



**Glorydale Merchant Services**

**Terms & Conditions**

## 1. INTRODUCTION

- 1.1 Under the Contract, We may provide one or a combination of the following defined Services, based upon Your business requirements as indicated to Us in Your application:

"**Acquiring Services**" means the services provided by Us where We act as Your Acquirer;

"**Gateway Services**" means the transmission over the internet of Data through Our technical systems from You to the relevant Acquirer or Other Financial Institution;

"**Other Payment Services**" means the services provided by Us where We make available to You Other Payment Methods by collecting payment for goods and/or services and Remitting such payment to You;

The above types of Services differ with respect to Transactions and their Authorisation:

"**Transaction**" means:

- in the case of the Acquiring Services: any payment for goods or services, or Refund made, by use of a Card, a Card number or otherwise to debit or credit the applicable Cardholder's account;
- in the case of the Other Payment Services: any payment for goods or services, or Refund made, using an Other Payment Method; and
- in the case of the Gateway Services: any transaction similar to any of the foregoing in connection with any payment for goods and/or services,(and "**Transactions**" shall be construed accordingly);

"**Authorisation**" means:

- in the case of the Acquiring Services: the process whereby We obtain at the time of the Transaction (directly or indirectly) from the Card Issuer confirmation that the Card has not been listed as lost or stolen and that there are sufficient funds for the relevant Transaction;
  - in the case of the Other Payment Services: the status indicating that the relevant Transaction has been validated by the Other Financial Institution; and
  - in the case of the Gateway Services: the process whereby We obtain at the time of the Transaction (directly or indirectly) from the relevant Acquirer, Card Issuer or Other Financial Institution confirmation that the applicable Card has not been listed as lost or stolen and that there are sufficient funds for the relevant Transaction.
- 1.2 As a result of these different types of Services and the fact that We may (depending on Your business requirements as indicated to Us in Your application) provide them in combination with each other, Our role (including the way in which We must be entitled to take measures to protect Our position with respect to Refunds, Chargebacks, Fines or any other liability relating to any Transactions) and Your responsibilities may differ on the basis

set out in these Conditions, which will be indicated by reference to the type of Service or combination of Services which the relevant provision is related to.

## 2. DEFINITIONS AND INTERPRETATION

1. 2.1 In these Conditions, the following terms shall (unless the context otherwise requires) have the following meanings:

"**Acquirer**" means a Person (In respect of the Acquiring Services) who or which is licensed by a Card Scheme and/or has appropriate arrangements in place with a third party relating to the use of a Card Scheme licence and who or which enters into an agreement with You for the provision of Services allowing You to accept payment by Cards pursuant to the Rules and for You to receive payment from such Person in respect thereof;

"**Application Form**" means (where relevant) the application form provided by Us, pursuant to which You apply for the provision of the Services;

"**Card**" means a credit, debit, charge or purchase or other card issued by a Card Issuer and licensed by a Card Scheme (including, in the case of Gateway Services, any other cards which We are able to process (as notified by Us to You from time to time) and which We have agreed to process) (and

"**Cards**" shall be construed accordingly);

"**Cardholder**" means a Person who or which is the authorised user of a Card (and "**Cardholders**" shall be construed accordingly);

"**Card Issuer**" means a financial institution which issues Cards under the authority of the relevant Card Scheme (and "**Card Issuers**" shall be construed accordingly);

"**Card Schemes**" means Visa Europe, Visa Inc, MasterCard Worldwide, UK Maestro, Solo and/or International Maestro and/or such other schemes governing the issue and use of Cards, as approved and notified by Us to You in writing from time to time (and "**Card Scheme**" shall be construed accordingly);

"**Chargeback**" has the meaning given to such term in clause 8.1 (and "**Chargebacks**" shall be construed accordingly);

"**Chargeback Costs**" has the meaning given to such term in clause 8.5.2;

"**Conditions**" means these terms and conditions;

"**Confidential Information**" means information that is designated as "**confidential**" or which by its nature is clearly confidential including any information concerning Our or (as the case may be) Your technology, technical processes, procedures, business affairs, finance, security procedures and the layout of Our or (as the case may be) Your premises and may take the form of (but is not limited to):

(a) documents, 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; or (b) oral descriptions, demonstrations or observations; "**Contract**" means the contract between You and Us, incorporating these Conditions and the other documents referred to in clause 3.1, for the supply of the Services by Us to You;

"**Control**" means the ability to direct or influence the affairs of another whether by way of contract, ownership of shares or otherwise (and "**Controls**" and "**Controlled**" shall be construed accordingly);

"**Customer**" means a Person (including a Cardholder, where the context permits) who or which has ordered goods and/or services from You and where payment for such order is to be received by You through use of the Services (and "**Customers**" shall be construed accordingly);

"**Data**" means documents, data and records of any kind relating to Transactions (including, for the avoidance of doubt, data relating to Cards and Customers);

"**Data Control**" has the meaning given to such term in clause 19.3;

"**Fees**" means the fees payable by You to Us for the provision by Us of the Services, as notified to You by Us from time to time;

"**MMF**" means the minimum monthly fee only applied if there is a discrepancy in your transactions and or business profile, compared to what was disclosed at the start of your application in relation to personal details, business details and transaction details.

"**MMSC**" means minimum monthly service charge, this is the minimum amount of £20 that will be charged to your account in any given month if your transactional charges are less than £20.

"**Fines**" means any and all fines, levies, costs, expenses, charges, assessments or imposition of liabilities of any nature which the Card Schemes or any Other Financial Institution require You or Us to pay or which are otherwise directly or indirectly recovered from Us by the Card Schemes or any Other Financial Institution at any time and which relate to any aspect of Our relationship with You (including the Transactions and the provision of the Services);

"**Floor Limit**" has the meaning given to such term in clause 9.1.2

"**Group Company**" means, in respect of a Party, any undertaking which, directly or indirectly, Controls or is Controlled by such Party or an undertaking which, directly or indirectly, Controls or is Controlled by any aforementioned undertaking (and "**Group Companies**" shall be construed accordingly);

"**Intellectual Property Rights**" means any and all intellectual property rights of whatever nature and includes patents, inventions, know-how, trade secrets and other confidential information, registered designs, copyrights, database rights, design rights, rights affording equivalent protection to copyright, trademarks, service marks, logos, domain names, business names, trade names, moral rights, and all registrations or applications to register any of the aforesaid items, rights in the nature of any of the aforesaid items in any country or jurisdiction, rights in the nature of unfair competition rights and rights to sue for passing off;

"**Merchant Bank Account**" means the bank account which You are required to maintain pursuant to clause 10.1;

"**Merchant Operating Instructions**" has the meaning given to such term in clause 3.1.3;

"**Other Financial Institution**" means any third party which regulates or is responsible for any Other Payment Method (and "**Other Financial Institutions**" shall be construed accordingly);

"**Other Payment Method**" means a payment method (other than Cards) which is approved by Us in writing from time to time (and "**Other Payment Methods**" shall be construed accordingly);

