



Merchant service agreement

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merchantpay.com

Merchant services agreement

1. Getting started

- 1.1. We will use our best efforts in providing you with payment and auxiliary services at any time you may need. In return we are expecting that you will act in good faith and in accordance with all applicable laws when using our Services.
- 1.2. The legal relationship between you and us is governed by the terms in this Merchant Services Agreement (“MSA”), its Schedules and as added and amended from time to time in writing, together with the terms set out in other documents which we give you, such as your Merchant Application Form, letters relating to your Merchant Account, other documents setting out our fees, interest rates and charges and those relating to specific services (together, the “Agreement”).
- 1.3. Please read carefully all of these legally binding documents and keep a copy or download a copy of them for your records and future reference.
- 1.4. You can ask us, at any time, for a copy of any or all of these documents.
- 1.5. If the terms in this document are inconsistent with or contradicting any term in another document from the Agreement, the term in that document will apply.
- 1.6. Words which begin with a capital letter have a specific meaning, which is explained in the “Definitions and interpretation” section. In addition, in the Agreement: (a) “Merchant”, “you” and “your” mean any legal entity entering the Agreement with us and, where applicable, their duly authorised representatives, legal personal representatives and successors; (b) “emerchantpay”, “we”, “us” and “our” mean the company which provides the Service to you; (c) each party may be individually referred to herein as a “Party” or collectively as the “Parties”.
- 1.7. We can change the provisions of the Agreement from time to time for various reasons we have set out. We can also suspend the provision of the Services by giving you advance notice, or, in certain specific circumstances provided below, without giving you a notice.

2. Definitions and interpretation

- 2.1. The following terms when used in the Agreement have the following meaning:

Account Data means any data which includes

(1) **Cardholder Data** (primary account number (PAN); cardholder name; service code; expiration date) and

(2) **Sensitive Authentication Data** (including full track data from the magnetic stripe, equivalent data on the chip, or elsewhere; CAV2/CVC2/CVV2/CID4 - the three or four-digit value printed on the front or back of a payment card; PIN/PIN Block - personal identification number entered by cardholder during a card-present transaction, and/or encrypted PIN block present within the transaction message);

Action means any claim, demand, lawsuit or other action by a party that may lead to occurrence of Financial Liability;

Alternative Payment Method (APM) means a payment method (other than Cards) specified in Schedule, or as otherwise approved by us in writing from time to time;

Card Scheme means card payment systems, such as VISA, MasterCard, or others;

Data Account means an electronic information account in our gateway(s) that contains data related to your Transactions;

Data Controller means the person, public authority which, alone or jointly with others, determines the purposes and means of the processing of personal data;

Data Processor means the person that processes personal data on behalf of the controller;

Director means person who is duly authorised to direct, control and coordinate the Merchant's activities;

Effective Date means the date on which the Agreement enters into force;

Financial Liabilities mean any claims, losses, liabilities, penalties, costs, expenses, charges or damages (including reasonable legal fees);

Merchant means a legal entity that conducts sale of Product/Service electronically and receive payments via selected Payment Methods based on Transactions that occur at its e-commerce web site;

Merchant Account means an account held by PSP in your name which is used for the execution of payment Transactions;

Party each party under the Agreement – emerchantpay and the Merchant – may be individually referred as a "Party"

Payment Account means an account held by Bank or credit institution which is used for the execution of payment Transactions in your favour;

Product/Service means any product or service offered by you to your customers and which is ordered, purchased, leased, or otherwise provided to a customer pursuant to a Transaction;

Regulatory Requirements means any law, statute, regulation, order, judgement, decision, recommendation, rule, policy or guideline passed or issued by parliament, government or any competent court;

Reserve means an amount which is determined by us (in our sole discretion) for the purpose of securing any claims that we might have against you;

Security means any form of security requested by us (in our sole discretion) from you: reserve, guarantee other such security;

Service Provider is an umbrella term that encompasses Acquirers and Alternative Payment Methods Provider;

Service(s) means any service provided by us directly or provided by Service Provider(s) and/or FinTech company/ies to which we provide you an access;

Standards is an umbrella term that encompasses (1) all applicable rules, regulations and operating guidelines issued by the Card Schemes or any APM Provider as updated from time to time; and (2) the Payment Card Industry Data Security Standard, Payment Application Data Security Standard and the PIN Transaction Security Standard as updated from time to time;

Transaction means any financial transaction in accordance with the terms of the Agreement and in relation to which we provide your with Services;

Website means the website operated by or on behalf of you (as amended from time to time) through which its customers are able to make Transactions.

- 2.2. Headings are for convenience only and shall not affect the construction or interpretation of the Agreement.
- 2.3. Unless the contrary intention appears, words in the singular include the plural and vice versa; words importing the masculine gender include the feminine and neuter and vice versa.
- 2.4. Any phrase introduced by the term "included", "including", "in particular" or any similar expression will be construed as illustrative only and will not limit the sense of the words preceding that term.

