

SECURETRADING LIMITED PAYMENT GATEWAY TERMS AND CONDITIONS

This Agreement sets out the terms and conditions which apply to the online payment processing services provided to you by Securetrading Limited (“we”, “us” or “our”) a company incorporated in England and Wales under registration number 4591066 whose registered office is at 19th Floor, 40 Bank Street, London, E14 5NR.

Please note the following important information

This Agreement is a legal document. As such, please make sure you read and understand it before completing the Application Form and signing the Pricing Schedule for the Services as you will be bound by its terms. This Agreement sets out limitations and guidance on how you are to properly use the Services. It also explains the meaning of words and phrases which have been given a specific meaning either in the text or in clause 17 (*Defined terms explained*). If you are unsure of any term or have any questions, please feel free to ask us or seek independent legal advice. Please note the Pricing Schedule will be provided to you separately.

1. OUR SERVICES

- 1.1 **Service description, standards and licence.** We will provide you the Services with respect to the processing of Payment Transactions related to the sale of goods and/or services by you to your Customers. You agree in us providing the Services:
- 1.1.1 the Services will, following the Effective Date, be provided from the Go Live Date;
 - 1.1.2 we act as facilitator on your behalf (i) to enable you to enter Payment Transactions with your Customers; and (ii) for the purpose of processing Authorisation Requests and you waive any claim against us, whether for the performance and/or non-performance of any Payment Transaction entered into as a consequence of our acceptance of an Authorisation;
 - 1.1.3 any dates provided by us for the provision of the Services are approximate only. We are not liable for any delay in completion of any Services howsoever caused;
 - 1.1.4 that we will provide the Services in accordance with the terms of this Agreement, the Service Levels, in compliance with Laws, the Card and Payment Scheme Rules and with reasonable care and skill;
 - 1.1.5 we are responsible for the security of the data related to the Payment Instrument that we possess to otherwise store, process or transmit on your behalf, or to the extent that we could impact the security of your Payment Instrument data environment; and
 - 1.1.6 we grant you a limited, personal, revocable, non-exclusive, non-transferable, non-sub-licensable licence to use and access the Services solely for the purposes of, and in accordance with, this Agreement.
- 1.2 **Other Service functionality and Additional Services.** We may offer other Service functionality or Additional Services. This may include service information, help content, bug fixes, maintenance releases, modifications, amendments and/or upgrades to the existing Services. These Additional Services and functionality are subject to the terms of this Agreement and/or any other terms and conditions made known to you when we make the other service/functionality and/or Additional Services available.
- 1.3 **Suitability.** Notwithstanding this clause 1, we do not make any representation express or implied about the suitability of the Services and/or Additional Services for you.

2. USING THE SERVICES

- 2.1 **Your use of the Services.** The Services are deemed accepted by you upon your usage of any or all of the Services. You agree at all times to comply with this Agreement, perform your obligations under this Agreement at your own expense in a competent and business-like manner and with reasonable skill and care.
- 2.2 **The importance of the information you provide us.** We agree to provide you the Services based on the information you supply us, including the description of products and services that you sell and any address, premises or websites or online applications you use to trade. Our registration of you as a merchant to use the Services is expressly and strictly dependent upon this information together with your warranty that you will only use the Services in the course of your own business, trade or professions and not as a consumer.
- 2.3 **Changes to the information you supplied us.** We reserve the right to accept or reject your application to use the Services based on the information you provide (whether as part of the application process or otherwise). If any information you provide changes (including information related to your business model and/or the goods and/or services you sell), you must notify us immediately so your information is always accurate, up to date, truthful and complete. In particular, you must not use the Services for any goods and/or service that you have not agreed with us, nor trade from any other premises or websites/online applications without seeking our prior written approval. Any approval we provide related to the sale of goods and/or services you trade in no way constitutes any advice nor opinion by us as to the legality or otherwise compliance with laws of your trade in such goods and/or services.
- 2.4 **Your systems.** You agree you are responsible, at your own cost, for the provision of all your systems and/or other goods/services required to use the Services, including that such systems:

