emerchantpay

Merchant service agreement

Terms and conditions

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emerchantpay.com

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Terms and conditions

1. Definitions and interpretation

1.1. In the Merchant Service Agreement, unless the context otherwise requires the listed terms will have the following meanings:

3DS Protocol	means the 'Three-Domain Secure' messaging protocol developed by Visa International Inc. (Visa) branded as 'Verified by Visa' and 'Mastercard SecureCode' developed by Mastercard International Inc. (Mastercard), including successive versions thereof and any amendments thereto that promotes frictionless payer authentication and enables the payers or Cardholder to authenticate themselves with their Card Issuer when making a Card Not Present eCommerce Payment Transaction
Account: Merchant Account	means the account that governs the Services provided to you and records your Transactions, fees or charges. Each account you have will have a Merchant Identification Number (MID)
Account: Payment Account	means an account held by an Authorised Institution, which is used for the execution of Payment Transactions in your favour
Action	means any claim, demand, lawsuit or other action by a Party that may lead to the occurrence of Financial Liability
Affiliate	means any entity directly or indirectly controlled by, controlling or under direct or indirect common control with emerchantpay Group, where control means the ability to direct the affairs of another whether by ownership of 25% or more of the issued shares, by contract or otherwise (whether directly or indirectly) and 'Controlled' and 'Controlling' will mean the same
Agreement or Merchant Service Agreement	the Merchant Application Form (MAF), these Terms and conditions (T&Cs), our Data processing terms and the Schedule: Financial conditions, as added to and amended from time to time in writing are together collectively referred to as 'Merchant Service Agreement' or 'Agreement'
Authorised Institution	is an umbrella term for Payment Institutions, Electronic Money Institutions, Credit Institutions and equivalent institutions
Authorised Institution: Equivalent Institution	means a legal entity that has been granted authorisation to issue electronic money and/or to provide and execute payment services throughout non-EU countries
Authorised Institution: Agent of AI	means any legal entity that acts on behalf of an Authorised Institution(s) in provision of services and is registered by them with the respective competent authority

Authorised Institution: Credit Institution (Bank)	means a legal entity that has been granted authorisation by the competent authority in its country of incorporation to take deposits or other repayable funds from the public and to grant credits for its own account
Authorised Institution: Electronic Money Institution	means a legal entity that has been granted authorisation to issue electronic money by the competent authority in its country of incorporation
Authorised Institution: Payment Institution	means a legal entity that has been granted authorisation to provide and execute payment services throughout the United Kingdom (UK), European Union (EU) or European Economic Area (EEA)
Business Days	means any day we are open for business, which is a day other than: (i) Saturday or Sunday; (ii) a public holiday in the UK and/or in the country where the Merchant has its establishments; and (iii) a day on which Banking Institutions in the UK are authorised by Regulatory Requirements to be closed
Card Issuer	means a member of a Card Scheme that enters into a contractual relationship with a Cardholder for the issuance of one or more Cards
Card Scheme: Mastercard	Mastercard International Inc., a company organised and existing under the laws of the State of Delaware, USA
Card Scheme: Visa	Visa Inc., a company organised and existing under the laws of the State of Delaware, USA
Card Schemes	is an umbrella term for Visa, Mastercard and any other Card Scheme notified by us to you
Card Security Code or CVV2 or CVC2	is a three- or four-digit security code printed on the signature panel on the back of a Card
Card or Payment Card	means a Payment Card, which can complete a Payment Transaction and is a Visa Card, Mastercard Card or other Card
Cardholder	means a person who is issued with and authorised to use a valid Card and is a Customer purchasing products and/or services from you
Chargeback	means a Payment Transaction, which is successfully charged back on the request of the Merchant's client or the Card Issuer pursuant to the relevant Standards resulting in a cancellation of a Payment Transaction in respect of which a Merchant has been paid or was due to be paid
Chip	means an electronic component designed to perform processing or memory functions
Collecting Agent	is an intermediary through whom a Merchant effects on its behalf settlement of fund generated from Merchant's Transactions with a PSP
Currency: **Processing Currency**	is the currency in which the Transaction was originated

Currency: **Account Currency**	is the currency of your Merchant Account
Currency: **Payment Currency**	is the currency of your Payment Account
Customer	is an umbrella term for individuals (e.g., Cardholders or voucher users) that use the products and/or services provided by the Merchant
Data Security Event	means any event where Customer Data or Transaction Data is stolen, misused or disclosed to an unauthorised person
Data: Account Data	this includes: (i) Cardholder Data (including a primary account number (PAN); Cardholder name; service code and expiration date); and (ii) Sensitive Authentication Data (including full track Data from the magnetic stripe, equivalent Data on the Chip or elsewhere; CAV2, CVC2, CVV2 or CID4 (the three- or four-digit value printed on the front or back of a Payment Card); PIN or PIN Block (the personal identification number entered by the Cardholder during a Card Present Transaction) and/or encrypted PIN block present within the Transaction message)
Data: Personal Data	Means any information relating to an identifiable natural person, including identifiers such as name, identification number, location Data or online identifier; physical identity factors such as height or colour of eyes; physiological identity factors such as biometric Data or a medical record; economic identity factors such as source of funds, source of wealth, account balance or Transaction history; cultural identity factors such as level of education; and social identity factors such as marital status, children, criminal convictions and offences
Data: Sensitive Payment Data	is an umbrella term for Account Data and Transaction Data
Data: Transaction Data	means all Data relating to submitted Transactions
Director	means a person who is duly authorised to direct, control and coordinate business activities of the Merchant
Documentation	means our standard published documentation for the software, currently available on https://emerchantpay.github.io/gateway-api-docs/
Effective Date	means the date on which the Agreement enters into force
Exchange Rate	means the foreign exchange rate provided to us by our foreign exchange rate service providers
Fee: (Pre)arbitration/(Pre)compliance handling fee	means a charge for any reasonable expenses incurred for the administration of a complaint or dispute raised by you against us
Fee: Authorisation Fee	means a charge incurred for the approval of a Payment Transaction using a Payment Instrument

Fee: Card Scheme Fee	means fees paid to the Card Schemes by an acquirer for the services rendered by them for the processing of a payment transactions. Card Schemes fees include variable and fixed fees per transaction and are applied on pass-through basis to Merchants
Fee: Chargeback (dispute) Handling Fee	means a charge for the administration of a filed Chargeback (dispute)
Fee: Chargeback reporting Fee	means a charge imposed for the use of a portal where the Merchant is (i) provided with a detailed information on its chargeback and disputes; (ii) is able to manage its chargeback and disputes
Fee: Currency conversion	means a charge for a Payment Transaction involving currency exchange
Fee: Ethoca Alerts management Fee	means a charge imposed for the management of the Ethoca Alerts service (provision of information on confirmed disputed transactions and/or non-fraud dispute transactions that Mastercard creates, evaluates or otherwise distributes)
Fee: Interchange Fee	means a fee, set by the Card Schemes, paid by the acquirer to the issuer of the Payment Card for each Transaction, directly or indirectly (i.e., through a third party)
Fee: Mastercard Collaboration management Fee	means a charge imposed for the management of the Mastercard Collaboration service (a Mastercard dispute resolution solution providing Merchant with the opportunity to rectify a dispute before it becomes a formal chargeback)
Fee: Merchant Account maintenance Fee	means an ongoing charge for the support of a Merchant Account opened with us
Fee: Merchant Account set-up Fee	means a charge due for the opening of a Merchant Account with us
Fee: MOTO/Pay by link Fee	means a charge for a Payment Transaction effected via mail/telephone order (a Transaction where the payee is not physically present at the point of sale at the time of the Transaction, and the payment details are presented to the Merchant by means of mail, fax or telephone, but not email) or the Pay by link Payment Instrument
Fee: Payout Fee	means a fee charged for the processing of a Visa Original Credit Transaction (OCT) or a Mastercard Payment Transaction (PT) or for the processing of a payout transaction from the Merchant to its client using a Payment Instrument different than a card
Fee: Processing Service Fee/ Transaction Fee	means a fee charged for processing of Payment Transactions (both approved and declined) regardless of the Transaction amount and the type of the used Payment Instrument
Fee: Provision of non-statutory required data (report)	means a charge imposed according to the rules set in clause 7.12. of these T&C
Fee: Rapid Dispute Resolution (RDR) Fee	means a charge imposed for the administration of the RDR service (a pre-dispute resolution service that provides the ability for merchants to automate the acceptance of financial liability for a disputes transaction)

Fee: Refund Fee	means a fee charged for the processing of an approved refund transaction
Fee: Risk transaction Fee	means a charge for a Payment Transaction authorised without a 3DS protocol
Fee: Secure transaction Fee	means a charge for a Payment Transaction authorised with a 3DS protocol
Fee: Settlement fee	means a charge for the administration of a Payment Transaction effected via an electronic transfer from the Merchant Account to the Payment Account
Fee: Wire transfer Fee	means a charge imposed by third parties such as Payment Institutions for the administration of a Payment Transaction effected via an electronic transfer from the Merchant Account to the Payment Account
Financial Liabilities	means any claims, losses, liabilities, penalties, costs, expenses, charges or damages (including reasonable legal fees)
Group or our Group	means emerchantpay Group Ltd and each of the Group's Affiliates
Interchange ++ Pricing Model	is a dynamic pricing model, which is based on the real cost of different parties involved in the processing of a Transaction. The fee paid by you will consist of an Interchange, Card Scheme Fee and Processing Service Fee
Merchant Location or Point of Sale	unless otherwise agreed with a Payment Service Provider (PSP), it means: **(i)** for Face to Face (F2F) Transactions: the physical location at which you accept Transactions; **(ii)** for mail order or telephone order (MOTO) Transactions: the physical location at which you receive Card and Cardholder Information; **(iii)** for eCommerce Transactions: your domain name host website
Merchant, You and Your	means any legal entity entering into the Agreement with us and, where applicable, their duly authorised representatives and successors
Merchant: Inactive Merchant	is a Merchant that has not submitted any Transaction during a period of three (3) consecutive months. We consider as an Inactive Merchant also any Merchant to which we are prevented to pay for a reason beyond our control (such as, but not limited to, the Merchant ignoring our requests and failing to provide documentation in thirty (30) calendar days)
Normal Working Hours	being no less than 09:00 to 17:00 GMT on Monday to Friday each week
Party	means each party under the Agreement
Payment Card Industry Data Security Standard (PCI DSS)	means a worldwide information security standard defined by the Payment Card Industry Security Standards Council (PCI SSC) and applies to all organisations that hold, process or exchange Cardholder information from any Card
Payment Gateway	as defined in clause 5.47.
Payment Gateway Service	is the provision of the Service as defined in clause 5.47.

