



**Josa Service Terms and Conditions**  
2 March 2021

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**1. Definitions**

1.1 Capitalised terms used in the Agreement have the meanings set out below:

**Agreement:** These Josa service terms and conditions together with any other documents to which reference properly made in order to ascertain the rights and obligations of the parties.

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

**Charges:** The charges payable in respect of the Services as set out.

**Confidential Information:** All information, whether technical or commercial, where the information is either identified as confidential at the time of disclosure; or ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.

**Client Data:** The Client's customer and Visitor information, marketing and pricing information and any other information inputted into the service by the client, Josa on the client's behalf or by visitors for the. Purpose of using the services.

**Client Service:** The barber service offered by the client.

**Customer:** A consumer who purchases client services.

**Customer Terms:** The terms and conditions that apply to the customer when booking a client service;

**Fees:** The monthly subscription fees for the services set out by Josa in accordance to terms and services.

**Hosted Services:** The website hosting services provided for the site including the online booking and customer management services together with any optional hosted services which the client has agreed to purchase and Josa has agreed to supply under an order form.

**Materials:** The content provided to Josa by the client occasionally for incorporating in the site.

**Order Forms:** A "Josa Order Form" signed (whether by hand or electronic means) by both parties for the purchase by the client of the services.

Services: The website design and development services and the hosted services to be provided by Josa to the client pursuant to this agreement as specified in an Order For.

Site: The website to be developed and hosted by Josa for the client pursuant to this Agreement.

Visitor: A visitor to the site who may be a customer

- 1.2 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular
- 1.3 Any words following the term including or any similar expression shall not limit the sense of the words preceding those terms
- 1.4 Reference to content include any kind of text, information, image, or audio or video material which can be incorporated in a website for access by a visitor to that website

## **2. Basis of Agreement**

- 2.1 Subject to any variation under clause 2.2 any contract formed by Josa and client will be on the terms of this agreement to the exclusion of all other terms and conditions
- 2.2 Any variation to this agreement and any representations about services shall have no effect unless expressly agreed in writing and signed by duly authorised signatories of Josa and the client.
- 2.3 No order form shall be effective until signed by both parties or from the date of commencement of the provision of the services by Josa to the client, whichever is the sooner.
- 2.4 In the event of any conflict between the documents forming this agreement, they shall be interpreted in the following order of precedence:
  - The terms contained the order form;
  - The terms contained in the Josa online payment terms and conditions (if applicable); and
  - The terms and conditions set out in these Josa Service Terms and Conditions

## **3. Development and Acceptance of Site**

- 3.1 Josa shall design and develop the site. Once Josa has completed the design of the site, Josa shall provide the client with access to the site in order to review it.
- 3.2 The client shall review the site and provide any comments to Josa. Josa will edit the site in accordance with client comments and refer the site back to the client for its approval.
- 3.3 Acceptance of the site by the client shall be deemed to have taken place upon the occurrence of any of the following events:
  - a. The client informs Josa that it accepts the site;
  - b. The client uses any part of the site for any revenue-earning purposes or to provide any services to third parties other than for test purposes; or
  - c. The client unreasonably delays in reviewing the site.

## **4. Hosted services**

- 4.1 Subject to the clients paying the applicable fees and charges, Josa shall provide the hosted services to the client and grants to the client a non-exclusive, non-transferrable right to use and to permit its nominated users to use the hosted services on terms of and as permitted by this agreement during the term solely to enable the client to offer its client services to visitors and to enable customers to make bookings for its client services

- 4.2 The client undertakes that:
- a. Each nominated user shall have a unique log-in and shall keep a secure password for his use of the services;
  - b. It will not allow or suffer any unique long-in to be used by more than one individual nominated user;
  - c. The client shall promptly notify Josa of any unauthorized access to or use of the services; and
  - d. The client shall be responsible for any breach of terms of this agreement by any of its nominated users and any other person who accesses the services using client access credentials or systems (whether permitted to do so by the client or not)
- 4.3 The Hosted Services may incorporate third party products or services. Third party products and services are supplied in accordance with the relevant licensor's standard terms. Certain third party products and services require the Client to accept the licensor's standard terms before they can be used. Where additional fees are payable for the use of third party products and services, these are specified in the Order Form. If the Client chooses to purchase the "Josa Online Payment Service", the terms and conditions set out in the Josa Online Payment Terms and Conditions apply and are hereby incorporated into the Agreement.
- 4.4 Josa may make operational changes to the Services without giving prior notice to the Client and may control, direct and establish technical procedures for the use and supply of the Services.
- 4.5 Josa will, as part of the Services and at no additional cost to the Client, provide the Client with maintenance and support in accordance with its Maintenance and Support Policy.
- 4.6 All bookings of Client Services made by a Client shall be on the standard terms of booking in the Customer Booking Terms with such other terms as the Client may wish to apply provided that such other terms are not inconsistent with the standard terms of booking. Accordingly, the Client agrees to comply with such standard terms of booking and to provide the services booked by a Client through the Hosted Services.