"**Party**" means You or Us (as the case may be);

"**Payment System**" means all equipment and software used by You (and Your agents, sub-contractors or any third parties used by You) in connection with Transactions and the storage and/or processing of Data;

"**Person**" means any individual, corporation, firm, unincorporated association, government, state or agency of a state and joint venture (and "**Persons**" shall be construed accordingly); "**Reason Code**" has the meaning given to such term in clause 21.13.3;

"**Refund**" means a return of an amount to a Cardholder's account or (as the case may be) the reversal of a payment effected using an Other Payment Method, in each case pursuant to a request or instruction from You to Us (and "**Refunds**" shall be construed accordingly);

"**Remittance**" means the relevant payment due to You from Us in respect of Transactions (and "**Remit**" and "**Remitted**" shall be construed accordingly);

"**Remittance Date**" means the date as shall be notified from Us to You from time to time, when We shall submit the Remittance in accordance with clause 7;

"**Rules**" means all applicable rules, regulations and operating guidelines issued by Us or the Card

Schemes or (where relevant) any Other Financial Institution from time to time relating to Cards, Transactions, Other Payment Methods and any payments or processing of Data relating thereto (including all amendments, changes and revisions made thereto from time to time);

"**Services**" means such of the Acquiring Services, the Gateway Services and the Other Payment Services which are provided to You by Us from time to time (or any of them, as the context shall permit or require);

"**Settlement**" means the crediting to Us of the proceeds of Transactions from (in the case of the Acquiring Services) the relevant Card Scheme or from (in the case of the Other Payment Services) the relevant Other Financial Institution (and "**Settle**" and "**Settled**" shall be construed accordingly); "**Trading Limit**" has the meaning given to such term in clause 9.1.1;

"**Us**" means Alma Attic Limited, a company registered in England and Wales (registered number 04628031) of Glorydale House, 18 Wintersells Road, Byfleet, KT14 7LF United Kingdom (and "**Our**", "**Ours**" and "**We**" shall be construed accordingly); and

"**You**" means the Person identified as the Merchant in the Contract (and "**Your**" and "**ours**" shall be construed accordingly).

2. 2.2 In these Conditions (unless the context otherwise requires):

1. 2.2.1 the words "**including**" and "**include**" and words of similar effect shall not limit the general effect of the words which precede them;
2. 2.2.2 references to the Contract, these Conditions and any other agreement, contract or document (including the Rules) shall be construed as a reference to it or them as varied, supplemented or novated from time to time;
3. 2.2.3 words importing the singular shall include the plural and vice versa;
4. 2.2.4 words importing any gender shall include a reference to each other gender; and
5. 2.2.5 References to a numbered clause are to a clause of these Conditions so numbered.

3. 2.3 The headings in these Conditions are for convenience only and shall not affect their construction or interpretation.

### 3. THE CONTRACT

1. 3.1 The following documents are incorporated into and form part of the Contract:

1. 3.1.1 the Application Form (if applicable);
2. 3.1.2 these Conditions; and
3. 3.1.3 any merchant operating instructions, datasheets or manuals relating to various aspects of the Services which are issued and/or amended by Us from to time to time (together, "**Merchant Operating Instructions**").

2. 3.2 In the event of any inconsistency between the provisions of these Conditions and the provisions of any of the documents detailed at clauses 3.1.1 to 3.1.3 inclusive, the provisions of these Conditions shall take precedence.

#### 4. OUR OBLIGATIONS

1. 4.1 Notwithstanding Your submission of an Application Form to Us (if applicable), We shall not be obliged to provide any Services unless and until We notify You in writing that We have unconditionally accepted Your application for the provision of the Services by Us (and where such notice is given, Our obligations to provide the Services shall commence on the date of such notice or, if different, the date specified in such notice).
2. 4.2 We shall, in return for the Fees, provide you with the Services upon and subject to the provisions of these Conditions.
3. 4.3 We shall provide the Services with reasonable care and skill and in accordance with all applicable laws and regulations (including the Rules and the Merchant Operating Instructions).
4. 4.4 You acknowledge and agree that You are only entitled to use the Acquiring and/or the Gateway Services (as the case may be) for Cards approved in advance by Us and so notified in writing to You.

#### 5. YOUR OBLIGATIONS

1. 5.1 You shall at all times comply with:
  1. 5.1.1 the provisions of the Contract;
  2. 5.1.2 the Rules;
  3. 5.1.3 all laws, regulations and codes of practice applicable to the Transactions, the sale of goods and/or services by You in connection with the Transactions and the execution and performance by You of Your obligations under the Contract (including the Merchant Operating Instructions); and
  4. 5.1.4 Your obligations relating to the provision of goods and/or services by You to Customers.
2. 5.2 You shall:
  1. 5.2.1 only accept payments and/or process Refunds from Cardholders or Customers in connection with goods and/or services which You have supplied to the relevant Cardholder or Customer;
  2. 5.2.2 only accept payments and/or process Refunds in respect of goods and services which commonly fall within Your business as identified in Your application for the Services; and
  3. 5.2.3 only accept payments and/or process Refunds in respect of goods or services that the Cardholder or Customer would reasonably expect to receive and only supply the relevant goods or services in accordance with the laws of any jurisdiction within which a Card Scheme, Card Issuer, Cardholder, Customer, Acquirer or any party to this Contract operates.

3. 5.3 Unless otherwise agreed by Us in writing, You acknowledge and agree that You shall (at Your own cost) be solely responsible throughout the duration of the Contract for the provision of all such equipment, software, systems and telecommunications facilities which are required to enable You to receive the Services (including any modification or adjustments thereto pursuant to clause 23.1).

## **6. FEES, CHARGES AND OTHER PAYMENTS DUE FROM YOU**

1. 6.1 In return for us providing you with the Merchant Services, You shall pay us the fee of MMSC, MMF and all other sums payable by You to Us in accordance with the provisions of the Contract.
2. 6.2 Unless stated otherwise, all Fees, charges and other payments to be made by you under the Contract are exclusive of VAT and any other relevant taxes and in addition to paying such Fees, charges or other payments you shall also pay any such taxes.
3. 6.3 We may from time to time vary the Fees and/or introduce new charges in addition to the Fees by giving you not less than 30 days' notice.
4. 6.4 We may charge admin fee starting from minimum £50 to maximum £150 to merchant for the change of information, change of bank details, change of legal entity or any other changes requested by the merchant.