- 2.4.1 properly collects and delivers to us the Transaction Data in the form requested;
- 2.4.2 uses the Software without alteration, modification or adaptation to integrate your website with our server and the Interface so as not to affect or in any way prejudice the functionality of the Software; and
- 2.4.3 do not store credit or debit card details on any server maintained by either you or any third party without first undergoing a security audit carried out by a third party security auditor approved by us. Any and all costs for such audit will be borne by you. You will hold all forms of customer data securely. We take no responsibility for the security of your systems.
- 2.5 **Transaction Data.** You acknowledge and agree that the collation and accuracy of any Transaction Data submitted to us is your exclusive responsibility and that we act solely on your behalf in seeking the Authorisation from the relevant Acquirer of the relevant Card and Payment Scheme and/or Payment Instrument issuer.
- 2.6 **Compliance with Laws and Card and Payment Scheme Rules.** You agree you are solely responsible for carrying out your business operations and performing any and all sale transactions you enter with your Customers in compliance with all applicable Laws and Card and Payment Scheme Rules. You agree not to use the Services in any way whatsoever which may constitute a violation of any Law or Card and Payment Scheme Rule or which may cause us to be subject to any investigation, prosecution or legal action or for any type of business which in our opinion is unacceptable.
- 2.7 **Responsibility for carrying out sales transactions with your Customers.** You agree to (i) carry out and perform any sales transaction you enter with your Customers (including matters such as delivery of goods (whether physical or digital) and/or the provision of services that are part of the sales transaction) and (ii) provide any and all customer support services to your Customers relating to your sale of goods and/or services. You must offer your Customers customer service and complaints contact details. In performing customer service, you agree to always represent yourself and your business operations as a separate entity or operation from us. We are not responsible for any goods and/or services offered or sold by you.
- 2.8 **Protecting our reputation and goodwill.** You agree not to carry out any action or omit from acting in a manner which we may consider (acting reasonably) to adversely impact our goodwill, reputation and/or branding.
- 2.9 **Suspension or termination of Services.** We reserve the right to suspend or terminate your use of the Services if you are in breach or it appears you are breach of any provision of this Agreement including without limitation, the provision of false information submitted on the Application Form or any misuse of the Services.
- 2.10 **Service maintenance.** From time to time the Services in whole or in part may be closed down for routine repair or maintenance work. Unless there is a Service Interruption, we will give as much notice as is reasonable in the circumstances and will as far as practicable endeavour to carry out Service maintenance and repairs during scheduled maintenance periods with as little disruption as possible.
- 2.11 **Our logo.** You agree to display our logo and any associated text on your website for which the Services are used and in addition agree and undertake to incorporate a hypertext link to our website. Any such link will be in the form agreed with us and you agree and undertake to amend our logo, any associated text and hypertext link within 28 days of a written request from us. In the event of termination of this Agreement, you agree and undertake to remove any such hypertext link and/or our logo from your website immediately.
- 3 PAYMENT TRANSACTION PROCEEDS**
- 3.1 **Settlement Proceeds.** The Acquirer is responsible for payment of the Settlement Proceeds to you in accordance with your Merchant Account Agreement.
- 3.2 **Refunds.** All Refunds will be processed by you. In the event you are unable to process Refunds and would like us to manage this process on your behalf, we will levy a charge as set out in the Pricing Schedule or as otherwise agreed.
- 3.3 **Chargebacks.** We have no responsibility for any Chargebacks. You will deal with any and all Chargebacks directly with the relevant Acquirer. If requested, you agree to provide us with details of any and all Chargebacks so that we can record such Chargebacks. Information must be provided within 14 days of our initial request unless, in our sole discretion, we give you an extended time period.
- 4 SERVICE FEES AND OTHER AMOUNTS PAYABLE**
- 4.1 **Service Fees.** In consideration for us performing the Services you will pay us the Service Fees and all other amounts which are due and/or payable by you in accordance with this Agreement. Service Fees are subject to change. We will provide you details of any such change on our website and/or directly with 14 days prior written notice. We may increase the Service Fees in the event that the number of Payment Transactions processed per month fall below the forecast number stated in the Application Form or as agreed between the parties.
- 4.2 **Late Go Live Date.** If you have not commenced processing Payment Transactions through our Payment Gateway Network before the Go Live Date, we reserve the right to charge you the fee specified in the Pricing Schedule at the end of the month in which the Go Live Date falls.
- 4.3 **Payment terms.** You agree to pay the Service Fees and all other amounts properly due as set out in Pricing Schedule, monthly in arrears within 14 days of the date of invoice. Where you use Securetrading Financial Services Limited ("STFS") as your Acquirer, you agree that the Services Fees may be collected by STFS from the Settlement Proceeds and subject to receiving an invoice from us, paid by STFS directly to us in settlement of that invoice on your behalf.

