

Merchant Terms & Conditions

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1. Introduction

The Service, as defined below, allows for Users to make payment to the Merchant by way of a swift and secure bank transfer in a user-friendly interface without the need for any additional software or registration arrangements and for the Merchant to receive acquiring, settlement and money remittance services to receive Settlements and to manage Pay-outs to the User. The Service is provided by the Provider to the Merchant, as defined below.

2. Definitions and interpretation

2.1 When used in this Service Agreement, the following capitalised terms shall have the following meanings and the definitions of such terms are applicable to the singular as well as to the plural forms thereof:

"Affiliate" means a legal entity that directly or indirectly is in control of, is controlled by, or is under common control with, either Party, including a legal entity directly or indirectly controlled by any such legal entity.

"AML and CTF Regulations" has the meaning stated in Section 6.5.

"Applicable Law" means all laws, regulations, orders, rules, guidance, directions, judgments, directives, industry agreements or determinations in force from time to time (including the requirements of any Regulatory Authority) applicable to a Party and relevant to this Service Agreement, including the PSRs, AML and CTF Regulations and any applicable legislation relating to sanctions, data privacy, tax and consumer protection.

"API" means the application programming interface that the Provider has developed to create a connection between the Provider and the Merchant in order for the Provider to provide its Services to the Merchant.

"API references" means the technical documentation and integration guidelines detailing the implementation and use of the Provider's API, as made available at <https://eu.developers.trustly.com/doc/reference/api-protocol>.

"Attachments" means the attachments listed in Section 3.

"Backoffice" means the Provider's proprietary interface made available to the Merchant for *inter alia* reconciliation, settlements and reporting purposes including information regarding the Merchant's Settlement Balance, Settlements and Pay-outs.

"Bank Day" means the days of Monday through Friday with exception of such days which are public holidays or bank holidays according to the law, customs and/or traditions in the country in which the Service is provided.

“Charity” means, as defined in regulation 2(1) of the PSRs, a body whose annual income is less than £1 million and is (a) in England and Wales, a charity as defined by section 1(1) of the Charities Act 2011; (b) in Scotland, a charity as defined by section 106 of the Charities and Trustee Investment (Scotland) Act 2005; and (c) in Northern Ireland, a charity as defined by section 1(1) of the Charities Act (Northern Ireland) 2008.

“Confidential Information” has the meaning stated in Section 16.

“Data Protection Legislation” has the meaning stated in Section 17.2.

“Deductions” means all amounts the Provider is entitled to deduct from the Settlement Amount under this Service Agreement prior to making a Settlement or a Pay-out, including: (i) Fees; and (ii) any other amounts owed by the Merchant to the Provider under this Service Agreement.

“Designated Account” means a bank account verified by the Provider and held by the Merchant for the receipt of Settlements.

“Disclosing Party” has the meaning stated in Section 16.1.

“Effective Date” means the last date that this Service Agreement is signed by either Party.

“Effective Date of Change” has the meaning stated in Section 21.

“FCA” means the Financial Conduct Authority.

“Fees” means the fees charged by the Provider to the Merchant for providing the Service, as set out in the Sign-Up Form.

“GDPR” means the General Data Protection Regulation ((EU) 2016/679) as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018) and any data protection legislation from time to time in force in the United Kingdom (including the Data Protection Act 2018).

“Go-Live Date” means the date when the Service is agreed to be taken into active use by the Merchant and the OBeP Solution offered to Users as agreed between the Parties in the Sign-Up Form.

“Intellectual Property Rights” means any material and results, and all intellectual property rights (including but not limited to all patents, inventions, trademark rights, copyrights and neighbouring rights, rights in computer software and database rights, design rights, trade secrets and know-how including the rights to registration and application for these rights).

“KYC” means Know Your Customer.

"KYC and Data Services" means services which enable the Merchant to receive certain personal data relating to the Users, either as a result of providing certain personal data to the Provider or otherwise as further stated in Attachment 1.

"Merchant" means the company set out in the Sign-Up Form that provides goods and/or services to Users.

"Micro-Enterprise" means, as defined in regulation 2(1) of the PSRs, an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed 2 million euro.

"Name Allocation Service" means the service which can be provided to the Merchant as further stated in Attachment 4.

"Notice" has the meaning stated in Section 28.1.

"OBEP Solution" means the Provider's online bank e-payment solution which is a payment initiation service provided by the Provider to Users and which is offered on a Merchant website to enable Users to make payment (by way of credit transfer) to the Merchant for the goods and/or services provided by the Merchant to the User.