## **7. OUR PAYMENTS TO YOU**

1. 7.1 Subject to clauses 7.2 to 7.8 (inclusive), we shall on the Remittance Date send direct to a Pre-Paid card or to Your Merchant Bank Account each relevant Remittance.
2. 7.2 Remittance shall not fall due until the occurrence of the later of the following:
  1. 7.2.1 the next Remittance Date following the relevant Transactions; and
  2. 7.2.2 The expiry of any period of deferment pursuant to clauses 7.5, 7.6, 7.7 and/or 7.8 in respect of the relevant Transactions.
3. 7.3 At Our option, We shall be entitled to either:
  1. 7.3.1 deduct any or all of the sums set out in clause 7.3.3 from any Remittance; or
  2. 7.3.2 invoice You separately for any or all of the sums set out in clause 7.3.3 (in which case, such sums shall be payable by You to Us in accordance with the terms of such invoice) and, if and to the extent applicable, make payment of a Remittance;
  3. 7.3.3 the sums referred to in clauses 7.3.1 and 7.3.2 are:
    1. 7.3.3.1 the Fees in respect of the Transactions which We have not yet charged You for;
    2. 7.3.3.2 any Refunds processed by Us since the previous Remittance Date (or, in the case of the first Remittance Date, since the date of commencement of the Services in accordance with clause 4.1);
    3. 7.3.3.3 any Chargebacks and any Fines;
    4. 7.3.3.4 any amounts required by Us to cover any:

- a. potential or expected Refunds, Chargebacks, Chargeback Costs, any liability or potential liability relating to a Transaction or Fines;
  - b. liability or potential liability of Yours under the Contract; and
5. 7.3.3.5 Any other charges or amounts due to us under the Contract
4. 7.4 In the event that the value of the sums set out in clause 7.3.3 exceeds the aggregate value of all payments which would otherwise be due to You in respect of the Transactions on the relevant Remittance Date, We may elect not to pay any Remittance on such Remittance Date and the resulting shortfall may be held over by Us for deduction of such shortfall (together with interest in accordance with clause 11.1) against the following (and any subsequent) Remittance. We reserve the right at any time to require immediate payment of all or part of such shortfall, together with interest in accordance with clause 11.1.
5. 7.5 Throughout the term of the Contract, We shall be entitled to defer the payment of any relevant Remittance to You in respect of the Transactions to the next Remittance Date if the amount of such Remittance falls below the minimum threshold as notified by Us to You in writing from time to time.
6. 7.6 Throughout the term of the Contract and after its termination for any reason, We shall be entitled to defer (for such period as We shall in Our absolute discretion consider appropriate) the date upon which the Remittance in respect of Transactions would (but for this clause 7.6) be due in order to protect Our position with respect to Chargebacks, any liability of Yours to Us, any liability of Yours relating to any Transactions or any Fines, in each case whether actual or anticipated. Our right under this clause 7.6 is in addition to and separate from our rights of set-off under clause 12.1.
7. 7.7 If We become aware of any Chargebacks, claims, any action in connection with the Contract, any Transaction or otherwise or any Fines (in each case, whether actual or potential), or We conclude that any such Chargebacks, claims, action or Fines may arise, We may (notwithstanding any other provision of these Conditions) delay making any payment to you for 180 days or longer which would (but for this clause 7.7) be due to You until either:
  1. 7.7.1 the relevant liability is incurred (when We shall pay to You the balance of the amount of such sums, if any, after deducting the amount of such liability); or
  2. 7.7.2 We are satisfied that no such liability will be incurred.
8. 7.8 Where we have a reasonable suspicion that a Transaction may be fraudulent or involves other criminal activity, we have the right to suspend the processing of that Transaction or withhold payment for 180 days or longer of the amount of that Transaction until the satisfactory completion of our investigation or that of any third party.
9. 7.9 If throughout the term of this Contract and after its termination for any reason We become aware or have a reasonable suspicion that You are in breach of or likely to be in breach of Your obligations under clause 5.2 We may withhold payment to You without providing any notice to You.



10. 7.10 You shall not be entitled to any interest or any other compensation whatsoever in respect of any sums held by Us prior to being Remitted to You for any period for which payment may be deferred under this clause 7 or otherwise withheld under clause 8.
11. 7.11 In respect of the Gateway Services, You acknowledge and agree that the relevant Acquirer (or, where applicable, the relevant Other Financial Institution) shall be solely responsible for paying to You any sums due in respect of Transactions and authorising and settling Transactions in accordance with the terms of Your agreement with such Acquirer.
12. 7.12 In view of the nature of Gateway Services, You acknowledge and agree that We may not be able to ascertain whether there are any errors in the transmission of Data in respect of any Transactions and accordingly You shall be responsible for notifying Us in the event that there are any discrepancies between the amount of any payments You actually receive and those you expect. Such notice must be given to Us in writing within 7 days following the date of the relevant Transactions.

## 8. CHARGEBACKS

1. 8.1 In certain circumstances, Card Issuers, Card Schemes and/or Other Financial Institutions refuse to Settle a Transaction or require repayment from Us in respect of a Transaction previously Settled and/or Remitted, notwithstanding that Authorisation may have been obtained from the Card Issuer and/or Other Financial Institution (such circumstances being a "**Chargeback**").
2. 8.2 Where the only Services that We provide to You under the Contract are the Gateway Services, the following provisions of this clause 8 shall not apply. However, the following provisions of this clause 8 apply to all aspects of the Acquiring Services and the Other
3. Payment Services.
4. 8.3 You acknowledge and agree that under the Rules, You may be required to reimburse Us for Chargebacks in circumstances where You have accepted payment in respect of the relevant Transaction and even if You are under no legal liability for the supply or performance of the goods or services concerned.
5. 8.4 All Chargebacks shall correspond to the whole or part of the Settlement value of the original Transaction or, at Our option, to an amount converted to the Settlement currency from the currency of Chargeback by the Card Scheme to Us at the rate of exchange quoted by Us for Settlement purposes on the day the Chargeback is processed.
6. 8.5 Where a Chargeback occurs, We shall immediately be entitled to debit Your Merchant Bank Account and/or make a deduction from any Remittance in accordance with clause 7.3.1 and/or invoice You in accordance with clause 7.3.2 to recover:
  1. 8.5.1 the full amount of the relevant Chargeback; and
  2. 8.5.2 any other costs, expenses, liabilities or Fines which We may incur as a result of or in connection with such Chargeback ("**Chargeback Costs**").
7. 8.6 A Chargeback represents an immediate liability from You to Us and where the full amount of any Chargeback and/or any Chargeback Costs is not debited by Us from Your Merchant Bank Account or deducted from any Remittance or invoiced as referred to in clause 8.5, then We shall be entitled to otherwise recover from You by any means the full

amount of such Chargeback and Chargeback Costs (or the balance thereof, as the case may be).

