

# ETCHROCK TERMS AND CONDITIONS

**Effective Date: April 18, 2018**

## 1.

### Introduction

#### 1.1

This website is owned and operated by Etch Rock Limited. Our company information is at the end of this document.

#### 1.2

Please read these terms and conditions carefully. They cancel and replace any previous versions. By downloading or App or registering on or using our Service (as defined below) you agree to be bound by these terms and conditions. Please print or save these terms for future use as we will not keep a file copy specifically for the transaction with you and we cannot guarantee that they will remain accessible on our website in future. These terms and conditions are available in the English language only.

#### 1.3

These terms and conditions constitute an “end user licence agreement” between you and us (not the Appstore) in relation to our App and, in addition, you agree to be bound by the Appstore Rules.

## 2.

### Definitions

#### 2.1

Capitalised terms have the following meanings in these terms and conditions:

- a) “App” - the EtchRock mobile application.
- b) “Appstore” – the app distributor from which you download the App.
- c) “Appstore Rules” – any applicable rules, policies or terms of the relevant Appstore.
- d) “Consumer” - an individual acting for purposes which are wholly or mainly outside that person’s trade, business, craft or profession.
- e) “Content” - all information of whatever kind (including profiles, Event pages, posts, comments, images, photos, audio, video etc.), published, stored or sent on or in connection with our Service.
- f) “Data Protection Laws” - all applicable data protection and privacy laws, regulations and guidance including from 25 May 2018 onwards Regulation (EU) 2016/679 (the “General Data Protection Regulation” or “GDPR”) and guidance or codes of practice issued by the Information Commissioner from time to time.
- g) “Event” – an event promoted on our Service.
- h) “Organiser” – a User who offers an Event via our Service.
- i) “Participant” – a User who books tickets for an Event via our Service.
- j) “Participant Data” – personal information of Participants which Organisers opt to collect via our Service.
- k) “PSP” – our payment service provider.
- l) “Service” – our website, our App and any related services.
- m) “User” - a person who uses our Service (whether or not registered with us).

## 3.

### Changes to the terms and conditions

#### 3.1

We may change these terms and conditions by giving notice by email, SMS or in- app message and/or by posting the new version on our website. Please check our website from time to time. You will be bound by the revised agreement if you continue to use our Service following the effective date shown.

## 4.

### Use of our Service

#### 4.1

We grant Users a limited personal right to use our Service on any applicable device owned or controlled by you in accordance with the Appstore Rules and subject to these terms and conditions.

#### 4.2

You are not eligible for, and must not use or register on, our Service if:

- a) you are below 14 years of age; or
- b) display of or access to any aspect of this Service is illegal under the laws (if applicable) of the country from which you are accessing the Service (e.g. because the country does not permit such a Service or display of or access to such material at all or because you are under the relevant age limit in that country); or
- c) you have been convicted of any offence, or subject to any court order, relating to assault, violence, sexual misconduct or harassment.

#### 4.3

You agree that you will not in connection with the Service:

- a) breach any applicable law, regulation or code of conduct;
- b) publish or send any Content (including links or references to other content), or otherwise behave in a manner, which:
  - 1. i) is defamatory, threatening, harassing, invasive of privacy, offensive, vulgar, racist, hateful, discriminatory, obscene, pornographic, sexually suggestive, promoting of self-harm, misleading, abusive or deceptive;
  - 2. ii) infringes any intellectual property or other rights of others;
  - 3. iii) involves phishing or scamming or similar; or
  - 4. iv) we otherwise reasonably consider to be inappropriate;
- c) publish or send any Content which includes someone else's personal information unless that person is 18 years or over and you have obtained that person's explicit written consent or you are the parent/guardian of such person;
- d) impersonate any person or entity in order to mislead others;
- e) publish or send any Content which links to any third party websites which are unlawful or contain inappropriate Content;
- f) sell access to the Service;
- g) use the Service to provide a similar service to third parties or otherwise with a view to competing with us;
- h) sell advertising, sponsorship or promotions on or in connection with Content except where explicitly authorized by us;
- i) use the Service for junk mail, spam, pyramid or similar or fraudulent schemes;
- j) do anything which may have the effect of disrupting the Service including worms, viruses, software bombs or mass mailings;
- k) do anything which may negatively affect other Users' enjoyment of the Service;
- l) gain unauthorised access to any part of the Service or equipment used to provide the Service;
- m) use any automated means to interact with our systems excluding public search engines; or
- n) attempt, encourage or assist any of the above.