"Pay-out" means a pay-out or refund payment (the latter, in full or partial reversal of a Transaction) made to the User by the Provider on the Merchant's behalf, as requested by the Merchant.

"Personal Data" has the meaning stated in Section 17.1.

"Personal Data Legislation" has the meaning stated in Section 17.2.

"Provider" means Trustly UK Limited, a company incorporated under the laws of England, (registration number 08841430) having its registered office at The Wingate, 93-107 Shaftesbury Avenue, London, United Kingdom, W1D 5DY, authorised and regulated by the FCA as a Payment Institution under firm reference number: 1005703 as a Payment Institution and authorised to provide the Service to the Merchant and the OBEP Solution to the User.

"PSRs" means the Payment Services Regulations 2017.

"Receiving Party" has the meaning stated in Section 16.1.

"Regulatory Authority" means any regulatory authority which has responsibility for regulating the Provider and/or the Merchant (as applicable) and/or the Service and/or any of the Parties' other respective services, products, business or activities under or relating to this Service Agreement and, in the case of the Provider, the FCA.

"Service" means the services provided by the Provider under this Service Agreement as detailed in Section 5. and as specified as "Products" in the Sign-Up Form or otherwise agreed

between the parties. The Service may include, where applicable, KYC and Data Services, MDD UK and Name Allocation Service provided by the Provider.

“Service Agreement” means the (i) Sign-Up Form, (ii) these Terms & Conditions including any Attachments, (iii) all other documents, links and similar referred to in these Terms and Conditions, and (iv) any additional agreements on the Service that the Parties may enter into in the future.

“Service Representation Requirements” means the requirements found in <https://trustlybrandguidelines.com/> as amended from time to time.

“Settlement” means the settlement by the Provider to the Merchant by way of credit transfer to the Designated Account of the Settlement Balance.

“Settlement Amount” means the amount due to the Merchant by way of Settlement in respect of Transactions before any Deductions are applied.

“Settlement Balance” means the Settlement Amount less any Deductions.

“Sign-Up Form” means the form which includes details of the Parties and agreed commercial terms such as pricing and marketing.

“Software” means the API, source and object code, documentation, including all parts and versions in the form provided as well as decompilations, modifications and reproductions thereof or any other software or other program written, developed or provided by the Provider.

“Terms & Conditions” means these terms and conditions including any Attachments.

“Transaction” means a payment initiated by a User using the OBeP Solution to make payment to the Merchant for the goods and/or services provided by the Merchant to the User.

“MDD UK” means the direct debit service provided by the Provider to the Merchant that enables the Merchant to receive payments from its Users via direct debit as further described in Attachment 2.

“User” means a customer of the Merchant (and the Provider) using the OBeP Solution to make payment to the Merchant for the goods and/or services provided by the Merchant to the User.

2.2 This Service Agreement is split into sections and inserted a number of headings in order to make them easier to read. The headings are not intended to affect the way that this Service Agreement is interpreted.

2.3 In this Service Agreement:

- 2.3.1** when reference is made to a person, this could mean any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity;
- 2.3.2** when reference is made to a statute or statutory provision, this includes any subordinate legislation made under it and any modifications, amendments, extensions, consolidations, re-enactments and/or replacements of that statute, statutory provision and/or subordinate legislation which are in force from time to time;
- 2.3.3** any references to the singular include the plural and vice versa;
- 2.3.4** any references to any gender include every gender;
- 2.3.5** any references to a time of day are to UK time;
- 2.3.6** any words following the words include, includes, including, in particular or any similar words or expressions are for illustration or emphasis only and are not intended to limit the meaning of the words preceding them; and
- 2.3.7** any references to a “Party” or to the “Parties” means the Merchant and/or the Provider as the context requires.

3. Attachments

- 3.1** The following attachments, as applicable, shall also form part of this Service Agreement:

Attachment 1 – Additional terms and conditions for KYC and Data Services.

Attachment 2 – Additional terms and conditions for MDD UK.

Attachment 3 – Additional terms and conditions for Charity and Micro-Enterprise Merchants.

Attachment 4 - Additional terms and conditions for Name Allocation Service.

- 3.2** In case of any inconsistency or conflict between the provisions of this Service Agreement, the following order of precedence shall apply (first takes precedence): (i) the Sign-Up Form, (ii) if, as at the Effective Date of its Service Agreement, the Merchant is a Charity and Micro-Enterprise, Attachment 3 – Additional terms and conditions for Charity and Micro-Enterprise Merchants; (iii) the product specific Attachments (i.e. Additional Terms for each of MDD UK, KYC and Data Services and Name Allocation Service), if any, (iv) these Terms & Conditions; and (if relevant any service presentation requirements).