Payment Instrument	means a personalised device(s) and/or set of procedures agreed and used in order for a Payment Transaction to be initiated
Payment Service Provider (PSP)	means providers of payment services as defined in Directive (EU) 2015/2366 of the European Parliament and of the Council of 25th November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (PSD2) or equivalent licenced providers
Payment System	Means a funds transfer system with formal and standardised arrangements and common rules for the processing, clearing and/or settlement of Payment Transactions, e.g., Visa, Mastercard, Sofort, SEPA Direct Debit, etc.
Principal Place of Business	means the fixed location at which a legal entity's executive officers direct, control and coordinate the entity's activity
Referral Agent	is a legal entity introducing you to and facilitates your communication with a PSP
Refund	a reversal (partial or full) of a particular Transaction, whereby the funds are reimbursed to the Merchant's client on the initiative or request of the Merchant
Regulatory Requirements	means any law, statute, regulation, order, judgement, decision, recommendation, rule, policy or guideline passed or issued by parliament, government or any competent court
Reserve	means an amount, which is determined by us (in our sole discretion) for the purpose of securing any claims that we might have against you
Security	means any form of Security requested by us (in our sole discretion) from you: Reserve, guarantee or other such Security
Service Providers, We, Us, emerchantpay and Our	means the company which provides the Services to you
Service(s)	means the Service(s) provided by us under the Agreement
Standards	means: (i) Payment System Standards (any operating rules, regulations or procedures of the relevant Payment System including, but not limited to any manuals, guides, bulletins or member letters as may be amended from time to time); and the Standards established by the PCI SSC; (ii) PCI DSS; and (iii) Payment Application Data Security Standards (PA DSS)
Terminal: Payment Page	means an electronic Data capture software solution approved by us and used at your Merchant Location to capture and to submit Transaction Data to us
Third Party Provider	means a provider of services that is not party to the Agreement

Transaction or Payment Transactions	means the acceptance of a Payment Instrument (e.g., Card or voucher) for payment of products sold and/or leased and/or services provided to end users by the Merchant. The term Transaction also includes credits, errors, returns and adjustments

1.2. In the Agreement, the following abbreviations are used:

API	Application Programming Interface
FX	Foreign Exchange
MID	Merchant Identification Number
PCI SSC	Payment Card Industry Security Standards Council
PCI DSS	Payment Card Industry Data Security Standards
RAM	Remote Access Module
RDR	Rapid Dispute Resolution

1.3 In the Agreement, unless the context otherwise requires:

(a) any reference to the applicable Regulatory Requirements, the Standards and agreements will be interpreted as a reference to such applicable Regulatory Requirements, Standards and agreements as amended, extended, consolidated or re-enacted from time to time and will extend to any subordinate legislation made under it;

(b) references to clauses and schedules are to clauses of and schedules of the Agreement, and references to paragraphs are of paragraphs in the schedules in which such references appear;

(c) a reference to a person (including a Party hereto) includes a reference to: (i) that person's legal personal representatives, successors and permitted assigns; and (ii) corporate, unincorporated associations, natural persons, firms and partnerships;

(d) unless the contrary intention appears, words in the singular include the plural and vice versa; words importing the masculine gender include the feminine and neutral and vice versa;

(e) the headings in the Agreement are for convenience only and will not affect the construction or interpretation of the Agreement;

(f) any phrase introduced by the term 'included', 'including', 'in particular' or any similar expression will be construed as illustrative only and will not limit the sense of the words preceding that term;

(g) subject to applicable Regulatory Requirements, in construing the Agreement, the so-called 'contra proferentem' rule will not apply and, accordingly, no term, condition or provision of the Agreement will be construed against a Party hereto solely on the basis that the Party drafted and/or is relying upon the relevant term, condition or provision;

(h) in the case of any conflict or ambiguity between the Agreement and the Standards, the Standards will prevail, provided that the Agreement will be interpreted to give as full effect as it is possible to both the Standards and the Agreement;

(i) in the case of any conflict or ambiguity between the Standards and the applicable Regulatory Requirements, the Regulatory Requirements will prevail.

2. Service providers

2.1. The Services under the Agreement are provided by emerchantpay Ltd.

2.2. emerchantpay Ltd is a company, organised and existing under the laws of England and Wales and having its registered office address at 29, Howard Street, North Shields, Tyne and Wear, NE30 1AR, UK, registered with Companies House under number 05153270. ('emerchantpay', 'us', 'we') emerchantpay is duly authorised as an Electronic Money Institution and is subject to the prudential supervision of the UK Financial Conduct Authority (Financial Services Register No. 900778).

2.3. emerchantpay is your main contact point under the Agreement and will provide all Services.

3. Services

General provisions

3.1. Subject to the Terms and conditions of the Agreement, we agree to provide you with the following services, as described below ('**Services**'):

(a) Advisory Services: unbiased and unrestricted advice regarding Payment Systems and Payment Instruments that will suit your needs best – see clause 5.1.;

(b) application processing and due diligence – see clauses 5.2. – 5.8;

(c) Referral Services: introduction to maintaining your communication and liaisons with the PSP(s) – see clauses 5.9. – 5.11;

(d) Risk management and Chargeback (dispute) management – see clauses 5.12. – 5.17.;

(e) Collecting Agent Service: delivering the Merchant's settlements, originating from the PSP(s), by acting as your Collecting Agent – see clauses 5.18. et seq;

(f) POS and Payment Page(s) – see clauses 5.43. et seq;

(g) Payment Gateway Services – see clauses 5.47. et seq;

(h) Customer support – see clauses 5.63., 5.64.;

(i) Trainings and educational support – see clauses 6.65., 5.66.

3.2. Our Services will facilitate your access to, and use of different payment services provided by an authorised PSP(s), including, but not limited to:

(a) execution of Payment Transactions through a Payment Instrument (e.g., a Payment Card or a similar device);

(b) execution of direct debits, including one-off direct debits;

(c) acquiring of Payment Transactions.

3.3. We will provide the Services as set out in the Agreement and we will not be obliged to provide any other services, unless expressly agreed between you and us in writing. We are not responsible for the provision of any advice, such as legal, accounting or taxation matters, or services not specified in the Agreement.

3.4. For the avoidance of any doubt, we do not offer payment services, we facilitate your use of payment services provided by authorised PSPs. The Agreement does not represent a payment services contract.

3.5. We will provide the Services with reasonable skill, care and diligence in compliance with Regulatory Requirements and Standards, following good business practices and to your reasonable satisfaction.

Suspension of services

3.6. We may suspend or limit the Services at any time and at our sole discretion due to:

(a) any material changes to: (i) your business, including any change of control or constitution; (ii) business model, as stated in the Merchant Application Form; (iii) the products and/or services you provide, as stated in the Merchant Application Form; (iv) your Payment Account, including when it ceases to be acceptable to the Authorised Institutions we work with; (v) Regulatory Requirements or Standards which you are subject to, including but not limited to, changes to or the revocation of the licences required for your business, where such changes mean you will not be able to comply with the terms of this Agreement; (vi) your credit and/or financial standing, including your insolvency, liquidation, winding up, bankruptcy, administration, receivership or dissolution, or where we reasonably consider that there is a real likelihood of the same in relation to you; or (vii) where anything material occurs in relation to your company that in our opinion suggests you will be unable to provide your products and/or services and/or otherwise fulfil the contracts that you have with your Customers or you have with us, such as a significant volume drop or cease of processing;

(b) material breach of the Agreement;

(c) material non-compliance or reasonable suspicion of non-compliance with the Regulatory Requirements and/or the Standards.

3.7. As your Collecting Agent, we may suspend or limit the Collecting Agent Service at any time and at our sole discretion due to:

(a) serious deterioration in your financial responsibility, which has a material adverse effect on us, including: (i) pending full payment of any outstanding Financial Liabilities by you to us; or (ii) failure to file your annual accounts with the business register, when due;

(b) change in your Payment Account, including when it ceases to be acceptable to the Authorised Institutions we work with;

(c) non-compliance with the Security requirements set out in section 'Financial conditions', sub-section 'Security'.

3.8. We may suspend or limit the Services at any time and at our sole reasonable discretion for Security reasons – when we believe it is necessary or desirable to protect the Security of Account Data, Transaction Data, Personal Data or your Merchant Account, whereby such suspension will be limited to the extent necessary to achieve these aims.

3.9. We may suspend or limit the Services at any time, when we are required to do so, due to:

(a) an order from a competent regulatory body or court; or

(b) an order from the PSP or the Payment System you are using; or

(c) entry into force of relevant and applicable Regulatory Requirements or Standards.

