

SCHEDULE 1

General Terms and Conditions of Supply of Gateway Services to Merchant.

AGREED TERMS:

1. INTERPRETATION AND APPLICATION

- 1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions (**conditions**):

Business Day: Monday, Tuesday, Wednesday, Thursday and Friday.

Compaynet: Compaynet Ltd, being a company registered in United Kingdom, Company Number 10373566, of 1st Floor, Sackville House, 143-149 Fenchurch Street, London, England, EC3M 6BN.

Compaynet's Equipment: any equipment, including tools, systems, cabling or facilities, provided by Compaynet or its subcontractors and used directly or indirectly in the supply of the Services that are not the subject of a separate agreement between the Parties under which title passes to the Merchant.

Charges: collectively, the Fixed Charge, Transaction Charge (as more particularly described on the Order Form) and any other additional amounts payable to Compaynet by the Merchant pursuant to these conditions as amended from time to time in accordance with these conditions.

Commencement Date: the effective start date of the Contract as set out on the Order Form.

Contract: the Order Form, all applicable Special Conditions (if any) and these conditions.

Document: includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

DPA: Data Protection Act 1998 (as amended or replaced from time to time).

Fixed Charge: an annual or monthly fixed charge, payable in advance either per annum or per calendar month of the Contract in respect of the Merchant being given access to the Services (including, without limitation, the issuing of a user name and password to the Merchant by Compaynet for this purpose).

Indemnifier: is the Party providing the indemnity to the other Party

Indemnified Party: is the Party receiving indemnity from the Indemnifier

Initial Term: One calendar year from and including the Commencement Date of the Contract, following which the Contract will continue on a half-yearly(180 days) term rolling basis, unless otherwise specified in the Order Form or otherwise in writing by Compaynet.

Intellectual Property Rights ("IPR"): all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, know how, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications

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for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

MPTV: maximum permitted transaction volume.

Order Form: the order form appearing as a front sheet to these conditions and Agreement.

pa: per annum

Party(ies): Compaynet Ltd and the Merchant as named in the Order Form.

PCI: the Payment Card Industry.

PCI:DSS: the Payment Card Industry Data Security Standard.

pcm: per calendar month

Merchant: the person, firm or company including its officers, employees and agents who purchases Services from Compaynet as set out on the Order Form.

Merchant Equipment: any equipment, hardware, computer, systems, cabling or facilities provided by the Merchant and used directly or indirectly in the supply of the Services.

Merchant Information: data and any other materials (in whatever form) published or otherwise made available (directly or indirectly) by the Merchant or on behalf of the Merchant by using the Services or relating to the Services. Merchant Information may include information about the Merchant itself (including individual employees or representatives) or permitted users or clients of the Merchant (or prospective clients) that may include personal data subject to laws or regulations.

Rolling Term: successive periods of one half calendar year (180 days) following the end of the Initial Term.

Services: the services to be provided by Compaynet under the Contract for the authorisation and payment of credit, debit, purchase, fuel, charge and like card transactions, bank transfers, Payment Schemes together with the provision of the necessary interface through which authorisation and payment of credit/debit/charge card transactions takes place (as more particularly described in the Order Form).

Special Conditions: special conditions relating to particular aspects of the Service required as set out in the Contract or otherwise that applies more particularly specified in the Order Form.

Support: the second line support services (which for the avoidance of doubt do not include Compaynet's dealing directly with any Third Party) relating to diagnosis of errors, restoration of functionality and mandatory system upgrade by way of correction, re configuration, patch provision, driver update, software re-load, interface guideline update or user guidance to remedy a fault and the implementation of mandatory updates, adjustments, additions or modifications to the Services as Compaynet may prescribe from time to time or as otherwise set out in the Order Form. On rare and critical occasions Compaynet can call out and provide assistance.

Term: the period for which the Parties are contracted as defined in Initial and Rollover Term.

Third Party: the company, organisation or person who purchases or uses the Services provided by the Merchant.

Third Party Terms: means those terms applicable to the supply of the Services from Merchant to a Third Party, such as they may be from time to time which shall be no less onerous on the Third Party than those contained in this

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Contract and which will inform the Third Party that the term "Compaynet" must be used by the Third Party in any communication between that Third Party and their acquiring bank when describing the Services.

Transaction Charge: a charge payable on each transaction processed by the Services at the rate set out in the Order Form.

Transaction: a transaction is defined as a successful or declined pre-authorisation, full authorisation or refund; this includes 3D Secure authentication requirements (for clarity, a 3D Secure authentication shall not constitute a Transaction in its own right).

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

Headings in these conditions shall not affect their interpretation.

A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

The schedules form part of the Contract. A reference to **writing** or **written** includes delivery of the communication either in person; or by pre-paid first class post; or by recorded delivery; or by commercial courier; or by e-mail.

Any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.

References to conditions, schedules and appendices are to the conditions, schedules and appendices of the Contract.

- 1.2 These conditions shall:
- (a) apply to and be incorporated into the Contract; and
 - (b) prevail over any inconsistent terms or conditions (whether express or implied) contained, or referred to, in any Merchant purchase order, confirmation of order, acceptance of a quotation, or specification or other Document supplied by the Merchant, or that have been or may be entered into between the Parties implied by law, trade custom, practice or course of dealing.
- 1.3 A Contract for the supply and purchase of the Services on and subject to these conditions will be established at such time as both Parties have signed the Order Form or Compaynet commences provision of all or any part of the Services, whichever is the earlier. The Merchant's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other Document shall not govern the Contract.
- 1.4 Quotations are given by Compaynet on the basis that no Contract shall come into existence except in accordance with these conditions. Any quotation can be withdrawn or amended by Compaynet at any time prior to a Contract being formed.

