

## 1 Basis of contract

- 1.1 These Conditions apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.2 The Contract Form constitutes a Contract by you to accept the Services in accordance with these Conditions. You are responsible for ensuring that the terms set out on the Contract Form are complete and accurate.
- 1.3 The Contract Form shall only be deemed to be accepted when the Company signs the Contract Form (by a handwritten or electronic signature) at which point the Contract shall come into existence.
- 1.4 The Contract constitutes the entire Contract between the parties. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.

## 2 Term

- 2.1 The Contract shall start on the Commencement Date and shall run for the Initial Period. If the Contract is not terminated during the Initial Period in accordance with clause 18, the Contract shall continue to run on a rolling twelve (12) calendar month basis, starting on the next day following the expiration of the Initial Period.

## 3 The Company's Role

- 3.1 The Company assists you, as a third party seller to process E-commerce Transactions in relation to Orders. While the Company as a platform provider helps facilitate Acquiring Services in respect of processing E-commerce Transactions relating to Orders that are carried out on your website, the Company is neither the buyer nor the seller of your goods.
- 3.2 The Company provides a venue for you and the Customers to complete E-commerce Transactions. Accordingly, the contract formed at the completion of an Order is solely between you and the Customer. The Company is not a party to this contract nor assumes any responsibility arising out of or in connection with it nor is it your agent.
- 3.3 You are responsible for the sale of the goods and for dealing with any Customer claims or any other issue arising out of or in connection with the contract between you and the Customer.
- 3.4 Provision of the Services, particularly Merchant and Acquiring Services are dependent upon the actions of Third Parties, including but not limited to Customer Cards, Card issuers and Financial Institutions processing Orders and E-commerce Transactions. Subject to the provisions of clause 17, we will not be held responsible for any delay or failure to comply with our obligations under these Conditions if the delay or failure arises from any cause which is beyond our reasonable control, particularly in respect of any Downtime in providing the Services at anytime, particularly **outside of Office Hours**.
- 3.5 It is expressly agreed that the Company shall not be liable for any delays or Downtime in respect of providing services caused by events beyond our control, such as the failure of Third Party internet providers for either you, Customers, Barclaycard, Smartpay, Financial Institutions, or otherwise, in respect of the Company delivering the Services.

## 4 Other businesses

- 4.1 Parties other than the Company and its subsidiaries, provide services on the Website. For example, Barclaycard and/or Smartpay provide the Acquiring Services in respect of processing payment of all Customer Orders via the Website. In addition, we provide links to the websites of affiliated companies and certain other businesses.
- 4.2 We are not responsible for examining or evaluating, and we do not warrant or endorse the offerings of any of these businesses or individuals, or the content of their websites. The Company does not assume any responsibility or liability for the actions, products, and content of any of these and any Third Parties. You can tell when a Third Party is involved in your transactions, and we may share Customer information related to those transactions with that Third Party. You should carefully review their privacy statements and other conditions of use.

## 5 Your Responsibilities and Payments

- 5.1 The first four (4) weeks of the Contract shall be free of charge. You shall make the Payments to the Company on the Weekly Payment Date for the Term. The Payments shall be paid in GBP Sterling by standing order from your Bank Account, or by such other means as may be agreed by the Company, to ensure that the Payments are made on or before the Weekly Payment Date.
- 5.2 The Payments are inclusive of VAT but exclusive of any other applicable taxes and duties or similar charges, which shall be payable by you at the rate and in the manner from time to time prescribed by Applicable Law.
- 5.3 All payments to be made by you under this Contract shall be made without withholding or set-off on account of disputes, counterclaims or for any other reason whatsoever.
- 5.4 You shall at all times comply with:
  - 5.4.1 the provisions of this Contract;
  - 5.4.2 all Applicable Laws, including those requirements which apply to the sale of goods by you in connection with the Transactions and the execution and performance by you of your obligations under this Contract; and
  - 5.4.3 your obligations relating to the sale and/or supply of goods by you to Customers.
- 5.5 You shall:
  - 5.5.1 in relation to Transactions involving Cards, only accept payment from Customers in connection with goods which you have sold and supplied to those Customers;

- 5.5.2 only accept payments in respect of goods the sale and supply of which commonly falls within your business as identified to us;
  - 5.5.3 notify us in writing before you make any change to the nature of the goods the sale and supply of which fall within your business as identified to us;
  - 5.5.4 only accept payments and submit Data to us in respect of Transactions which a Customer has authorised in accordance with Applicable Law, this Contract and any other information or instructions provided by us to you from time to time;
  - 5.5.5 ensure that you prominently and unequivocally inform Customers of our identity at all points of interaction with a Customer (including prominently displaying the Company name and any trading name on any website through which Transactions are conducted), so that the Customer can readily identify the Company as the counterparty to the relevant Transaction; and
  - 5.5.6 only submit Data to us directly from your own staff or systems, or via a Third Party Product, which has been expressly approved by us in writing as one you are entitled to use to submit Data to us.
- 5.6 You must notify us promptly and, in any event, no later than twelve (12) calendar months after becoming aware of any unauthorised or incorrectly executed Transactions.

## 6 Indemnity

- 6.1 You shall hold us harmless from and against, and indemnify us in respect of any losses, damages, costs or expenses which we may suffer or incur or other amounts for which we are liable (including any penalty, fine, surcharge or costs related thereto) in connection with any Claims brought against us by a Customer, Card Scheme, Financial Institution, regulatory authority or any other Third Party, to the extent such Claims arise out of or in consequence of or in connection with:
- 6.1.1 a Transaction;
  - 6.1.2 the enforcement or attempted enforcement of this Contract;
  - 6.1.3 a failure by you to comply with the requirements of an Applicable Law; and
  - 6.1.4 any reasonable steps taken in the protection of our interests in connection with:
    - (a) any breach of the requirements of a Card Scheme or Applicable Law; or
    - (b) any allegation of fraud made in relation to you or your business,except, if and to the extent such Claim is caused by our fraud or any breach of this Contract by us.