3.10. We will make reasonable efforts to inform you of any such suspension in advance, or if this is impossible or impracticable, immediately afterwards combined with the reasons for such suspension unless we are prohibited to do so by Regulatory Requirements.

3.11. We will reinstate the Service, as soon as practicable after the reasons for the suspension cease to exist.

3.12. The right to suspend under clause 3.6. (a), 3.6. (b) and 3.7. will only arise if we have first given you thirty (30) days' written notice of the matters giving rise to the anticipated suspension and an opportunity to remedy these matters.

4. Eligibility

General provisions

4.1. You will only be eligible to use the Services subject to your status and after you have met relevant eligibility criteria. Details on the applicable eligibility criteria may be varied from time to time.

4.2. If at any point, you fail to fulfil all the eligibility criteria, we may terminate the Agreement and stop providing Services.

4.3. If you conduct your business through multiple business lines or you have multiple eCommerce websites, entering into a separate agreement for each of them may be required.

Merchant profile

4.4. Our Services are intended for a legal entity of any size that conducts sale of products and/or services and receive payments via approved Payment Systems and Payment Instruments.

4.5. The Merchant must be all of the following:

(a) incorporated and operate within the area required by the selected PSP;

(b) financially responsible; and

(c) have a good reputation.

4.6. The Merchant must NOT

(a) be engaged in any activity that could cause harm to the selected Payment System, PSP or our reputation;

(b) be engaged in any activity that is considered illegal or brand-damaging;

(c) be prohibited, including its known owners (principals) from participating in any Payment System programme;

(d) be subject to financial sanctions and must not act directly or indirectly on behalf of a designated person;

(e) misrepresent itself as being a member of the Card Schemes or misrepresent its Merchant Location(s).

Merchant location

4.7. In order to use our Services, you must have a registered company address within the area required by the selected PSP. You undertake not to misrepresent or alter your Merchant Location.

4.8. When determining your location, we will consider, among others, where you:

(a) are incorporated and where your Principal Place of Business is;

(b) have your registered office address;

(c) hold a business licence or you are otherwise authorised to conduct business;

(d) assess and pay respective taxes on the Transaction activity;

(e) maintain an office or other physical presence where your employees or agents conduct business activity, directly related to providing your Customers with products and/or services, and where you can receive business-related mail.

4.9. To verify your Merchant Location, we may perform a site visit or use a suitable alternative.

4.10. We expect that you have and maintain at least one Director who must be resident of the country from the licensed area of the PSP.

Authorised persons

4.11. Unless otherwise notified, we will assume that the persons registered with your company's registry as the company's registered Directors are authorised to enter into the Agreement on your behalf and to exercise your rights and perform your duties under it, including to re-authorise third parties with such rights (e.g., procurator, proxy or attorney).

5. Rights and duties of the provider

Advisory Services

5.1. When requested by you, we can provide unbiased and unrestricted advice regarding the Payment Systems and Payment Instruments that would best suit your needs.

Application processing and due diligence

5.2. Before entering into, extending or renewing our Agreement with you and during the term in which the Agreement is in full force and effect, we will request to be provided with information and documents (**'Information'**).

5.3. You agree to provide us, upon reasonable request and at your expense, with accurate, precise, complete and updated Information.

5.4. We will impose certain requirements, in respect of the content, issuer, validity period, etc., for the documents that we will request you to provide to us. You undertake to comply with these requirements.

5.5. You acknowledge and agree that we will research your background including, but not limited to, credit background checks, banking relationships and financial history, and collect Data and/or information about you through automatic means, public registers, social media, Data vendors or other Data providers.

5.6. Based on the Data, information and documents collected, we will fill in and present your application to PSPs we partner with in order to establish a business relationship between you and one or more of them.

5.7. We will use reasonable endeavours to present your application in the best way possible and we will neither be in breach of this Agreement nor liable for any failure or delay in the performance of our obligations under this Agreement in the case that the respective PSP(s) decides to reject your application.

5.8. When required and if your application is approved, you will enter into a direct agreement with the respective PSP.

Referral services

5.9. When acting as your Referral Agent of choice, we shall serve as a liaison between you and the respective PSP, including:

(a) utilising each established channel and partnership programme for the purpose of introducing you to the previously agreed PSP(s) to enter into a payment service agreement;

(b) facilitating processing of your applications with potential PSPs and the exchange of documents and information;

(c) maintain effective working relationship between you and the PSP;

(d) serve as your primary point of contact with the PSP, ensuring that our team is helpful, courteous and professional at all times;

(e) serve as an intermediary in exchanging information between you and the PSP;

(f) negotiate on your behalf, the terms of your agreement with the PSP, including the applicable fees with regard to payment services you will use.

5.10. You will be responsible for ensuring all documents and information intended to be delivered on your behalf to the PSP are accurate and reliable.

5.11. During the term of this Agreement, you agree to put forward emerchantpay as your preferred provider (on a first refusal basis) of the Referral Services.

Risk management and chargeback (dispute) management

5.12. When offering your products and/or services, you will be required to comply with certain rules set in the Standards regarding you as a payment service user and as a Merchant, including your relationships with Customers and third parties.

5.13. We will conduct monitoring of your business, including Transaction processing to ensure its ongoing compliance with the Regulatory Requirements and the Standards and to support you on an ongoing basis to address the risks, to which you might be exposed, related to the conduct of your business.

5.14. You undertake to follow strictly our instructions regarding payment methods risk management to ensure your compliance with the Standards and to reduce the level of your risk exposure.

5.15. We will support your risk management, including supplying you with available fraud scrubbing tools and supporting the implementation of security and fraud prevention methods.

5.16. We will support you in the process of Chargeback management and defence. In particular, if you wish to dispute a Chargeback, we will process this dispute with the relevant Payment Scheme and in accordance with its Standards.

5.17. Depending on business specifications, we may offer Chargeback reporting – a portal enabling you to (i) receive a detailed information on your chargebacks and disputes; (ii) manage your chargeback and disputes.

Collecting Agent Services

5.18. In order to place, transfer or withdraw funds related to the sale of your products and/or services you need an account(s) held in your name ('**Merchant Account**'). You will have Merchant Accounts in various Account Currencies corresponding to your Processing Currencies.

5.19. As a result of the used payment services with a PSP, in your Merchant Account you will:

(a) receive funds as a result of single payments, recurring payments, instalment payments or other payments that are due to you (such as retro-charges), collectively referred to as 'Pay-Ins Transactions'; and from there

(b) funds will be withdrawn as a result of Chargebacks, Refunds, fees or fines imposed by Card Schemes or other liabilities that are due by you, collectively referred to as 'Pay-Outs Transactions'.

5.20. Your Merchant Account will be opened with:

(a) the respective PSP, when the PSP requires a separate agreement with you for its services and undertakes direct settlement to you; or

(b) us, when you have selected emerchantpay as your Collection Agent to settle to you on behalf of a PSP.

<u>When we settle to you on behalf of a PSP, the provisions below apply:</u>

5.21. The positive net balance between the Pay-In Transactions and the Pay-Out Transactions will be settled to you and we will initiate or procure the initiation of each payment by bank transfer to your Payment Account.

5.22. You undertake to open and maintain in your name a Payment Account throughout the term of the Agreement and for such period as may be required thereafter.

5.23. You need to provide us with the full and correct details of your Payment Account.

5.24. You need to notify us in advance if you intend to change (i) your Payment Account by changing the Authorised Institution (or its branch) or (ii) by changing your Payment Account with a new one that is held by another entity. For the sake of clarity, in any case our pre-approval of the change of the account is required. You must forthwith irrevocably authorise payments to be transferred to the new Payment Account.

5.25. We will not be in default of our settlement obligations if our payment instructions, as specified by you, are not honoured by the Authorised Institution(s) of which the settlement depends.

5.26. The Parties will consider that we have acted with due care if the payment instructions, as specified by you are promptly entered in the online platform of the Authorised Institutions that serve the Service Providers. If the payment instructions are not honoured, you undertake to provide us with a new Payment Account, and we will at no time be liable to find an alternative solution for settling.

5.27. [reserved].

5.28. We will settle with you in a timely manner during Business Days, according to the agreed settlement cycle provided that the amounts owed to you by the PSP are received in our bank account(s).

5.29. The settlement cycle is agreed in the Schedule: Financial conditions and may be daily or weekly with different Business Days in arrears.

5.30. We are responsible for providing settlement funds directly to you. That is why we request the Payment Account to be held in your name. Any payment at your instruction to the Payment Account held in the name other than yours will constitute good receipt by you of the sum due and to you in relation to our liability under the Agreement.

5.31. We may defer any payment if the amount due is less than the minimum payment threshold as per the Schedule: Financial conditions. The payment will be deferred until the due amount reaches that threshold. Where you have more than one Merchant Account with us, the account balances will not be aggregated to reach the payment threshold.

5.32. We, as well, may defer any payment due to the reason listed in section ‘Suspension of Services’.

5.33. You acknowledge that by paying the due sum to the designated Payment Account we duly perform our contractual undertakings under the Agreement and our liability for payment of this particular sum will be extinguished, discharged or reduced. If such payment is performed, you will lose your right to seek further monetary or other relief from us. This is without prejudice to the Limitation of Liability clause.

5.34. We will submit a Settlement Statement to you, which will contain information on the amount we owe to you and provide a specification of the invoice summary and Transactions encompassed by the settlement.

5.35. All payments that we will make to you under the Agreement will be made in the Account Currency of the respective Merchant Account as long as you provide us with the Payment Account in the same currency and the Authorised Institutions we work with accept payments in this currency for your subject of activities. Otherwise, the payments will be made in EUR or another Payment Currency, as agreed from time to time. When currency exchanges are needed, fees may apply.