2. COMMENCEMENT AND DURATION

- 2.1 The Services supplied under the Contract shall be provided by Compaynet to the Merchant from the Commencement Date or as otherwise agreed in writing by Compaynet.

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2.2 Subject to condition 10, the Services supplied under the Contract shall be supplied for the Initial Term and, following the expiry of the Initial Term, shall continue to be supplied for further additional and successive periods of one half calendar year (the Rolling Term) unless the Contract is terminated by one of the Parties giving to the other not less than 180 days written notice, such notice to expire no sooner than upon the expiry of the Initial Term or on the last day of each subsequent half-year (180 days) term as appropriate.

3. COMPAYNET'S RIGHTS AND OBLIGATIONS

- 3.1 Compaynet shall use reasonable endeavours to provide the Services to the Merchant, in accordance in all material respects with these conditions and any Special Conditions.
- 3.2 Compaynet shall use reasonable endeavours to meet any performance dates specified in the Order Form, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 Without prejudice to Compaynet's rights to terminate the Contract pursuant to condition 10.2 Compaynet shall be entitled to suspend the Services (or any part thereof) at any time with immediate effect:
- (a) for operational reasons such as repair, maintenance, improvement provided that Compaynet shall use all reasonable endeavours to give the Merchant as much as notice as is reasonably possible before doing so and shall restore the Service as soon as reasonably practicable following any such suspension;
 - (b) where Compaynet reasonably believes that the continued provision of the Services represents a threat or potential threat to the operation, security or functionality of any or all of the following (or any part thereof)
 - (i) the integrity of the Compaynet Equipment
 - (ii) Compaynet Hardware;
 - (iii) the Merchant's Equipment;
 - (iv) the system or operation of any Third Party; or
 - (v) any aspect of services provided to a Third Party by Compaynet; or
 - (c) where Compaynet identifies or reasonably suspects any out of character traffic profile attributable or connected to the utilisation of the Services by the Merchant (eg MPTV). Compaynet will endeavour to contact the Merchant to advise if the MPTV is being exceeded, ahead of suspending the Service. For the avoidance of doubt, the right to suspend is designed to protect the Service from risks such as DDoS; all reasonable steps will be taken to maintain the Service.
- 3.4 Compaynet shall have the right to vary at any time the Services supplied to the Merchant pursuant to the Contract in order to comply with any law, regulation, industry standard (including without limitation any PCI standard or best practice) in any relevant jurisdiction.
- 3.5 Compaynet shall be entitled to change the technical specification of the Services for purely operational reasons provided that any change to technical specification will not materially reduce the performance of the Services.
- 3.6 Compaynet shall use reasonable endeavours to provide an uninterrupted Service but cannot guarantee that it will always be able to do so. Compaynet shall provide the Service with 99.9% Availability (excluding scheduled service maintenance) with the following provisions:
- (a) a Service Outage is a failure within or to the Compaynet environment caused by Compaynet or its first level suppliers that renders the Service unable to meet the Availability levels;

- (b) Service Outage duration is the total minutes for which the services were unavailable during the month period under consideration;
- (c) the total duration of the month under consideration is determined by multiplying 24 hours by the number of days in the month multiplied by 60 minutes;
- (d) Compaynet guarantees that the Compaynet environment will be available and capable of processing transactions for 99.9% of the time;
- (e) Availability as a percentage is calculated as: $100 * ((\text{Total Minutes (defined in (c) above) in month}) - (\text{Total Minutes of Non-Availability in that month defined in (b) above})) / (\text{Total Minutes in Calendar Month})$;
- (f) Compaynet shall provide the Merchant with a monthly report on Availability within 10 days of the end of each month (and the Merchant shall be entitled to audit (whether by itself or by its authorised agents) Compaynet's server log records excluding any and all cardholder records held under PCI:DSS compliance in order to verify such reports, the costs of any such audit being borne in full by Merchant);
- (g) if the Compaynet Availability is not met in a calendar month, Merchant will receive a service credit of 1/30th of their monthly charges for that calendar month for each full hour of outage beyond the 99.9% target Availability (but if Availability falls below 99.5% in any month, a full refund of the Charges for that month), subject to the following limitations:
 - i. service credit(s) will be granted only if Merchant has afforded Compaynet reasonable endeavours to assist in testing and any other work in order to remedy the cause of the Service Outage.
 - ii. Compaynet records and data will be the sole basis for all service credit calculations and determinations (save in the case of manifest error, in determining the alleged existence of which, Merchant shall bear all costs including but not limited to forensic analysis and temporary server equipment);
 - iii. service credit(s) shall be deducted from the charges payable by Merchant hereunder and shall be expressly indicated on Merchant invoice (provided that if any service credits are outstanding following termination, such sums shall be a debt payable to the Merchant);
 - iv. loss of Service Availability caused by issues beyond Compaynet's reasonable control, including, without limitation (in each case solely where outside of Compaynet's reasonable control), denial of service or similar attacks, mail bombs, DNS resolution, domain name expiration, hardware failure, Internet availability, Merchant's portion of any network, IP transit provider issues, SYN attacks, or any other Force Majeure Event will be excluded from Service Availability calculations;
 - v. in order to maintain performance and security of the Services and full PCI:DSS compliance, Compaynet performs Scheduled Maintenance within its published maintenance windows that may require specific Services to be suspended during the maintenance period. Loss of Service Availability due to Scheduled Maintenance will not be included in the calculation of Service Availability. Compaynet will use commercially reasonable efforts to notify Merchant in advance of any Scheduled Maintenance that may adversely affect Merchant's use of the Services;
 - vi. Compaynet may need to perform emergency maintenance, including security patch installation or hardware replacement. Compaynet will not be able to provide Merchant with advanced notice in case of emergency maintenance. Loss of Service Availability due to emergency maintenance will be excluded from calculations for Service Availability.