8. 8.7 We shall not be obliged to investigate the validity of any Chargeback by any Card Issuer, Card Scheme or Other Financial Institution, whose decision shall be final and binding in respect of any Chargeback.
9. 8.8 As Chargebacks may arise a considerable period after the date of the relevant Transaction, You acknowledge and agree that, notwithstanding any termination of the Contract for any reason, We shall remain entitled to recover Chargebacks and Chargeback Costs from You (and, where relevant, from any Person who has provided Us with a guarantee or security relating to Your obligations under the Contract) in respect of all Chargebacks that occur in relation to Transactions effected during the term of the Contract.
10. 8.9 We reserve the right to immediately pass on to You and recover from You any Fines incurred and/or impose further charges on You and/or terminate the Contract forthwith if We consider that the total value of Refunds and/or Chargebacks is unreasonable. We can recover Fines from You in the same way as Chargebacks and in any event they represent an immediate liability from You to Us.
11. 8.10 You agree that it is Your responsibility to prove to Our satisfaction (or that of the relevant Card Issuer or Other Financial Institution) that the debit of a Customer's or Cardholder's account was authorised by such Customer or Cardholder.
12. 8.11 If We consider in good faith that there is a high risk of Chargeback, You shall on demand by Us (without prejudice to clauses 13.1 and 13.2) put such funds into Your Merchant Bank Account as We shall require to cover such risk.

## 9. FLOOR AND TRADING LIMITS

1. 9.1 In respect of the Acquiring Services and/or Other Payment Services, We may from time to time notify You of a monetary limit:
  1. 9.1.1 on the aggregate value of one or more Transactions in respect of any specified period ("**Trading Limit**"); and/or
  2. 9.1.2 above which You agree to obtain Our consent prior to completing a Transaction or more than one connected Transaction ("**Floor Limit**").
2. 9.2 You shall not exceed the Trading Limit or complete a Transaction in excess of the Floor Limit without Our prior written approval (to be given at Our discretion). Such restriction shall continue to apply save if and to the extent that We otherwise notify You in writing.
3. 9.3 Unless otherwise agreed by Us, the monetary value of the Floor Limit shall be deemed to be zero.

## 10. BANK ACCOUNT AND PAYMENTS

1. 10.1 You shall throughout the term of the Contract and for such period as may be required thereafter for the purposes of any applicable provisions of the Contract maintain in Your

name a bank account that is acceptable to Us for the purposes of receiving payments from Us and making payments to Us.

2. 10.2 Where it is possible for Us to debit Your Merchant Bank Account, We shall be entitled to debit all sums due to Us from You pursuant to these Conditions by direct debit from Your Merchant Bank Account and exercising Our right to do so shall not prejudice any other rights or remedies We may have. You shall maintain with Your bank an instruction to authorise such debits.
3. 10.3 You shall notify Us in writing in advance of any changes proposed by You in respect of Your Merchant Bank Account (including, without limitation, the location of the branch at which such account is held) and shall not implement such changes without Our prior written consent. If any change in Your Merchant Bank Account details is imposed on You, You shall notify Us in writing immediately, giving full details of such changes and the reasons.

## **11. INTEREST**

1. 11.1 If either Party fails to pay any amount under the Contract when due, then You or We (as appropriate) shall be entitled to charge default interest at a rate equal to three (3) percent per annum above the published Royal Bank of Scotland plc base rate from time to time.

## **12. SET OFF**

1. 12.1 In addition to any lien or right to which We may be entitled by law, You hereby irrevocably authorise Us from time to time without notice and both before and after demand to set-off by whatever means the whole or any part of Your liabilities to Us under the Contract or any other contract (whether such liabilities are present, future, actual or contingent or potential, liquidated or unliquidated and irrespective of the currency of its denomination) against any Remittance or against any sums (whether or not related to the Transaction that gave rise to the liability) held by Us, including in any of Your accounts with Us which are in Your name or any other accounts referred to in clause 13.2.
2. 12.2 You are not entitled to set-off any liabilities of Ours under the Contract or otherwise (whether such liabilities are present, future, actual, contingent or potential) against any funds due to Us from You.
3. 12.3 Any exercise of Our rights under this clause 12 shall be without prejudice to any other rights or remedies available to Us under the Contract or otherwise.

## **13. SECURITY**

1. 13.1 We may at any time require You to procure that a Person or Persons satisfactory to Us, provide Us with a guarantee and/or indemnity in respect of Your obligations (including contingent or potential obligations) from time to time under the Contract.
2. 13.2 We may at any time require You to grant to Us, or procure the granting to Us of, security other than guarantees or indemnities in such form, including, for the avoidance of doubt, the requirement to put funds into Your Merchant Bank Account and/or any other account which We may specify (including a trust or deposit account which We may establish for such purpose) and over such assets (and free of other security interests or subject only to such other security interests and other rights as We shall permit) to secure to Our

satisfaction the performance of Your obligations (including contingent or potential obligations) from time to time under the Contract.

3. 13.3 We may exercise Our rights under clauses 13.1 and 13.2 either to require additional security or to require the replacement of a previous security which has been withdrawn or which We for any reason require to be replaced.
4. 13.4 Without prejudice to any other provision of the Contract, Your failure to comply with any requirement made under this clause 13 strictly in accordance with the relevant time limits shall constitute a material breach of these Conditions for the purposes of clause 14.3.1.

#### **14. TERM AND TERMINATION**

1. 14.1 Subject to clause 4.1, the Contract shall commence upon the date on which You sign the Application Form or the Contract (as the case may be) and, subject to earlier termination pursuant to clause 8.9, 14.2 to 14.4 (inclusive) or 21.14, shall continue in force until terminated by either Party giving to the other not less than one complete calendar month's notice to that effect, provided that You shall not be entitled to serve such notice until a period of 12 months has elapsed from the date of the first Transaction following the commencement of the Contract (excluding, for the avoidance of doubt, any Transaction effected for testing purposes).
2. 14.2 In the event that We notify You in writing that We have not accepted Your application for the provision of the Services by Us, the Contract shall terminate with immediate effect on the service of such notice.
3. 14.3 We shall be entitled to immediately suspend the provision of one or more of the Services (or, in each case, any part thereof) or to terminate the Contract or any one or more of the Services (or, in each case, any part thereof) at any time with immediate effect by notice to You if:
  1. 14.3.1 You materially breach any of the provisions of the Contract;
  2. 14.3.2 You fail to pay any amount under the Contract on the due payment date;
  3. 14.3.3 We consider (in Our absolute discretion) that the total value of Refunds and/or Chargebacks is unreasonable;
  4. 14.3.4 You breach any applicable Trading Limit or Floor Limit;
  5. 14.3.5 You breach the Rules;
  6. 14.3.6 You present a Transaction to Us in a situation where You do not give to the relevant Customer or Cardholder the goods, services or other facilities referred to which they could reasonably expect to receive;
  7. 14.3.7 You become insolvent or any step is taken for Your liquidation, winding-up, bankruptcy, receivership, administration or dissolution (or anything analogous to the foregoing occurs in any jurisdiction);
  8. 14.3.8 You make or propose any arrangements with Your creditors generally;