5.36. We will prepare and provide a Settlement Statement on your activities in the relevant settlement period (hereinafter the ‘Settlement Statement’). The Settlement Statement contains financial information that reflects your activity during the reporting period. You should keep a copy of the Settlement Statements for your records and future reference. We do not keep records of the Settlement Statements of the Merchants and we will not re-send Settlement Statements that were already provided.

5.37. You must promptly examine the received Settlement Statement and immediately notify us in writing of any inaccuracies and inconsistencies in this document, but not later than sixty (60) days from the date of the Settlement Statement.

5.38. The notification under the previous clause should be made in writing so that the details of the notification are clear and complete. The notification must include at least: (i) any unique identifying number; (ii) the amount of the asserted error (expressed in sterling or other applicable currency); (iii) a description of the asserted error; and (iv) an

explanation of why you believe an error exists and the cause of it, if known. The notification should be addressed to: finance@emerchantpay.com

5.39. You will be deemed to have accepted and confirmed the Settlement Statement if you do not notify us about any inaccuracies and inconsistencies within the agreed sixty (60) day term.

5.40. Any delay or failure to exercise your right to notification against the Settlement Statement will constitute and be considered as a waiver of your rights of claim which arise out of, or relate to, the inaccuracies and inconsistencies in the Settlement Statement and preclude these rights' further exercise.

5.41. We safeguard your funds by applying the segregation method. This includes:

(a) keeping your funds separate in our books or records, from the moment the funds are received; and

(b) depositing them in a safeguarding account(s), opened with an authorised Credit Institution, separate from our own accounts. In case of insolvency of emerchantpay, your claims as a Customer will be paid from the asset pool formed from the funds in the safeguarding accounts. Only costs in respect of the costs of distributing the asset pool will be paid with priory to the Customer's claims.

5.42. You acknowledge and agree that:

(a) emerchantpay is not a Bank or Credit Institution, and your Merchant Account is not a Payment Account;

(b) Merchant Accounts are not insured by any government agency and Deposit Guarantee Scheme does not apply to your Merchant Account;

(c) emerchantpay does not act as a trustee, fiduciary or escrow holder in respect of balances in your Merchant Account;

(d) emerchantpay does not pay interest on any balances in your Merchant Account; and

(e) you will indemnify emerchantpay against any Financial Liabilities associated with your business operations and brought against us by the respective PSP and/or any other third party.

Point of sale: Terminals and payment pages

5.43. In order to send Transaction Data relating to eCommerce Transactions, you need to have a Payment Page that is hosted by you or by a Third Party Provider on your behalf and is approved by us.

5.44. Where you are using a Payment Page provided by us:

(a) we are responsible for ensuring that the Payment Page is PCI DSS Level 1 compliant in respect of the collection and storage of Sensitive Payment Data and will engage with the PCI SSC to the extent necessary to achieve this; and

(b) you must undertake all card-based Transactions using 3DS Protocol when required as per the applicable Regulatory Requirements and/or the Standards or when agreed in writing with us.

5.45. When use of your own Payment Page is agreed, you will be solely responsible for the safety and security of the stored, processed and transmitted Data, including Account Data. To verify your compliance with PCI DSS, we will need to be provided with necessary documents before any Transactions are processed.

5.46. If you would like to use a SoftPOS software solution and/or rent or lease a POS terminal, then you need to enter into a separate agreement.

Payment Gateway Services

General provisions

5.47. If the provision of any of our Services is expressly agreed in writing with you, we will provide you with software ('Payment Gateway' or 'Gateway Services') and connectivity that will allow processing of your payments. This Section of the Agreement governs the provision of Software as a Service (SaaS), Data as a Service (DaaS) and Infrastructure as a Service (IaaS), collectively referred to as the '**Payment Gateway'**, its support and maintenance. The Payment

Gateway represents an essential service, which means that the Payment Gateway is necessary for the provision of our Services, and you cannot opt out of the use of the Payment Gateway for the duration of the Agreement.

5.48. In order to provide you with the Gateway Services, we are in agreements with Fintech companies, the owners of the servers and software.

5.49. emerchantpay provides the Payment Gateway that interfaces between you on one side and acquirers or providers of alternative payment methods on the other side for the purpose of managing and processing Transactions over the Internet, in compliance with the Regulatory Requirements and the Standards.

A detailed description of the provided Payment Gateway is available on https://emerchantpay.github.io/gateway-api-docs/

5.50. The Payment Gateway is made available on a limited licence or access basis, and no ownership right is conveyed to you. We have and retain all rights, titles and interest, including all Intellectual Property rights, in and to the Payment Gateway.

5.51. You can use the Payment Gateway to connect: (i) to our processing platform; and (ii) to the processing platforms of providers of card-based payment methods (e.g., Amex) or other payment methods (e.g., online banking) for the purpose of managing and processing Payment Transactions over the internet.

5.52. The provided Payment Gateway can be used by you for processing legal and valid Payment Transactions in compliance with the Standards.

5.53. For our Payment Gateway, we shall provide you annually upon request with: (i) a copy of the Annual PCI DSS Assessment of Compliance ('AOC'); and (ii) written acknowledgement of responsibility for the security of Cardholder Data processed or otherwise stored or transmitted on your behalf.

5.54. In all cases where you subcontract or in any way outsource the processing of Sensitive Payment Data or use an API, which redirects or transmits Data to our Payment Gateway, you are responsible for maintaining the PCI compliance for your API and must provide us with their AOCs.

Your licence rights

5.55. When using our Gateway Payment Services throughout the term of the Agreement, we will provide you via Fintech companies with a non-exclusive and non-transferable licence to use the Payment Gateway during the term of this Agreement for your own business purposes in accordance with this Agreement, the Documentation and applicable Regulatory Requirements.

5.56. The Payment Gateway Service shall be provided to you directly, which may include, without limitation, any: software provider with which the services have been integrated, payment processor, hardware provider or other third party which may capture, hold, host, access, store or transmit any Transaction, payment or personally identifiable Data or information.

5.57. We will provide you with RAM access to our Payment Gateway enabling:

- **(a)** Transaction monitoring;
- **(b)** Transaction reports downloading;
- **(c)** other functionalities upon agreement.

Data usage and compliance

5.58. By signing this Agreement, you authorise emerchantpay to act on your behalf and to accept and transmit Transaction related data and other information as necessary for emerchantpay to deliver the Services and fulfil its obligations under this Agreement. emerchantpay shall collect, retain, use, process and transfer information and Data from you and your Customers, including but not limited to non-public, personally identifiable Data, financial Data, Transaction Data, payment information, payment history and other Cardholder Data, in accordance with this Agreement.

5.59. You agree that:

(a) you are solely responsible for verifying the accuracy and completeness of all Sensitive Payment Data and associated Data submitted to emerchantpay, and for ongoing Transaction monitoring;

(b) emerchantpay shall not be liable for any Transactions, including without limitation those that are unauthorised, improperly processed or approved, wrongfully declined, or otherwise; and

(c) emerchantpay shall not be liable for any third party access to any Account Data, Transaction Data or Personal Data, including without limitation illegal or fraudulent access.

Restrictions

5.60. Except as otherwise expressly permitted in this Agreement, you shall not:

(a) reproduce, modify, adapt or create derivative works of any part of the Payment Gateway;

(b) rent, lease, distribute, sell, sub-licence, transfer or provide access to the Payment Gateway to a third party without advance notice to us;

(c) use the Payment Gateway for the benefit of any third party;

(d) interfere with any licence key mechanism in the Payment Gateway or otherwise circumvent mechanisms in the Payment Gateway intended to limit your use;

(e) reverse engineer, disassemble, decompile, translate or otherwise seek to obtain or derive the source code, underlying ideas, algorithms, file formats or non-public APIs to the Payment Gateway, except to the extent expressly permitted by applicable Regulatory Requirements (and then only upon advance notice to us);

(f) remove or obscure any proprietary or other notices contained in the Payment Gateway;

(g) use the Payment Gateway for competitive analysis or to build competitive products;

(h) publicly disseminate information regarding the performance of the Payment Gateway;

(i) encourage or assist any third party to do any of the foregoing.

System requirements

5.61. You are solely responsible for ensuring that your systems meet the hardware, software and any other applicable system requirements for the Payment Gateway as specified in the Documentation. We shall have no obligations or responsibility under this Agreement for issues caused by your use of any third party hardware or software not provided by us.

5.62. You shall have to carry out testing of the Payment Gateway before they can be used. You are responsible for all expenses which might occur in connection with the implementation and testing.

Customer support

5.63. Our personnel will be available to answer your inquiries relating to the Services on Business Days during our Normal Working Hours, unless otherwise agreed.

5.64. We will conduct our communications with you in a courteous, prompt and efficient manner and will use our best efforts to resolve any issue you might have with regards to the Services.

Trainings and educational support

5.65. We will provide you on an ongoing basis with trainings, educational support and notifications in order to ensure your compliance with the Regulatory Requirements, the Standards and the Agreement.

5.66. You undertake to familiarise yourself with all materials we provide you with under the Agreement and to participate in all trainings and workshops that we organise for you.

Visa Rapid Dispute Resolution service

5.67. We will offer to you the Visa Rapid Dispute Resolution (RDR) service (a pre-dispute resolution service that provides the ability for Merchants to automate the acceptance of Financial Liability for a disputed Transaction). The provision of this service is governed by separate terms and is subject to additional fees for an enrolment to the service. Please note that RDR administration fees may apply under the present Agreement. If you are interested in this service, please contact your account manager.