3. Services

3.1. General provision

- 3.1.1. Subject to the terms and conditions of the Agreement we agree to provide you with services to manage your access to and receipt of payments via selected Payment Methods (“Services”), namely:
- (a) unbiased and unrestricted advices regarding payment methods that will suit best your needs;
 - (b) application processing;
 - (c) liaisons with Service Provider(s);
 - (d) risk management;
 - (e) settlement services;
 - (f) gateway service;
 - (g) trainings and educational support.
- 3.1.2. We will provide the Services set out in the Agreement and we will not be obliged to provide any other services, unless expressly agreed between you and us in writing. We are not responsible for the provision of any advices, such as on legal, accounting, or taxation matters, or services not specified in the Agreement.
- 3.1.3. We will provide our Services with reasonable skill, care and diligence in compliance with Regulatory Requirements and Standards, following good business practices and to your reasonable satisfaction.
- 3.1.4. Your relationship with Service Provider(s) and the use of selected Payment Method in some cases will be governed by separate agreement, which might be bilateral (signed by and between you and Service Provider) or trilateral (signed by and between you, Service Provider and us).
- 3.1.5. Some of the services offered by Service Provider(s) will only be available to certain types of Merchants and some are only available in certain jurisdictions.
- 3.1.6. You acknowledge and agree that in all cases where you are in direct agreement with Service Provider:
- (a) we will operate as an intermediary between you and Service Provider(s). We make no representations or warranties and do not ensure the quality or safety of the service(s) provided by Service Provider(s) or Payment Method(s);
 - (b) any dispute regarding any Service Provider(s), service(s) or Payment Method(s) is between you and the respective Service Provider. We will not be a party to any resulting disputes including, but not limited to, disputes over performance and liability issues relating to the use of Service Provider(s) service or Payment Method(s). However, we will provide you with our reasonable cooperation in the settlement of such disputes.

3.2. Application processing

- 3.2.1. In order to enter into relationship with you and subsequently to present your application to Service Provider(s), we will carry out due diligence measures, which include identification and verification of your identity (Know Your Customer procedure) on the basis of data, information and documents.
- 3.2.2. With the due diligence process, we aim to verify that your business is a bona fide business; you comply with Regulatory Requirements (AML/CTF laws included) and Standards; have sufficient safeguards in place to protect Account Data from unauthorised disclosure or use; that each Transaction you submit will reflect bona fide business between you and your customers.
- 3.2.3. We will collect documents verifying your:
- (a) company details (full company name, company registry and registered number, registered office, business address of each of its offices, business function);

- (b) legal representatives (company executive officers - directors, managers, authorised signatories or equivalent);
 - (c) ownership structure and beneficial owners;
 - (d) domain ownership;
 - (e) authorisations and licences.
- 3.2.4. We will provide you with certain requirements in respect of content, issuer, validity period, etc. of the documents that we will request you to provide us with.
- 3.2.5. We may collect data and/or information about you through automatic means, public registers, social media, data vendors or other data providers.
- 3.2.6. Based on the data, information and documents collected, we will fill in and present your application to our Service Provider partners in order business relationship between you and one or more of them to be established.
- 3.2.7. We will use reasonable endeavours to present your application in the best way possible, and we will neither be in breach of this Agreement nor liable for any failure or delay in performance of our obligations under this Agreement in case respective Service Provider(s) decides to reject your application.
- 3.2.8. If your application is approved, you will enter into direct agreement with the respective Service Provider. An agreement is required in all cases where the Service Provider is an acquirer and in some cases where the Service Provider is APM provider.

3.3. Liaisons with Service Provider(s)

- 3.3.1. We will serve as a liaison between you and the respective Service Provider, including we will:
- (a) maintain effective working relationship between you and Service Provider(s);
 - (b) serve as your primary point of contact with Service Provider(s), ensuring that our team will be helpful courteous and professional at all times;
 - (c) support you as a Service Provider services user by replying to your telephone calls, email queries and by providing you with information, advice and guidance;
 - (d) serve as intermediary in exchanging information between you and Service Provider(s);
 - (e) negotiate on your behalf the terms of your agreement with Service Provider, including the applicable fees with regard to Service Provider services you will use.
- 3.3.2. You will be solely responsible that all documents and information intended to be delivered on your behalf to Service Provider(s) are accurate and reliable.

3.4. Risk management

- 3.4.1. We will support you on an ongoing basis to address the risks, to which you might be exposed, related to receipt of payments via selected Payment Methods, including by supplying you with available fraud scrubbing tools (such as, but not limited to ThreatMetrix, VbV/MCSC, Ethoca Alerts) and supporting the implementation of security and fraud prevention methods.
- 3.4.2. When offering Payment Methods, you will be required to comply with certain rules set in the Standards regarding:
- (a) **you as a merchant**, including but not limited to, whether you conduct bona fide business operations, whether you refrain from prohibited practices, whether you use payment methods marks, etc.;
 - (b) **your relationships with customers** and third parties, including but not limited to, adoption of policies and procedures, provision of information, honour your obligations to consumers, etc.
 - (c) **use of payment methods**, including but not limited to, obligations for acceptance, with regard to Transactions, etc.

- 3.4.3. We will conduct monitoring of your business to ensure its ongoing compliance with the Standards and to deter any possible fraudulent and other wrongful activity.
- 3.4.4. If required by Service Provider(s), we may conduct one or more regular or periodic audits of your recruitment, underwriting processes and marketing materials for the purpose of determining compliance with the Standards.

3.5. Settlement services

- 3.5.1. In order to place, transfer or withdraw funds related to the sale of your Product/Service you need an account held in your name (“Merchant Account”).
- 3.5.2. As a result of the used Payment Method(s), in your Merchant Account you will:
 - (a) receive funds as a result of single payments, recurring payments, instalment payments, other payments that are due to you (such as retro-charges), collectively referred to as “Pay-ins Transactions”; and from there
 - (b) funds will be withdrawn as a result of chargebacks, refunds, fees, fines imposed by Card Scheme(s) or other liabilities that are due by you, collectively referred to as “Payouts Transactions”.

The positive balance between your Pay-ins Transactions and your Pay-outs Transactions will be settled to you.