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- 3.7 In the event of downtime due to scheduled service maintenance, Compaynet shall use its reasonable endeavours to give the Merchant reasonable notice of such scheduled maintenance and details of how to re-route the Services through an alternative server where available to ensure minimum disruption to the Merchant (and shall use all reasonable endeavours to ensure that such scheduled service maintenance takes place between the hours of 0200 and 0500 (prevailing British time)). It shall be the responsibility of the Merchant to act in accordance with Compaynet's reasonable instructions in such circumstances.
- 3.8 Compaynet shall provide the Services with reasonable care and skill and in accordance with Payment Card Industry standards from time to time including in particular the PCI:DSS. In the event that Compaynet believes that their PCI:DSS status may be at risk or revoked, it must inform the Merchant without delay. Compaynet shall inform the Merchant without any undue delay if the Service fails to meet any industry standard (including but not limited to PCI:DSS). If Compaynet fails to remedy any failure to meet any industry standard within the timescale required by the Merchant (having acted reasonably in setting any such timescale) then the Merchant shall be entitled to terminate this Agreement for cause with immediate effect.
- 3.9 Compaynet shall have the right, at any time, and for any reason whatsoever
- (a) to decline to allow any prospective Third Party customer to utilise the Services or any part thereof ("**Merchant Veto**") and Compaynet shall promptly notify the Merchant in writing where it decides to exercise the Merchant Veto, with its reasons for doing so unless restricted by regulation or legal framework from doing so. For the avoidance of doubt, for the provision of the Merchant's services to Third Parties, where the Service acts as a preauthorisation service, Compaynet will have no Merchant Veto. The Merchant Veto only applies in the case that the Merchant starts to sell payment services in addition to the pre-authorisation services; and
 - (b) to enter into commercial discussion with the Merchant in regard to prospective Third Party customers who present special case requirements of a technical or financial nature, including transaction costs, which would require Merchant and/or Compaynet to deviate from or negotiate the currently agreed transaction cost payable from Merchant to Compaynet for that Third Party. For example, where closing a deal between Merchant and a commercially significant Third Party could be seen as being advantageous to Merchant and Compaynet, Compaynet may consider a variation to the transaction costs for that Third Party on a specific case basis without prejudice to the Agreement overall.
- 3.10 The Services shall include any necessary Compaynet product training of personnel utilised by the Merchant. Where sales or marketing advice is sought by Merchant from Compaynet and where such falls within Compaynet's knowledge base, Compaynet will offer Merchant a training rate that reflects the alliance between Compaynet and Merchant.
- 3.11 Compaynet shall promptly notify Merchant of any breaches in its security.
- 3.12 Nothing in this Agreement shall prevent Compaynet from entering into similar agreements with third parties that provide services that are similar or competitive with the Merchant.

4. CUSTOMER'S OBLIGATIONS

- 4.1 The Merchant shall:
- (a) co-operate fully with Compaynet in all matters relating to the Services;
 - (b) provide to Compaynet, in a timely manner, such Merchant Information and other information as Compaynet may reasonably require and ensure that it is, to the knowledge of Merchant, accurate in all material respects, Compaynet to provide reasonable notice of such access requests, ensuring that confidentiality is maintained and

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that the confidential information will not be shared or used in a manner other than to ensure the safe and compliant provision of the service;

- (c) if applicable, be responsible (at its own cost or that of the Third Party) for providing the telecommunications services and correctly configured Merchant Equipment that is needed to connect to the Services;
- (d) provide details of a system administrator who, on behalf of the Merchant, will be familiar with the Services and who shall
 - (i) be the first point of contact for the Merchant and any Third Party users of the Services;
 - (ii) be available to be contacted by Compaynet on a weekday 0900-1730 basis and promptly to provide details in writing to Compaynet of any change to the contact details of the system administrators or the identity of the system administrators;
 - (iii) if applicable, be responsible for configuration and management of access to the Services including configuration of network, firewall, DNS, routers and any personal computers as well as any integration of the Service into a website or call centre application that the Merchant wishes to undertake that Compaynet agrees to in the Order Form or otherwise in writing;
 - (iv) grant to Compaynet a non-transferable, non-exclusive licence for the duration of the Contract to use and copy the Merchant Information to enable Compaynet to carry out its obligations under the Contract and non-transferable, non-exclusive perpetual licence to incorporate the Merchant Information into the Compaynet databases for the purpose of providing Compaynet Services (in each case on a free of charge basis), including PCI compliant fraud screening services for the prevention or detection of fraud, as provided for in Section 29 of the Data Protection Act 1998;
 - (v) if applicable, obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services and the use of the Merchant's Equipment in relation to Services in all cases before the date on which the Services are to start;
 - (vi) permit Compaynet, upon giving reasonable written notice, the right to audit the Merchant's transaction taking/processing procedures and to provide advice and/or recommendations. Where material issues in the Merchant's processes are identified, the Merchant shall promptly follow and implement the advice and/or recommendations given by Compaynet or their own appointed PCI QSA in relation to the Services so far as reasonably practicable;