9. 14.3.9 anything happens to You or a matter is brought to Our attention which We in Our absolute discretion consider may affect Your ability or willingness to comply with all or any of Your obligations or liabilities under the Contract;
10. 14.3.10 any other change in Your circumstances (including a deterioration in or change to Your financial position) or in the nature of Your business or in the goods and/or services supplied by You to Customers or Cardholders occurs which We in Our absolute discretion consider material to the continuance of the Services or any facilities made available by Us to You;
11. 14.3.11 You cease to carry on business;
12. 14.3.12 We, in Our absolute discretion, determine that Our relationship with Your business represents increased risk of loss or liability to Us;
13. 14.3.13 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 and individual activities) or You engage in any business trading practices or individual activity which We in Our absolute discretion consider disreputable or capable of damaging Our reputation or that of any of the Card Schemes or Other Financial Institutions, detrimental to Our business or that of any of the Card Schemes or Other Financial Institutions or which may or does give rise to fraud or any other criminal activity or suspicion of fraud or any other criminal activity;
14. 14.3.14 there is any change to the Person, or group of Persons acting together pursuant to an agreement or understanding (whether formal or informal), which Controls You;
15. 14.3.15 any claim or action in connection with the Contract is threatened or commenced by You or Us;
16. 14.3.16 any Fines or any other claims are brought against Us by any Card Scheme, an Other Financial Institution or any other third party arising from any aspect of Our relationship with You (including in connection with any security breach as described in clause 19.5, compromise or theft of Data held by You or on Your behalf irrespective of whether such security breach, compromise or theft of Data was within or outside Your control);
17. 14.3.17 We are required or requested to do so by any Card Scheme or Other Financial Institution;
18. 14.3.18 You undertake trading practices which We have not consented to;
19. 14.3.19 any security granted to Us by You in connection with the Contract ceases to be enforceable or is withdrawn;
20. 14.3.20 We consider that any act or omission of Yours falls within a Reason Code (in which case the provisions of clause 21.14 shall apply);
21. 14.3.21 We or any Group Company of Ours become entitled to terminate any agreement with or enforce any security from You or any Group Company of Yours;

22. 14.3.22 the relevant Services (or relevant part thereof) are suspended or otherwise cease to be provided by the relevant Acquirer, Card Scheme or Other Financial Institution (as the case may be); or
  23. 14.3.23 any Card Scheme or Other Financial Institution or the relevant Acquirer introduces additional terms and conditions or amends the terms and conditions relating to such Services.
4. 14.4 You shall be entitled to terminate the Contract at any time with immediate effect by notice to Us if:
1. 14.4.1 save where permitted or authorised to do so pursuant to these Conditions, We fail to pay any undisputed sums due to You from Us under the Contract within 30 days of notice from You to Us that We have failed to make such payment;
  2. 14.4.2 We become insolvent or any step is taken for Our liquidation, bankruptcy, receivership, administration, dissolution or other similar action; or
  3. 14.4.3 We are in material breach of any of the provisions of the Contract.

## **15. CONSEQUENCES OF TERMINATION**

1. 15.1 Upon termination of the Contract all rights and obligations of either Party shall cease to have effect immediately, save that:
  1. 15.1.1 the clauses of these Conditions which expressly or by implication have effect after termination will continue to be enforceable notwithstanding such termination (including, for the avoidance of doubt but without limitation, clauses 7, 8, 10, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 24, 30 and 31); and
  2. 15.1.2 Termination shall not affect accrued rights and obligations of either Party under the Contract as at the date of termination.
2. 15.2 Upon or at any time after termination of the Contract, You shall immediately pay to us all amounts owed by You under the Contract and, for the avoidance of doubt, We shall remain entitled to withhold sums pursuant to clause 7, set-off any sums pursuant to clause 12.1 and recover any Chargebacks and Chargeback Costs pursuant to clause 8.

## **16. INDEMNITY**

1. 16.1 You shall indemnify and hold Us indemnified from and against all actions, proceedings, costs, claims, demands, charges, expenses (including legal expenses), liabilities, fines (including Fines), levies, losses and damages, whether arising in tort, contract or common law, which We may suffer or incur to the extent arising out of or in consequence of or in connection with:
  1. 16.1.1 any claim brought against Us by a Customer, Cardholder, Card Scheme, Card Issuer, Other Financial Institution, Acquirer or other third party arising from a Transaction whether or not previously Remitted by Us to You;

2. 16.1.2 any other claim brought against Us (including Fines) arising from any aspect of Our relationship with You (including in connection with any security breach as described in clause 19.5, compromise or theft of Data held by You or on Your behalf irrespective of whether such security breach, compromise or theft of Data was within or outside Your control);
  3. 16.1.3 the enforcement or attempted enforcement of the Contract (which includes the recovery or attempted recovery of any sum owing to Us under the Contract);
  4. 16.1.4 the protection of Our interests in connection with any aspect of Our relationship with You (including the cost of any third parties nominated by Us or instructed by Us for this purpose);
  5. 16.1.5 a breach by You of any of these Conditions or any other provisions of the Contract;
  6. 16.1.6 any Transaction (including a Transaction which is subsequently discovered to be fraudulent); or
  7. 16.1.7 any other arrangements between You and a Customer,
    - except, in each case, if and to the extent caused by or contributed to by Our negligence or any breach of the Contract by Us.
2. 16.2 For the avoidance of doubt, if a claim is brought against Us by a Customer, Card Issuer, an Other Financial Institution, an Acquirer or any other third party We shall be entitled to settle or otherwise deal with it at Our sole discretion.
  3. 16.3 If You are a partnership, each partner shall be jointly and severally liable under the Contract.

## 17. LIABILITY

1. 17.1 Subject to clauses 17.2, 17.3, 17.4, 17.5 and 17.7, We accept liability for any proven direct losses which You suffer or incur as a direct result of Our negligence or any breach by Us of Our obligations under the Contract, save if and to the extent that such negligence or breach is caused or contributed to by You.
2. 17.2 We shall not be liable for any delay or failure to carry out any of Our obligations under the Contract if and to the extent that such failure is due to circumstances beyond Our reasonable control (or that of our agents or sub-contractors).
3. 17.3 Subject to clause 17.7, We shall not be liable to You in contract, tort (including negligence or breach of statutory duty) or otherwise for any indirect, special or consequential loss or damage howsoever caused arising out of, or in connection with, any supply, failure to supply or delay in supplying the Services or otherwise in connection with the Contract.
4. 17.4 Subject to clause 17.7, Our total liability to You in contract, tort (including negligence or breach of statutory duty) or otherwise arising out of, or in connection with, the supply, failure to supply or delay in supplying the Services throughout the term of the Contract or otherwise in connection with or related to the Contract shall be limited to:
  1. 17.4.1 the Fees paid to Us in the twelve months prior to the date of the first event giving rise to any relevant liability; or

2. 17.4.2 where the date of the first event giving rise to any relevant claim arises during the period of 12 months commencing on the date on which You sign the Application Form or the Contract (as the case may be), the total amount of Fees which have been paid in such period together with an amount equal to the Fees which would be reasonably likely to be payable (having regard to matters such as the amount of Fees which have been paid or are payable, market conditions and general patterns of trading and assuming that the Contract would remain in full force and effect) for the remainder of such 12 month period.
5. 17.5 Without prejudice to either Party's rights to terminate the Contract, Your sole remedy at law, in equity or otherwise in respect of any claim against Us shall be limited to damages.
6. 17.6 You acknowledge and agree that, given the nature of the Services, the availability to You of suitable alternative payment methods for Your customers and Your ability to choose other providers of services similar to the Services before entering into the Contract, the limitations on liability contained in this clause 17 are reasonable in all the circumstances and that the Fees 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.
7. 17.7 Nothing in these Conditions shall operate to exclude or restrict Our liability for fraud or deceit or for death or personal injury resulting from Our negligence.
8. 17.8 We shall have no liability to You in relation to any decision of any Acquirer or Other Financial Institution, save if and to the extent that such decision is made as a direct result of Our negligence or any breach of the Contract by Us.