- 3.5.3. Your Merchant Account will be opened with:
 - (a) respective Service Provider - when direct settlement between you and the Service Provider is agreed; or
 - (b) us - when we settle to you on behalf of Service Provider.
 - 3.5.4. The positive balance aggregated in your Merchant account opened with us will be transferred to your Bank account (or Payment account with credit institution). You need to provide us with your Bank (Payment) account designated by the following details: (1) Name of the credit institution, (2) Address of the credit institution, (3) SWIFT/Routing Number, (4) IBAN/Account Number, (5) Beneficiary, (6) Currency.
 - 3.5.5. If you change your Bank (Payment) account:
 - (a) by changing the credit institution or its branch - you must notify us in writing immediately and must forthwith irrevocably authorise payments to be transferred to the new payment account;
 - (b) with new one, that is held by another entity - then our pre-approval is required.
 - 3.5.6. The Bank (Payment) account must be held on your name. Where you are prevented from opening an account on your own name, we may agree but we are not obliged to settle to an account held by third party. In all cases when we approve settlement to third party account, we will do so after performing customer due diligence to the account holder.
 - 3.5.7. When we settle to you on behalf of Service Provider, we will settle with you in a timely manner, according to the agreed settlement cycle provided that the amounts owed to you by the Service Provider are received in our bank account(s).
 - 3.5.8. The settlement cycle depends on selected Payment Method(s) and may be daily, weekly or monthly with different days in arrears.
 - 3.5.9. We may defer any payment if the amount due is less than the minimum payment threshold, if any. The payment will be deferred until the due amount reaches that threshold. Where you have more than one Merchant Account with us, the account balances will not be aggregated to reach the payment threshold.
 - 3.5.10. We, as well, may defer any payment due to the reason listed in art. 3.8.1. and art. 3.8.2.
- ### 3.6. Gateway Services
- 3.6.1. If expressly agreed in writing, we will provide you with software (Payment Gateway) and connectivity that will allow processing of your payments.

- 3.6.2. In order to accept payments with Payment Method(s) you need to have a **payment page** that is hosted by you, by third party on your behalf or by us.
- 3.6.3. When use of your own payment page is agreed, you will be solely responsible for the safety and security of the stored, processed and transmitted data, including Account Data. To verify your compliance with PCI-DSS we will require to be provided with necessary documents.
- 3.6.4. In order to provide you with Gateway Services we are in agreements with FinTech companies, owners of the servers and software.
- 3.6.5. The provided Payment Gateway(s) is a secure, hosted software as a Service (SaaS) application that interfaces between you and Service Provider(s) for the purposes of managing and processing Transactions that occur at your e-commerce web site in compliance with the Regulatory Requirements and the Standards, including PCI-DSS.
- 3.6.6. We are committed to maintain proper security of Cardholder Data that we will obtain from you. We will be responsible for the security of Cardholder Data that we will possess or otherwise might store, process or transmit on your behalf or to the extent that we could impact the security of your Cardholder Data environment.
- 3.6.7. We will provide you with Gateway Services in accordance with the terms set out in this document and taking into consideration our agreement with the respective FinTech company and Payment gateway API documentation, as amended from time to time.
- 3.6.8. You acknowledge and accept that occasionally, in providing Gateway Service, we may be required to:
- (a) change the technical specification of the Gateway Service for operational reasons, however, we will ensure that any change to the technical specification does not materially reduce or detrimentally impact the performance of the Gateway Service;
 - (b) give you instructions which we reasonably believe are necessary for reasons of health, safety or the quality of any Gateway Service provided and you will comply with such instructions; and
 - (c) suspend the Gateway Service for operational reasons such as repair, maintenance or improvement or because of an emergency, in which case we will give you as much on-line, written or oral notice as possible and we will ensure that the Gateway Service is restored as soon as possible following suspension.
- 3.6.9. You will be responsible for:
- (a) ensuring that you have system administrator(s) who is/are familiar with the use of the Gateway Service and can act as the first point of contact;
 - (b) informing us of any changes to your system administrator's contact details without undue delay;
 - (c) providing the telecommunications and network services and correctly configured hardware and other equipment needed for the integration;
 - (d) the configuration and management of access to the Gateway Services; and
 - (e) obtaining our prior written consent to any integration of the Gateway Service into an application which you may wish to undertake; and
 - (f) any work required for any integration approved by us.
- 3.6.10. Our payment gateway(s) will be integrated with the gateways of the respective Service Provider(s).
- 3.6.11. The provision of Gateway Services does not require and when we provide Gateway Services we will not enter into possession of any funds – proceeds of processed Transactions.
- 3.6.12. We will provide you with **Data Account** with access to the Gateway you are integrated with enabling:
- (a) transaction monitoring;

(b) transaction reports downloading;

(c) other functionalities upon agreement.

3.6.13. You are responsible for protecting your Data Account and for maintaining adequate security and control of your access credentials – username and password.

3.7. Trainings and educational support

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

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

3.8. Suspension of Services

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

(a) **Financial Liabilities** - pending full payment of any outstanding Financial Liabilities by you;

(b) **Material Changes** - any changes to

- your business, including any change of control or constitution;
- business model;
- your Product/Service;
- your Bank (Payment) account, including when it ceases to be acceptable to the credit institutions we work with;
- Regulatory Requirements or Standards to which you are subject, including but not limited to, changes to or the revocation of the licences required for your business;
- your credit and/or financial standing, including your insolvency, liquidation, winding up, bankruptcy, administration, receivership or dissolution, or where we reasonably consider that there is a threat of the same in relation to you; or
- where anything occurs which in our opinion suggests that you will be unable to provide the Products/Services and/or otherwise fulfil the contracts that you have with your customers or you have with us, such as significant volume drop or cease of processing;

(c) **Breach** of the Agreement or any security requirements;

(d) **Non-compliance** with Regulatory Requirements or Standards, including without limitation:

- in relation to money laundering, terrorism financing, fraud or other illegal activities;
- excessive levels of chargebacks or refunds;
- reasonable suspicion of non-compliance;

3.8.2. We may suspend or limit the Services at any time and at our sole discretion for security reasons – when we believe it is necessary or desirable to protect the security of your Merchant Account or your Data Account.