Third Parties

- (vii) without prejudice to condition 3.9, promptly notify Compaynet in writing including the use of email of any prospective Third Party and all relevant details of such Third Party all of which information shall remain confidential information of Merchant;
- (viii) make the Services available for use by Third Parties under Third Party Terms;

Security

- (ix) be responsible for the security and proper use of all user identities ("User IDs") and passwords in connection with the Services (including changing passwords on a regular basis) and agrees to ensure that User IDs are kept confidential, secure, used properly and not disclosed to any unauthorised person and to inform Compaynet immediately if there has been (or is likely to be) a breach of security or misuse of the Service;

- (x) promptly change any or all of the passwords used in connection with the Service when requested to do so by Compaynet where Compaynet reasonably believes that there is or is likely to be a breach of security or misuse of the Services;
- (xi) promptly inform Compaynet if any of the information supplied on or in relation to the Order Form changes;
- (xii) not store card details on their systems whether in plain text or encrypted form. Where a Merchant, with the agreement of its acquiring bank, needs to store card details on its systems whether in plain text or encrypted form, the Merchant agrees to notify Compaynet in order to be assessed for their adherence to PCI:DSS. In such a case, the Merchant will be authorised by Compaynet to maintain a store of card numbers only if those aspects of the Merchant's systems have a current PCI:DSS class 1 approval, in which case the annual certificate from the Merchant's QSA must be provided to Compaynet without delay;
- (xiii) immediately notify Compaynet if it becomes aware of any unauthorised use of all or any part of the Services;

Use of the Service

- (xiv) only access the Services as permitted by the Contract and shall not make any attempt to circumvent the system security of the Services or those of Compaynet at any time;

Regulations

- (xv) comply with all legislation, instructions or guidelines issued by any regulatory authority, relevant licensees and any other codes of practice that apply to the Merchant and that relate to the provision of the Merchant Information or in any way in relation to the Services (including without limitation any PCI Standards of which Compaynet inform the Merchant from time to time);
- (xvi) be responsible for the acts and omissions of all Third Parties and any other user of Services including any failure on their part to perform or observe these conditions.

Insurance

- (xvii) not hold Compaynet liable in respect of any Merchant Equipment.

Identification of the PCI compliant gateway entity

- (xviii) identify Compaynet as appropriate.

Indemnity

- 4.2 If Compaynet's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Merchant, its agents, subcontractors, consultants or employees, Compaynet shall not be liable for any costs, liabilities, expenses, charges or losses sustained or incurred by the Merchant arising directly or indirectly from such prevention or delay.
- 4.3 The Merchant shall on demand indemnify Compaynet in full, and shall keep Compaynet fully indemnified in respect of all reasonable costs, charges, losses or expenses (including legal costs and expenses) sustained or incurred by Compaynet (including, without limitation, those arising from injury to or death of any person) arising directly or indirectly from the Merchant's fraud, negligence, failure to perform or delay in the performance of any of its

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obligations under the Contract, subject to Compaynet confirming such costs, charges and losses to the Merchant in writing.

4.4 Compaynet shall on demand indemnify Merchant in full, and shall keep Merchant fully indemnified in respect of all reasonable costs, charges, losses or expenses (including legal costs and expenses) sustained or incurred by Merchant (including, without limitation, those arising from injury to or death of any person) arising directly or indirectly from Compaynet's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to Merchant confirming such costs, charges and losses to Compaynet in writing.

4.5 Neither party shall be liable to the other or any third party for any liquidated, indirect, consequential, special, speculative, lost profits, exemplary or incidental damages (including damages for loss of business profits, business interruption, loss of business information, and the like) arising out of this Agreement even if the party at fault has been advised of the possibility of such damages.

5. CHARGES AND PAYMENT

5.1 In consideration of the provision of the Services by Compaynet, the Merchant shall pay the Charges in accordance with the following conditions:

5.2 Compaynet will invoice the Merchant on the last Business Day of each calendar month in respect of the monthly amount due in respect of the Fixed Charge and Transaction Charges arising from the use of the Services by the Merchant in that calendar month.

5.2.1 Compaynet may at its discretion elect to receive payment of the Transaction Charges by way of direct deduction from the proceeds of Transactions held by the relevant acquiring banks.

5.3 The Merchant agrees for all Charges payable pursuant to the Contract to be paid to Compaynet by Direct Debit; or credit or debit card; or by direct bank transfer as determined by Compaynet and the Merchant shall provide Compaynet with a signed Mandate to effect such payment. The Charges shall be paid no later than 28 days from the date of the Compaynet invoice and payment shall be made without any set-off, withholding or counterclaim.