- 4.4 **Direct debit mandate.** You agree to sign a direct debit mandate to allow the Service Fees and any amount owed by you to be debited directly from your bank account in accordance with the relevant regulations. You agree to keep such mandate in place until termination of this Agreement and/or until all monies due to us have been paid in full (whichever is later in time). We reserve the right to charge an administration fee of £5 per month for each month or part thereof between the Effective Date and the date you sign a direct debit mandate. The operation of this clause may not be applicable where you use STFS as your Acquirer.
- 4.5 **Unpaid Service Fees.** When payment of any invoice or direct debit is overdue, we may suspend the Services and/or terminate this Agreement and charge a reconnection fee of £50 to resume provision of the Services.
- 4.6 **Late payment interest.** All amounts owed by you under this Agreement but not paid when due, will bear interest from the date such amounts are due at 2% per annum above the base rate of the Bank of England from time to time (accruing daily). This interest rate may vary without notice and apply with immediate effect when there is a change in the Bank of England base rate. Details of The Bank of England Base rate are accessible via: www.bankofengland.co.uk.
- 4.7 **Other currency.** Where Transaction Charges are based upon a currency other than pounds sterling the exchange rate for the purposes of calculating the Service Fees will be based upon the exchange rates published by us on the date when such Service Fees are calculated by the billing system.
- 4.8 **VAT and taxes.** All sums (including Service Fees) referred to this Agreement are exclusive of VAT. Any VAT properly chargeable in respect of sums referred to in this Agreement are payable in addition to such sum at the relevant rate from time to time. You agree to pay and be responsible for determining any and all taxes and/or duties assessed, incurred, or required to be collected, paid or withheld for any reason in connection with the sale or purchase of any products or services for a Payment Transaction, or otherwise in connection with any action, inaction, omission by you or any Affiliate of yours, or any of your or their respective employees, agents, contractors, or representatives ("**Taxes**"). You are also responsible for collecting, withholding, reporting and remitting correct Taxes to the appropriate tax authority. We and our Affiliates are not obligated to determine whether Taxes apply to you and are not responsible for calculating, collecting, reporting or remitting on your behalf any Taxes to any tax authority arising from any Payment Transaction.
- 4.9 **No set-off.** The amounts due under this Agreement by you will be paid to us in full without any right of set-off or deduction.
- 4.10 **Third party fees.** When using the Services, you are responsible for any fees, costs, liabilities or other charges that may be levied by your third party suppliers (which may include for example, telecommunication carriers that levy fees related to data and messaging services). Although you may have agreed with a third party supplier that we may collect fees levied on you by the third party supplier, you agree that we are not responsible, nor liable, for those fees or liabilities.
- 5 SOFTWARE LICENCE (APPLICABLE TO XPAY AND SECURE TRADING API ONLY)**
- 5.1 **Software licence grant.** We grant to you a non-exclusive, non-transferable licence to use the Software for the duration of this Agreement upon the terms and conditions set out in this clause 5. The licence granted hereunder is deemed to incorporate and include all Software which is supplied by us to you. This clause 5 is without prejudice to our right to charge you for the supply of any bespoke software.
- 5.2 **Licence restrictions.** The licence granted is subject to the following restrictions:
- 5.2.1 the Software will only be used by you for the purposes of this Agreement and in relation to your website;
- 5.2.2 you will not assign, sub-licence, charge or otherwise dispose of or grant rights over the licence or the Software and will not attempt to do any such thing without our prior written consent;
- 5.2.3 you will not attempt to ascertain or list the source programs or source code relating to the Software;
- 5.2.4 you will not decompile or translate the Software into any other computer language or attempt to do so;
- 5.2.5 you will not without our prior written consent use the Software for any business purpose other than as agreed;
- 5.2.6 you will not modify alter or in any way interfere with the Software or merge the Software with other data, programs or systems save that you will be permitted to make the Configuration Changes; and
- 5.2.7 we reserve the right at any time to make any improvements, substitutions or modifications in the specification of any element or part of the Software.
- 5.3 **Unauthorised use.** If any unauthorised use is made of the Software or any part thereof and such use is due to an act or default of yours then without prejudice to our rights and remedies:
- 5.3.1 you are immediately liable to pay us an amount equal to the charges we would have levied had we authorised the grant of a licence to or for such unauthorised use at the beginning of the period of such unauthorised use together with interest at the rate set out in clause 4.6 from the date of such unauthorised use to the date of payment; and
- 5.3.2 we may terminate this Agreement with immediate effect.
- 6 LIMITATION OF LIABILITY**
- 6.1 **Liability not excluded.** Nothing in this Agreement will limit or exclude either party's liability for fraud, death or personal injury caused by negligence or any other liability which cannot be excluded by law.