#### 4.4

You must comply with any guidelines or requirements on our Service.

#### 4.5

You must promptly comply with any reasonable request or instruction by us in connection with the Service.

#### 4.6

We are entitled to impose and/or change limitations on usage of our Service, for example in relation to the numbers of Users who can be followed.

#### 4.7

You must ensure that any contact or other information which you supply to us is accurate and not misleading and you will update it so that it remains so.

#### 4.8

We do not supply support except to the extent specifically stated on our site, as may be varied from time to time. You acknowledge that the Appstore has no obligation to supply any maintenance and support services in relation to the App.

## 5.

### Your Content

#### 5.1

You are responsible for your Content.

5.2

You promise to us that you have (and will retain) all rights and permissions needed to enable use of your Content as contemplated by the Service and these terms and conditions.

5.3

If you post a review or rating, you promise that you have no personal or business relationship with the entity, product or service being reviewed, that you are not a competitor of that entity, that have not been offered any incentive to write the review and that the review is your independent, honest, genuine opinion.

5.4

If you use any features on our site which enable you to share your Content with third party sites, we are not responsible for use of your Content on those third party sites.

5.5

We reserve the right without notice or refund to reject, suspend, alter, remove or delete Content or to disclose to the relevant authorities or to a complainant any Content or behaviour if it is the subject of complaint or where we have reason to believe that it breaches our terms and conditions, or that such steps are necessary to protect us or others, or that a criminal act has been committed, or if we are required to do so by law or appropriate authority. If so, you must not attempt to re-publish or re-send the relevant Content.

5.6

If you join a public event, you undertake that your related Content will be appropriate, reasonable and respectful of the spirit and nature of the event and that you will comply with any reasonable request by the owner of that event.

5.7

We do not accept responsibility if your Content is misused by other Users as this is outside our reasonable control.

5.8

It is your responsibility to make your own backup of any Content stored within the Service to protect you in case of loss or damage to such material. We are not responsible for such loss or damage.

5.9

We reserve the right to place advertisements adjacent to or within your Content. We retain all revenue from such advertisements.

5.10

We may irretrievably delete your Content without telling you after 30 days following the ending of this agreement. You should make a backup of any Content that you wish to keep.

## **6.**

### **Content of other User**

6.1

You accept that we have no obligation to vet or monitor Users or their Content. We do not endorse or recommend any profiles, events or other Content. You rely on such information at your own risk. We accept no legal responsibility for the accuracy of, or otherwise in relation to, any such Content or in connection with any dealings between Users. It is your responsibility to carry out careful and detailed investigations before dealing with other Users including use of or reliance on their Content. You should not assume that any Content from another User is accurate and be aware that a person may not be who he or she claims to be.

6.2

You acknowledge that if you create a public event, other Users who join the event are entitled to reproduce the details of the event including event name, description of the event and relevant images and to use the event to fundraise for their own cause.

6.3

You acknowledge that in using the Service you may be exposed to offensive or other inappropriate Content or behaviour. If so, please contact us using the email address shown below. If appropriate, you should seek relevant external help, for example from law enforcement authorities and/or stop using the Service.

6.4

If you have any complaint about Content or behaviour which you think is defamatory or otherwise infringes your rights, please email us at [support@etchrock.com](mailto:support@etchrock.com).

## **7.**

### **Events**

## Contract between Organisers and Participants

### 7.1

Organisers and Participants contract with each other on the following terms as well as on any other applicable terms in this agreement.