## 7 Condition Precedent

- 7.1 It is a condition precedent of this Contract that at all relevant times, particularly at the time of EPOS and prior to Transaction, all Customers provide you with their express and informed consent for the Company to Process Personal Data and Transaction Personal Data in order for the Company to provide you with the Services, particularly in respect of Data Analysis.
- 7.2 All Customers must verify their personal details using the 3D secure process, or latest industry standard, encompassing acquirer domain, issuer domain and interoperability domain to ensure it is the Customer making the Order with you. To afford greater levels of protection for all parties (including Customers), such online authentication is a condition precedent in respect of all Transactions and E-commerce Transactions to supplement the additional level of security provided by Streamline and Sage Pay.

## 8 Processing Data

- 8.1 The Company warrants that, to the extent it processes any Personal Data on your behalf, or your Customers:
- 8.1.1 it shall act only on instructions from you; and
  - 8.1.2 it has in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.
- 8.2 Whenever we request it, you shall give us reasonable assistance to facilitate the successful collection and delivery of all Data.
- 8.3 You represent, warrant and undertake that you have obtained and will continue to obtain the specific and informed consent (and in the case of sensitive Personal Data, the explicit consent) of all and any of the Customers (or any other relevant Persons) to the processing of their Personal Data and Transaction Personal Data in the manner envisaged by this Contract.
- 8.4 It is agreed that the Company shall be a Data Controller and the Company or its appointed agents, servants, sub-contractors or any third parties used by the Company (as the case may be) shall be a Data Processor in respect of Personal Data and/or Transaction Personal Data, as applicable.
- 8.5 We shall, to the extent that we are a Data Processor:
- 8.5.1 take appropriate technical and organisational measures against unauthorised or unlawful processing of, and accidental loss or destruction of, or damage to Personal Data and/or Transaction Personal Data; and
  - 8.5.2 only Process Personal Data and/or Transaction Personal Data as necessary for the purpose of performing our obligations under this Contract and as otherwise envisaged in this Contract.
- 8.6 We shall not store (as such term is used in the PCI SSC Standards), at any time:

- 8.6.1 Card verification value in the magnetic stripe;
  - 8.6.2 Card verification value printed on the Card in or next to the signature panel;
  - 8.6.3 Card verification value contained in the magnetic stripe image in a chip application;
  - 8.6.4 PIN verification value contained in the magnetic stripe;
  - 8.6.5 the full contents of any track from the magnetic stripe (on a Card, in a chip or elsewhere); or
  - 8.6.6 any other Data that the Card Schemes mandate from time to time as Data that cannot be stored.
- 8.7 In addition to complying with all record retention provisions under Applicable Law, and subject to the requirements of the PCI SSC Standards, the Company shall retain legible copies of Data for a minimum period of eighteen (18) months from the date of each Transaction.

## 9 Provision and Disclosure of Data

- 9.1 During the course of providing the Services, particularly Merchant and Acquiring Services, the Company may upon request from Barclaycard, Smartpay or Financial Institutions, be requested to provide copies of Data:
- 9.1.1 relating to the performance of the Services or obligations under this Contract or Applicable Law;
  - 9.1.2 to assist in handling any Claim or query raised by a Customer, a Card issuer, a Card Scheme or any other Third Party in relation to the Services or any Transaction;
  - 9.1.3 to co-operate in providing any Financial Institution with all information requested by it in order for Transactions to be accepted by such Financial Institutions or otherwise to enable the Company to provide you with any of the Services (or any part thereof);
  - 9.1.4 You hereby authorise us and any Financial Institution (including the credit institution at which the Company maintains the Merchant Bank Account) to use, share and release Data and any other information relating to you, the Services or the Card Schemes (or, if instructed by us, you shall provide such Data or information or procure that such Data or information is provided) to any Person, Card issuers, Card Schemes, Third Parties, regulatory authorities, law enforcement agencies, fraud prevention agencies and credit reference agencies:
    - (a) for the purpose of fulfilling our obligations under the Contract or requirements of a Card Scheme or otherwise as required by Applicable Law;
    - (b) in relation to any breach of, or to enforce, this Contract;
    - (c) to recover debt or in relation to your insolvency;
    - (d) to develop customer relationships, services and systems;
    - (e) to prevent and detect fraud or crime;
    - (f) in the course of any investigation by the Company, or any Financial Institution or any Third Party into any suspected criminal activity;
    - (g) regarding information security, the risk of fraud, sector risk and credit risk; and
    - (h) to enable the Card Schemes to assign codes to any undesirable act or omission.
- 9.2 You shall advise us in writing as soon as you become aware of any other agreement that you enter into concerning your acceptance of Transactions.
- 9.3 If you contact us electronically, we may collect your electronic identifier (for example, Internet Protocol (IP) address or telephone number) supplied by your service provider.
- 9.4 We may disclose information concerning you to Third Parties where we aggregate Data to facilitate cross industry analysis and comparisons.
- 9.5 The information which we and/or any Financial Institution collect from you may be transferred to, processed and stored at, a destination outside the EEA.

## 10 Data Analysis

- 10.1 You shall provide the Company with Materials weekly, monthly, or otherwise as agreed.
- 10.2 The Company shall produce Data Analysis Reports based upon the Materials you provide and stored in the Merchant Data Account, which may entail reconciliation of payments processed by Barclaycard and/or Smartpay into the Merchant Account against Orders and Customer Personal Data and/or Transaction Personal Data.

## 11 Intellectual Property

- 11.1 The Contract does not transfer, and is not intended to transfer, to any party any of the Intellectual Property Rights that any other party owns at the Commencement Date or any Intellectual Property Rights that are created, acquired or developed during the term of the

Contract. Notwithstanding the foregoing sentence, you hereby grant the Company a licence to such Intellectual Property Rights in respect of Materials you provide to the extent required for the Company to perform its obligations under this Contract.

- 11.2 You shall not acquire any Intellectual Property Rights in any Merchant Data Account, any Data, or Data Reports that we make available to you under this Contract. Notwithstanding the foregoing sentence, the Company hereby grants you a non-exclusive licence to such Intellectual Property Rights to the extent required to utilise the Services in accordance with this Contract.
- 11.3 Each party shall obtain the written consent of the other Parties prior to using or referring to any trade marks, logos, copyrighted materials, business names or other similar Intellectual Property Rights in any promotional materials or literature, agreements or on any website.
- 11.4 On termination of the Contract, each Party shall remove any reference to the other Parties from any promotional materials or literature, agreements or on any websites.