- 6.2 **Liability excluded.** We will use reasonable skill and care in providing the Services but have no liability whatsoever for any and all direct, indirect or consequential loss arising from: any delay or failure to provide all or any of the Services; all or any loss of data; Service Interruptions outside of our control which without limitation include those arising from errors or omissions by you or from levels of use which are unusually large and which have the effect of causing disruption or delays in the Services. We have no liability for any failure or delay in performing our obligations under this Agreement if such failure or delay is caused by your acts, omissions, or results from acts taken by us in good faith to avoid violating a Law, rule or regulation of any government authority or caused by circumstances outside our control.
- 6.3 **Limitation of liability.** Unless otherwise provided in this Agreement, our liability in contract, tort (including negligence or breach of statutory duty), statute or otherwise is limited to the reasonable cost of reprocessing the Payment Transaction(s) which was not processed correctly by us.
- 6.4 **Disclaimer of warranties.** We do not warrant that the Services and/or software (including without limitation the Software) are error free or operate without interruption or are compatible with all equipment and software configurations and we give no warranty whatsoever as to the quality of information received through the Services and/or Software. Other than as expressly set out elsewhere in this Agreement, all representations, warranties, conditions and terms express or implied whether statutory or otherwise are expressly excluded to the fullest extent permitted by law.
- 6.5 **Network Boundary Points.** You agree that we have no control over or responsibility for the quality of the Service obtainable through any networks or services beyond the Network Boundary Points and accordingly any liability in respect of the same whatsoever is excluded.
- 6.6 **Survival of term.** This clause 6 survives termination of this Agreement.

7 INDEMNITY

- 7.1 **Our indemnification of you.** We will indemnify and keep you indemnified from and against all losses, actions, costs, claims, demands and proceedings and all expenses including reasonable legal expenses, incurred by you arising from claims of a third party which arise in whole or in part from the infringement of Intellectual Property Rights arising from the use of the Services, or our negligent or wilful misconduct. Such indemnification is limited to the extent that such losses, actions, costs, claims, demands, proceedings and expenses are incurred due to an act or omission on your part. For the purposes of this clause (and without prejudice to the indemnity contained herein) you agree we will be entitled in our sole discretion to accept, dispute, compromise or otherwise deal with any claim, alleged claim, loss or liability arising under this indemnification.
- 7.2 **Your indemnification of us.** You agree and undertake to fully indemnify and keep us indemnified from and against all losses, actions, costs, claims, demands and proceedings and all expenses including reasonable legal expenses incurred by us arising directly or indirectly from or relating to (i) any transaction between you and your Customer (and any legal action arising in connection with such transaction) (ii) your breach and/or non-observance of this Agreement, and/or (iii) your breach of any procedures and instructions resulting in additional work for us.

8 FAULT RESOLUTION

- 8.1 In the event that a defect, fault or impairment in the Services causes a Service Interruption the matter will be handled in accordance with the current Service Levels.
- 8.2 If we determine in our reasonable opinion that any Service Interruption resulted directly or indirectly from:
- 8.2.1 your negligent act, omission or default;
 - 8.2.2 your breach of this Agreement;
 - 8.2.3 the operation failure or malfunction of any software, hardware or network equipment not provided by us and/or under lease or controlled by you;
 - 8.2.4 any third party action in response to your act or omission or any person given access to the Services by you;
 - 8.2.5 failure to provide services by any third party; and/or
 - 8.2.6 any failure due to communication protocols;

then we may recover in advance from you all reasonable costs incurred by us or on our behalf in connection with the remedy of such Service Interruption.