### 7.2

Organisers will promptly notify Participants if an Event is cancelled and are responsible for making full refunds via our Service of all payments made by Participants. When making refunds, Organisers are responsible for making up any shortfall arising from deduction of our or payment provider fees from funds received by the Organiser.

### 7.3

Organisers promise that they will operate their Events in accordance with the highest standards reasonably to be expected, in accordance with all applicable laws and regulations and in a manner which does not infringe any third party rights.

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### 7.4

Organisers and Participants agree that they will deal with each other in a courteous and polite manner.

## Payment for Events

### 7.5

Participants can buy tickets for Events by making payments to our PSP.

### 7.6

Participants may not cancel ticket purchases for Events.

### 7.7

Participants must maintain a valid payment card registered with our PSP and must update it if it expires.

## Fees – applicable to Organisers only

### 7.8

You acknowledge that we are entitled to deduct our fees from all ticket payments at the rate (plus applicable VAT) specified on our website on the date that the Event is launched on our Service. These rates may change and so you should check them each time you launch an Event. The applicable PSP fees will also be deducted.

### 7.9

You also acknowledge that neither we nor the PSP are liable to repay any fees to you if you decide, or are obliged, to make any refunds to Participants.

### 7.10

You are liable to repay to us the amount of any chargeback (i.e. card payment disputed with a card issuer) arising on any payment which we have sent to you including any related fees, penalties or other charges.

## Our role

### 7.11

We are entitled at any time for any reason with or without notice to reject or remove any Event from our Service.

### 7.12

Organisers and Participants separately promise us that they will comply with, and be bound by, their contracts with each other as set out above. We are not a party to those contracts. Any legal recourse relating to an Event is against the relevant Organiser or Participant and not against us.

### 7.13

While we reserve the right to decide whether to allow an Event onto the Service, that does not constitute any form of endorsement by us. All payments are made direct to our PSP. We do not hold funds on behalf of Organisers and do not provide refunds. Organisers are free to take ticket proceeds at any time. We do not investigate or supervise and are not responsible for Events, Organisers or Participants. We do not promise that any Event will take place or that it will be of any particular quality. Nor do we mediate disputes between Organisers and Participants (unless we choose to do so in our discretion). You participate in Events at your own risk.

7.14

We do not guarantee that any Event will achieve any particular level of funding or sales.

## Personal information of Participants

7.15

Organisers promise to deal with any Participant Data strictly in accordance with Data Protection Laws. The Organiser is the “data controller” in respect of Participant Data. We are the “data processor” on behalf the Organiser and our obligations are set out in the “GDPR Addendum” at the end of this document.

## PSP

7.16

If Stripe are specified on our Service as our PSP, then the following applies: Payment processing services for Events are provided by Stripe and are subject to the Stripe Connected Account Agreement, which includes the Stripe Terms of Service (collectively, the “Stripe Services Agreement”). By agreeing to this agreement, you agree to be bound by the Stripe Services Agreement, as the same may be modified by Stripe from time to time. As a condition of our enabling payment processing services through Stripe, you agree to provide us with accurate and complete information about you and your business, and you authorise us to share it and transaction information related to your use of the payment processing services provided by Stripe.

7.17

We are not responsible for the acts or omissions of our PSP.

## 8.

### Third party websites / services

8.1

We may use third party-provided services or display third party advertising within our Service and/or link to third party websites which may be of interest to you. We do not recommend or endorse, nor are we legally responsible for, those sites or services. You use them at your own risk.

8.2

Any donations are made through JustGiving or our other partner specified on our Service. We are not involved in the collection or distribution of donations and have no responsibility in connection with such donations. If you intend to make or receive donations, it is your responsibility to satisfy yourself that the partner website / service is suitable for your purposes and you accept that you are subject to any applicable terms and conditions on the partner website.

## 9.

### Guidance on our site

9.1

Any guidance or similar information which we ourselves make available on our Service is intended as very general guidance information but we cannot guarantee that it is accurate or up to date and we do not accept legal responsibility for it.