## 12 Confidential Information

- 12.1 Except to the extent set out in this clause 12, each Party shall:
  - 12.1.1 treat as confidential all Confidential Information obtained from the other Parties under the Contract;
  - 12.1.2 use the other Parties' Confidential Information solely for the specific purposes for which it was disclosed;
  - 12.1.3 not publish or otherwise disclose to any person the other Parties' Confidential Information without the owner's prior written consent; and
  - 12.1.4 take all action reasonably necessary to secure the other Parties' Confidential Information against theft, loss or unauthorised disclosure.
- 12.2 Each Party may disclose Confidential Information that would otherwise be subject to clause 12.1 but only if it can demonstrate that the Confidential Information:
  - 12.2.1 is required to be disclosed by any court of competent jurisdiction, regulatory authority, or by Applicable Law;
  - 12.2.2 was lawfully in its possession prior to disclosure to it by any other Party without an obligation restricting disclosure;
  - 12.2.3 is already public knowledge or which becomes so at a future date (otherwise than as a result of breach of this clause 12);
  - 12.2.4 is received from a Third Party who is not under an obligation of confidentiality in relation to the information; or
  - 12.2.5 is developed independently without access to, or use or knowledge of, the Confidential Information.
- 12.3 Notwithstanding the provisions of clauses 12.1, 12.2 and 12.4, we and/or any Financial Institution may aggregate and anonymise your Confidential Information (including Data), and disclose it in that form to any Third Party.
- 12.4 Other than as expressly permitted under this Contract, on termination of the Contract for whatever reason, each Party shall forthwith cease to use any Confidential Information of the other parties and shall return on demand, or at the request of the other, destroy or permanently erase all copies of that Confidential Information in its possession or control, save that a party will be permitted to retain such part of the Confidential Information for the purposes of and for so long as required by any Applicable Law or its legitimate internal compliance requirements.

## 13 Acquiring Services and Merchant Services

- 13.1 The Company shall provide you the Merchant Services and Acquiring Services in respect of your Customer Orders and processing Transactions and E-commerce Transactions via the Merchant Account. The functions in respect of Acquiring Services being provided by Streamline with processing of Sensitive Authentication Data being provided by Smartpay in compliance with PCI SSC standards.

## 14 Receipts

- 14.1 Following the value dating and crediting of Transactions and E-commerce Transactions by Streamline to the Merchant Bank Account, we shall initiate or procure the initiation of each Receipt by bank transfer to your Bank Account on the later of the following:
  - 14.1.1 on, or before twenty-one (21) Business Days after the Remittance Date; or
  - 14.1.2 the expiry of any period of deferment in respect of relevant Transactions.
- 14.2 We may defer any amount we are obliged to pay you:
  - 14.2.1 where we reasonably believe that the Transaction may be fraudulent or involves any criminal activity, until the satisfactory completion of our investigation or that of any Financial Institution or any Third Party; or
  - 14.2.2 without limit in amount or time, if we become aware or reasonably believe that you are in breach of or likely to be in breach of your obligations under this Contract.
- 14.3 We shall notify you of any such action, the reasons for it and the procedure for rectifying any factual errors that led to the refusal, unless we are prohibited from doing so under the Applicable Law. Subject to reasonable security measures and Applicable Law, we will notify you before any suspension of processing such affected Transaction if we are able to do so, or otherwise immediately after such suspension. We may charge you the reasonable costs of any such notification.

- 14.4 You shall not be entitled to receive interest, if any, paid by our bank service provider in connection with funds held in the Merchant Bank Account and any such interest may be retained by us.
- 14.5 Receipts shall be paid in the currency or currencies agreed between you and us as set out in the Application Form, or as otherwise agreed in writing by you and us from time to time. In circumstances where it is necessary to apply currency conversion to Receipts, we shall be obliged to apply the prevailing exchange rate based on the standard reference rate of the Royal Bank of Scotland plc or such other reference rate as we notify to you.

## 15 Service Adjustments and Contract Variations

- 15.1 From time to time, we may adjust the content and interfaces of the Services, make changes to the Services which are necessary to comply with any Applicable Law, or make changes which do not materially affect the nature or quality of the Services. If such adjustments or changes lead to a change in software, interfaces or operating procedures, we shall notify you as soon as reasonably practicable prior to the implementation of such adjustments or changes.
- 15.2 From time to time we may change the way we use your information (other than Transaction Personal Data). Where we believe you may not reasonably expect such a change we shall write to you. If you do not object to the change within thirty (30) Business Days, you will be deemed to consent to that change.
- 15.3 We shall be entitled to vary the provisions of the Contract from time to time by giving you at least thirty (30) Business Days' prior written notice. If we do this, you shall be entitled to terminate the Contract immediately by providing written notice to us, provided that such notice is served upon us within thirty (30) Business Days of you receiving the notice of variation. Otherwise, you will be deemed to have accepted any variation of the provisions of this Contract thirty (30) Business Days from receipt of the notice.