9 TERM AND TERMINATION

- 9.1 **Term.** This Agreement commences on the date you sign the Pricing Schedule (the "**Effective Date**") and continues, unless terminated earlier in accordance with this Agreement, for an initial minimum period expiring on the first anniversary of the Effective Date (the "**Initial Term**").
- 9.2 **Automatic extension.** The term of this Agreement will automatically extend for one (1) year ("**Extended Term**") at the end of the Initial Term and at the end of each Extended Term, unless this Agreement is terminated earlier in accordance with this Agreement.
- 9.3 **Your right to terminate for convenience.** You may terminate this Agreement at any time after the Initial Term by giving us two (2) months' prior written notice.

- 9.4 **Our right to terminate for convenience.** We may terminate this Agreement at any time by giving you at least two (2) months' prior written notice.
- 9.5 **Each party's rights to immediately terminate.** Without prejudice to any rights accrued under this Agreement, or any party's rights or remedies, either party may at any time terminate this Agreement with immediate effect by giving written notice to the other party if:
- 9.5.1 the other party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - 9.5.2 the other party repeatedly breaches any 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;
 - 9.5.3 the other party is subject to a bankruptcy, insolvency or winding up or is unable to pay its debts as and when due, a receiver or administrator is (or is going to be) appointed or other similar event; and/or
 - 9.5.4 as a result of Laws, Card and Payment Scheme Rules, regulatory authority rules or guidance or any change in or any introduction thereof (or a change in the interpretation or application thereof) it is unlawful or contrary to any such Laws, Card and Payment Scheme Rules, regulatory authority rules or guidance for either of the parties to perform or give effect to any of its obligations hereunder and such obligation cannot be readily severed from this Agreement.
- 9.6 We may terminate this Agreement with immediate effect if (i) any Acquirer declines to offer or continue to provide you with services for any reason whatsoever including without limitation if your Merchant ID No. is withdrawn for any reason whatsoever, or (ii) you wish to use the Services to support a business which is contrary to any applicable Laws or prohibited under the Card and Payment Scheme Rules or is considered likely to harm our brand or reputation
- 9.7 **Consequence of termination.** Any termination of this Agreement (howsoever caused) will not affect any accrued rights or liabilities of either party nor will it affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination. In respect of the period if any between the date that notice of termination is given and the effective date of termination ("**the Termination Date**") the following provisions will have effect:
- 9.7.1 we will continue to provide the Services until the Termination Date;
 - 9.7.2 on the Termination Date, we will cease to provide the Services;
 - 9.7.3 you will pay all Service Fees due to us in accordance with the terms of this Agreement up to and including the Termination Date; and
 - 9.7.4 as soon as possible following the Termination Date, you will remove and delete the Software and all its components from your systems.
- 10 INTELLECTUAL PROPERTY**
- 10.1 **Our Intellectual Property Rights.** You may only use our Intellectual Property Rights in accordance with this Agreement and our written instructions from time to time. This Agreement does not assign any of our Intellectual Property Rights existing as at the Effective Date, nor does it assign any Intellectual Property Rights which are created or developed by or on our behalf during the term of this Agreement or otherwise.
- 10.2 **Use of logos and trademarks.** Each party grants the other party a fully paid up, limited, non-exclusive, personal and non-transferable licence to use its logo(s) and trademarks solely for the purpose of performing their obligations under this Agreement. You allow us to use your name and logo to identify you as a participating merchant of our Services (including in our marketing materials). Except as licensed here, each party retains all right, title, goodwill and interest in and to its trademarks and logo. In using each other's trademarks or logos, the parties will follow any guidelines for usage provided by the owner of the trademark or logo being used.
- 11 CONFIDENTIALITY**
- 11.1 Each of the parties will keep confidential and will not disclose to any person any information, whether in written or any other form, disclosed to it ("**receiving party**") by or on behalf of the other party ("**disclosing party**") in the course of the discussions leading up to or the entering into or performance of this Agreement and which is identified as confidential or is clearly by its nature confidential ("**Confidential Information**") except insofar as the Confidential Information (i) is required by a person employed or engaged by the receiving party in connection with the proper performance of the Agreement, or (ii) is required to be disclosed by Law, provided that the party disclosing the information notifies the other party of the information to be disclosed as early as reasonably possible before such disclosure must be made and will take all reasonable action to avoid and limit such disclosure.
- 11.2 Confidential Information includes information relating to Customers and their Payment Transactions (including where appropriate, any 'hot card file information') and our business, the Card and Payment Schemes and the Card and Payment Scheme Rules.
- 11.3 Any disclosure of Confidential Information permitted under this Agreement will be in confidence, will only be to the extent that any persons to whom the information is disclosed need to know for the performance of their duties in accordance with this Agreement and the receiving party is obliged to procure that all such persons are aware of the obligation of confidentiality and undertake to comply with it.