## 10.

### Security

10.1

Your account on our Service is for your personal use only and is non-transferable. You must not authorise or permit any

other person to use your account. You must take reasonable care to protect and keep confidential your password and other account or identity information. You must notify us immediately of any apparent breach of security such as loss, theft, misuse or unauthorised disclosure or use of a password. You are responsible for third parties who use your account or identity (unless and to the extent that we are at fault).

## **11.**

### **Ending or suspending this contract**

#### 11.1

You may at any time end this agreement by deleting your account or otherwise following the instructions on our Service. Ending the contract does not give rise to any refund.

#### 11.2

We are entitled at any time to end this agreement without refund by email notice and/ or by SMS and/or by in-app message for any reason except that the agreement will continue insofar as necessary in relation to pending Events.

#### 11.3

We are entitled at any time (with or without notice) end this agreement or suspend part or all of our Service if we have reason to believe that you have breached our terms and conditions or if any fees due to us are unpaid / unjustifiably charged back or if it is necessary to protect us or others or if we are required to do so by law or appropriate authority. There will be no refund.

#### 11.4

If this contract ends: Your right to use our Service and all licences are terminated. Existing rights and liabilities are unaffected. All clauses in this agreement which are stated or intended to continue after termination will continue to apply. You must not attempt to re-register for or continue to use our Service if we have given you notice of termination.

## **12.**

### **Functioning of our Service**

#### 12.1

We do not guarantee that the Service will be uninterrupted or error-free.

#### 12.2

We are entitled, without notice and without liability, to suspend the Service for repair, maintenance, improvement or other technical reason.

#### 12.3

We are entitled to make changes to the Service which don't seriously affect it.

## **13.**

### **Compatibility of App**

#### 13.1

The App is compatible with applicable mobile devices and associated operating systems (OS's) which have been released as at the date we launched the App (or as at the most recent App update). We do not guarantee that the App is or will be compatible with any other devices or OS's. We may issue App updates through the Appstore; if so, you may not be able to use our App properly or at all until you have downloaded the update, which may be subject to the agreement of new terms and conditions. It is your responsibility to frequently monitor for App updates and to install them as soon as they become available.

## **14.**

### **Liability**

#### 14.1

Nothing in this agreement in any way limits or excludes our liability for negligence causing death or personal injury or for fraud or fraudulent misrepresentation or for anything which may not legally be excluded or limited. In this section, any reference to us includes our employees and agents.

#### 14.2

Very important: If you are a Consumer, we shall not be liable for any loss or damage caused by us or our employees or agents in circumstances where:

- a) there is no breach of a legal duty of care owed to you by us or by any of our employees or agents;
- b) such loss or damage was not reasonably foreseeable (meaning it was not an obvious consequence of our breach or not contemplated by you and us at the time we entered into this contract);
- c) such loss or damage is caused by you, for example by not complying with this agreement; or
- d) such loss or damage relates to a business of yours.

#### 14.3

Very important: If you are a Consumer, you will be liable for any reasonably foreseeable loss or damage we suffer arising from your breach of this agreement or misuse of our Service (subject of course to our obligation to mitigate any losses).

#### 14.4

The following clauses apply only if you are not a Consumer:

- a) To the extent allowed by law, you and we exclude all terms, whether imposed by statute or by law or otherwise, that are not expressly stated in this agreement. In this clause, any reference to us includes our employees and agents.
- b) Our liability of any kind (including our own negligence) with respect to any Event is limited to the total fees paid to us in connection with such Event.
- c) In no event (including our own negligence) will we be liable for any:

- 1. i) economic losses (including, without limit, loss of revenues, profits, contracts, business or anticipated savings);
- 2. ii) loss of goodwill or reputation;
- 3. iii) special, indirect or consequential losses; or
- 4. iv) damage to or loss of data (even if we have been advised of the possibility of such losses).

d) You will indemnify us against all claims and liabilities directly or indirectly related to your use of the Service and/or breach of this agreement.

e) This agreement constitutes the entire agreement between us with respect to its subject matter and supercedes any previous communications or agreements between us. We both acknowledge that there have been no misrepresentations and that neither of us has relied on any pre- contractual statements. Liability for misrepresentation (excluding fraudulent misrepresentation) relating to the terms of this agreement is excluded.