4. Payment services regulatory requirements

- 4.1 If, as at the Effective Date of its Service Agreement, the Merchant is a Charity or a Micro-Enterprise, the Parties agree that Attachment 3 – Additional terms and conditions for Charity and Micro-Enterprise Merchants shall apply.
- 4.2 If Section 4.1 does not apply, the Merchant acknowledges and agree that the provisions of the PSRs shall be excluded to the fullest extent permitted by law, and specifically, the Merchant agrees the following with respect to the provisions of the PSRs:
 - 4.2.1 Part 6 of the PSRs (i.e. regulations 40 to 62 inclusive) shall not apply;
 - 4.2.2 all of regulations 66(1), 67(3) or (4), 75, 77, 79, 80, 83, 91, 92 and 94 of the PSRs shall not apply;
 - 4.2.3 a different time period (6 months instead of 13 months) applies for the purposes of regulation 74(1) of the PSRs.

5. Service description

- 5.1 In consideration for the payment of the Fees and other amounts due by the Merchant, the Provider shall provide the following Services to the Merchant in accordance with the terms of this Service Agreement:
 - 5.1.1 enabling User Transactions via the OBeP Solution which shall be made available to the Merchant's Users;
 - 5.1.2 the acquiring of payments made by Users using the OBeP Solution;
 - 5.1.3 enabling the Merchant to withdraw Settlements to receive their Settlement Balance;
 - 5.1.4 enabling the Merchant to initiate Pay-outs to the User at the Merchant's request; and
 - 5.1.5 the provision to the Merchant of a Backoffice account, through which it can manage payments.
- 5.2 Settlements can be withdrawn at the Merchant's request (via Backoffice) or in the frequency as agreed between the Parties from time to time. The Merchant acknowledges and agrees that the Provider shall make a Settlement to the Designated Account(s) only. Before Settlement of funds to a Designated Account, the Merchant shall provide adequate documentation proving that the Merchant is the named holder of the Designated Account(s).
- 5.3 Pay-outs can be made at the Merchant's request. Where the Merchant instructs the Provider to make a Pay-out, the Merchant acknowledges and agrees that it will only be able to make such Pay-outs which in total are equal to or less than the Settlement Balance. This means

that the Provider will only initiate a Pay-out once there is sufficient Settlement Balance. Moreover, the Merchant acknowledges that the Pay-outs can only be made to Users.

6. Representations and warranties of the Parties

- 6.1 The respective Party hereby represents and warrants to the other Party the following and acknowledges that the other Party has entered into this Service Agreement in reliance on the representations and warranties set out in this Section 6. All such representations and warranties are true, complete and accurate as of the Effective Date of this Service Agreement and at all times while this Service Agreement is in force.
- 6.2 The respective Party is duly organised and validly existing under the laws of its domicile, has the legal capacity and corporate authority to own its property and conduct its business as now conducted and is not in breach of its by-laws.
- 6.3 To their respective knowledge, the respective Party is and has at all times been, in all material respects, in compliance with Applicable Laws related to its business operations.
- 6.4 The respective Party has obtained any licenses, permits or similar required to perform the conducted business activities.
- 6.5 The respective Party conducts its business in full compliance with all Applicable Laws and any laws and regulations relating to anti-money laundering and terrorist financing-regulations including but not limited to The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and any replacements thereof ("**AML and CTF Regulations**").

7. Principal commitments of the Provider

- 7.1 The Provider will provide the Service to the Merchant. This includes providing access to the Software and upgrades thereof in order to provide and ensure access to the Service and Backoffice, as well as staff, servers and other components necessary to ensure the function of the Service, provided the Merchant complies with its undertakings in Section 8.1.
- 7.2 The Provider will make every reasonable effort to uphold the functionality of the Service in a professional and workman-like manner consistent with industry standards reasonably applied to similar services. For the avoidance of doubt, transaction speeds may not be met in the event of significant peaks of transaction volumes initiated under a short period of time or during planned maintenance.
- 7.3 The Provider will in a timely manner provide support, maintenance and instructions necessary to implement and uphold the functionality of the Service, provided that the Merchant complies with its undertakings in Section 8.1.

- 7.4 The Provider will safeguard the Merchant's Settlement Balance in accordance with its obligations under the PSRs.
- 7.5 The Provider shall perform its obligations under this Service Agreement promptly with all due skill, care and diligence.
- 7.6 The Provider's obligation to provide the Services is subject to the Merchant having successfully completed the Provider's initial and ongoing KYC as are necessary for the Provider to fulfil its regulatory obligations under AML and CTF Regulations and as shall be notified to the Merchant by the Provider from time to time.