## **5. Client responsibilities**

- 5.1 The Client acknowledges that Josa's ability to provide the Services is dependent upon the full and timely co-operation of the Client (which the Client agrees to provide), as well as the accuracy and completeness of the Materials and any other information and data the Client provides to Josa. Accordingly, the Client shall provide Josa with access to, and use of, all information, data and documentation reasonably required by Josa for the performance by Josa of its obligations under this Agreement.
- 5.2 The Client shall be responsible for the accuracy and completeness of the Materials on the Site in accordance with clause 7.

## **6. Josa property**

- 6.1 As between the parties, Josa retains all right, title and interest, including without limitation all patent, copyright, trademark, design right, trade secret, database rights, business names and domain names, rights in get-up and trade dress, goodwill and other intellectual property and proprietary rights, in and to (i) the Services (including the software used to provide the Services), (ii) the Site but excluding the Materials, and (iii) any and all improvements, modifications, translations and derivative works of any of the foregoing (collectively, "Josa Property").

6.2 The Client does not acquire any right, title or interest in or to Josa Property except as expressly set out in this Agreement.

6.3 Client agrees that it will not:

- a. other than as permitted by this Agreement, permit any third party to access and/or use the Services;
- b. rent, lease, loan, or sell access to the Services to any third party;
- c. interfere with, disrupt, alter, translate, or modify the Services or any part thereof, or create an undue burden on the Services or the networks or services connected to the Services;
- d. use the Services for any purpose other than for its own internal business purposes;
- e. reverse-engineer the Services, or access the Services to build a competitive product or service; or
- f. introduce software or automated agents or scripts to the Services so as to produce multiple accounts, generate automated searches, requests and queries, or to strip or mine data from the Services.

6.4 Josa reserves the right to terminate the Client's access to the Services or the account of any nominated user in the event Josa believes the Services are being used in breach of the provisions of this clause 6.

## **7. Site content**

7.1 The Client shall ensure that the Materials do not infringe any applicable laws, regulations or third party rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous or in breach of any third party Intellectual Property Rights) (Inappropriate Content) and shall indemnify Josa against all damages, losses and expenses arising as a result of any action or claim that the Materials constitute Inappropriate Content.

7.2 Josa shall grant the Client access to the Site in order to update information held on the Site.

7.3 The Client acknowledges that Josa has no control over any content placed on the Site by Visitors and does not purport to monitor the content of the Site. Josa reserves the right to remove content from the Site where it reasonably suspects such content is Inappropriate Content. Josa shall notify the Client promptly if it becomes aware of any allegation that any content on the Site may be Inappropriate Content.

## **8. Client data and data protection**

8.1 The Client shall own all rights, title and interest in and to all of the Client Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Client Data.

8.2 Josa warrants that, to the extent it processes personal data about any living individual (**Personal Data**) on behalf of the Client in the course of providing the Services:

- a. it shall act only on instructions from the Client; and
- b. it has in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

8.3 Josa shall comply with the Josa Privacy Policy in handling personal data.

## **9. Charges and payment**

9.1 The Fees and Charges for the Services are set out in the Order Form.

9.2 The Fees are payable monthly in advance.

9.3 The Charges are payable monthly in arrears.

9.4 Josa shall issue a monthly invoice in respect of the Fees for the following month and Charges for the previous month.

9.5 The monthly invoices issued by Josa in respect of the Fees and Charges are payable by way of card payment. These payments shall be initiated by Josa, on behalf of the Client. Such payments are classified as 'merchant-initiated transactions' (MITs). In accordance with EU regulations, in order to process MITs and pay for the monthly invoices from Josa, the Client must provide Josa with a 'mandate' which authorises Josa to initiate a series of monthly payments for the Fees and Charges.

9.6 These MITs:

- a. Will correspond to the Fees for the following month and Charges for the previous month;
- b. Will occur once a month on around the same day each month. For example, if the first payment is taken on the third day of February (3rd February), the second will be taken on or around 3rd March;
- c. May vary from month to month due to variations in the use of the Services by the Client, such as variations in the quantity of marketing SMSs and emails sent by the Client using the Services.

9.7 By agreeing to these terms, the Client provides Josa with a mandate and authorises Josa to send instructions to the financial institution that issued the Client's card to take payments from the Client's card account in accordance with the terms of this Agreement.

9.8 In cases where Josa has provided additional and/or bespoke work at the request of the Client, and where the cost of such work has been agreed beforehand by both Josa and the Client, for example, the production and development of a custom app for the Client, Josa may issue additional invoices payable by the Client. Such invoices are payable by way of card payment within 14 days of the date of Josa's invoice.