#### 14.5

The following applies where Apple Inc is the Appstore:

- a) In the event of any failure of the App to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the App (if applicable). To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be our sole responsibility subject to these terms and conditions.
- b) We, not Apple, are responsible for addressing your claims or the claims of any third party relating to the App or the end-user's possession and/or use of that App, including, but not limited to: (i) product liability claims; (ii) any claim that the App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

## 15.

### Intellectual property rights

#### 15.1

The intellectual property rights in all material used on or in connection with the Service are owned by us or our partners or other Users. For your personal use only, you may view such material on your device. You must not otherwise use such material including copying, selling or adapting it or taking extracts from it without our specific prior written consent.

#### 15.2

For the avoidance of doubt you must not collect, scrape or harvest any Content on our Service or deep-link to or frame Content on our Service without our specific prior written consent.

#### 15.3

You must not circumvent or otherwise interfere with any security related features of the Service or features that limit or prevent copying of Content or which restrict use of Content.

#### 15.4

You must not reverse-engineer or decompile any of our software in any way (except to the extent allowed by applicable law). You must not create or use a modified or derivative version of our software or distribute or sublicense our software to third parties. You must take reasonable steps to ensure that our software is not disclosed to any third party.

#### 15.5

If you publish any Content on our Service or provide us with any ideas or suggestions for our Service, you allow us at no cost, and perpetually, to use and adapt all or part of such material however we wish, whether on our own Service, on our other channels including mobile, email communications, social media, PR, competitions and press releases and also on third party media, including for the purpose of redistribution or promotion of our Service. You waive your "moral rights" in relation to such Content to the extent legally permitted. You also allow each User a license to use your Content in

accordance with these terms and conditions.

15.6

In the event of any third party claim that the App or your possession and use of the App infringes that third party's intellectual property rights, we, not the Appstore, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.

**16.**

## **Privacy**

16.1

You acknowledge and agree that we may process your personal data in accordance with the terms of our privacy and cookies policy [<https://etchrock.com/privacy-policy>] which is subject to change from time to time.

**17.**

## **Events outside our control**

17.1

We are not liable for failure to perform or delay in performing any obligation under this agreement if the failure or delay is caused by any circumstances beyond our reasonable control including third party telecommunication failures.

**18.**

## **Legal compliance**

18.1

You promise that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties. (This clause is required by Apple, Inc.)

**19.**

## **Transfer**

19.1

We may transfer all or part of our rights or duties under this agreement provided we take reasonable steps to ensure that your rights under this agreement are not prejudiced. As this agreement is personal to you, you may not transfer any of your rights or duties under it without our prior written consent.

**20.**

## **English law**

20.1

These terms and conditions shall be governed by English law and any disputes will be decided only by the courts of the United Kingdom. You may be entitled to use an EU online dispute resolution service to assist with any contractual dispute you may have with us. This service can be found at <http://ec.europa.eu/consumers/odr/>. Our email address is [support@etchrock.com](mailto:support@etchrock.com).

**21.**

## **General**

21.1

We may send all notices under this agreement by email to the most recent email address you have supplied to us (unless otherwise stated in this agreement). Headings used in this agreement are for information and not binding. Any failure by



either party to exercise or enforce any right or provision of this agreement does not mean this is a “waiver” (ie that it cannot be enforced later). If any part of this agreement is ineffective or unenforceable for any reason, the rest of the agreement shall continue to apply. A person who is not a party to this agreement shall have no rights to enforce agreement except insofar as expressly stated otherwise. The parties are independent contractors and, except as otherwise specifically stated above, nothing in this agreement constitutes any party as agent, employee or representative of the other.

## 22.

### Complaints

21.1

If you have any complaints, please contact us via the contact details shown below.

## 23.

### Company information

23.1

Company name: Etch Rock Limited.

23.2

Trading name: “EtchRock”

23.3

Country of incorporation: England and Wales.