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

(a) request by Service Provider(s), that you are in an agreement with;

(b) order from competent authority or court;

(c) under relevant and applicable Regulatory Requirements or Standards; or due to

(d) actions or omissions of third parties – Service Provider(s) or FinTech companies (e.g. delayed payment from Service Provider on which behalf we need to settle to you).

3.8.4. We will make reasonable efforts to inform you of any such suspension in advance, or if this is not practicable, immediately afterwards and we will give you the reasons for such suspension unless prohibited by Regulatory Requirements.

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

4. Eligibility

4.1. General provisions

4.1.1. You will only be eligible to use the Services subject to your status and after you have complied with any relevant eligibility criteria. Details of any applicable eligibility criteria may be varied by us or by selected Service Provider.

4.1.2. If at any point, you fail to meet any eligibility criteria, we may terminate the Agreement, stop providing the relevant Service or move you to an alternative service or payment method for which you do meet the eligibility criteria.

4.2. Merchant profile

4.2.1. Our services are intended for legal entities that conduct sale of Product/Service electronically and receive payments via selected Payment Methods based on Transactions that occur at its e-commerce web site (“Merchant”).

4.2.2. Our services are suitable for Merchants that receive orders for purchase of their Product/Service via website, e-mail or phone.

4.2.3. The Agreement will apply to Merchant of any size. However, you represent and warrant that you are not a consumer or micro-enterprise, meaning that you employ more than 10 persons and your annual turnover and/or annual balance sheet total exceeds EUR 2 million. If you are organised as a charity, you represent and warrant that your annual income is more than GBP 1 million.

4.2.4. We do not offer services to Merchants engaged in sale of Product/Service that according to the Regulatory Requirements and Standards are considered illegal or brand-damaging.

4.3. Location

4.3.1. In order to use our Services, you must be incorporated and you must have registered address (i.g. to be located) within the area required by the selected Service Provider.

4.3.2. As a general rule, we will require you to be located in EU Member state. When determining your location, we will consider, among other factors, where you:

- (a) hold a business licence or you are otherwise authorised to conduct business;
- (b) assess and pay respective taxes on the Transaction activity;
- (c) maintain an office or other physical presence at which your employees or agents conduct business activity directly related to providing the cardholder with Product/Service and where you can receive business-related mail;

4.3.3. You are required to have and maintain at least one director who is domiciled in the place of your incorporation.

4.4. Authorised persons

4.4.1. We will assume that your company`s registered directors are authorised persons that may give any instructions for you and may otherwise enter into Transactions with us for you, including:

- (a) entering into agreements with us for the provision of further Services which they consider to be in your interests;
- (b) giving us instructions in connection with Services; and
- (c) changing the authorised persons at any time by giving us written notice.

- 4.4.2. You may select other persons to act for you as authorised persons.
- 4.4.3. We will act on instructions given by authorised persons and will disclose information about your use of our Services to them.
- 4.4.4. You alone will be responsible for (a) instructions given by a person you have told us is authorised to give instructions for you, and (b) the manner in which an authorised person uses Services.
- 4.4.5. We can continue to act on instructions from an authorised person until we receive written notice from you that they are no longer authorised.
- 4.4.6. By signing this document, your signatory warrants that s/he is duly authorised to sign on your behalf as your authorised person.

5. Payment methods

- 5.1. We will facilitate your access to and acceptance of different Payment Methods provided by Service Provider(s), including, but not limited to:
 - (a) cards – credit, debit and prepaid - Visa Cards and MasterCard Cards;
 - (b) eWallets;
 - (c) direct debits;
 - (d) Online and/or offline bank transfers;
 - (e) Online Banking ePayments (OBeP);
 - (f) Interactive Voice Response (IVR) payments and SMS (Call payments from landline, mobile networks, and SMS).
- 5.2. Each Payment Method is governed by its own terms and conditions and you shall read carefully and acknowledge the information we will provide you in this regard.

6. Financial conditions

6.1. Fees

- 6.1.1. As consideration for the Services provided, you agree to pay merchantpay the applicable Fees set forth in the Schedule, or as otherwise provided by merchantpay along with this Agreement, or, if applicable, upon receipt of your invoice from merchantpay.
- 6.1.2. Fees are non-refundable unless otherwise explicitly agreed.
- 6.1.3. Fees are quoted exclusive of Value Added Tax (VAT). We will charge you VAT or comparable sales taxes where Regulatory Requirements require us to do so. Where required, we will provide information on the net amount, the amount of tax and the tax rate applied.
- 6.1.4. Where possible, all Fees due shall be deducted from the Merchant Account balance.
- 6.1.5. Where we are unable to deduct the Fees due, we will issue an invoice for the amount owed. Invoices are payable within **seven (7) days** of the date of the invoice.
- 6.1.6. All fees owed by Merchant to third parties, are Merchant's sole responsibility and are not covered by this Agreement.
- 6.1.7. If you do not pay us amounts when due, we may charge default interest from the due date for payment at an annual rate of 8% above the base lending rate of National Westminster Bank Plc from time to time accruing at a daily rate until payment is made in full.