## 16 Level of Services

- 16.1 The provisions of this paragraph 16 shall apply to the service levels and support applicable in respect of providing the Services.
- 16.2 We shall use of best endeavours to provide 99.9% Uptime, with no planned outages, and be responsible for all systems hosted on our servers and data centres that are **within our direct control**.
- 16.3 We will not be responsible for ensuring data is delivered correctly to your acquiring bank or authorised processor in a way acceptable to the acquiring bank or authorised processor, nor for any connection difficulties that are outside our control. We accept no responsibility for service levels of your acquiring bank or any other authorised processors' networks or any other Third Party Product supplier, such as an ISP or other bandwidth provider of any description.
- 16.4 **Direct Support:** Only you may contact us directly if you are experiencing any problems with the Services. Under no circumstances must you encourage any of your customers to contact us directly, and we will not be responsible for accepting any such contacts.
- 16.5 **Communication and Tools:** On receipt of a non-critical incident notification, we will supply the relevant incident resolution service and will use its reasonable endeavours to meet the service levels set out in paragraph 16.9 below. Critical incidents will be supported by us automatically in accordance with the service levels set out in paragraph 16.9.
- 16.6 **Telephone:** You should notify us of incidents initially by telephone. We will determine and notify you whether or not the problem is directly concerned with the Services, determine the severity of the problem and thereafter use our reasonable endeavours to remedy the problem within the timescale relevant to the determined severity of the problem (as detailed in paragraph 16.9 below).
- 16.7 **Email:** You may notify us of incidents via e-mail, but not severity 1 incidents (as detailed in paragraph 16.9 below), unless follow-up information has been requested.
- 16.8 Severity 1 or 2 incidents (as detailed in paragraph 16.9 below) that have been notified to us by telephone should be followed up with an email notification.
- 16.9 **Severity and Targets:** The following definitions and targets apply for incident reporting and resolution:

Severity	Definition	Targets
Severity 1	<b>Critical incident</b> Business impact on you is critical. You are unable to use any of the Services; productivity is severely impacted. This shall include the ability to authorise and process Transactions, with accuracy, within the part of the authorisation process that is within our direct control.	<ul style="list-style-type: none"> <li>Resolution within 2 hours</li> <li>Confirmation of receipt &lt;=30 minutes</li> <li>Initial response indicating anticipated resolution time &lt;=30 minutes</li> <li>Supported 24 x 7 x 365</li> </ul>
Severity 2	<b>High incident</b> You are unable to use certain of the Services (such as processing Transactions; productivity is affected. This shall include any material adverse effect on the speed of transaction response, which is within our direct control.	<ul style="list-style-type: none"> <li>Resolution within 3 to 8 hours following notification.</li> <li>Confirmation of receipt &lt;=30 minutes</li> <li>Initial response indicating anticipated resolution time &lt;=1 hour and contingency support for affected service</li> <li>Supported 24 x 7 x 365</li> </ul>
Severity 3	<b>Normal incident</b> You are able to use the Services; minor effect on productivity.	<ul style="list-style-type: none"> <li>Resolution / support provided within 4 hours response from first notification. Provided if such notification is <b>not during Office Hours</b> within 4 business hours commencing on the next Business Day following the first notification.</li> </ul>
Severity 4	<b>Low incident</b> You are able to use the Services, no impact on productivity. This also may include features that may or may not be fixed within the next revision.	<ul style="list-style-type: none"> <li>Resolution within 5 days from first notification provided if such notification is <b>not during Office Hours</b> within 5 Business Days commencing on the next Business Day following the first notification.</li> <li>Workaround or fix may or may not be included in next scheduled revision.</li> </ul>

- 16.10 The targets for the delivery of these response and resolution times are 98% for any incident. 98% resolution means that we will use our reasonable endeavours to resolve 98% of Severity 1, 2, 3 or 4 (as applicable) problems within the specified time scales set out above.

## 17 Exclusion and Limitation of Liability

- 17.1 Subject to the provisions of clauses 17.2 to 17.5 inclusive, each party shall only be liable for loss or damage directly arising out of or in connection with its own breach of this Contract, negligence or wilful misconduct, provided that nothing in this Contract shall operate to exclude or limit a Party's liability:
- 17.1.1 for losses suffered by the innocent party arising out of the other party's (or its personnel's) fraud, fraudulent misrepresentation or wilful misconduct;
  - 17.1.2 for death or personal injury resulting from a party's negligence or that of its personnel;
  - 17.1.3 any breach of any obligations implied by the Sale of Goods Act 1979 or the Supply of Goods and Services Act 1982, or other Applicable Law; or
  - 17.1.4 any other liability to the extent which it cannot be lawfully excluded or limited.
- 17.2 Subject to clause 17.1, you shall not be entitled to any interest or any other compensation whatsoever in respect of any sums held by us in accordance with this Contract prior to Receipts being transferred to you for any period for which payment may be deducted, withheld, deferred or not paid under clause 14.
- 17.3 Each of the following shall apply in respect to our liability:
- 17.3.1 We shall not be liable for any delay or failure to carry out any of our obligations under this Contract if and to the extent that such failure is due to:
    - (a) circumstances beyond our reasonable control;
    - (b) any cessation or interruption of any part of the Services which are due to any act or omission of a Card Scheme, or Financial Institution and is not caused by our breach of this Contract;
    - (c) us complying with any Applicable Law;
    - (d) your failure to provide complete and/or correct Data to us and/or your breach of this Contract (provided that we may make reasonable efforts to recover any funds paid by us as a result of such failure and may make a reasonable charge to you for doing so); or
    - (e) a suspension of Services by us under clause 18.
  - 17.3.2 The liability of the Company to you in relation to all Claims arising out of, or in connection with the Services or this Contract shall be limited to an amount equivalent to the average monthly Payments due to us in the period from the Commencement Date to the first event giving rise to such Claim, multiplied by twelve (12).
- 17.4 The Company and any other party providing the Services:
- 17.4.1 is providing its element of the Services as an independent contractor, and not as a partner or agent of or joint venturer with the other parties;
  - 17.4.2 shall be only severally liable in respect of its own obligations under this Contract; and
  - 17.4.3 shall not be liable in connection with the Services provided by the other parties, whether jointly, jointly and severally or at all.
- 17.5 The following additional exclusions and limitations apply in relation to the Services:
- 17.5.1 We accept no responsibility, and shall not be liable for (a) the accuracy or reliability of any Data you send to us; (b) our interpretation of that Data; or (c) the consequences or accuracy of our interpretation of that Data or any subsequent interpretation or other assessment you undertake in relation to that Data.
  - 17.5.2 We do not warrant that Data Reports are accurate, up-to-date, reliable or error-free.
  - 17.5.3 We accept no responsibility, and shall not be liable for any Third Party Product you use in connection with the Services, and any reference by us to a Third Party Product (including in any technical specification we provide to you) shall not constitute any recommendation or endorsement by us of that Third Party Product, or any warranty or representation that such Third Party Product will be suitable for your use or will deliver any specific result.
  - 17.5.4 We accept no responsibility for any losses that you may incur as a result of any Downtime in provision of the Services caused by the failure, or omissions to act by Third Parties including, but not limited to Customer Card issuers, Card issuers, Financial Institutions, Barclaycard, Smartpay, or any other service providers in respect of processing Orders, Transaction and E-commerce Transactions at anytime, particularly **outside of Office Hours**.
  - 17.5.5 You are responsible for all losses resulting from if you have acted fraudulently or you have either intentionally or through negligence failed to comply with the provisions of this Contract (including failing to notify us of the incorporat transaction).