- 11.4 Each party undertakes to use the Confidential Information disclosed to it solely in connection with the performance of this Agreement and not otherwise for its own benefit or the benefit of any third party.
- 11.5 Confidential Information does not include information which (i) is or becomes publicly available otherwise than through a direct or indirect breach of this Agreement, or (ii) is or becomes available to the receiving party otherwise than pursuant to this Agreement and free of any restriction as to its use or disclosure.
- 11.6 Notwithstanding the above, nothing in this Agreement prevents us from utilising your information (including your Confidential Information) for the purposes of carrying out the Services as required to liaise with the Card and Payment Schemes or any other financial or credit institutions, or as set out in our privacy policy.
- 11.7 Without prejudice to any other rights or remedies that the disclosing party may have, the receiving party acknowledges and agrees that if the Confidential Information is used or disclosed other than in accordance with the terms of the Agreement, the disclosing party is, without proof of special damage, entitled to seek an injunction, specific performance or other equitable relief for any threatened or actual breach of the provisions of this clause 11, in addition to any damages or other remedy to which it may be entitled.

12 NOTICES

- 12.1 Any notice or other communication required to be given under this Agreement must be given by email or post to the other party at its address as notified to the other for the purposes of our Agreement. You agree to maintain a valid email address and access to the internet to receive notices. Any notice sent by email will be deemed received one (1) hour after being sent, or if sent after 5pm, at 9am the next Working Day (provided that an undeliverable receipt has not been returned to the sender by this time). Any notice so sent by post will unless the contrary is proved, be deemed served at the expiry of three (3) Working Days after it is posted and in proving such posting it will be sufficient to prove that the envelope containing the notice was properly addressed and posted as a first class pre-paid letter.

13 PRIVACY POLICY

- 13.1 Our privacy policy is on our website (www.securetrading.com) and forms part of this Agreement. Please see the policy for further details of our use of your personal data. We will comply with all applicable Laws relating to data protection and privacy. You must notify us of any changes in your named contacts. We may disclose information you provide us to the Acquirer, Card and Payment schemes and your Customer's issuing bank where necessary.

14 OTHER IMPORTANT TERMS

- 14.1 **Interpretation.** Use of the word "including" also includes the words "without limitation" immediately following the word "including". Any phrase introduced by the words 'including', 'includes', 'in particular' or 'for example' or similar will be construed as illustrative and does not limit the generality of the related general words. Words in the singular include the plural and vice versa. A reference to a particular law is a reference to it as it is in force for the time being taking into account any amendment, extension, application or re-enactment and includes any subordinate legislation in force made under it. Headings are included for convenience only. References to clauses are, unless otherwise stated, references to the clauses in this Agreement.
- 14.2 **Force Majeure.** Neither party is liable for any delay in or failure to perform its obligations if that delay or failure is caused by circumstances beyond its reasonable control, including without limitation fires, strikes, insurrection, riots, embargos, inability to obtain supplies, refusal or revocation of licence or regulations of any civil or military authority, fire, act of god, flood or any network breach, breakdown in any third party equipment including third party computer hardware or third party software. If any such circumstances continue for a period of one (1) month either party may by notice to the other terminate this Agreement.
- 14.3 **Severability.** If any court or competent authority finds any provision of this Agreement (or part of any provision) invalid, illegal or unenforceable, that provision or part-provision will, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement will not be affected. If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the parties will negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.
- 14.4 **Third party rights.** Except for any of our Affiliates, a person who is not a party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 ("**Act**") to enforce any term or condition of this Agreement. This does not affect any right or remedy of a third party specified in this Agreement and which exists or is available apart from that Act.
- 14.5 **Our use of third parties.** We may contract or engage with other goods and/or service providers with respect to providing you the Services.
- 14.6 **No waiver.** No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law will constitute a waiver of that or any other right or remedy, nor will it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy precludes or restricts the further exercise of that or any other right or remedy.
- 14.7 **Remedies are cumulative.** Except as expressly provided, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