6.2. Security

6.2.1. General provisions

- 6.2.1.1. We may establish a Security in relation to you and your processing for the purpose of providing a source of funds to pay us for any and all, actual and reasonably anticipated Financial Liabilities. Such Security will be agreed in a Schedule.
- 6.2.1.2. The Security may include:
- (a) the establishment of a Reserve;
 - (b) provision of guarantee in our favour;
 - (c) other security agreed between you and us.
- 6.2.1.3. When determining the Security and its amount we may take into account:
- (a) your overall financial standing;
 - (b) our risk assessment - considering risks associated with your business - strategic risks (including Material Changes, geographical risk factors), financial risks, marketing and sales risks (including product, service, Transaction or delivery channel risk factors), operational risks, IT, compliance and legal risks.
- 6.2.1.4. You will undertake, at your own expense, any further action (including executing any necessary documents and registering any form of document) necessary to establish such Security as is reasonably required by us.
- 6.2.1.5. The Security will remain in place regardless of any termination of the Agreement for as long as there are residual or contingent Financial Liabilities.
- 6.2.1.6. We will have the right, at any time without notice, to offset any Financial Liabilities from the available Security.
- 6.2.1.7. Where you incur a negative balance, meaning that your Financial Liabilities exceed the Security, you will be obliged to make a payment to us **immediately** upon our request or demand for such payment. Failure to do so is a breach of the Agreement.
- 6.2.1.8. We may at any time send reminders or take debt collection measures including, but not limited to, mandating a debt collecting agency or solicitors to pursue the claim in court.
- 6.2.1.9. We will charge you the expenses reasonably incurred in connection with any debt collection or enforcement efforts.

6.2.2. Reserve

- 6.2.2.1. The amount of the Reserve will be determined either as:
- (a) **Up-Front Reserve** – as an absolute amount; or
 - (b) **Rolling Reserve** – as a percentage of proceeds of Transactions, net of any amounts due to us.
- 6.2.2.2. The Reserve will be determined by us from time to time at our sole discretion.
- 6.2.2.3. Where a Reserve has not been established at the Effective Date, we will notify you of the imposition of a Reserve, its method of calculation, its amount, as well as any increase or reduction of the Reserve without undue delay in writing at any time during the term of the Agreement.

6.2.3. Guarantee

- 6.2.3.1. We may require the Security to be in the form of a guarantee in which case you will, upon request, procure such guarantee in our favour.
- 6.2.3.2. The guarantee must be acceptable for us with regard to its issuer (your owner(s) or affiliate(s), bank or other credit institution), form and amount.

6.3. Currency and currency conversion

- 6.3.1. All due payments under the Agreement will be executed in the currency agreed between the Parties.
- 6.3.2. In case of currency conversion, all charges as well as the exchange rate to be used for converting the Transactions will be disclosed before the Transaction is initiated.
- 6.4. Information on additional charges or reductions

We will inform you of any charge requested or reduction offered by us, Service Provider(s) or third party, as the case may be, before you initiate Transaction.

6.5. Costs

Except as expressly stated in the Agreement, each party shall be solely responsible for the costs and expenses for the performance of its obligations.

6.6. Taxes

- 6.6.1. You have sole responsibility for the management of your tax and legal affairs, including but not limited to, determine which, if any, taxes apply to you, making any applicable filings and payments and complying with any applicable laws and regulations.
- 6.6.2. We are not obliged to determine whether taxes apply, and we are not responsible to collect, report, or remit any taxes arising from any Transaction.

7. Our liability

- 7.1. We are liable to you for any Losses directly caused by our gross negligence, wilful default or fraud.
- 7.2. In no event our liability (including liability for negligence) arising out of the Agreement will exceed the fees you paid to us hereunder during the six (6) month period immediately preceding the event which gave rise to the claim for damages.
- 7.3. Nothing in the Agreement will exclude or limit any duty or liability that:
 - (a) we may have to you under Regulatory Requirements; or
 - (b) Regulatory Requirements does not allow to be excluded or limited.
- 7.4. We are not liable (including for negligence) to you:
 - (a) for any Losses arising out of any action or omission of Service Provider(s) or FinTech companies; or
 - (b) for any Losses due to settlement delays caused by third parties; or
 - (c) for any Losses arising out of any cause beyond our reasonable control and the effect of which is beyond our reasonable control to avoid; or for
 - (d) any Losses that we could not reasonably have anticipated when you gave us an instruction; or
 - (e) if a hardware, software or internet connection is not functioning properly; or if
 - (f) the information provided to Service Provider(s) contain incorrect or improperly formatted information; or
 - (g) loss of business, of goodwill, of opportunity or of profit; or
 - (h) costs of procurement of substitute goods or services, or
 - (i) any indirect, incidental, consequential, punitive or special damages arising out of this Agreement.

- 7.5. We are not liable to you if we fail to take any action which in our opinion would breach any Regulatory Requirement or Standards. To the extent there is any conflict between the Agreement and our duties under any Regulatory Requirement or Standards, we will act in a way we reasonably consider necessary to comply with such Regulatory Requirement or Standards. We will not be treated as having breached the Agreement as a result.
- 7.6. In addition to this clause, depending on which Services you choose, different liability provisions may apply for particular services, as set out in the terms for those services.

8. Indemnification

8.1. General provisions

- 8.1.1. The parties agree, that when due, the **indemnity** will cover any and all Financial Liabilities incurred by reason of any Action by a third party (party other than the Indemnified Party).
- 8.1.2. The party that due the indemnification will be referred to as **Indemnifying Party** and the party (its employees and directors included) that has the right to receive the indemnification will be referred to as **Indemnified Party**.
- 8.1.3. Each party undertakes to:
- (a) use reasonable efforts to notify the Indemnifying Party of such Action by a third party as early as possible and in writing;
 - (b) use reasonable efforts to mitigate the loss or amount of the Financial Liabilities;
 - (c) refrain from admitting any liability or settling any claim without the prior written consent of the Indemnifying Party;
 - (d) provide, at its own cost, reasonable cooperation in the defence or settlement of such claim.