- 17.5.6 For the avoidance of doubt, if you are a partnership, each of your partners shall be jointly and severally liable with the other(s) to perform your obligations under this Contract.
- 17.5.7 You acknowledge and agree that, given the nature of the Services, the availability to you of suitable alternative payment methods for the Customers and your ability to choose other providers of services similar to the Services before entering into this Contract, the limitations on liability contained in this clause 17 are reasonable in all the circumstances and that the Payments have been calculated taking into account such limitations (which would be higher but for such limitations) and accordingly you have accepted the risk of any losses which you may suffer because of the limitation on our liability under this clause 17.
- 17.5.8 No party shall be liable to any other party for any loss of profits, loss of Data, loss of customer business or goodwill, losses incurred by third parties or any indirect or consequential loss or damage, howsoever arising. Subject to clauses 17.1 and 17.3, we shall have no liability to you for any inaccuracy in the information we or any Financial Institution provide to any third parties pursuant to clause 9.

## 18 Term and Termination

- 18.1 This Contract shall come into force on the Commencement Date and, unless otherwise terminated earlier in accordance with any provision of this Contract, continue thereafter until it is terminated in accordance with clause 18.2.
- 18.2 For the purposes of termination by notice under clause 18.1, you may terminate this Contract:
- 18.2.1 during the Initial Period, by giving at least sixty (60) Business Days' written notice to the Company, such notice to expire no later than the last day of the Initial Period;
- 18.2.2 after the Initial Period, by giving at least sixty (60) Business Days' written notice to the Company, such notice to expire no earlier than the last day of the rolling twelve (12) month period;
- 18.2.3 we may terminate this contract at any time by giving you thirty (30) Business Days' prior written notice.
- 18.3 If having served a notice pursuant to clause 18.2.2 you wish the Contract to terminate prior to the end of the rolling twelve (12) month period, you shall pay to the Company all Payments that would otherwise be due up to the end of the Term, on receipt of which the Company will confirm that the Contract has been terminated.
- 18.4 You may terminate this Contract or any Service with immediate effect by giving written notice to us if any of us:
- 18.4.1 commits a material breach of this Contract which, if capable of remedy, is not remedied to your reasonable satisfaction within twenty-one (21) Business Days of service of a notice requiring such remedy;
- 18.4.2 is insolvent;
- 18.4.3 is the subject of a petition, order, or resolution or any step in connection with winding up (whether solvent or insolvent).
- 18.5 We may terminate this Contract or any Service, or suspend the provision of any Service with immediate effect by giving written notice if you:
- 18.5.1 commit a material breach of this Contract which:
- (a) is not, in our reasonable opinion, capable of remedy; or
- (b) if capable of remedy, is not remedied to our reasonable satisfaction within twenty-one (21) days of service of the notice requiring such remedy;
- 18.5.2 you commit a breach clause 7;
- 18.5.3 you default in any of your payment obligations;
- 18.5.4 are insolvent, or being an individual, you have a petition presented for your bankruptcy;
- 18.5.5 are the subject of a petition, order, or resolution or any step in connection with winding up (whether solvent or insolvent);
- 18.5.6 cease or threaten to cease to carry on all or a material part of your business, except for the purpose of a bona-fide reconstruction, amalgamation, reorganisation, merger or consolidation;
- 18.5.7 begin negotiations or proceedings, or propose or agree to defer, reschedule or readjust your debts;
- 18.5.8 propose or make a general assignment of your debts or an arrangement or composition with or for the benefit of some or all of your creditors in respect of all or all of a particular type of your debts;
- 18.5.9 agree to a moratorium, or a moratorium is agreed or declared in respect of all or a material part of (or a particular type of) your debts;
- 18.5.10 are the subject of a petition for an administration order or an application for an administration order, or an administrator is appointed to you or notice of intention to appoint an administrator to you is given, or any other step is taken by any person with a view to the administration of you under the Insolvency Act 1986, or other Applicable Law, including the passing of any resolution by your directors or shareholders approving the presentation of any such petition, the making of any such application or appointment or the giving of any such notice;

- 18.5.11 are the subject of any step to enforce security over, or a distress, execution or other similar process is levied or served against, the whole or a substantial part of your assets or undertaking, including the appointment of a receiver, administrative receiver, manager or similar officer to enforce that security;
- 18.5.12 suffer or are subject to any equivalent event, circumstance or procedure to those set out above in this clause 18.5.2 to 18.5.11 (inclusive) in any other jurisdiction;
- 18.5.13 act in a manner, or if anything happens to you or comes to our attention in relation to you or arising from or incidental to your business or the conduct of your business (including trading practices or any individual's activity), that we in our reasonable discretion consider:
- (a) to be disreputable or capable of damaging the reputation of us or that of any Card Scheme or a Financial Institution; or
  - (b) to be detrimental to our systems, business or that of any Card Scheme or Financial Institution; or
  - (c) may or does give rise to fraud or any other criminal activity or suspicion of fraud or any other criminal activity; or
  - (d) may or does give rise to increased risk of loss or liability to any of us; or
  - (e) may affect your ability or willingness to comply with all or any of your obligations or liabilities under this Contract.
- 18.6 We may terminate this Contract, or any Service, or suspend the provision of any Service with immediate effect by giving written notice if:
- 18.6.1 we or any Financial Institution becomes entitled to enforce any guarantee or security from or in relation to you;
- 18.6.2 we are required to do so by any Card Scheme or regulatory authority or Applicable Law;
- 18.6.3 a Card Scheme, any Third Party or any Financial Institution ceases to provide us with any Merchant or Acquiring Services necessary for us to provide a Service to you; or
- 18.6.4 any of the above provisions of clauses 18.5.2 to 18.5.9.
- 18.7 You shall inform us upon becoming aware of any of the events set out in the following clauses: clauses 18.6.2 to 18.6.11 (inclusive).
- 18.8 Where any party serves notice to terminate this Contract pursuant to clause 18.2, we shall during the relevant period prior to termination provide reasonable assistance to you, or use our reasonable endeavours to ensure that you are provided with reasonable assistance, for you to make arrangements for the processing of the relevant transactions by another service provider. We may charge you for providing such assistance and if so you shall be liable to pay us for any costs reasonably incurred in so doing.

