law or regulation.
- 15.4. On termination of this Agreement for any reason:
- 15.4.1. the licence granted under clause 2.1 shall immediately terminate and the Customer shall immediately cease all use of the Services and the Documentation;
  - 15.4.2. each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
  - 15.4.3. the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and

- 15.4.4. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

**16. Force majeure**

Neither party will have liability to the other party under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the affected 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, provided that the non-affected party is notified of such an event and its expected duration.

**17. Conflict**

If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.

**18. Variation**

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**19. Waiver**

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

**20. Rights and remedies**

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

**21. Severance**

21.1. If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

21.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

**22. Entire agreement**

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

22.2. Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

### **23. Assignment**

23.1. Neither party shall, without the prior written consent of the other party, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

### **24. No partnership or agency**

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

### **25. Third party rights**

This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999. The parties may amend or terminate this Agreement without the consent of any third party.

### **26. Notices**

26.1. Any notice required to be given under this Agreement can be by way of email. The Customer can give notice to the Supplier by emailing [admin@telleroo.com](mailto:admin@telleroo.com). The Supplier can give notice to the Customer.

26.2. The Customer agrees to the use of electronic communications and notifications by the Supplier in connection with the Service.

### **27. Governing law**

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

### **28. Jurisdiction**

Each party irrevocably agrees 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 or its subject matter or formation (including non-contractual disputes or claims).

### **Schedule 1 Services**

The Telleroo platform is the software interface to authorised companies (schedule 3) for the purpose of sending bulk payments. Businesses can import payments or connect to Telleroo API to use Telleroo services, such as payment initiation. Telleroo customers interact directly with Telleroo as opposed to the Authorized Company.

Telleroo issues electronic money accounts per client at the Authorized Company. Account holder is the client itself, no third party payments allowed. The account allows the client to hold, send or receive electronic money/payments.

## **Schedule 2 Payment Processing Fees**

Fees consist of transaction fees per sent payment and a monthly flat fee.

As agreed upon individually.



### **Schedule 3 List of Authorized Companies**

The Telleroo business account is an e-money account provided by TransferWise Ltd. TransferWise is authorised by the Financial Conduct Authority under the Electronic Money Regulations 2011, Firm Reference 900507, for the issuing of electronic money.

There are controls in place under the UK Electronic Money Regulations 2011 to safeguard and protect customer funds. Transferwise is required by law to keep your money safe by storing it in a low-risk financial institution. Barclays Bank serves as their third party banking party. Barclays Bank PLC is authorised by the Prudential Regulation Authority, and regulated by the Financial Conduct Authority (Financial Services Register No. 122702) and the Prudential Regulation Authority.