## **18. MATERIALS**

1. 18.1 You shall only use such materials identifying the Services, Us, any Group Company of Ours or any Card Scheme if such materials have previously been approved by Us in writing.
2. 18.2 You shall display prominently on each of Your premises, trading venues or website where You accept Cards for payment, the Card and Card Scheme identification required by the Rules.

## **19. DATA**

1. 19.1 Whenever We request it, You shall give Us reasonable assistance to facilitate the successful collection and delivery of all Data. We shall assist You, upon Your request, where We are able to gain access to the Data, but reserve the right to make charges for doing so.
2. 19.2 At all times while Data is in Your possession or control or that of Persons acting for or connected with You, You shall ensure that the Data is kept secure and is used only for the purposes of the Contract and that all applicable laws, rules, regulations or similar obligations in any relevant territory governing the use, storage and/or processing of data relating to individuals are observed and performed with regard to it.
3. 19.3 Notwithstanding any other provision of these Conditions, each Party shall, as detailed below, ensure the security, integrity and confidentiality of Data ("**Data Control**") and shall do



so in the circumstances detailed below (regardless of any similar or superior obligations imposed by the operation of any contract or law, or otherwise):

1. 19.3.1 We accept responsibility for Data Control in respect of any Data You or Customers deliver to Us, upon receipt of such Data by Us;
2. 19.3.2 in circumstances where Data is to be delivered to Us by You or via Your nominated agent You accept responsibility for Data Control, and for the collection, storage and delivery of Data to Us in a medium and format agreed with Us; and
3. 19.3.3 We may refuse to accept Data from You where the requirements specified in any instructions issued by Us from time to time are not satisfied in full and Our processing the Data shall not preclude Us from subsequently requiring its replacement, deletion or correction.
4. 19.4 You acknowledge and agree that You (and Your agents, sub-contractors or any third parties used by You) shall abide by any payment card industry data security standards of the relevant Card Schemes as updated from time to time (the "PCI DSS "). The PCI DSS require You and Us, among other things, to observe standards of due care with regard to the protection of sensitive Customer or Cardholder information or sensitive authentication data and to ensure that the Payment System is compliant with those standards. Accordingly, without prejudice to the generality of the foregoing, You shall ensure that the Payment System complies in all respects with the PCI DSS, which include the following requirements:
  1. 19.4.1 to build and maintain a secure network (to include the installation and maintenance of a fire wall configuration to protect Data and not to use vendor supplied defaults for system passwords and other security parameters);
  2. 19.4.2 to protect Data (to include protecting stored Data and encrypting transmission of Data across open, public networks);
  3. 19.4.3 to maintain a vulnerability management programme (to include the use of and regularly updating anti-virus software and developing and maintaining secure systems and applications);
  4. 19.4.4 to implement strong access control measures (to include restricting access to Data by business need-to-know, assigning a unique ID to each person with computer access and restricting physical access to Data);
  5. 19.4.5 to regularly monitor and test networks (to include tracking and monitoring all access to network resources and Data and regularly testing security systems and processes); and
  6. 19.4.6 to maintain an information security policy
5. 19.5 You shall notify us immediately if you become aware of or suspect any security breach relating to Data (whether or not you have complied with the PCI DSS Standards). As soon as reasonably practicable, You shall also (and without prejudice to any other remedy We have in respect thereof) immediately identify and remediate the source of such security breach and take any steps that We require of You including but not limited to the procurement (at Your cost) of forensic reports from third parties recommended by Us.
6. 19.6 You shall not store, at any time:

1. 19.6.1 Card verification value in the magnetic stripe;
  2. 19.6.2 Card verification value printed on the Card in or next to the signature pane;
  3. 19.6.3 Card verification value contained in the magnetic stripe image in a chip application;
  4. 19.6.4 PIN verification value contained in the magnetic stripe;
  5. 19.6.5 the full contents of any track from the magnetic stripe (on a Card, in a chip or elsewhere); or
  6. 19.6.6 any other Data that the Card Schemes mandate from time to time.
7. 19.7 Your obligations under clauses 19.4, 19.5 and 19.6 shall survive termination of the Contract and shall continue in full force and effect until all Data obtained under the Contract has been destroyed or as otherwise agreed in writing by Us.
  8. 19.8 Without prejudice to any other provision of the Contract, any failure by You to comply with the provisions of clauses 19.4 and 19.5 shall constitute a material breach of the Contract for the purposes of clause 14.3.1.

## **20. RETENTION OF RECORDS**

1. 20.1 Subject to the requirements of the PCI DSS Standards, You shall retain legible copies of Data for a minimum period of 18 months from the date of each Transaction.
2. 20.2 We may, from time to time, request You to provide copies of Data. You shall provide such copies to Us within 14 days of such request being received by You from Us.
3. 20.3 You hereby authorise Us to release Data and any other information relating to 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 agent of Ours or any other Person:
  1. 20.3.1 as is necessary for the purpose of fulfilling Our obligations under the Contract or the Rules or otherwise as required by law; or
  2. 20.3.2 where We, or any third party, are investigating any suspected criminal activity.

## **21. PROVISION AND DISCLOSURE OF INFORMATION**

1. 21.1 You shall at all times throughout the term of the Contract (and for such period as may be necessary thereafter):
  1. 21.1.1 disclose to Us such information as We reasonably require relating to the performance of the Contract including any information:
    1. 21.1.1.1 required to satisfy Our obligations to any Card Scheme, Other Financial Institution or governmental or regulatory authority or otherwise; and
    2. 21.1.1.2 relating to any aspect of the processing of Data by You or by any Person with whom You have a commercial relationship for that purpose;