Ethoca Alerts and Mastercard Collaboration services

5.68. We will offer to you the Ethoca Alerts service (information on confirmed disputed Transactions and/or non-fraud dispute Transactions that Mastercard creates, evaluates or otherwise distributes) and the Mastercard Collaboration service (a Mastercard dispute resolution solution providing Merchant with the opportunity to rectify a dispute before it becomes a formal chargeback). The provision of these services is governed by separate terms and is subject to additional fees for enrolment to the services. Please note that Ethoca management fees and/or Mastercard Collaboration management fees may apply under the present Agreement. If you are interested in this service, please contact your account manager.

6. Rights and duties of the merchant

Compliance

6.1. You acknowledge that you are aware of and undertake to operate in compliance with and to refrain from actions contrary to the applicable Regulatory Requirements and Standards.

Solicitation materials

6.2. Your solicitation materials (such as advertisements, stationery, business cards, sales brochures, website promotional content, etc.) must NOT include misleading statements. You must not engage in potentially deceptive marketing practices. We are entitled to suspend any marketing campaign if the content of the materials is not in compliance with the applicable Regulatory Requirements, the Standards and the provision of this Agreement.

Intellectual property rights

6.3. You acknowledge that you operate in a way that does not infringe the Intellectual Property of the Service Providers.

6.4. You acknowledge that the Service Providers and each of the PSPs is the sole owner of their respective trademarks. You may use one or more of the trademarks in connection with your products and/or services, provided the trademarks are used in accordance with the Regulatory Requirements and Standards, according to our expressed written instructions, and solely in connection with payments for your products and/or services.

6.5. You agree to comply with any branding and logo requirements imposed by the Service Providers and PSPs and included in a branding manual or similar document.

Sensitive payment data security

6.6. You are solely responsible for the safety and security of the stored, processed and transmitted Sensitive Payment Data.

6.7. If a Data Security Event occurs or if you suspect that a Data Security Event has occurred, you will notify us in writing immediately and provide the information relevant to the case.

Employees

6.8. You undertake full responsible for your employees' actions and omissions while in your employment.

Audits

6.9. For the purpose of determining compliance, we may conduct one or more regular or periodic audits (on-site and/or on-desk inspections) of your recruitment, inventory, solicitation, sales and trading materials, operational controls, established fees, adherence to the Standards, Regulatory Requirements and Payment Gateway Documentation.

6.10. When planning an audit, we will give you a minimum of thirty (30) days written notice, except where the requirements of a regulatory authority do not permit such notice, or we have immediate Data security, compliance or fraud concerns, in which case we may give immediate or shorter notice.

7. Financial conditions

7.1. As consideration for the Services provided, you agree to pay us the applicable fees set forth in the Schedule: Financial conditions, or as otherwise provided by us along with the Agreement, or, if applicable, upon receipt of an invoice from us.

7.2. All fees payable to us under the Agreement are immediately due and payable on provision of the relevant Service. Our fees are non-refundable unless otherwise explicitly agreed.

7.3. Fees are quoted exclusive of Value Added Tax (**VAT**). We will charge VAT or comparable sales taxes where Regulatory Requirements require us to do so. Where required, we will provide you with information on the net amount, the amount of tax, the tax rate applied and other necessary data.

7.4. Where possible, all fees due will be deducted from the available balance in your Merchant Account.

7.5. In case we are unable to deduct the fees due, we will issue an invoice for the amount owed. Invoices must be paid within **seven (7) days** of the date of the invoice ('**Payment Term**').

7.6. All fees owed by you to third parties, are your sole responsibility and are not covered by the Agreement.

7.7. If you do not pay us the due amounts in the abovementioned timeframe, we may charge **default interest** from the due date for payment at an annual rate of 8% above the base lending rate of the National Westminster Bank PLC from time to time accruing at a daily rate until payment is made in full.

7.8. If you do not pay us the due amounts within the Payment Term, you shall be in default, and we may suspend the provision of the Payment Gateway or terminate the Agreement if the fees remain unpaid thirty (30) days following the expiration of the Payment Term. We shall restore access to the Payment Gateway on the condition that the full amount of the overdue payments is credited to our Payment Account.

7.9. **Inactivity fee.** Inactivity fee is charged to Inactive Merchants. The inactivity fee is equal to 5% of the inactivity fee base, which is defined as the Merchant Account balance as at the last Tuesday of the month when a Merchant is classified as an Inactive Merchant. The inactivity fee base will be adjusted for any amounts credited to the Merchant Account after the date when the initial inactivity base was determined. The inactivity fee is non-refundable and we will not accept any claims for reimbursement.

7.10. Early termination fee. If for any reason the Agreement is terminated on or prior to the third anniversary of the Effective Date, you will pay to us, upon the date of the termination, an early termination fee in the amount of EUR 195. However, we will not charge you for termination after the expiry of (eighteen) 18 months of entering into the Agreement. The early termination fee applies to eCommerce Merchants.

7.11. You agree to repay us the full amount of any:

(a) Chargeback, if applicable;

(b) Refund issued (if not already deducted from sums paid by us to you);

(c) payments made by us in respect of court order or an official instruction by a law enforcement officer; or

(d) fines or other charges payable by us to a PSP, when such charges are in connection with the Merchant's business operations.

In addition, we may charge you administration fee as a percentage over the amount of the incurred Financial Liabilities.

7.12. We will not charge you for providing or making available information, which is a statutory requirement to be provided or made available. We may charge you for any information that is provided at your request where such information is: (i) additional to the information that is a statutory requirement to be provided or made available to you; (ii) provided more frequently than is specified in the Agreement; or (iii) provided on paper. In all cases, any charges imposed for the provision of information will reasonably correspond to our actual costs for its provision.

7.13. You will pay all reasonable costs and expenses of any audit or audits, conducted under the Agreement.

Security

This sub-section 'Security' applies when you have appointed us explicitly to act as your Collecting Agent.

7.14. We may establish a Security in relation to you and your processing for the purpose of providing a source of funds to pay us for any and all, actual and reasonably anticipated Financial Liabilities. Such a Security will be agreed in the Schedule: Financial conditions and held in a manner to be readily identified by you and controlled by us.

7.15. The Security may take the following forms: (i) establishment of a Reserve; (ii) provision of a guarantee in our favour; or (iii) another Security agreed between the Parties.

7.16. When agreeing to the Security and its amount we may consider our risk assessment, including your overall financial standing.

7.17. You will undertake, at your own expense, any further action (including executing any necessary documents and registering any form of documents) necessary to establish such a Security as is reasonably required.

7.18. The Security will remain in place regardless of any termination of the Agreement for as long as residual or contingent Financial Liabilities are reasonably likely, with an adjustment being made to release part of the Security if the residual or contingent Financial Liabilities considered reasonably likely is less than the Security.

7.19. We may at any time by notice require you to give a reasonable Security or to augment the provided Security. The amount of the additionally requested Security will be determined based on your Transaction history and the expected loss or damage that we may suffer under the Agreement. You must comply with our reasonable request within the timescale specified in the notice.

7.20. We will have the right, at any time without notice, to offset any Financial Liabilities due and owed by you under the terms of this Agreement from the balances (including the Security) on any accounts held with us or with any party of our Group in respect of any liabilities of yours.

7.21. Our Group may set off, against any sums due from us (whether in connection with the Agreement or not) to you or your Affiliate, any sums due from you or your Affiliate to us or which in our reasonable opinion are likely to fall due but to remain unpaid by you or your Affiliate.

7.22. Where you incur a negative balance, meaning that your Financial Liabilities due and owed by you under the terms of this Agreement exceed the Security, you will be obliged to pay us immediately for the balance owed upon our request or demand for such payment. Failure to do so is a breach of the Agreement.

7.23. We may at any time send reminders or take debt collection measures including, but not limited to, mandating a debt collecting agency or solicitors to pursue the claim in court.

7.24. We will charge you the expenses reasonably incurred in connection with any debt collection or enforcement efforts.

7.25. The amount of the Reserve will be determined either as: (i) Up-Front Reserve, as an absolute amount; and/or (ii) Rolling Reserve, as a percentage of proceeds of Transactions, net of any amounts due to us, provided that the payment amount exceeds the minimum payment thresholds, which will be kept for the agreed period and released after the expiration of this period. In case the minimum payment threshold is not reached, the payment amount is carried forward as proceeds for the next billing period.

7.26. The Reserve will be determined by us from time to time at our sole discretion.

7.27. Where a Reserve has not been established at the Effective Date, we will notify you of the imposition of a Reserve, its method of calculation, its amount as well as any increase or reduction of the Reserve without undue delay in writing at any time during the term of the Agreement.

7.28. When we are entitled to request a Security under the terms of this Agreement, we may require the Security to be in the form of a guarantee in which case you will, upon request, procure such guarantee in our favour. The guarantee must be acceptable for us with regards to its issuer (Merchant's owner(s) or Affiliate(s), Bank or other Credit Institution), form and amount.

7.29. We may defer any amount due to you where we reasonably believe that Transactions or related activities may be fraudulent or involve other criminal activity until the satisfactory completion of our investigation.

8. Our liability

8.1. We are liable to you for any losses directly caused by our negligence, wilful default or fraud.

8.2. In no event our liability arising out of the Agreement will exceed the fees you paid to us hereunder during the **six (6) month period** immediately preceding the event which gave rise to the claim for damages.

8.3. Nothing in the Agreement will exclude or limit any duty or liability that:

(a) we may have to you under Regulatory Requirements; or

(b) Regulatory Requirements do not allow to be excluded or limited.