## **19 Assignment, Sub-contracting and Novation**

- 19.1 The Contract is personal to you and you may not assign, novate or transfer it or any of your rights or obligations under it.
- 19.2 You shall be liable to us for the acts or omissions of any of your Personnel in the course of or relating to the performance of your obligations under the Contract or arising out of or in connection with any Transaction.
- 19.3 Subject to Applicable Law, we shall be entitled at any time to assign or transfer the Contract or the benefit of any or all of our rights under the Contract and/or to sub-contract our obligations under the Contract without your consent. Upon request, you shall execute any documents required to effect any such assignment, transfer or subcontract.
- 19.4 We shall be entitled to novate any or all of our rights and obligations (as appropriate) under the Contract to a Third Party at any time on giving you at least thirty (30) Business Days' notice. If we do this you shall be entitled to terminate the Contract within thirty (30) Business Days' of you receiving the notice of the novation. You will be deemed to have accepted the novation of the Contract thirty (30) Business Days from receipt of the notice.
- 19.5 With effect from the date that we novate our obligations under the Contract to a Third Party (the "Novation Date"), you shall release and discharge us from further performance of our obligations under the Contract and from all claims and demands against us, whatsoever arising out of or in respect of the Contract, whether prior to, on or subsequent to the Novation Date and the Third Party shall perform, or procure the performance of, all such obligations under the Contract, and shall accept all liabilities arising out of or in respect of the Contract, from the Novation Date.

## **20 Waiver**

- 20.1 No failure or delay by a party in exercising any of its rights or remedies provided under the Contract or under Applicable Law shall be construed as a waiver or release of that right or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. The parties agree and acknowledge that the doctrine of affirmation, by which a party is deemed to have affirmed a decision to proceed with a contract notwithstanding the enlivening of a right to terminate, shall have no application to the Contract.
- 20.2 No single or partial exercise of any of a party's rights or remedies under the Contract or under Applicable Law shall preclude or restrict the further exercise of such right or remedy. A waiver of any breach of any provisions of the Contract shall not constitute a waiver of any other breach, and shall not affect the other provisions, of the Contract.
- 20.3 Subject to clause 22.2, the rights and remedies of a party under the Contract are cumulative and not exclusive of each other or of any rights or remedies provided by Applicable Law.

## **21 Notices**



- 21.1 Subject to clause 21.2, any notice to be given under or in connection with the Contract shall be in writing and signed by or on behalf of the Party giving it and shall be served by delivering it personally or sending it by post (or registered airmail in the case of an address for service outside the United Kingdom) or by email or by facsimile to the postal address, email address or fax number of the other Party as set out in this Contract or otherwise as notified by such Party from time to time. For the avoidance of doubt, any notice delivered by email shall not need to be signed.
- 21.2 Unless otherwise agreed in writing, notice from you to us to terminate the Contract must be delivered by post.
- 21.3 Any notice given in accordance with clauses 21.1 or 21.2 shall be deemed to have been received:
- 21.3.1 if sent by email, on the day on which the communication is sent and no report of non-delivery is received by the sender, provided that (i) any notice despatched after 17:00 hours on any Business Day or at any time on a day which is not a Business Day shall be deemed to have been given at 09:00 on the next Business Day;
- 21.3.2 if delivered personally, at the time of delivery;
- 21.3.3 if sent by first class post within the United Kingdom, two (2) Business Days from the date of posting;
- 21.3.4 if sent by second class post within the United Kingdom, four (4) Business Days from the date of posting;
- 21.3.5 in the case of registered airmail, seven (7) Business Days from the date of posting; and
- 21.3.6 in the case of facsimile, on the date it is transmitted subject to confirmation of uninterrupted transmission by a transmission report, provided that (i) any notice despatched after 17:00 hours on any Business Day or at any time on a day which is not a Business Day shall be deemed to have been given at 09:00 on the next Business Day.
- 21.4 A party may specify (by giving notice to the other parties in accordance with this clause 21) a particular individual or office holder to whom any notices to be served are to be addressed, in which case a notice shall not be validly given unless so addressed.
- 21.5 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

## 22 Entire Agreement

- 22.1 The Contract constitutes the entire agreement and understanding 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, (whether oral or in writing, express or implied), other than any securities or written pledges, undertakings or assurances which you may previously have given to us as a condition precedent or in anticipation of the Contract. Each party acknowledges that in entering into this Contract it does not rely on any statement, representation, warranty or understanding other than those expressly set out in this Contract.
- 22.2 No party shall have any claim for innocent or negligent misrepresentation based upon any statement in this Contract.
- 22.3 Nothing in this clause 22 shall operate to exclude any liability for fraud.

## 23 Severability

- 23.1 If any provision of the Contract or any part of it is held by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable:
- 23.1.1 the legality, validity and enforceability of the remainder of the Contract shall not be affected; and
- 23.1.2 if such provision would cease to be illegal, invalid or unenforceable if some part of that provision were modified or deleted, the provision in question shall apply with the least such modification or deletion as may be necessary to make the provision legal, valid and enforceable.

## 24 Miscellaneous

- 24.1 Nothing in the Contract shall be construed as constituting a partnership, joint venture or agency between or among the parties.
- 24.2 This Contract is not intended to confer any benefit on any Third Party and no Person who is not party to the Contract shall have any rights to enforce any provisions of the Contract. Notwithstanding the foregoing sentence, the rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Contract are not subject to the consent of any Third Party.
- 24.3 This Contract is in the English language. We are only obliged to communicate with you in English. We may provide to you a foreign language translation of this Contract or any other communication (at your cost), provided that such translation shall be for your information purposes only and in the event of any inconsistency between the English version and the foreign language version, the English version shall prevail.