2. 21.1.2 take all reasonable steps to assist Us in handling any claim or query raised by a Cardholder, Customer, a Card Issuer, a Card Scheme, an Acquirer, an Other Financial Institution or any other third party in relation to the Services;
  3. 21.1.3 co-operate in providing any Other Financial Institution with all information requested by it in order for You to be accepted by such Other Financial Institution or otherwise to enable Us to provide You with the Other Payment Services (or any part thereof);
  4. 21.1.4 fully comply with the requirements of any Other Financial Institution relating to the relationship between You and such Other Financial Institution in respect of which the Other Payment Services are to be provided (including any requirement for You to have a contract and/or connection number with such Other Financial Institution); and
  5. 21.1.5 give Us reasonable assistance on request for the prevention and detection of fraud or other criminal activity in respect of Transactions.
2. 21.2 To enable Us to assess Your financial position throughout the term of the Contract, You shall on request:
    1. 21.2.1 provide Us with Your latest audited accounts and any other information We may require (including but not limited to management accounts); and
    2. 21.2.2 permit or procure Us or Our duly authorised representatives to have access to any premises where Your business trades or where any of its records are for the time being situated, to examine all or any of such records and those of any other business which We consider is or may be connected to it, and to take and retain copies of all or any such records and further to provide to Us or procure that We are provided with honest and comprehensive answers to any enquiries We may make.
  3. 21.3 You shall advise Us immediately in writing of any:
    1. 21.3.1 other agreement that You enter into concerning Your acceptance of Transactions;
    2. 21.3.2 act, omission or error which does or may:
      1. 21.3.2.1 cause loss or damage to Us (including damage to Our reputation); or
      2. 21.3.2.2 adversely affect Your ability to perform Your obligations under the Contract;
    3. 21.3.3 actual or suspected violation or compromising of the security or integrity of any Data or any other information relating to the Services or the Card Schemes or any Confidential Information at any time obtained or held by You; and/or
    4. 21.3.4 material change in the nature of Your business or in the goods and/or services supplied to Your customers or of any additional business commenced by You or of Your cessation of business.

4. 21.4 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.
5. 21.5 We may use and share Your information (including information about Transactions) with Our Group Companies, Card Issuers, Card Schemes and credit reference agencies to help Us and/or them:
  1. 21.5.1 assess financial and insurance risks;
  2. 21.5.2 recover debt;
  3. 21.5.3 develop customer relationships, services and systems; and
  4. 21.5.4 prevent and detect crime.
6. 21.6 We do not disclose Your information to anyone other than as expressly provided in the Contract except:
  1. 21.6.1 where We have Your permission;
  2. 21.6.2 where We are required or permitted to do so by law;
  3. 21.6.3 to other companies who provide a service to Us or You; or
  4. 21.6.4 where We may assign, subcontract or transfer rights and obligations under the Contract.
7. 21.7 From time to time We may change the way We use Your information. 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 60 days, You consent to that change.
8. 21.8 A link between You and anyone with whom You have a joint account or similar financial association will be recorded at credit reference agencies, creating a "financial association". All parties' information will be taken into account in future applications until one of You successfully files a "notice of disassociation" at the credit reference agencies.
9. 21.9 We may make periodic searches of and provide information about You to credit reference agencies, fraud prevention agencies, Card Issuers, Card Schemes and Our Group Companies to manage and take decisions about their relationship or prospective relationship with You. Such information may be used by other credit providers to take decisions about You and Your financial associates.
10. 21.10 The information which We collect from You may be transferred to, and stored at, a destination outside the European Economic Area ("EEA"). It may also be processed by staff operating outside the EEA who work for Us or for one of Our subcontractors or suppliers in connection with the Contract (including the purposes referred to in this clause 21). We shall ensure that an adequate level of protection is given to any of Your information which is transferred or processed outside of the EEA in accordance with this clause 21.10.
11. 21.11 We may disclose information concerning You to third parties for use in their or any Card Scheme's or Acquirer's or Other Financial Institution's fraud prevention programmes for the purpose of assisting in identifying merchants involved in, amongst other things, fraud or suspected fraud, insolvency, breach of a merchant services agreement and any other such matter which would assist Us or other third parties in their efforts to prevent fraud. We may

also disclose information concerning You to law enforcement bodies where We suspect that fraud or other criminal activity may have occurred.

12. 21.12 You acknowledge that the viability and availability of the Card Schemes depends upon effective and reliable information regarding, and effective management of, information security, the risk of fraud and sector and credit risk. Accordingly, You acknowledge and agree that We shall notify the Card Schemes or Persons nominated by them and, where We consider appropriate, crime enforcement authorities, of all information regarding You, Your business and Your conduct relating to the Contract or the operations and activities contemplated by it which We consider relevant to such matters. The Persons who We notify and the information notified may well vary from time to time as legal requirements and industry practices change.
13. 21.13 In particular, You acknowledge that:
  1. 21.13.1 some or all of the Card Schemes may operate databases containing information regarding the conduct of Card transactions by merchants;
  2. 21.13.2 We may disclose information to the Card Schemes pursuant to this clause 21; and
  3. 21.13.3 some or all of the Card Schemes categorise undesirable acts and omissions of merchants under certain codes (each such code being a "**Reason Code**").
14. 21.14 If We consider that any act or omission of Yours falls within a Reason Code then We may immediately terminate the Contract in accordance with clause 14.3.20. Where applicable, details of any such act or omission shall be advised to You and shall also be available on request. In that event, the fact of termination and the Reason Code forming the grounds for termination shall be notified to (and may be recorded by) Visa and MasterCard and thereafter be maintained by them in accordance with their normal practice. The aforementioned database records are available for enquiry by any Acquirer and Card Issuer. In certain circumstances, they are also made available to crime enforcement authorities.
15. 21.15 You agree that where We have acted in good faith We shall have no liability to You for any inaccuracy in the information We provide to any third parties pursuant to this clause 21.

## **22. INTELLECTUAL PROPERTY**

1. 22.1 The Contract does not transfer, and is not intended to transfer, to You any of the Intellectual Property Rights that We own at the date of the commencement of the Contract or any Intellectual Property Rights that We create, acquire or develop during the term of the Contract.
2. 22.2 You shall obtain Our written consent prior to using or referring to any of Our trade marks, logos, copyrighted materials, business names or other similar protected intellectual property in any of Your promotional materials or literature, agreements or on any website.
3. 22.3 On termination of the Contract, You shall remove any reference to Us from any of Your promotional materials or literature, agreements or on any websites.

## **23. SERVICE ADJUSTMENTS AND CONTRACT VARIATIONS**

1. 23.1 From time to time, We may adjust the content and interfaces of the Services. If such adjustments 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.
2. 23.2 Without prejudice to clause 6.3, We shall be entitled to vary the provisions of these Conditions from time to time on giving You at least 30 days' notice.