8. Principal commitments of the Merchant

- 8.1 The Merchant shall provide reasonable access to its systems, staff, equipment and premises where necessary for the Provider to fulfil its undertakings as set forth in this Service Agreement.
- 8.2 The Merchant shall comply with instructions given by the Provider, including the Provider's API references, relating to the use or function of the Services, in order for the system to (a) function in a professional and workman-like manner consistent with industry standards reasonably applied for similar services, (b) to avoid and/or remedy critical or recurring errors in the Service and (c) to comply with any applicable law. Subject to Section 8.3, the Provider will give the Merchant two (2) months' notice of any changes/updates that shall be made to the Service and/or to the provisions of this Service Agreement.
- 8.3 Notwithstanding Section 8.2, if a change or update to the Service is required to avoid critical errors in processing or to comply with any Applicable Law, requirements and directives from authorities, or to avoid infringement on any intellectual property rights of third parties, the Merchant shall make such changes or updates immediately upon the Provider notifying the Merchant thereof. In case the Merchant does not immediately implement required changes or updates the Provider may suspend the Service in accordance with Section 19.
- 8.4 The Merchant warrants that it will take every appropriate measure needed to ensure that the Service is used only for lawful purposes and in full compliance with Applicable Law at all times during the validity of this Service Agreement. By signing this Service Agreement, the Merchant undertakes to carry out KYC on Users in accordance with AML and CTF Regulations (should the Merchant be bound by such). Upon request by the Provider (where needed in order for the Provider to comply with Applicable Law), the Merchant undertakes to provide copies of internal policies/guidelines relating to AML and CTF Regulations and any and all information and documentation required for the Provider's KYC of the Merchant. The Merchant acknowledges that the Provider will not activate or shall suspend the Service if the Merchant does not provide the Provider with the required information. Where the delay of providing the information exceeds four weeks, the Provider shall be entitled to terminate this Service Agreement with immediate effect.

- 8.5 The Merchant undertakes to provide any information and documentation, including identification details, about Users which the Merchant has in its records, when required by the Provider, in order for the Provider (or a third party, e.g. a bank or public authority, who is required by law) to fulfil its obligations under Applicable Law. Furthermore, the Merchant undertakes to, upon the Provider's request, provide any information related to Transactions, including but not restricted to information regarding the identity of beneficiaries and/or payers, executed within the scope of the Service. The Merchant shall respond to requests from the Provider in accordance with this Section 8.5 within one week. Notwithstanding the above the Merchant shall without delay and in any event within two business days, provide all information and documentation as the Provider may require in relation to suspected fraudulent authorised push payments, including but not limited to, information related to specific transactions and/or ultimate beneficiaries.
- 8.6 The Merchant shall immediately inform the Provider of any changes in the regulatory status of the Merchant or in case any material changes are made to its business models or ownership structure or any other changes that from a regulatory standpoint is important for the Provider to be informed, for instance due to AML and CTF Regulations.
- 8.7 The Merchant shall take every precaution necessary to prevent unauthorised access to the Service and shall make every effort to keep safe the Merchant's personalised security credentials applicable to the Merchant's Backoffice account and/or any device used by the Merchant to access its Backoffice account. Subject to the provisions of Attachment 3 – Additional terms and conditions for Charity and Micro-Enterprise Merchants (if applicable), the Merchant acknowledges and agrees that any and all actions taken in the Backoffice through an account of the Merchant, to which the Merchant will receive personalised security credentials, shall be presumed to have been carried out by the Merchant or someone authorised by the Merchant unless otherwise is proven.
- 8.8 The Merchant is not entitled to charge or surcharge Users for payments made by Users using the Service. The Merchant acknowledges that the Provider will uphold and enforce the provisions of the User terms and conditions as amended from time to time and as applicable in the relevant jurisdiction, in relation to Users.
- 8.9 To optimise the Parties' commercial benefits of the Service the Merchant shall, upon request by the Provider, to the extent reasonably possible, share conversion data with the Provider. For the purposes of this Section 8.9 conversion data means data on, for example, the extent to which Users choose to pay with the Provider as compared with other online payment solutions and the extent to which Users abandon a payment initiated through the Service.
- 8.10 The Merchant acknowledges and agrees that the Provider does not have any obligations to any third parties under this Service Agreement other than the Merchant.
- 8.11 The Merchant shall perform its obligations under this Service Agreement promptly with all due skill, care and diligence.