- 14.8 **Assignment and sub-contracting.** You may not assign, novate, sub-contract, sub-licence or otherwise transfer or dispose of any of your rights and/or obligations under this Agreement, in whole or in part, without our prior written consent. We may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of our rights and/or obligations under this Agreement.
- 14.9 **Entire agreement.** This Agreement and any other documents referred to herein constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of this Agreement. Each party acknowledges that, in entering into this Agreement it does not rely on any statement, representation, assurance or warranty ("**Representation**") of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement. Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation will be for breach of contract.
- 14.10 **No agency etc.** Nothing in this Agreement is intended to, or will be deemed to, establish any partnership, agency, fiduciary duty, joint venture or any other form of legal association between the parties. The parties are independent contractors for all purposes.
- 14.11 **Publicity and announcements.** Neither party may refer to the other, the subject matter of this Agreement or this Agreement in any publicity or advertising material without first obtaining the other party's prior written consent.
- 14.12 **Joint and several liability.** If you comprise more than one (1) person (e.g. a partnership) each legal person has joint and several liability under this Agreement. Each legal person will be individually responsible for any amounts owed to us under this Agreement.
- 14.13 **Non-exclusivity.** All Services provided by us are provided on a non-exclusive basis. You are not restricted from entering into an agreement with another payment service provider to receive services of a similar nature to the Services however you are not permitted to submit the same Payment Transactions submitted to us to another payment service provider. We are able to accept payment transactions from other persons (whether they be merchants or payment service providers themselves).
- 14.14 **Your co-operation.** At any time during this Agreement, you agree, at our request, to execute or procure the execution of such documents and do or procure the doing of such acts and things as we may reasonably require for the purpose of giving effect to all the provisions of this Agreement. This includes you agreeing to do all things reasonably necessary to confirm the ownership of our, our Affiliates, any Card and Payment Scheme and/or authorised licensor's Intellectual Property Rights including executing documents and taking other reasonable actions to perfect ownership.

15 CHANGING TERMS OF THIS AGREEMENT

- 15.1 **Right to amend by providing 14 days prior notice.** We may vary this Agreement by giving you at least 14 days prior written notice ("**Change Notice**"). If we provide you with a Change Notice, you are entitled to terminate this Agreement immediately, without charge, by providing written notice to us, provided you provide such notice within the notice period stated in the Change Notice before the applicable variation becomes effective. Following the expiration of a Change Notice (and if you have not terminated this Agreement before the notice period stated in the Change Notice), you will be deemed to have accepted the variation on the date the applicable variation becomes effective.
- 15.2 **Amendments to other important documents.** Amendments to other terms, documents and policies (including Card and Payment Scheme Rules) are amended in accordance with their governing terms. Please note that changes to the Card and Payment Scheme Rules may occur immediately.

16 GOVERNING LAW AND JURISDICTION

This Agreement is governed by the laws of England and Wales and any dispute between us will be resolved exclusively in the courts of England and Wales.

17 DEFINED TERMS EXPLAINED

Acquirer	the bank, or the provider of bank processing services on behalf of the Acquirer, with which you have or intend to have a Merchant Account Agreement and Merchant ID No. (i.e. a unique identification number allocated to you by your Acquirer for the purpose of accepting payments over the internet).
Additional Services	any services provided by us to you in addition to the Services, charged at our current rates or as agreed in writing between the parties.
Application Form	the application form to be completed by you prior to any Services being provided.
Agreement	these terms and conditions together with any documents referred to herein and any technical documents issued by us to you or displayed on our website from time to time.
Affiliate	in relation to a party, that party and any subsidiary or holding company or anybody corporate with an immediate or ultimate holding company in common

with that party where "subsidiary" and "holding company" will have the meaning as set out in Section 1159 of the Companies Act 2006.