9.9 All Fees and Charges are quoted exclusive of VAT. If applicable, Josa will add VAT at the prevailing rate to all invoices.

9.10 The Fees may be increased by Josa, upon prior written notice to the Client, provided that any such increase will: (i) not be made more than once in any twelve month period; and (ii) be at the rate of the then standard Josa annual price increase, which will not exceed five percent (5%). Charges which are based on the prices of third party providers of products or services will be increased in line with and as and when Josa is subject to an increase in price from the third party product or service providers. This includes, but is not limited to, increases in cost experienced by Josa for products and services from third party providers due to the changing value of international currencies.

9.11 If the Client fails to make any payment due to Josa under this Agreement by the due date for payment, the Client shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.

9.12 If the Client fails to make a payment on the due date, without prejudice to any other right or remedy available to Josa in respect of such failure, Josa may, at its discretion:

- a. suspend access to the Services until payment of the due amount (including any interest accrued in accordance with clause 9.11) has been received; or
- b. upon giving thirty days' written notice to the Client to remedy such non-payment, terminate this Agreement

## **10. Warranties**

**10.1** Josa shall perform the Services with reasonable care and skill.

**10.2** The undertaking at clause 10.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Josa's reasonable instructions, or modification or alteration of the Services by any party other than Josa or Josa's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Josa will, at its expense, use all reasonable commercial endeavours to correct

any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Client's sole and exclusive remedy for any breach of the undertaking set out in clause 10.1 Notwithstanding the foregoing, Josa:

- a. does not warrant that the Client's use of the Services will be uninterrupted or error-free; nor that the Services or the information obtained by the Client through the Services will meet the Client's requirements; and
- b. 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 Client acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

10.3 Josa warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement and that it will comply with all applicable laws and regulations with respect to its activities under this Agreement.

10.4 This Agreement sets out the full extent of Josa's obligations and liabilities in respect of the supply of the Services. All conditions, warranties or other terms concerning the Services which might otherwise be implied into this Agreement or any collateral contract (whether by statute or otherwise) are hereby expressly excluded.

## **11. Limitations of remedies and liability**

**11.1** Nothing in this Agreement shall operate to exclude or limit Josa's liability for:

- a. death or personal injury caused by its negligence; or
- b. any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- c. fraud; or
- d. any other liability which cannot be excluded or limited under applicable law.

11.2 Josa shall not be liable to the Client for any damage to software, damage to or loss of data, loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage.

11.3 Subject to Clause 11.1, Josa's aggregate liability in respect of claims based on events in any calendar year arising out of or in connection with this Agreement or any collateral contract, whether in contract or tort (including negligence) or otherwise, shall in no circumstances exceed the total of the Fees payable by the Client to Josa under this Agreement in that calendar year.

11.4 The Client shall indemnify Josa from and against any costs, claims, expenses or losses suffered by Josa as a result of any claim in relation to the Client Services.

## **12. Terms and terminations**

**12.1** This Agreement shall commence on the commencement of the provision of the Services to the Client and shall continue until terminated in accordance with this clause.

12.2 Either party may terminate this Agreement by giving the other party one month's written notice.

12.3 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:

- a. the other party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

- b. the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- c. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

12.4 On termination of this Agreement all licences granted by Josa under this Agreement shall terminate immediately.

12.5 On expiry or termination of this Agreement otherwise than on termination by Josa under clause 12.3, Josa shall return any Materials in its possession. Josa shall provide such assistance as is reasonably requested by the Client in transferring the hosting of the Site to the Client or another service provider, subject to the payment of Josa's expenses reasonably incurred.

12.6 On expiry or termination of this Agreement, 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.

### **13. Force majeure**

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for four weeks, the party not affected may terminate this Agreement by giving 10 days' written notice to the affected party.

### **14. Confidentiality**

14.1 Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

14.2 Confidential Information may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.

14.3 The obligations set out in this clause 14 shall not apply to Confidential Information which the receiving party can demonstrate:

- a. is or has become publicly known other than through breach of this clause; or
- b. was in possession of the receiving party prior to disclosure by the other party; or
- c. was received by the receiving party from an independent third party who has full right of disclosure; or
- d. was independently developed by the receiving party; or
- e. was required to be disclosed by a governmental authority, stock exchange or regulatory body, provided that the party subject to such requirement to disclose gives the other party prompt written notice of the requirement.

14.4 The obligations of confidentiality in this clause 14 shall not be affected by the expiry or termination of this Agreement.

### **15. Notices**

**15.1** Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:

- a. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- b. sent by email to info@josa.co

**15.2** Any notice shall be deemed to have been received:

- a. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- b. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- c. if sent by email, at 9.00 am on the next Business Day after transmission.

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

## **16. General**

**16.1** Neither party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

**16.2** 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.

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

**16.4** No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

**16.5** 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.

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

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

**16.8** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.