5.4 The Charges shall be invoiced and paid in EUR or pounds sterling. Compaynet will (where applicable) add value added tax (or any other applicable tax or charge in any country where the Services are provided) to the Compaynet invoices.

5.5 Compaynet reserves the right at any time to require that the Merchant pay all or any part of the Charges in advance of provision of all or any part of the Services or a deposit in advance or to provide a guarantee as security for payment of future invoices in respect of the Services to be provided if the Merchant gives legitimate cause for concern by defaulting on or being late in paying due Compaynet invoices.

5.6 The Charges do not include any call charges or service charges incurred by the Merchant in accessing the Services via the internet or via a Third Party internet service provider. The Merchant agrees to pay these charges directly to the relevant service provider on the terms and conditions of the relevant customer agreement with such service provider.

5.7 Compaynet may, at the end of each calendar year during the term of the Contract, restructure the Contract and revise the Charges (or any part thereof). If Compaynet does so, it will give the Merchant at least 180 days notice in writing. Any upward alteration to the Charges within the Initial Term of the Contract shall be an amount of not greater than the current UK Retail Price Index. If such increase is not acceptable to the Merchant, it may within 180 days of such notice being received or being deemed to have been received, notify Compaynet and the Contract shall continue on its then existing terms and conditions (including in relation to the Charges) unless terminated by Compaynet in accordance with condition 10.

- 5.8 Without prejudice to any other right or remedy that it may have, if the Merchant fails to pay Compaynet on the due date in accordance with the Contract, Compaynet may:
- (a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Lloyds TSB Bank Limited, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Merchant shall pay the interest immediately on demand. Compaynet may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
 - (b) suspend the provision of all or any Services until payment has been made in full in cleared funds.
- 5.9 Time for payment shall be of the essence of the Contract.
- 5.10 All sums payable to Compaynet under the Contract shall become due immediately on its termination for any reason whatsoever, notwithstanding any other provision. This condition 5.10 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 5.11 Compaynet may, without prejudice to any other rights it may have, set off any liability of the Merchant to Compaynet against any liability of Compaynet to the Merchant.
- 5.12 Nothing in this Agreement shall prevent Merchant from substituting Compaynet in whole or in part in respect of the Services supplied to one or more Third Parties.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 As between the Merchant and Compaynet, all Intellectual Property Rights in the Services shall be owned by Compaynet. Subject to condition 6.2, Compaynet licenses all such rights to the Merchant free of charge and on a non-exclusive, worldwide basis to such extent as is necessary for the sole purpose of enabling the Merchant to make reasonable use of the Services and resell the same to Third Parties. If Contract expires or terminates, this licence shall automatically terminate simultaneously at the time of such termination.
- 6.2 Compaynet will indemnify the Merchant if any Third Party makes or threatens to make a claim against the Merchant based on allegations that the Merchant's use of the Services infringes that Third Party's intellectual property rights, provided that the Merchant:
- (a) notifies Compaynet promptly in writing of any allegation of infringement;
 - (b) makes no admission relating to the infringement;
 - (c) allows Compaynet to conduct all negotiations and proceedings and gives Compaynet all reasonable assistance in doing so (Compaynet will pay the Merchant's reasonable expenses for such assistance); and
 - (d) allows Compaynet to modify the Services or any item provided as part of the Services, so as to avoid the infringement, provided that such modification does not materially affect the performance of the Services.
 - (e) Limits of liability stated at (8) in the Contract shall apply to clause 6.2
- 6.3 The indemnity in condition 6.2 does not apply to infringements caused by the use of the Services in conjunction with any other software or services that Compaynet has not supplied or to infringements caused by designs or specifications made by the Merchant or by any other Third Party.

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6.4 The Merchant understands and accepts that Compaynet will have no direct control over the way that the Merchant may use the Services and consequently any misuse of the Services by the Merchant may have serious implications for Compaynet in respect of its reputation and relationships with Third Party suppliers and business partners. The Merchant therefore agrees to indemnify Compaynet fully, on demand, from and against any claims or legal proceedings that are brought or threatened against Compaynet by a Third Party where:

- (a) the act and/or omissions of the Merchant have resulted in the Services' not being used in accordance with this Contract; or
- (b) use of the Services in conjunction with other software and special services not supplied by Compaynet by the Merchant has caused a Third Party's IPR to be infringed.

7. NON-DISCLOSURE, CONFIDENTIALITY AND COMPAYNET'S PROPERTY

- 7.1 The Merchant and Compaynet both agree that all commercial arrangements including the names of 3rd Party Customers, Fixed Charges, Services Charges, Transaction Charges, Special Conditions and Services within this agreement will not be disclosed to any third party and will remain strictly confidential.
- 7.2 Both the Merchant and Compaynet shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives that are of a confidential nature and have been disclosed to its employees, agents, consultants or subcontractors and any other confidential information concerning each Party's business or its products.
- 7.3 Either Party may disclose such information:
- (a) to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out its obligations under the Contract; and
 - (b) as may be required by law, court order or any governmental or regulatory authority.
- 7.4 Each Party shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this condition 7.
- 7.5 Each Party shall not use any such information for any purpose other than for the purposes of the Contract.
- 7.6 All materials, equipment and tools, drawings, specifications and data supplied by either Party shall, at all times, be and remain the exclusive property of the originating Party (or any relevant Third Party), but shall be held by the other Party in safe custody at its own risk and maintained and kept in good condition by the receiving Party until returned to the disclosing Party and shall not be disposed of or used other than in accordance with written instructions or authorisation of the other Party.