Authorisation	with respect to each Payment Transaction, the process whereby we obtain from the relevant Payment Instrument issuer, Payment Account issuer and/or Card and Payment Scheme, confirmation that the applicable Customer's Payment Instrument or Payment Account (as the case may be) has not been stolen and there are sufficient funds available for the Payment Transaction.
Authorisation Request	an electronic or paper request of an Authorisation for a Payment Transaction generated at the point of sale evidencing the purchase/Refund of goods and/or services by a Customer from you.
Card and Payment Schemes	the card and payment schemes, alternative payment providers, associations or organisations highlighted in the Application Form as applying to your use of the Services and any other card or payment scheme, alternative payment providers, association or organisation as agreed by the parties in writing from time to time (including their Affiliates and successors).
Card and Payment Schemes Rules	all current and future rules, by-laws, guidance, regulations, directions promulgated by the Card and Payment Schemes.
Chargebacks	the fee which an Acquirer may charge from time to time in respect of invalid or disputed Payment Transaction, notwithstanding that an Authorisation may have been previously provided.
Configuration Changes	the changes which you are permitted to make to the Software for the purposes of configuring the Software to function correctly with your website.
Customer	any of your customers involved in Payment Transactions for goods and/or services through your website.
Go Live Date	the date when your website is enabled for payment processing by our support department and from which date you anticipate conducting live Payment Transactions through our Payment Gateway Network.
Intellectual Property Rights	patents, copyright (including copyright in source code, object code, developer tools, data, materials, content and printed and electronic specifications, integrations guides, procedures manuals and related documentation) design rights, trade marks, service marks, trade secrets, know-how, business names, trade names, database rights and other rights in the nature of intellectual property rights (whether registered or not) and all applications for the same which may now, or in the future, subsist anywhere in the world, including the right to sue for and recover damages for past infringements
Interface	the Software interface, which can be downloaded from our website, which we may amend from time to time. The purpose of such interface being the linking of our Service to your website in order to facilitate the processing of Payment Transactions.
Laws	all laws and regulations (including regulations, rules and/or guidance of any governmental or regulatory authority) applicable to a party to this Agreement in each case currently in force in any jurisdiction, but excluding Card and Payment Scheme Rules.
Merchant Account Agreement	the contract between you and your Acquirer for the provision of your online bank account.
Network Boundary Points	the points at which an IP Data Packet (i.e. the unit of data sent across a computer network) passes from equipment wholly managed by us or on our behalf to, or from, equipment not so managed.
Payment Account	the payment account held in the name of a Customer (or who is otherwise authorised to use the payment account).
Payment Instrument	the device (such as a credit or debit card) held in the name of a Customer (or who is otherwise authorised to use the device) or set of agreed procedures that permit the Customer to send payment orders.

Payment Gateway Network	the hardware, software and telecommunications tools necessary to perform protocol conversion between different networks or applications and all associated software required in order to allow you to submit authorisation and data capture transactions to a provider of bank processing services and to transmit authorisation and settlement transactions between you and your Acquirer.
Payment Transaction	any type of payment made to you or a Refund, return and/or adjustment carried out via the internet using a Payment Instrument, Payment Account or other payment token (as the case may be) where the payment is processed and/or funded by a Card and Payment Scheme. Payment Transaction includes a series of Payment Transactions.
Pricing Schedule	the schedule setting out the pricing for the Services used to calculate the Service Fees.
Refund	reimbursement of any sum due from you to a Customer relating to a Payment Transaction.
Service Interruption	an unscheduled interruption to part or all of the Services and/or Additional Services.
Services	electronic commerce payment processing services provided by us to you on a non-exclusive basis and relating to the processing of credit card payment authorisations and/or credit card, debit card or other payment transactions which are carried out in order to effect the transfer of funds between you and your Customers together with any related services we offer from time to time.
Service Fees	the fees for the Services and the Transaction Charges as set out in the Pricing Schedule payable by you to us in accordance with this Agreement for the provision of Services and any Additional Services.
Settlement Proceeds	the proceeds of the Payment Transactions due to you, expressed in the currency which we may use from time to time as specified in the Pricing Schedule, resulting from a successful Authorisation Request.
Service Levels	the document titled 'Service Level Agreement' as published on our website.
Software	computer programs, protocols and the object codes, source codes and other forms of the same and or any portion of the same, together with any and all associated documentation, specification, reports, algorithms, logic, tools, formats, designs, methods and processes associated with such computer software provided by us to you which enables you to use the Services.
Transaction Charge	a type of Service Fee incurred per transaction set out in the Pricing Schedule.
Transaction Currency	the currency in which the Payment Transaction is completed.
Transaction Data	the transmission of authorisation and settlement transaction messages between you and your Acquirer in a secure manner and in formats compatible with our systems.
Working Day	a day between Monday and Friday on which banks are open for normal banking business in London excluding Saturday, Sunday and public holidays.
you or your	the entity set out in the Application Form who is not us.