## 25 Dispute Resolution Procedure

- 25.1 Subject to the provisions of clause 27, if any dispute between you and us (each a "Disputing Party") arises out of or in connection with this Contract or its subject matter, formation, validity or enforceability (including non-contractual claims) (each a "Dispute") then, except as expressly provided in this Contract, the Disputing Parties shall follow the dispute resolution procedure set out in this clause.
- 25.2 Either Disputing Party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice"), together with any relevant supporting documentation. Following service of the Dispute Notice, representatives of each of the Disputing Parties shall attempt in good faith to resolve the Dispute.

- 25.3 If the representatives of the Disputing Parties are for any reason unable to resolve the Dispute with fourteen (14) Business Days of service of the Dispute Notice, either Disputing Party shall be entitled to commence proceedings under clause 31.2.
- 25.4 If the Dispute is resolved by the Representatives within fourteen (14) Business Days of service of the Dispute Notice in accordance with clause 25.2, the settlement shall be recorded in writing and signed by each of the Disputing Parties within seven (7) Business Days of the end of the period referred to in clause 25.2.
- 25.5 Nothing in this clause 30 shall prevent either Disputing Party making any application for injunctive relief that it considers necessary to protect its position.

## 26 Governing law and jurisdiction

- 26.1 This Contract and any Dispute, shall be governed by and construed in accordance with laws of the Island of Guernsey.
- 26.2 Subject to the provisions of clause 25, the parties irrevocably agree, for our sole benefit that, subject as provided below, the Guernsey Courts shall have exclusive jurisdiction over any Dispute. Nothing in this clause shall limit our right to take proceedings against you in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings by us in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction. You waive any objection to any proceedings in such courts pursuant to this clause 26.2 on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum. Any proceedings brought by you against us in respect of a Dispute must be brought in the Guernsey Courts.

## 27 Complaints

- 27.1 If you are not satisfied with our Services, you must initiate our complaints handling procedure to resolve such matters. For more information about this process please telephone us or visit such URL as we notify to you from time to time.

## 28 Interpretation and Construction

- 28.1 Except where the context otherwise requires, words denoting the singular include the plural and vice versa, words denoting a gender include every gender and references to persons include bodies corporate and unincorporated.
- 28.2 A party or parties means a party or parties to this Contract.
- 28.3 References to Recitals and Clauses are, unless the context otherwise requires, references to recitals and clauses hereof hereo and references to sub-clauses are, unless otherwise stated, references to the sub-clause of the Clause in which the reference appears.
- 28.4 The Recitals form part of this Contract and shall have the same force and effect as if they were expressly set out in the body of this Contract and any reference to this Contract shall include the Recitals.
- 28.5 Any reference to this Contract or to any Contract or document referred to in this Contract shall be construed as reference to such Contract or document as amended, varied, modified, supplemented, restated, novated or replaced from time to time.
- 28.6 Any reference to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to such statute or statutory provision as the same may have been or may from time to time be amended, modified, extended, consolidated, re-enacted or replaced.
- 28.7 Clause headings are inserted for convenience only and shall not affect the construction of this Contract.
- 28.8 In this Contract, unless the context otherwise requires, the following expressions shall have the following meaning:

<b>"Contract Form"</b>	means the form by which you have agreed to order the Services on the terms of these Conditions;
<b>"Acquiring Services"</b>	means both (A) the processing by Streamline of E-commerce Transactions and (B) the receipt and disbursement of related funds;
<b>"Applicable Law"</b>	means all laws or regulations (and including the requirements of any regulatory authority) applicable to a party or to any Transaction for the time being in force in any jurisdiction;
<b>"Bank Account"</b>	means your business bank account from which Payments shall be requested by the Company via standing order (details of which are set out on the Contract Form) and Receipts shall be transferred to you;
<b>"Business Day"</b>	means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
<b>"Card"</b>	means a credit, debit, charge, purchase or other payment card under a Card Scheme whose payments Barclaycard and/or Smartpay is able to process (as notified by Barclaycard and/or Smartpay to the Company from time to time);
<b>"Card Scheme"</b>	means schemes governing the issue and use of Cards listed as follows, or as may be approved and notified by Barclaycard and/or Smartpay to the Company in writing from time to time: Visa Europe, Visa Inc, MasterCard Worldwide, UK Maestro, International Maestro, American Express, China UnionPay, Diners Club International, Discover Financial Services, JCB and Laser Card;
<b>"Cardholder"</b>	means the Person who is the authorised user of a Card;
<b>"Claim"</b>	means any action, proceedings, cost, claim, demand, charge, expense (including legal fees and expenses), assessment, loss, damages, whether arising in tort, contract, for breach of statutory duty or otherwise;
<b>"Commencement"</b>	means the date of that the Company signs the Contract Form;