8.4. We are not liable (including for negligence) to you:

(a) for any losses due to unavailability of our Service arising out of any action or omission of third parties engaged by you;

(b) for any losses due to settlement delays caused by third parties;

(c) for any losses due to Transactions that were authorised, but not sent for clearing after the Suspension of Services;

(d) for any losses due to Transactions that were rejected for clearing or settlement by the PSP for whatever reasons, although you have rendered the service or shipped the products;

(e) for any losses arising out of any cause beyond our reasonable control and the effect of which is beyond our reasonable control to avoid;

(f) any losses that we could not reasonably have anticipated when you gave us an instruction;

(g) if your hardware, software or internet connection is not functioning properly;

(h) loss of or corruption of Data or information due to your fault;

(i) costs relating to wasted managerial, operational or other time;

(j) loss of business, of production, of goodwill, of reputation, of opportunity, of bargain, of profit, of revenue, of anticipated savings or loss of margin;

(k) costs of procurement of substitute products and/or services,

(l) claims made against you by third parties; or

(m) any indirect, incidental, consequential, punitive or special damages arising out of the Agreement.

8.5. We are not liable to you if we fail to take any action, which in our opinion would breach any Regulatory Requirement or Standards. To the extent there is any conflict between the Agreement and our duties under any Regulatory Requirement or Standards, we will act in a way we reasonably consider necessary to comply with such Regulatory Requirement or Standards. We will not be treated as having breached the Agreement as a result.

8.6. In addition to this clause, depending on which Services you choose, different liability provisions may apply for particular services, as set out in the terms for those services.

9. Indemnification

General provisions

9.1. The Parties agree, that when due, the indemnity will cover any and all Financial Liabilities incurred by reason of any Action by a third party (party other than the Indemnified Party).

9.2. The Party that is obliged to perform the indemnification will be referred to as the Indemnifying Party and the Party (its employees and Directors included) that is entitled to the indemnification will be referred to as the Indemnified Party.

9.3. Each Party undertakes to:

(a) use reasonable efforts to notify the Indemnifying Party of such Action by a third party as early as possible and in writing;

(b) use reasonable efforts to mitigate the loss or amount of the Financial Liabilities;

(c) refrain from admitting any liability or settling any claim without the prior written consent of the Indemnifying Party; and

(d) provide, at its own cost, reasonable cooperation in the defence or settlement of such a claim.

9.4. If a Party comprises of more than one person, then the liability of such persons will be joint and several.

Payment gateway services

9.5. emerchantpay acknowledges that it is fully liable and responsible for operating the Payment Gateway in strict compliance with the Standards (PCI DSS).

9.6. You shall defend, indemnify and hold harmless emerchantpay from and against any loss, cost, liability or damage (including attorney's fees) arising from or relating to any claim brought against us:

(a) by a third party relating to your modifications of the Payment Gateway in breach of this Agreement; or

(b) by a third party related to any information or materials provided by you to third parties; or

(c) by a third party relating to any content or Data that is not of emerchantpay and is used by you in connection with the Payment Gateway.

9.7. This indemnification obligation is subject to you receiving: (i) prompt written notice of such a claim (but in any event notice in sufficient time for you to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defence or settlement of such a claim; and (iii) all reasonably necessary cooperation of emerchantpay at your expense.

9.8. The access to the Payment Gateway may be modified, partially or completely suspended to the necessary extent in cases, justifying such actions, which is inter alia to ensure the security and stability of the Payment Gateway's environment, in connection with the change of applicable Regulatory Requirements and the Standards, for the purpose of repairs, maintenance, introduction of necessary adaptations, modifications and extensions of the software or the application, taking actions aimed at locating and removing malfunctions in the functioning of the services. Interruptions and limitations in performing of services in the cases indicated above are deemed to be compliant and admissible under the Agreement and do not give rise to our liability.

10. Personal data protection

10.1. Each Party acknowledges that, when performing their rights and duties under the agreement, they may process Personal Data. The processing may include an operation or set of operations, which are performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

10.2. We will process Personal Data disclosed to us as per our Data processing terms available be clicking here.

10.3. The Parties undertake to process Personal Data only on a lawful basis.

10.4. The Parties are committed to ensuring the processing of Personal Data under the Agreement complies at all times with applicable Regulatory Requirements and Payment System Standards.

10.5. You undertake as a minimum to implement and maintain appropriate technical and organisational measures to keep Personal Data secure and protect it against unauthorised or unlawful processing or accidental loss, destruction or damage in relation to the provision of Services.

10.6. The Parties undertake to inform the Data Subjects about their rights and assist then when exercising their rights.

10.7. Collected Personal Data will be stored for a period of five (5) years after the termination of the Agreement or ten (10) years of the date of the Transactions, whichever occurs first.

10.8. For the purpose of handling of Data Subjects' requests, we have designated a Data protection officer. The latter should be addressed to dpo@emerhantpay.com.

11. Communication

11.1. The Agreement is supplied in English, and all communication between you and us will be in English.

11.2. If we provide you for convenience with a translation of the Agreement or any communication, the English language version will be the only legally binding version and will prevail if there is any inconsistency.

11.3. You agree and consent to receive electronically all communications, agreements, documents, notices and disclosures (collectively, '**Communications**') that we provide in connection with your use of our Services.

11.4. We will provide these Communications to you: (i) by posting them on our website, if they are intended to all our clients; or (ii) by emailing them to you at the email address listed in your Merchant Application Form, if they are intended only for you.

11.5. If you withdraw your consent to receive Communications electronically, we may either terminate your Agreement or charge you additional fees for paper copies.

11.6. If, after you consent to receive Communications electronically, you would like a paper copy of a Communication we previously sent you, you may request a copy within a hundred and eighty (180) days of the date we provided the Communication to you by contacting us as described above.

11.7. We will send your paper copy to you by postal mail. In order for us to send you paper copies, you must have a current postal address.

11.8. The address to which we will send any electronic correspondence is the email address of the person you designated as a contact person in the Merchant Application Form. For any correspondence that needs to be provided on paper, your registered office address will be used as a postal address. You can update your email address or provide another address as a postal address at any time by informing your account manager.

11.9. It is your responsibility to keep your email and postal address up-to-date so that we can communicate with you.

11.10. You understand and agree that if we send you an electronic Communication, but you do not receive it because your email address on file is incorrect, out of date, blocked by your Third Party Provider(s), or you are otherwise unable to receive electronic Communications, we will be deemed to have provided the Communication to you.

11.11. Please note that if you use a spam filter that blocks or re-routes emails from senders not listed in your email address book, you must add us to your email address book so that you will be able to receive the Communications we send to you.

11.12. In order to access and retain electronic Communications, you will need:

(a) a computer with an internet connection;

(b) sufficient storage space to save past Communications or an installed printer to print them;

(c) a valid email address (your email address); and

(d) a current web browser with cookies enabled.

11.13. We will notify you if there are any material changes to the hardware or software needed to receive electronic Communications from us.

11.14. Communications to us made in connection with the Agreement must be sent:

(a) via email to helpdesk@emerchantpay.com or to the email address of your account manager;

(b) by postal mail to 1 London Bridge, 2nd Floor, London SE1 9BG United Kingdom – in all cases when hardcopies of documents are required.

11.15. You can also use our contact form provided in: https://www.emerchantpay.com/contact-us

12. Representations and warranties

12.1. Each Party represents and warrants to the other Party that:

(a) it is duly organised, validly existing and in good standing under the laws of its country of incorporation;

(b) it has and will maintain all required rights, powers and authorisations to enter into the Agreement and to fulfil its obligations;

(c) to the best of its knowledge there are no legal actions or regulatory investigations pending or threatened against its company that might affect its ability to perform its obligations under the Agreement;

(d) it will perform its obligations with reasonable skill and care;

(e) it has in place and will maintain adequate facilities to comply with its obligations under the applicable Regulatory Requirements, Standards and the Agreement, including Data protection and confidentiality obligations;

(f) it owns or has the right to use and sub-licence any Intellectual Property which it uses or licences for use to the other Party.

12.2. Except as specifically provided by the Agreement, we make no other warranty, guarantee or undertaking, express or implied, regarding the performance of the Services, and nothing contained in the Agreement will constitute such a warranty.

12.3. You expressly agree and acknowledge that all other conditions, terms, undertakings and warranties, express or implied, or statutory in respect of the Services (including but not limited to quality, performance, suitability or fitness for a particular purpose) are hereby executed to the maximum extent permitted by the Regulatory Requirements.

12.4. We do not make or give, and hereby expressly disclaim, all warranties, representations, or conditions of merchantability, merchantable quality, or fitness for any purpose, particular, specific, or otherwise, or any warranty of title or non-infringement, for any of the products, processing, services, specifications, software, hardware, or firmware created or supplied by us, or referenced in the Agreement.

12.5. You represent and warrant that you:

(a) maintain your legal entity active and solvent within the duration of the Agreement and at least six (6) months after its termination;

(b) have at all times all required licences and authorisations in place to engage in the advertising and conduct of your business;

(c) have and maintain at least one (1) Director;

(d) have and maintain at least one (1) Director who is domiciled in the place of your incorporation and registered business address;

(e) operate your business in compliance with the applicable Regulatory Requirements and Standards, including: (i) use our Services to process only Transactions that are legal, valid, genuine (non-fraudulent) and duly authorised by your Customers; (ii) use our Services to receive payments for a product or service offered by you and not by third parties; (iii) use our Services to receive only the total sale price of the product or service offered by you and not to collect from your Customers any fines, penalties, damages, non-disclosed fees, charges, etc.; (iv) not use our Services to provide your Customers with cash, travellers' checks, cash equivalents, or other negotiable instruments; and (v) will not be engaged in the sale or exchange of information (Account Data, Transaction Data or personal information).

(f) carrying out the terms of the Agreement will not cause you to break any other enforceable agreements which you are a party to;

(g) provided true, accurate and complete information in connection with the Agreement.

12.6. When you use our Payment Gateway Services, emerchantpay represents and warrants that it shall take reasonable commercial efforts to ensure that the Payment Gateway in the form and when provided to you, shall be free of any viruses, malware or other harmful code.