## **24. CONFIDENTIAL INFORMATION**

1. 24.1 Except to the extent set out in this clause 24, each Party shall treat as confidential all Confidential Information obtained from the other under the Contract, will protect such Confidential Information and will not, without the prior written consent of the other, disclose or use such Confidential Information except for the purposes of the Contract.
2. 24.2 Clause 24.1 does not apply to information which the receiving Party can show by reference to documentary or other evidence:
  1. 24.2.1 was rightfully in its possession prior to disclosure to it by the other Party;
  2. 24.2.2 is already public knowledge or which becomes so at a future date (otherwise than as a result of breach of this clause 24);
  3. 24.2.3 is received from a third party who is not under an obligation of confidentiality in relation to the information;
  4. 24.2.4 is developed independently without access to, or use or knowledge of, the Confidential Information; or
  5. 24.2.5 is trivial or obvious.
3. 24.3 Clause 24.1 shall not apply if and to the extent that any Confidential Information is required to be disclosed to any governmental or other regulatory authority, by the rules of a recognised stock exchange or by law.
4. 24.4 Other than as expressly permitted under these Conditions, on termination or expiry of the Contract for whatever reason, each Party shall forthwith cease to use any Confidential Information of the other 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 either Party will be permitted to retain one copy of such part of the Confidential Information for the purposes of and for so long as required by any law or by judicial or administrative process or its legitimate internal compliance issues.

## **25. ASSIGNMENT AND SUBCONTRACTING**

1. 25.1 The Contract is personal to You and You may not assign it or transfer it or any of Your rights under it without Our consent. If You are an individual, the Contract shall be binding upon Your personal representatives.
2. 25.2 You may only use an agent or subcontractor in relation to the performance of Your obligations under the Contract (including Your obligations relating to the supply of goods and/or services which are the subject of Transactions) with Our prior written consent and We may withdraw that consent at any time. If You do use an agent or subcontractor for such

purposes, You shall remain responsible for complying with these Conditions as though You were not using such agent or subcontractor.

3. 25.3 You shall be liable to Us for the acts or omissions of:
  1. 25.3.1 any agent or subcontractor of Yours, whether or not used with Our consent;
  2. 25.3.2 any Group Company of Yours; and
  3. 25.3.3 any employee or agent of any of the foregoing,  
in or relating to the performance of the Contract or in connection with any Transaction thereunder or any matter associated with any such Transaction.
4. 25.4 We shall be entitled to assign or transfer the benefit of the Contract and/or to subcontract our obligations under the Contract to any Person at any time.

## **26. WAIVER**

1. 26.1 No failure or delay by us in exercising any of our rights under these Conditions shall be construed as a waiver or release of that right unless otherwise agreed in writing by us.
2. 26.2 No single or partial exercise of any of our rights or remedies under these Conditions 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.
3. 26.3 Our rights and remedies under these Conditions are cumulative and not exclusive of any rights or remedies provided by law.

## **27. NOTICES**

1. 27.1 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 prepaid recorded registered post (or registered airmail in the case of an address for service outside the United Kingdom) or by facsimile (provided that a hard copy of the facsimile is also served by prepaid registered post or airmail) to the address of the other Party as set out in the Contract or as otherwise notified by such Party from time to time. Any notice given in accordance with this clause 27.1 shall be deemed to have been received:
  1. 27.1.1 if delivered personally, at the time of delivery;
  2. 27.1.2 in the case of prepaid registered post, 48 hours from the date of posting;
  3. 27.1.3 in the case of registered airmail, seven days from the date of posting; and
  4. 27.1.4 in the case of facsimile, on the date it is transmitted.
2. 27.2 We may from time to time serve notices:
  1. 27.2.1 by email, in which case the provisions of clause 27.1 relating to the service of notices by facsimile shall apply to the service of notices by email; and

2. 27.2.2 by other classes of post, in which case any such notice shall be deemed to have been received on the second day after it was put into prepaid first class post or the fourth day after it was put into prepaid second class post.
3. 27.3 For the avoidance of doubt, you may not serve notices by email without our prior written consent. Where such consent is given, it shall be deemed to have been given subject to the following conditions:
  1. 27.3.1 the provisions of clause 27.1 relating to the service of notices by facsimile shall apply to the service of notices by email; and
  2. 27.3.2 notices given by email which emanate (or reasonably appear to emanate) from any member of Your staff shall be deemed to be validly given by You, even if such member of staff did not have actual authority to send the relevant email and/or the relevant email in fact emanated from another member of staff or anyone else who may have had access to Your email systems.
4. 27.4 We may specify (by giving notice to You in accordance with this clause 27) a particular individual or office holder to whom any notices served on Us are to be addressed, in which case a notice shall not be validly given unless so addressed.

## **28. ENTIRE AGREEMENT**

1. 28.1 The Contract constitutes the entire agreement and understanding between Us and You in respect of the matters dealt with in it and supersedes and invalidates all other prior representations, arrangements, understandings and agreements relating to the subject matter of the Contract which may have been made between You and Us either orally or in writing prior to the date of the Contract, other than any securities or written pledges, undertakings or assurances which You may previously have given to Us and, subject to and together with such securities etc. sets out the entire agreement and understanding You and We have.
2. 28.2 Each Party warrants that it has not relied on any representations, arrangements, understanding or agreements (whether written or oral) not expressly set out or referred to in the Contract. The only remedy available to either Party in respect of any such representations, arrangement, understanding or agreement shall be for the breach of contract under the provisions of these Conditions.
3. 28.3 Nothing in this clause 28 shall operate to exclude any liability for fraud.

## **29. SEVERABILITY**

1. 29.1 If any provision of these Conditions is found by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable:
  1. 29.1.1 such illegality, invalidity or unenforceability shall not affect the other provisions of these Conditions, which shall remain in full force and effect; and
  2. 29.1.2 If such provision would cease to be illegal, invalid or unenforceable if some part of the provision were modified or deleted, the provision in question shall apply with such minimum modification or deletion as may be necessary to make it legal, valid and enforceable.



### **30. MISCELLANEOUS**

1. 30.1 Nothing in these Conditions is intended to create a partnership or joint venture or legal relationship of any kind that would impose liability upon one Party for the act or failure to act of the other Party, or to authorise either Party to act as agent for the other. Save where expressly stated in the Contract, neither Party shall have authority to make representations, act in the name or on behalf of or otherwise to bind the other.
2. 30.2 Nothing in these Conditions shall render either Party or any of their respective employees an employee of the other or render either Party or any of its employees capable of incurring any liability or obligation on the other's behalf, and neither Party shall hold itself out as such.
3. 30.3 A Person who is not party to the Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any provisions of the Contract. This clause 30.3 does not affect any right or remedy of any Person which exists or is available otherwise than pursuant to that Act.

### **31. GOVERNING LAW AND JURISDICTION**

1. 31.1 The Contract and any matter arising from or in connection with it shall be governed by and construed in accordance with English law.
2. 31.2 You and We irrevocably agree that, for our benefit only, the English courts shall have exclusive jurisdiction over any claim or matter arising from or in connection with the Contract, or the legal relationships established by or in connection with it. Accordingly, any proceedings by or against Us in respect of such claim or matter must be brought in the English Courts, but We shall not be prevented from taking proceedings against You either in the English courts or in any other court of competent jurisdiction. To the extent permitted by law, We may take concurrent proceedings in any number of jurisdictions.
3. 31.3 In the event of any conflict between the English version of the Contract (or any part thereof) and any version which has been translated into any language other than English, then the English version shall prevail.