8. LIMITATION OF LIABILITY

- 8.1 With reference to condition 3.6, in the event that the Services are available for less than 99.5% during one or more incidents within a given calendar month (with the Compaynet system log measurements being the conclusive record of this availability), then the Merchant's sole remedy in this respect shall be a credit by Compaynet to the Merchant of that calendar month's total Charges provided that the Merchant shall notify Compaynet in writing of any claim under this condition 8.1 within 30 (thirty) days of the incident of the Services' being unavailable for the period being claimed. This will be the sole remedy of the Merchant and any implied Service warranty or other remedy is hereby expressly excluded. The liability of either Party in any one Term shall not exceed the amount of fees payable during

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that Term. Nothing in this clause 8.1 shall affect the payment obligations of the Customer under Clause 5 in relation to the Charges for the Services and under Clause 10 in the event of termination of the Agreement.

8.2 This condition 8 sets out the entire financial liability of each party (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the other party in respect of:

- (a) any breach of the Contract;
- (b) any use made by a party of the Services, or any part of them; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

8.3 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

8.4 Subject to condition 8.3:

- (a) Neither party shall be liable for the other's losses including:
 - (i) loss of profits; or
 - (ii) loss of business; or
 - (iii) depletion of goodwill and/or similar losses; or
 - (iv) loss of anticipated savings; or
 - (v) loss of goods; or
 - (vi) loss of contract; or
 - (vii) loss of use; or
 - (viii) loss, corruption or destruction of data or information; or
 - (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) Compaynet's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Contract in any 12 month period shall be limited to the price paid by the Merchant for the Services in that 12 month period.

8.5 The indemnities provided under this Agreement are subject to the following provisions:

- (a) the Indemnified Party makes no statement prejudicial to the Indemnifier;
- (b) such a claim is not caused by or contributed to by acts of the Indemnified Party;
- (c) the Indemnifier is promptly notified in writing of the details of the claim;

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- (d) the Indemnifier has sole control of the defence of such claim and all related statement negotiations;
- (e) the Indemnified Party gives the Indemnifier all reasonable assistance at the Indemnifier's expense in connection with it; and
- (f) the Indemnified Party takes all steps to mitigate the losses, costs, damages, liabilities, fees and expenses it may incur.

8.6 The foregoing limitations on the liability of Compaynet set out in this Section 8, shall not apply: (i) to the extent that Compaynet did not maintain standards of security in its systems that are both consistent with the PCI:DSS standard and industry norms and practices applicable to comparable services; or (ii) to breaches in the non-solicitation provisions hereof by Compaynet.

9 DATA PROTECTION

- 9.1 The Merchant acknowledges and agrees that details of the Merchant's name, address and payment record may be submitted to a credit reference agency and personal data will be processed by and on behalf of Compaynet in connection with the Services.
- 9.2 Each Party shall comply with its respective obligations under the DPA as specified in this condition 9. Neither Party shall do any act that puts the other Party in breach of its obligations set out in this condition 9 and nothing in this Contract shall be deemed to prevent any Party from taking the steps it reasonably deems necessary to comply with the DPA.
- 9.3 The Parties acknowledge that:
- (a) The Merchant alone shall determine the purposes for which and the manner in which personal data (as defined in the DPA) are, or are to be, processed in the performance of the Services;
 - (b) The Merchant shall be the data controller (as defined in the DPA) in respect of all personal data processed in the performance of the Services; and
 - (c) Compaynet shall be the data processor (as defined in the DPA) in respect of the personal data processed as required for performance of the Services.
- 9.4 The Merchant warrants and undertakes that any instructions given by it to Compaynet (whether specific or nonspecific) in respect of the processing of personal data shall at all times be in accordance with the requirements of the DPA and that compliance with such instructions by Compaynet in its provision of the Services shall not put the Merchant or Compaynet in breach of the DPA.
- 9.5 Any obligation on Compaynet or the Merchant under this condition 9 to do, or refrain from doing, any act or thing shall include an obligation on Compaynet or the Merchant respectively to procure that its employees, agents and sub-contractors (if any) also do, or refrain from doing, such act or thing.
- 9.6 In respect only of personal data that Compaynet processes on behalf of the Merchant in connection with the Services, Compaynet shall:
- (a) only process the personal data in accordance with instructions from the Merchant, which may be specific instructions or standing instructions of general application in relation to the Services, whether set out in this Contract or otherwise notified to Compaynet;

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- (b) unless otherwise agreed in writing, only process the personal data to the extent and in such manner as is necessary for the provision of the Services or as is required by law or any regulatory body or otherwise as appropriate including where necessary involving credit reference, fraud prevention and law enforcement agencies and other organisations in relation to preventing fraud and money laundering;
- (c) maintain sufficient technical and organisational measures to prevent unauthorised or unlawful processing of personal data and to prevent any loss, destruction or unauthorised disclosure of personal data having regard to the nature of the personal data to be protected;
- (d) promptly notify the Merchant if it receives a request from a data subject (as defined in the DPA) to have access to personal data or any other complaint or request relating to the Merchant's obligations under the DPA and provide full co-operation and assistance to the Merchant in relation to any such complaint or request (including, without limitation, by allowing data subjects to have access to their personal data); and
- (e) otherwise provide reasonable assistance to the Merchant as necessary to allow the Merchant to comply with the DPA.