12.7. Except as expressly set forth above, all software, support and maintenance and any additional services are provided '**as is**', and we expressly disclaim any and all warranties and representations of any kind, including any warranty of non-infringement, title, fitness for a particular purpose, functionality or merchantability, whether express, implied or statutory.

12.8. We shall not be liable for delays, interruptions, service failures or other problems inherent in the use of the internet and electronic communications or other systems outside our reasonable control.

12.9. To the maximum extent permitted by the applicable Regulatory Requirements, neither we nor any of our third party suppliers makes any representation, warranty or guarantee as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of any software or any content therein or generated therewith, or that: (**i**) the use of any software shall be secure, timely, uninterrupted or error-free; (**ii**) the Payment Gateway shall operate in combination with any other hardware, software, system or Data; (**iii**) the Payment Gateway (or any products, services, information or other material purchased or obtained by you through them) shall meet your requirements or expectations); (**iv**) errors or defects shall be corrected; or (**v**) except as expressly set forth in clause 12.6., the software is free of viruses or other harmful components.

13. Changes

13.1. We may update or amend the Agreement at any time for any reason in accordance with this section 'Changes'. Any changes will be communicated to you:

(a) via our website, for any changes that come into effect immediately; or

(b) via email sent by us to your email address, for any changes that come into effect after a two month notice period.

13.2. Any proposed changes to the existing terms of the Agreement will be communicated to you no later than **two months** before the date on which they are to take effect.

13.3. Changes of the Agreement that do not require prior notice and will come into effect immediately, if so stated in our change notice to you, are:

(a) changes that make the Agreement more favourable to you or that have no effect on your rights;

(b) changes that are necessary in order for us to comply with Regulatory Requirements or Standards;

(c) changes to our charges; or

(d) changes to the currency exchange rates.

13.4. We may change the Agreement to make it more favourable to you by upgrading or enhancing the Services we provide to you if there are no increased costs to you.

13.5. We may also change any of the other terms of the Agreement if the change will have no effect on your rights for any of the following reasons:

(a) where we reasonably consider that: (i) the change would make the terms easier to understand or fairer to you; or (ii) the change would not be to your disadvantage;

(b) to cover: (i) the improvement of any Service or facility we supply; (ii) the introduction of a new Service or facility; (iii) the replacement of an existing Service or facility with a new one; or (iv) the withdrawal of a Service or facility which has become obsolete, or has not been used by you at any time;

(c) to enable us to make reasonable changes to the way we provide services as a result of changes in: (i) the banking, investment or financial system; (ii) technology; or (iii) the systems we use to run our business; or

(d) as a result of a Regulatory Requirement (or where we reasonably expect that there will be a change in a Regulatory Requirement).

13.6. We may change our charges or introduce a new charge:

(a) if we provide a new service or facility in connection with Services. For sake of clarity, you will not be charged for services not required by you;

(b) if there is a change in (or we reasonably expect that there will be a change in): (i) the costs we incur in carrying out the activity for which the charge is or will be made; or (ii) charges imposed upon us, whereby we will be permitted to increase our charges strictly on a pass-through basis to cover the costs we incur in; or

(c) for other valid reasons which are not set out in this clause.

13.7. Any change or new charge (that will come into effect immediately as per clauses 13.3. and 13.6. will be a fair proportion, as reasonably estimated by us, of the impact of the underlying change on the costs we incur by providing you a Service(s). No provision of the Agreement will be deemed waived, altered, modified or amended unless: (a) the Agreement provides otherwise; or (b) we otherwise agree with you in writing.

13.8. The up-to-date version of these T&C's will always be available to you upon request.

13.9. The Merchant Service Agreement is not effective and may not be modified in any respect without our express written consent.

14. Term and termination

Term

14.1. The Agreement is effective as of the date on which the signatures of the authorised representative(s) of the Service Providers are laid (hereinafter referred to as 'Effective Date') on the Agreement.

14.2. If the Agreement is executed remotely, as Effective Date is considered the date on which the remote verification of your authorised representative is completed.

14.3. The Agreement enters into force on the Effective Date and will remain in force until terminated by either Party.

Termination by you

14.4. You may terminate the Agreement at any time by giving us **thirty (30) calendar days written notice**.

Termination by us

14.5. Unless otherwise agreed upon, we may unilaterally terminate the Agreement with you by giving **ninety (90) calendar days written notice**.

14.6. We may unilaterally terminate the Agreement with you **immediately** and without giving notice if we reasonably believe that you:

(a) materially fail to comply with Regulatory Requirements and Standards;

(b) have seriously or persistently breached any terms of the Agreement which are not capable of remedy (including giving us incorrect information prior to or when entering into the Agreement and had we been provided with the correct information, we would not have entered into the Agreement);

(c) behave in a manner that makes it inappropriate for us to provide you the Services;

(d) fail to upgrade to the most current software version, security updates and/or patches, following expiration of the thirty (30) day remediation period;

(e) fail to operate the Payment Gateway in compliance with PCI DSS;

(f) provided to us any information substantial to the performance of the Agreement and/or your agreement with a PSP that is inaccurate or false;

(g) will cease business activities due to insolvency, liquidation, winding up, bankruptcy, administration, receivership or dissolution, or where we reasonably consider that there is a threat of the same in relation to you;

(h) will fail to make payments in the ordinary course of business because of your credit and/or financial status.

14.7. At any time we may unilaterally terminate the Agreement with you **immediately** and without giving notice:: (i) if we are unable to fulfil our obligations under the Money Laundering, Terrorist Financing and Transfer of Funds

Regulations in relation to you; (ii) in order to comply with changes in the Regulatory Requirements, including immigration laws; (iii) due to having reasonable grounds to suspect that our Services have been/are/will be used in connection to a serious crime; (iv) if required by the FCA, the Treasury or the Secretary of State; (v) due to having reasonable grounds to suspect that in the course of offering your good/services to Cardholders, you have engaged in a conduct that involves, or is likely to involve, the commission of an offence and our Services have been used in connection with the offence; (vi) due to material change in your financial stability; (vii) if the market conditions hinder your ability to supply your services; or (viii) when we provide you with Collecting Agent Services, if our financial exposure, as per our calculation, rises more than 30% from the originally expected exposure at the time of signing this Agreement.

Termination upon mutual consent

14.8. The Agreement may be terminated by the mutual consent of the Parties on such terms as they may agree.

Consequences of the termination

14.9. When the Agreement terminates, you will:

(a) cease using our Services;

(b) continue to be responsible for any financial or other obligations incurred as a result of your actions or omissions before the termination of the Agreement;

(c) promptly pay any outstanding and unpaid invoices, if any, due for our Services whether the invoice was submitted before or after the termination of the Agreement;

(d) not be entitled to a Refund of any fees previously paid to us; and

(e) continue to comply with all confidentiality provisions as specified in the Agreement.

14.10. In the case of termination due to bankruptcy, insolvency or other suspension of business operations, you undertake not to sell, transfer or disclose any materials that contain Sensitive Payment Data to any other entity. You must return this information to us or to provide acceptable proof of secure destruction of this information.

14.11. When the Agreement terminates, the Parties will return or destroy (at the option and request of the disclosing Party) any Confidential Information belonging to the other Party in its possession or control.

14.12. The termination of the Agreement neither affects the accrued rights, remedies and obligations or liabilities of the Parties existing at termination, nor will it affect the continuation in force of any provision of the Agreement that is expressly or by implication intended to continue in force after termination.

14.13. Where fees for the Services are levied on a regular basis, such fees will be apportioned up until the time of the termination of the Agreement and any fees paid in advance will be reimbursed proportionally.

14.14. When we provide you Collecting Agent Services, upon termination, we will suspend the release of the Rolling Reserve. Upon termination and in consideration of your processing history, we will withhold up to 100% of the residual positive net balance in your Merchant Account. Such residual positive net balance will be withheld for a security period of up to a hundred and eighty (180) days depending on the Payment System. Different security periods may be applied per single Merchant Account depending on the Payment System. For card-based transactions, in the cases provided by the Standards, this period may be extended up to five hundred and forty days (540) calendar days from the date of the last Transaction or up to three hundred and sixty-five (365) calendar days from the original expected delivery or performance date specified by you. Where a guarantee is provided, we may release the residual positive net balance before the expiration of this period.

14.15. If we suspend the provision of the Payment Gateway or terminate the Agreement, you shall have no claim for lost profits, consequential damages or any other loss, cost or expense as a result of such termination or suspension.

14.16. Upon any expiration or termination of this Agreement, your licence to the Payment Gateway terminates and you must cease using the Payment Gateway and delete (or at our request, return) any Confidential Information or other materials of emerchantpay in your possession at the earliest opportunity possible, but not later than the date indicated in the termination notice. If a deletion is requested, you shall certify such deletion upon our request.

14.17. With the expiration and/or termination of this Agreement, any agreements signed in connection with this Agreement (e.g., for point of sale under clause 5.46, for RDR service under clause 5.67, for Ethoca Alerts under clause 5.68) will be considered terminated, if not agreed otherwise.

14.18. To the extent permitted by applicable Regulatory Requirements, you agree that upon termination, we may delete all information relating to your use of the Payment Gateway.

14.19. Upon any expiration or termination of this Agreement, your licence to the Payment Gateway terminates and you must cease using the Payment Gateway and delete (or at our request, return) any Confidential Information or other materials of emerchantpay in your possession at the earliest opportunity possible, but not later than the date indicated in the termination notice. If a deletion is requested, you shall certify such deletion upon our request.

14.20. Upon termination, your rights to use the Payment Gateway, and any other rights granted under this Agreement, shall immediately cease.