8.2. Special provisions

- 8.2.1. Each party will indemnify and hold harmless the other party for and against any and all Financial Liabilities incurred by reason of any Action by a third party (other than an employee or director of the Indemnified Party) resulting from:
- (a) an actual or alleged infringement of any third party Intellectual Property rights in connection with materials provided by the Indemnifying Party;
 - (b) any breach of representations and warranties provided by you under the Agreement.
- 8.2.2. You will indemnify us and hold us harmless against any and all Financial Liabilities incurred by reason of any Action against us by Service Provider(s) resulting from your use of their services.

9. Provision of information

- 9.1. In order to provide our Services we will request data, information and documents (“**Information**”). You agree to provide us, upon reasonable request and at your expense, with accurate, precise and complete Information, which will be used to satisfy our and the Service Provider(s) due diligence and anti-money laundering requirements.
- 9.2. You explicitly authorise us to provide on your behalf Information requested by the Service Provider(s).
- 9.3. You must ensure you keep us updated with any changes in your status or any Information provided. Some Services may no longer be available if your status changes.

10. Data protection

- 10.1. Each party, when acting as data processor (“**Data Processor**”), shall process personal data in accordance with Regulatory Requirements.
- 10.2. Where one party acts as the Data Processor of personal data processed by the other party as data controller (“**Data Controller**”), the Data Processor shall at all times follow the Data Controller’s reasonable instructions with regards to the personal data processed.

11. Representations and warranties

11.1. Mutual representations and warranties

11.1.1. Each party represents and warrants to the other party that:

- (a) it has and will maintain all required rights, powers and authorisations to enter into the Agreement and to fulfil its obligations;
- (b) it will perform its obligations with reasonable skill and care;
- (c) it has in place and will maintain adequate facilities to comply with its obligations under the applicable Regulatory Requirements, Standards and the Agreement, including data protection and confidentiality obligations;
- (d) owns or has the right to use and sub-licence any Intellectual Property which it uses or licenses for use to the other party.

11.2. Additional Merchant representations and warranties

11.2.1. The Merchant represents and warrants that it will:

- (a) maintain its legal entity active and solvent within the duration of the Agreement and at least 6 months after its termination;
- (b) have at all times all required licences and authorisations in place to engage in the advertising and provision of its Product/Service;
- (c) have and maintain at least one (1) director;
- (d) have and maintain at least one (1) director who is domiciled in the place of the Merchant's incorporation and registered address;
- (e) operate its business in compliance with the applicable Regulatory Requirements and Standards, including:
 - use our Services to process only Transactions that are legal, valid, genuine (non-fraudulent) and duly authorised by your customers;
 - use our Services to receive payments for product or service offered by you and not by third parties;
 - use our Services to receive only the total sale price of the product or service offered by you and not to collect from your customers any fines, penalties, damages, non-disclosed fees, charges, etc.;
 - not use our Services to provide your customers with cash, travellers' checks, cash equivalents, or other negotiable instruments;
 - will not be engaged in sale or exchange of information (Account Data, transaction data, personal information).

12. Term and termination

12.1. Term

12.1.1. The agreement is effective as of the date on which the signature of emerchantpay's authorised representative is laid (hereinafter referred to as "Effective date") on the Schedule to the Agreement, that was signed first.

12.1.2. The agreement enters into force on the Effective date and will remain in force until terminated by either party.

12.2. Termination by you

You may terminate the Agreement at any time by giving us one month written notice.

12.3. Termination by us

12.3.1. We may terminate the Agreement with you by giving two months' written notice.

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

(a) fail to comply with Regulatory Requirements and Standards, including breaching any compliance thresholds set forth in the Standards - fraud thresholds, chargeback thresholds;

(b) have seriously or persistently broken any terms of the Agreement, including by:

- giving us information that is inaccurate, imprecise or incomplete;
- using, or allowing anyone else to use any Service illegally or for criminal activity;

(c) behaving in a manner that makes it inappropriate for us to provide you Service, including:

- putting us in a position where we might jeopardise ourselves including, but not limited to, violate any Regulatory Requirements, Standards or other duty which applies to us if we continue to provide you Service;
- expose us or any other member of emerchantpay Group to action or censure from any government, regulator or law enforcement agency;
- if it will be prejudicial to our interest or to the interest of any other member of emerchantpay Group;
- by abusing people who work for us.

12.4. Consequences of the termination

12.4.1. When this Agreement terminates, you will:

- (a) cease using the Service or in case where access to a specific part of the Service has been terminated cease to use the specified part of the Service; and
- (b) promptly pay any outstanding and unpaid invoices due for the Service whether the invoice was submitted before or after the termination of the Agreement.

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

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

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

12.4.5. Upon termination, we will withhold up to 100 % of the residual positive balance in the Merchant`s Account for a period of **180 days**. This period may be extended up to **18 months** (540 days) from the date of the last Transaction. Where a Guarantee is provided, we may release the residual positive balance before the expiration of this period.

13. Statutory information

13.1. Service provider

13.1.1. The Services under the Agreement are provided by emerchantpay limited - a company, organised and existing under the laws of England and Wales and having its principal place of business at 29, Howard Street, North Shields, Tyne and Wear, NE30 1AR, United Kingdom, England, registered with Companies House under number 05153270 – directly or through Service Provider(s) and/or FinTech company/ies to which emerchantpay provides you an access.