9.7 The Merchant recognises that a breach of the DPA would severely impact the reputation and shareholder value of Compaynet and therefore agrees that it will on demand fully and effectively indemnify Compaynet and keep Compaynet fully indemnified against any loss, liability and costs incurred as a result of any breach of the DPA by the Merchant. Compaynet recognises that a breach of the DPA would severely impact the reputation and shareholder value of the Merchant and therefore agrees that it will on demand fully and effectively indemnify the Merchant and keep the Merchant fully indemnified against any loss, liability and costs incurred as a result of any breach of the DPA by Compaynet.

10. TERMINATION

- 10.1 Without prejudice to any other rights or remedies that the Parties may have, the Merchant may terminate the Contract without liability to Compaynet immediately on giving written notice to Compaynet if Compaynet commits a material breach of any of the terms of the Contract and, if such a breach is remediable, fails to remedy that breach within 30 days of Compaynet being notified in writing of the breach.
- 10.2 Without prejudice to any other rights or remedies that the Parties may have, Compaynet may immediately suspend the provision of the Services and/or terminate the Contract or any part of the Contract without liability to the Merchant immediately on giving written notice to the Merchant if:
- (a) the Merchant fails to pay any amount due under the Contract on the due date for payment and remains in default not less than (30) thirty days after being notified in writing to make such payment; or
 - (b) the Merchant commits a material breach of any of the terms of the Contract and, if such a breach is remediable, fails to remedy that breach within (30) thirty days of the Merchant being notified in writing of the breach; or
 - (c) the Merchant repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with its having the intention or ability to give effect to the terms of the Contract; or
 - (d) the Merchant notifies Compaynet that it does not accept any variation in the Charges pursuant to condition 5.7; or
 - (e) the Merchant suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

- (f) the Merchant commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Merchant with one or more other companies or the solvent reconstruction of the Merchant; or
- (g) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Merchant other than for the sole purpose of a scheme for a solvent amalgamation of the Merchant with one or more other companies or the solvent reconstruction of the Merchant; or
- (h) an application is made to Court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Merchant; or
- (i) a floating charge holder over the assets of the Merchant has become entitled to appoint or has appointed an administrative receiver; or
- (j) a person becomes entitled to appoint a receiver over the assets of the Merchant or a receiver is appointed over the assets of the Merchant; or
- (k) a creditor or encumbrancer of the Merchant attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (l) the Merchant suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (m) any event occurs, or proceeding is taken, with respect to the Merchant in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 10.2(e) to condition 10.2(l) (inclusive).

10.3 On termination of the Contract for any reason:

- (a) the Merchant shall immediately pay to Compaynet all of Compaynet's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted and any portion of the remaining Fixed Charge for that calendar year and that has not yet been invoiced, Compaynet may submit an invoice, which shall be payable immediately on receipt;
- (b) the Merchant shall promptly return all and any of Compaynet's Equipment. If the Merchant fails to do so, then Compaynet may enter the Merchant's premises and take possession of them and the Merchant grants to Compaynet an irrevocable licence for his purpose. Until they have been returned or repossessed, the Merchant shall be solely responsible for their safe keeping; and
- (c) the accrued rights and liabilities of the Parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.

10.4 On termination of the Contract (however arising), the following conditions shall survive and continue in full force and effect:

- (a) condition 6 (IPR);
- (b) condition 7 (Non-Disclosure, Confidentiality and Compaynet's Property);

- (c) condition 8 (Limitation of Liability);
- (d) condition 9 (Data Protection)
- (e) condition 10 (Termination); and
- (f) condition 21 (Governing Law and Jurisdiction).

10.5 On any termination of this Contract, at the discretion of Merchant, Compaynet shall perform hereunder for up to ninety (90) days following termination so as to allow time for Merchant to engage a substitute for Compaynet in respect of Third Parties and Compaynet shall provide reasonable assistance in the migration of Third Parties from the Service to a substitute for the Services from a third party selected by Merchant.

10.6 On any termination hereof, Merchant has the right, but not the obligation, to offer to assign to Compaynet its rights and obligations under Third Party Terms to Compaynet. If Merchant makes such offer and Compaynet accepts, then Compaynet shall perform thereunder and shall pay, as of such assignment, 50% of the difference between what Third Parties pay under such Third Party Terms to Compaynet and the pricing set out herein for the remainder of the terms of each of such Third Party Terms notwithstanding termination of this Agreement.

11. FORCE MAJEURE

Neither party shall be liable to the other under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes; failure of a utility service or transport network; failure of or interruption to the internet or any other communication network; act of God and natural disaster; war, riot, civil commotion, malicious damage; compliance with any law or governmental order, rule, regulation or direction; accident; breakdown of plant or machinery; fire, flood, storm; or default of suppliers or subcontractors.

12. NON-SOLICITATION

12.1 Each Party agrees that they shall not, without the prior written consent of the other Party, at any time from the date of the Contract to the expiry of 12 months after the last date of supply of the Services or termination of the Contract, solicit or entice away from the other or employ (or attempt to employ) any person who is, or has been, directly engaged as an employee or as a consultant or subcontractor who has worked on Compaynet products if the Merchant were employing them for working on competing products of the other Party or *vice versa*.