14.21. Termination of this Agreement shall not relieve either Party from any liability arising prior to the termination of this Agreement.

14.22. To the extent permitted by applicable Regulatory Requirements, you agree that upon termination, we may delete all information relating to your use of the Payment Gateway.

15. Redress

15.1. During your relationship with us, you may wish to make a complaint. For this reason, we have procedures for handling your complaints fairly and promptly.

15.2. We prefer to receive your complaint in writing so that the details of your complaint are clear and complete. The complaints should be addressed to complaints@emerchantpay.com, if you wish to submit a complaint by email; or to 1 London Bridge, 2nd Floor, London SE1 9BG United Kingdom, if you wish to submit a complaint by post.

15.3. Once we have reviewed your complaint, we will provide you with a written response in the form of:

(a) Summary Resolution Communication, if we managed to find an appropriate solution to your complaint within a period of three **(3) Business Days**; or

(b) Final Response within fifteen **(15) Business Days** of receiving the complaint in which we may: (i) accept your complaint and, where appropriate, offer redress or remedial action; (ii) offer you redress or remedial action without accepting your complaint; or (iii) reject your complaint giving you our reasons for doing so.

15.4. We will endeavour to resolve complaints within fifteen (15) Business Days of receiving the complaint, but this will not be possible on all occasions. Where our review exceeds fifteen (15) Business Days, due to reasons beyond our control, we will contact you to inform you of the reasons for the delay and indicate to you when we expect to be in a position to complete our review, which will not be later than thirty-five (35) Business Days of receiving the complaint.

15.5. All disputes arising out of or in connection with the Agreement, including any question regarding its existence, validity or termination ('**Dispute**'), must be attempted to be solved through negotiation by the Parties within thirty (30) calendar days after either Party notifies the other in writing of the existence of the Dispute.

15.6. Any Dispute not resolved in the term abovementioned, will be finally settled by arbitration under the LCIA Arbitration Rules 2020 by the sole arbitrator appointed in accordance with the said Rules. The seat of arbitration will be in London, UK. The language to be used in the arbitral proceedings will be English.

15.7. In the case of procedural lacunae (gaps) in the LCIA Arbitration Rules 2020, UNCITRAL Model Law on International Commercial Arbitration will apply.

16. Miscellaneous

Confidential information

16.1. The Parties acknowledge that in the course of fulfilling their obligations under the Agreement, they may have access to information or material that is commercially valuable and not generally known and that, if misused or disclosed, could reasonably be expected to affect either Party's business adversely ('**Confidential Information**'). Confidential Information also includes without limitation the identities of the Parties to the Agreement and ancillary documentation, the terms of the Agreement and ancillary documentation, all information provided in anticipation of entering into the Agreement, all Sensitive Payment Data.

16.2. The Parties agree to cause their Directors, employees and other representatives to hold in strict confidence all Confidential Information obtained from each other and/or their Directors, employees and representatives, and not to use, disclose or permit any third party access to such Confidential Information for any other purpose then to fulfil their obligations.

16.3. Neither Party will at any time, use for its own benefit, directly or indirectly, or divulge to any person or entity, orally or in writing, directly or indirectly, in whole or in part, any Confidential Information of the other Party, without the other Party's written consent.

16.4. You must not disclose the Cardholder's account number, Cardholder's personal information or other Transactional Data to a third party without the prior consent of the Card Issuer and the respective Card Scheme, except when such Data is used for support of a loyalty programme, provision of fraud control service or completion of the initial Merchant Transaction.

16.5. Notwithstanding anything in the Agreement to the contrary, neither Party has any duty of non-disclosure with respect to Confidential Information that:

(a) was in that Party's possession or already known to that Party without an obligation to keep it confidential, before the information was disclosed, that is publicly available at the time of disclosure or that becomes publicly available after disclosure other than through breach of the Agreement or another wrongful act;

(b) is disclosed by either Party with mutual written approval;

(c) is disclosed to either Party by a third party who is not in breach of their own obligation of confidentiality;

(d) either Party develops independently other than through breach of the Agreement; or

(e) is required to be disclosed under Regulatory Requirements; further, we may disclose Confidential Information when requested by law enforcement or regulatory authorities or under the Standards.

16.6. The Parties agree to exercise the same degree of care to fulfil their obligations of confidentiality, which they exercise to safeguard their own Confidential Information.

16.7. This 'Confidential information' Clause will survive the termination of the Agreement for whatever reason and will continue for so long as either Party remains in possession of Confidential Information.

Publicity

16.8. Neither Party to the Agreement will issue a news release, public announcement, advertisement or other form of publicity concerning the existence of the Agreement or services to be provided under the Agreement without obtaining prior written approval from the other Party.

Intellectual property

16.9. Except as expressly stated, nothing in the Agreement will grant or be deemed to grant to any Party any right, title or interest in any Intellectual Property (including logos, trademarks, trade names or other) licenced to that Party by the other Party.

16.10. For the duration and strictly for the purpose of the Agreement, the Parties grant each other a non-exclusive, worldwide, royalty-free, non-transferable licence to copy, use and display any Intellectual Property owned by, or licenced to the other Party.

16.11. Any use of Intellectual Property is subject to prior written approval by the owner of the respective Intellectual Property.

16.12. In using the other Party's Intellectual Property, each Party will follow the other Party's reasonable instructions having regard to the purpose of such use under the Agreement and the jurisdiction in which the other Party's Intellectual Property is used.

16.13. Neither Party will mention the other Party in any public communication without receiving its prior written approval.

16.14. We reserve the right at any time and in our sole discretion to require you to suspend copying, making use of and displaying our Intellectual Property.

16.15. Third party marks used or included in the Services are pursuant to a licence agreement between emerchantpay and the applicable third party and shall constitute part of the Service for the purposes of this Agreement.

16.16. Notwithstanding the foregoing, you shall have no right to use, modify, display or reproduce any third party marks without emerchantpay's prior written consent. You agree to not do anything to contest or impair the third party marks and to immediately notify emerchantpay if you become aware of any unauthorised display or use of the third party marks.

Non-solicitation of employees

16.17. For the term of the Agreement and for a period of twelve (12) months thereafter you will not on your own behalf, or on the behalf of any person directly or indirectly, canvass, solicit or endeavour to entice away from our Group any person who has at any time during the term of the Agreement been employed or engaged by us or our Group.

No waiver

16.18. Our failure to insist on you strictly complying with the Agreement or any failure or delay on our part to exercise any right or remedy under the Agreement will not amount to a waiver of our rights under the Agreement.

Assignment

16.19. You may transfer or assign any of your rights or obligations under the Agreement only with our prior written consent, which will not be unreasonably withheld.

16.20. We may transfer any of our rights and obligations under the Agreement to any member of our Group or another entity without your consent. You agree that you will promptly complete all documents that we reasonably require in order to make a transfer effective. We may also sub-contract any of our obligations under the Agreement to another person without your prior consent.

16.21. Where we propose to transfer a material part of our assets to a member of our Group, we may also transfer all of our rights, powers, obligations and liabilities under or in connection with the Agreement without your further consent.

Delegation

16.22. We may delegate any of our functions and responsibilities under the Agreement to a member of our Group (with or without a further power to sub-delegate), if we reasonably consider it capable of discharging those functions and responsibilities.

16.23. Where we delegate or allow sub-delegation: (i) it may be to persons or agents outside the jurisdiction where we provide the services to you; (ii) it will not affect our liability to you for the matters delegated; and (iii) it will be undertaken in accordance with applicable Regulatory Requirements.

16.24. We may employ members of our Group and third parties to perform dealing and administrative services that are necessary to enable us to perform the Agreement without further notice or consent.

Severability

16.25. Each provision of the Agreement is severable. If any provision of the Agreement or any part of it is or becomes illegal, invalid or unenforceable, the provision will be treated as if it was not in the Agreement. The legality, validity, enforceability and reasonableness of the remainder of the Agreement will not be affected and will remain in full force.

Third party rights

16.26. No other person will have any rights to enforce the conditions of the Agreement, except for any of our Affiliates.

Relationship of the parties

16.27. The Parties are independent contractors under the Agreement, and nothing herein will be construed to create a partnership, joint venture or agency relationship between them. Neither Party has authority to enter into agreements of any kind on behalf of the other.

Force majeure

16.28. For the purposes of the Agreement 'Force Majeure Event' means any of the following: acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster; epidemic or pandemic; war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions; terrorist attack, civil war, civil commotion or riots; government restrictions, legislative changes or any other cause beyond the reasonable control of the Party that affects their performance.

16.29. Either Party, provided that it adheres to the provisions of clause 16.30. will not be in breach of this Agreement nor liable for any failure or delay in performance of any of its obligations under this Agreement (and, subject to clause 16.31. the time for that Party's performance of its obligations will be extended accordingly) arising from or attributable to a Force Majeure Event.

16.30. If either Party is subject to a Force Majeure Event it will not be in breach of this Agreement provided that: (i) it promptly notifies the other Party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; (ii) it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken,

but did not; and (iii) it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.

16.31. If the Force Majeure Event prevails for a continuous period of more than three (3) months, either Party may terminate the Agreement by giving ten (10) Business Days' written notice to the other. On the expiry of this notice period, the Agreement will terminate. Such termination will be without prejudice to the rights of either Party in respect of any breach of the Agreement occurring prior to such termination.

Entire agreement

16.32. The Agreement constitutes the entire agreement between you and us in respect of its subject matter and supersedes and invalidates all other prior representations, arrangements, understandings and agreements relating to the same subject matter.

16.33. Each Party acknowledges that in entering into the Agreement it does not rely on any statement, representation, warranty or understanding other than those expressly set out in the Agreement.