13.1.2. emerchantpay limited is duly authorised electronic money institution and is subject of the prudential supervision of the UK Financial Conduct Authority (FCA). emerchantpay`s reference number with the FCA is 900778.

13.1.3. emerchantpay limited is registered Data Controller with Information Commissioner`s Office Data Protection Register under number Z1042772.

13.1.4. emerchantpay limited is registered Independent Sales Organisations with Visa and MasterCard through different acquirers.

13.2. Communication

13.2.1. Language

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

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

13.2.2. Communication delivered to you

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

13.2.2.2. We will provide these Communications to you:

- (a) by posting them on our website, if they are intended to all our clients; or
- (b) by emailing them to you at the email address listed in your Merchant Application Form, if they are intended only for you.

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

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

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

13.2.3. Contact details

13.2.3.1. The address to which we will send any electronic correspondence is the email address of the person you designated as contact person. For any correspondence that needs to be provided on paper your company registered address will be used. You can update your email address or postal address at any time by informing your account manager.

13.2.3.2. It is your responsibility to keep your email address up to date so that we can communicate with you electronically.

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

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

13.2.4. Charges for information

13.2.4.1. We will not charge you for providing or making available information which is statutory required to be provided or made available.

13.2.4.2. We may charge you for any information which is provided at your request where such information is:

- (a) additional to the information statutory required to be provided or made available to you;
- (b) provided more frequently than is specified in the Agreement; or
- (c) provided on paper.

13.2.4.3. In all cases, any charges imposed for provision of information will reasonably correspond to our actual costs for its provision.

13.2.5. Technical requirement

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

- (a) a computer with an Internet connection;
- (b) sufficient storage space to save past Communications or an installed printer to print them;
- (c) a valid email address (your email address);
- (d) a current web browser with cookies enabled.

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

13.2.6. Communication delivered to us

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

- (a) via e-mail to admin@emerchantpay.com or to the e-mail address of your account manager;
- (b) by postal mail to our operational office in Bulgaria, 1407, Sofia, 53V Nikola Vaptzarov Blvd. 4th Floor - in all cases when hardcopies of documents are required.

13.2.6.2. You can use also our contact details provided in <https://www.emerchantpay.com/corporate/contact>

13.3. Changes

13.3.1. We may update or amend the Agreement at any time. Any changes will be communicated to you via e-mail sent to your e-mail address.

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

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

- (a) changes that make the Agreement more favourable to you or that have no effect on your rights;
- (b) changes that are necessary in order for us to comply with Regulatory Requirements or Standards;
- (c) changes to our charges;
- (d) changes to the currency exchange rates.

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

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

- (a) where we reasonably consider that: (i) the change would make the terms easier to understand or fairer to you; or (ii) the change would not be to your disadvantage;
- (b) to cover: (i) the improvement of any Service or facility we supply; (ii) the introduction of a new Service or facility; (iii) the replacement of an existing Service or facility with a new one; or (iv) the withdrawal of a Service or facility which has become obsolete, or has not been used by you at any time;
- (c) to enable us to make reasonable changes to the way we provide services as a result of changes in: (i) the banking, investment or financial system; (ii) technology; or (iii) the systems we use to run our business; or

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

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

- (a) if we provide new service or facility in connection with Services;
- (b) if there is a change in (or we reasonably expect that there will be a change in): (i) the costs we incur in carrying out the activity for which the charge is or will be made; or (ii) Regulatory Requirements;
- (c) for other valid reasons which are not set out in this clause.

Any change or new charge will be a fair proportion, as reasonably estimated by us, of the impact of the underlying change on the costs we incur by providing you Service(s).

13.3.7. The exchange rate used to convert foreign currency payments will be:

- (a) any fixed rate we have agreed with you; or
- (b) (if no fixed rate is agreed) the exchange rate that we have informed you about.

13.3.8. You will be deemed to have accepted the changes that do not require prior notice under art. 13.3.3., but you have the right to terminate the Agreement immediately and without any charge.

13.3.9. No provision of the Agreement will be deemed waived, altered, modified or amended unless:

- (a) the Agreement provides otherwise; or
- (b) we otherwise agree with you in writing.

13.3.10. The up-to-date version of the Agreement will always be available to you upon request.

13.4. Safeguards

13.4.1. All funds that we will hold on your behalf will be held in segregated accounts with established credit institutions. These accounts are to be designated as "Client Accounts".

13.4.2. You acknowledge and agree that:

- (a) we are not a bank or credit institution and your Merchant Account is not a bank (payment) account;
- (b) Merchant Accounts are not insured by any government agency and the UK's Financial Services Compensation Scheme (FSCS) does not apply to your Merchant Account;
- (c) we do not act as a trustee, fiduciary or escrow holder in respect of balances in your Merchant Account; and
- (d) we do not pay you interest on any balances in your Merchant Account.

13.5. Redress

13.5.1. Applicable law

The Agreement and any other relationships between the Parties shall be governed by the Laws of England and Wales.

13.5.2. Complaints

13.5.2.1. During your relationship with us, you may wish to make a complaint. For this reason, we have procedures for handling your complaints fairly and promptly. If you have a complaint, you may inform your account manager, in writing, by email or by telephone. Alternatively, you may use our general contact details.

13.5.2.2. We will try to resolve your complaint in our best efforts. If we are unable to assist you further, you will be able to refer your complaint to the proper authorities.

13.5.3. Out-of-court complaint and redress procedure

If you have a complaint with respect to our Services, you may choose to escalate it by contacting:

European Consumer Centre (ECC-Net). You may obtain further information regarding the ECC-Net and how to contact them at (http://ec.europa.eu/consumers/redress_cons/); or

UK Financial Ombudsman Service (FOS). For UK resident Users only - the FOS is a free, independent service which might be able to settle a complaint between you and us. You may obtain further information regarding the FOS and contact the FOS at <http://www.financialombudsman.org.uk>.