12.2 In the event that one Party gives consent in accordance with condition 12.1 above, the requesting Party agrees to pay the other Party, on demand, an amount that is equal to 30% of the relevant gross annual salary (or average annual income arising from working for the Merchant) of each person solicited or enticed in circumstances set out in condition 12.1.

12.3 During the term of this Agreement and permanently thereafter, none of Compaynet or any of its affiliates shall, directly or indirectly, solicit any Third Party, merchant or other client of Merchant to terminate their relationship with Merchant or its acquiring bank or enter into a new agreement with any party other than Merchant. This provision shall not be applicable after the term of this agreement in isolated cases where a Third Party, merchant or other client of Merchant independently and of their own initiative, and without the direct or indirect solicitation of Compaynet, determine to terminate their respective agreement with the Merchant in order to enter into a new agreement with any party other than the Merchant.

13. VARIATION AND SCOPE CHANGE

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- 13.1 Compaynet may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements or PCI standard guidance, provided that such changes do not materially affect the nature, scope of, or the Charges for the Services. If Compaynet requests a change to the scope of the Services for any other reason, the Merchant shall not unreasonably withhold or delay consent to it.
- 13.2 Subject to conditions 5.7, 13.1 and 13.4, no variation of the Contract or these conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the Parties.
- 13.3 The Merchant may at any time during the term request a change in the Services, a change in the MPTV or the addition of new Services (a "Change Request") by notifying Compaynet in writing of its requirements.
- 13.4 Compaynet shall give due consideration to any Change Request from the Merchant and shall, within 5 Business Days of receiving a Change Request from the Merchant:
- (a) confirm its acceptance of the Change Request, without any further variation to the terms of this Contract, in which case the Parties shall execute a variation to this Contract in accordance with condition 13 as soon as reasonably practicable and Compaynet shall implement the Change Request accordingly; or
 - (b) provide a written proposal for accepting the Change Request, subject to any variation that it reasonable considers necessary to the Services, or the Charges, including any new Services; or
 - (c) if Compaynet considers it is not reasonably practicable for any reason whatsoever, with or without any such variation, provide the Merchant with notification of this fact.
- 13.5 Any proposal provided by Compaynet under condition 13.4(b) shall be a fair and reasonable quotation for the Change Request.
- 13.6 The Merchant shall give due consideration to Compaynet's proposal under condition 13.4(b) and shall within 5 Business Days after receipt of the proposal either give Compaynet a written notice accepting the proposal (subject to or without further negotiation) or rejecting the proposal, in which case the Parties shall as soon as reasonably practicable execute a variation to this Contract in accordance with condition 13.2 and Compaynet shall implement the agreed variation.

14. WAIVER

- 14.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a Party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.
- 14.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

15. SEVERANCE

- 15.1 If any provision of the Contract (or part of any provision) is found by any Court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract and the validity and enforceability of the other provisions of the Contract shall not be affected.

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15.2 If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, the Parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable and, to the greatest extent possible, achieves the Parties' original commercial intention.

16. ENTIRE AGREEMENT

16.1 The Contract constitutes the whole agreement between the Parties and supersedes all previous agreements between the Parties relating to its subject matter.

16.2 Subject to condition 16.3, each Party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract), other than as expressly provided in the Contract.

16.3 Nothing in this condition 16 shall limit or exclude the liability of either Party for fraud.

17. ASSIGNMENT

17.1 Compaynet and Merchant shall have the right to assign, transfer, charge, mortgage, subcontract, or deal in any other manner with all or any of its rights and obligations under the Contract with the agreement of the other Party which will not be unreasonably withheld.

17.2 The Merchant having rights under the Contract is acting on its own behalf and not for the benefit of another person.

18. NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the Parties, nor constitute any Party the agent of another Party for any purpose. No Party shall have authority to act as agent for, or to bind, the other Party in any way.

19. RIGHTS OF THIRD PARTIES

A person who is not a Party to the Contract shall not have any rights under or in connection with it pursuant to the Contract (Rights of Third Parties) Act 1999 but nothing in the Contract shall affect any right or remedy of a Third Party that exists or is available otherwise than as a result of that Act.

20. NOTICES

20.1 Any notice required to be given under the Contract and its Schedules shall be in writing and shall include delivery of the communication to the address listed below in this subsection either in person; or by pre-paid first class post; or by recorded delivery; or by commercial courier; or by e-mail from the email address listed below in this subsection to the email address of the other party listed below in this subsection.

Addresses and numbers to be used for delivery are as follows:

Merchant

As provided in the Order Form

Compaynet Ltd

1st Floor, Sackville House, 143-149 Fenchurch Street, London, England, EC3M 6BN email: administration@compaynet.com

20.2 Any notice shall be deemed to have been duly received if delivered personally, when left at the address as specified on the Order Form or as otherwise notified to the other Party in writing; or, if sent by pre-paid first-class post or

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recorded delivery, at 9.00 am on the second Business Day after posting; or, if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email from the email address listed above in this subsection to the email address of the other party listed below in this subsection.

20.3 This condition 20 shall not apply to the service of any documents in any proceedings or other documents in any legal action.

21. GOVERNING LAW AND JURISDICTION

21.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non contractual disputes or claims), shall be governed by and construed in accordance with the law of England and Wales.

21.2 The Parties irrevocably agree that the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).