23.4

Registered number: 08759534

23.5

Registered office: 6B Parkway, Porters Wood, St Albans, Hertfordshire, AL3 6PA,

23.6

Trading address: Unit 11, Beaumont Hall, Redbourn Road, St Albans Hertfordshire, AL3 6RN, UK.

23.7

Other contact information: See our website.

23.8

VAT number: 197010414

Version 3.0

### DATA PROTECTION ADDENDUM

1.

Where used below, “data controller”, “data processor”, “data subject”, “personal data” and “processing” have the same meanings as set out in Data Protection Laws.

2.

The following are the details of the processing to be carried out by us acting as data processor in relation to the following personal data processed on your behalf in connection with this agreement (“Data”):

1. a) Subject matter: Participant Data (as defined above).
2. b) Duration of the processing: The period of this agreement.
3. c) Nature and purpose of the processing: To enable Organisers to use our Service in relation to their Events.
4. d) Type of personal data: Name, contact details and any other personal information of Participants which Organisers opt to collect.
5. e) Categories of data subject: Participants.
6. f) Obligations and rights of the controller: See below.

3.

The data processor (i.e. us) shall:

1. a) process the Data in accordance with Data Protection Laws (and nothing in this agreement relieves the obligations of the data processor of its own direct responsibilities and liabilities under Data Protection Laws);
2. b) process the Data only so far as is necessary for the purpose of performing its obligations under this agreement;

3. c) process the Data only on written instructions from the data controller (i.e. you) including as set out in this agreement unless the law requires otherwise in which case the data processor shall inform the data controller before processing;
4. d) not transfer Data outside the European Economic Area without the data controller's prior written consent other than to an entity which is certified under the EU-US Privacy Shield Framework;
5. e) not disclose Data to anyone other than its employees or agents and shall ensure that those persons are subject to an obligation of confidentiality in relation to the Data;
6. f) maintain technical and organisational security measures (including where applicable in relation to encryption, pseudonymisation, resilience of processing systems, backing up personal data in order to be able to reinstate the system and testing) sufficient to comply with the obligations imposed on the data controller under Data Protection Laws;
7. g) not subcontract any processing of Data without the data controller's prior written consent and:
8.
  1. i) the data controller shall be deemed to consent to any sub-processors listed on the data processor's website when this contract is entered into; and
  2. ii) the data processor shall give the data controller at least 14 days' notice in writing of the proposed appointment of any new sub-processor in which case the following shall apply:
    3.
      1. i) if the data controller does not object within such period, the data controller will be deemed to have consented to the appointment of the new sub-processor; and
      2. ii) if the data controller does object within such period, the data controller is entitled within 14 days of such objection to terminate this agreement to the extent that it relates to services which require the use of the proposed sub-processor.
9. h) in respect of any sub-processors:
10.
  1. i) impose on the sub-processor the same obligations in relation to Data that are imposed on the data processor under this agreement; and
  2. ii) the data processor remains fully liable to the data controller for the performance of the sub-processor's obligations;
11. i) take reasonable steps to assist the data controller in complying with the data controller's own obligations under Data Protection Laws including:
12.
  1. i) responding to subject access requests;
  2. ii) keeping Data secure;
  3. iii) notifying data subjects about personal data breaches;
  4. iv) carrying out any data protection impact assessment ("DPIA"); and
  5. v) consulting with the relevant supervisory authority where applicable following a DPIA;
13. j) on termination of this agreement, at the data controller's option either delete or return all Data to the data controller, unless the data processor is legally required to retain the Data (and the data processor assumes that the data controller opts for deletion of Data unless it requests return of the Data within 14 days of termination);
14. k) make available to the data controller all information necessary:
15.
  1. i) to demonstrate compliance with its obligations relating to Data both in this agreement and under Data Protection Laws; and
  2. ii) to submit and contribute to audits carried out by the data controller or an auditor appointed by the data controller; and
16. l) immediately inform the data controller if in its opinion a data controller instruction does not comply with Data Protection Laws.