13.5.4. Competent courts

For complaints that cannot be resolved otherwise, you submit to the non-exclusive jurisdiction of the English courts arising out of or in relation to this Agreement or the provision of our Services.

14. Miscellaneous

14.1. Non-disclosure

- 14.1.1. The parties acknowledge that in the course of fulfilling their obligations under the Agreement, they may have access to information or material that is commercially valuable and not generally known and that, if misused or disclosed, could reasonably be expected to affect either party's business adversely ("Confidential Information"). Confidential Information also includes without limitation the identities of the parties to the Agreement and ancillary documentation, the terms of the Agreement and ancillary documentation, all Transactions carried out under the Agreement and all information provided in anticipation of the entering into of the Agreement.
- 14.1.2. The Parties agree to cause their directors, employees and other representatives to hold in strict confidence all Confidential Information obtained from each other and/or their directors, employees, and representatives, and not to use, disclose, or permit any third party access to such Confidential Information for any other purpose than to fulfil their obligations.
- 14.1.3. Neither party shall at any time, use for its own benefit, directly or indirectly, or divulge to any person or entity, orally or in writing, directly or indirectly, in whole or in part, any Confidential Information of the other party, without the other party's written consent.
- 14.1.4. Notwithstanding anything in the Agreement to the contrary, neither party has any duty of non-disclosure with respect to Confidential Information that:
 - (a) was in that party's possession or already known to that party without an obligation to keep it confidential, before the information was disclosed, that is publicly available at the time of disclosure or that becomes publicly available after disclosure other than through breach of the Agreement or other wrongful act;
 - (b) is disclosed by either party with mutual written approval;
 - (c) is disclosed to either party by a third party who is not in breach of their own obligation of confidentiality;
 - (d) either party develops independently other than through breach of the Agreement; or
 - (e) is required to be disclosed under Regulatory Requirements; in addition we may disclose Confidential Information when requested by law enforcement or regulatory authorities or under the Standards.
- 14.1.5. The Parties agree to exercise the same degree of care to fulfil their obligations of confidentiality which they exercise to safeguard their own Confidential Information.
- 14.1.6. This "Non-disclosure" Clause will survive the termination of the Agreement for whatever reason and will continue for so long as the either party remains in possession of Confidential Information.

14.2. Non-conflict of interest

- 14.2.1. emerchantpay forms part of emerchantpay Group. We undertake neither emerchantpay, nor any of the affiliates of emerchantpay Group, nor any of their respective officers, employees, representatives or agents to have interest, relationship and/or arrangements, or to be engaged, either directly or indirectly, in any business, professionals or other activities that may corrupt our motivation or decision-making in relation to our relationship with you (“Interests”)
- 14.2.2. We will immediately notify you about such Interests, which might arise or have arisen within the duration of the Agreement.

14.3. Intellectual property

- 14.3.1. Except as expressly stated, nothing in this Agreement will grant or be deemed to grant to any party any right, title or interest in any Intellectual Property (including logos, trademarks, trade names or other) licenced to that party by the other party.
- 14.3.2. For the duration and strictly for the purpose of this Agreement, the parties grant each other a non-exclusive, worldwide, royalty-free, non-transferable licence to copy, use and display any Intellectual Property owned by, or licensed to the other party.
- 14.3.3. Any use of Intellectual Property is subject to prior written approval by the owner of the respective Intellectual Property.
- 14.3.4. In using the other party’s Intellectual Property, each party shall follow the other party’s reasonable instructions having regard to the purpose of such use under this Agreement and the jurisdiction in which the other party’s intellectual property is used.
- 14.3.5. Neither party will mention the other party in any public communication without receiving its prior written approval.
- 14.3.6. We reserve the right at any time and in our sole discretion to require you to suspend copying, making use of and displaying our Intellectual Property.

14.4. Non-solicitation of employees

The Merchant undertakes that it will not for the term of this Agreement and for a period of 12 months thereafter on its own behalf, or on behalf of any person directly or indirectly, canvass, solicit or endeavour to entice away from emerchantpay (an associated company or any person who has at any time during the term of this Agreement been employed or engaged by emerchantpay or an associated company).

14.5. No waiver

Our failure to insist on you strictly complying with the Agreement or any act or omission on our part will not amount to a waiver of our rights under the Agreement.

14.6. Assignment

- 14.6.1. You may not transfer or assign any of your rights or obligations under the Agreement without our prior written consent which will not be unreasonably withheld.
- 14.6.2. We may transfer our rights under the Agreement to any member of emerchantpay Group without your consent.
- 14.6.3. Where we propose to transfer a material part of our assets to a member of emerchantpay Group, we may also transfer all of our rights, powers, obligations and liabilities under or in connection with the Agreement without your further consent.

14.7. Delegation

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

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

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

14.8. Severability

If any provision of the Agreement is or becomes invalid or unenforceable, the provision will be treated as if it was not in the Agreement, and the remaining provisions of the Agreement will still be valid and enforceable.

14.9. Third party rights

Unless a term of the Agreement provides otherwise (and subject to Regulatory Requirements), a person who is not a party to the Agreement will have no rights to enforce any of its terms.

14.10. Relationship of the parties

The parties are independent contractors under the Agreement, and nothing herein will be construed to create a partnership, joint venture, agency relationship between them, or any other relationship covered by the Partnership Act 1890. Neither party has authority to enter into agreements of any kind on behalf of the other.



Merchant service agreement

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