<b>"Date"</b>	
<b>"Commission"</b>	means the Company's entitlement to a fee equivalent to 3.4 percent plus £0.20 of the value of each Order
<b>"Company"</b>	means Datman Ltd, a company registered with company number 55524 whose registered office is at Nerine House, PO Box 434, St George's Place, St Peter Port, Guernsey, GY1 3ZG;
<b>"Conditions"</b>	means the terms and conditions set out in this document as amended from time to time in accordance with clause 15;
<b>"Confidential Information"</b>	means information that is designated as "confidential" or which by its nature is clearly confidential including any information relating to: this Contract; a Customer or a Customer's use of a Card; any one of the Card Schemes; your and our respective technology, technical processes, procedures, business affairs, finance, security procedures; lists of suppliers and Customers and other proprietary knowledge, however any such information is conveyed or presented, including text, information, technical specifications, unpublished patent specifications, Data, drawings, plans, processes, photographs, databases, computer software in disk, cassette, tape or electronic form and items of computer hardware on any medium including all electronic, optical, magnetic and tangible media, oral descriptions, demonstrations or observations;
<b>"Contract"</b>	means the contract between the Company and you for Acquiring Services, Merchant Services and Data Analysis in accordance with these Conditions;
<b>"Customer"</b>	means a Person who has made an Order with you via the internet and has initiated a Transaction in respect of that Order, including being a Cardholder;
<b>"Data"</b>	means documents, data and records of any kind relating to Transactions (including, for the avoidance of doubt, data relating to Cards and Customers) and may include Transaction Personal Data and Sensitive Authentication Data;
<b>"Data Controller"</b>	means the Company, or any Person who alone or jointly or in common with other Persons determines the purposes for which and the manner in which Personal Data are, or are to be, processed;
<b>"Data Processor"</b>	means a Person (other than an employee of the Data Controller) who processes Personal Data on behalf of the Data Controller;
<b>"Data Analysis"</b>	means the analysis of Material in the form of Data Analysis Reports;
<b>"Data Analysis Reports"</b>	means detailed and focussed reports, spreadsheets, charts, or otherwise, of Material provided by you;
<b>"Downtime"</b>	means the amount of time in any calendar month during which the Services are not available, excluding any unavailability due to scheduled maintenance;
<b>"E-commerce Transactions"</b>	means Transactions that are sales in which payment for a Customer Order is initiated by EPOS via the internet, or otherwise;
<b>"Financial Institution"</b>	means any Third Party credit or financial institution, which may be involved, or which we in our sole and absolute discretion involve, in the course of our provision of any of the Services;
<b>"EPOS"</b>	means the electronic point of sale by which Customers pay for their Orders;
<b>"Initial Period"</b>	means a period of 4 calendar months;
<b>"Intellectual Property Rights"</b>	means all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, know-how, confidential information, trade secrets, business names and domain names, trade marks, service marks, trade names, patents, petty patents, utility models, design rights, database rights and any applications for the protection of registration or these rights (in the nature of unfair competition rights or rights to sue for passing off, or otherwise) and all renewals and extensions of the same existing in any part of the world whether now known or in the future created to which a party may be entitled;
<b>"Material"</b>	means the static data generated by Third Party Products including, but not limited to Customer Order details, Personal Transaction Data, takeaway menu items, price lists and other information;
<b>"Merchant Bank Account"</b>	means an account with a duly authorised credit institution maintained by the Company for the purpose of receiving Remittances generated by E-commerce Transactions;
<b>"Merchant Data Account"</b>	means an electronic management information account containing Data related to the Transactions;
<b>"Merchant Services"</b>	means the processing of E-commerce Transactions via the Merchant Bank Account by Streamline;
<b>"Office Hours"</b>	means 09:00 to 17:30 during Business Days;
<b>"Orders"</b>	means orders for food items and other takeaway goods by your Customers;
<b>"Payments"</b>	means the sum of £15 per week (inclusive of VAT) for the Services or such other amount agreed by the Company and stated on the Contract Form;
<b>"PCI SSC Standards"</b>	means the Payment Card Industry Data Security Standard, Payment Application Data Security Standard and the PIN Transaction Security Standard as updated from time to time and published by the PCI Security Standards Council at <a href="https://www.pcisecuritystandards.org">https://www.pcisecuritystandards.org</a>

<b>"Person"</b>	means any individual, company, body corporate, corporation sole or aggregate, government, state or agency of a state, firm, partnership, association, organisation or trust (in each case, irrespective of the jurisdiction in or under the law of which it was incorporated or exists);
<b>"Personal Data"</b>	means data which relates to a living individual who can be identified from those data or a combination of those data and other information in the possession of, or likely to come into the possession of, the Data Controller;
<b>"Personnel"</b>	means employees, agents, consultants, contractors and sub-contractors and their employees, agents, consultants and sub-contractors;
<b>"Receipts"</b>	means any payment made by the Company to you (less its Commission) per Transaction and/or E-commerce Transaction;
<b>"Remittance"</b>	means any payment made by Barclaycard and/or Smartpay to the Company in the course of providing Acquiring Services;
<b>"Remittance Date"</b>	means the Business Day (notified to us by Streamline from time to time) on which Remittance occurs;
<b>"Smartpay"</b>	means Barclaycard Smartpay, which is the supplier of online gateway services to the Company to manage and integrate the Website and Sensitive Authentication Data relating to Transactions and/or E-commerce transactions processed by Streamline and is PCI DSS Level 1 compliant to ensure the highest level of Customer Card and Data security;
<b>"Sensitive Authentication Data"</b>	means security related information used to authenticate Cardholders and authorise Card transactions. Sensitive Authentication Data elements include magnetic stripe data (PAVE, CVV, CVC, CID) PINs, PIN blocks and the three or four digit number security code found either on the front or on the back of a card (e.g. MasterCard CVC2/Visa CVV2);
<b>"Services"</b>	means Data Analysis, Acquiring Services and Merchant Services in accordance with these Conditions;
<b>"Term"</b>	means the term of this Contract as provided for in clause 2;
<b>"Third Party"</b>	means a Person who is not a party to this Contract;
<b>"Third Party Product"</b>	means a product (whether hardware, software or services) supplied to you by a Third Party;
<b>"Transaction"</b>	means any payment by a Customer for goods purchased from you using a Card in relation to which the Company provides Merchant Services to you;
<b>"Transaction Personal Data"</b>	means Personal Data which it is necessary to provide or to Process in connection with Transactions in the course of providing the Services;
<b>"Uptime"</b>	means the amount of time in any calendar month that is not Downtime. When expressed as a percentage it means the amount of Uptime divided by the total time in any calendar month;
<b>"Website"</b>	means the Company website (domain name <a href="http://www.datman.ie">www.datman.ie</a> );
<b>"Weekly Payment Date"</b>	the agreed day of every week during the Term on which the Payment is paid, which in the absence of express Contract shall be a Monday;
<b>"Barclaycard"</b>	Means Barclaycard the trading name of Barclays Bank PLC , which is the supplier of the Acquiring Services to the Company;
<b>"We/we", "Us/us", "Our/our"</b>	means the Company;
<b>"You/you"</b>	means your name or your company name as specified on the Contract Form.