9. KYC and Data Services, MDD UK and Name Allocation Service

- 9.1 The Merchant undertakes to adhere to the provisions set out in [Attachment 1](#) with regard to KYC and Data Services, where the Merchant uses such service.
- 9.2 The Merchant undertakes to adhere to the provisions set out in [Attachment 2](#) with regard to, MDD UK where the Merchant uses such service.
- 9.3 The Merchant undertakes to adhere to the provisions set out in [Attachment 4](#) with regard to, Name Allocation Service where the Merchant uses such service.

10. Service coverage

- 10.1 The Merchant acknowledges and agrees that the Provider may only offer the OBeP Solution in the United Kingdom. The Merchant acknowledges that the OBeP Solution cannot be offered on web pages that target Users located outside of the United Kingdom.

11. Fees

- 11.1 The Service is subject to Fees, which are specified exclusive of any applicable taxes, as set out in the Sign-Up Form. The Merchant acknowledges and agrees that it will be solely and separately liable for VAT and any other applicable taxes, duties, withholdings or levies under any Applicable Law.
- 11.2 Unless otherwise specified in this Service Agreement, the Fees will be deducted from the Settlement Amount (as a Deduction) and retained by the Provider. The Fees will become due and immediately payable by the Merchant as soon as the Settlement Amount is received by the Provider. For the avoidance of doubt, the Provider reserves the right to invoice its fees where it has not otherwise been able to collect them.

12. Implementation, interruptions, reporting

- 12.1 After the signing of this Service Agreement, the Provider will make available a test server to the Merchant for the purpose of ensuring functionality of the Service before the Go-Live Date. When the functionality of the Service has been verified by the Merchant, the Merchant shall immediately inform the Provider thereof. After the Provider has affirmed that the integration, the applied web-layout and the interface of the website in particular, has been carried out in an appropriate and functional manner, a Go-Live Date shall be agreed between the Parties.
- 12.2 If the Merchant notices any indication of malfunction of the Service or the OBeP Solution, the Merchant shall notify the Provider without delay. In such a case, the Provider undertakes to commence its best efforts to remedy any malfunction as soon as commercially practicable. The Provider shall inform the Merchant promptly as soon as the malfunction is resolved.

13. Intellectual property rights and trademark representation

- 13.1 The Parties acknowledge that any and all of the material and results, and all intellectual property rights (including but not limited to all patents, inventions, trademark rights, copyrights and neighbouring rights, rights in computer software and database rights, design rights, trade secrets and know-how including the rights to registration and application for these rights), hereafter referred to as “**Intellectual Property Rights**”, owned by a Party prior to this Service Agreement or developed solely by that Party, shall be and remain the sole property of that Party.
- 13.2 In the event that any Intellectual Property Rights are made, written, designed, produced or similar in the performance of or as a result of this Service Agreement by a Party or by the Parties in collaboration, the Merchant acknowledges that such Intellectual Property Rights shall exclusively vest in the Provider. The Provider shall have a right to freely develop and alter such Intellectual Property Rights and to license and assign them to third parties. The Merchant agrees to inform the Provider in writing of such Intellectual Property Rights wholly or partially made, written, designed, produced or similar by the Merchant in the performance of or as a result of this Service Agreement.
- 13.3 The Merchant shall not during or at any time after the expiry of this Service Agreement (whether in whole or with respect to parts only) in any way question or dispute the Provider's ownership of the material and results, and Intellectual Property Rights referred to under Section 13.1 and 13.2 above.
- 13.4 The Merchant acknowledges that the Service to be provided contains Intellectual Property Rights, Confidential Information and knowledge of the Provider, which is provided solely for the purpose of the Merchant using the Service under this Service Agreement. The Merchant accordingly undertakes not to use any such Intellectual Property Rights, Confidential Information and knowledge received from the Provider, or learned from use of the Service, for the purpose of directly or in conjunction with another person or entity, facilitating or engaging in competition with the Provider by developing, offering or setting up a product or service that is similar to or the same as the Service.
- 13.5 The Merchant is obliged to expose the Provider's trademarks as set out (or referred to) in this Service Agreement and in compliance with the service presentation requirements found in <https://trustlybrandguidelines.com/> as amended from time to time (the “**Service Representation Requirements**”). The Merchant is obliged to remove the trademarks, if this Service Agreement is terminated or upon the Provider's request. The Merchant acknowledges that its use of the Provider's trademarks inures to the benefit of the Provider and that the Merchant shall not acquire any rights in the trademarks.
- 13.6 The Merchant undertakes to treat the trademarks of the Provider equally with other payment methods offered by the Merchant on its webpage/checkout and/or in the Merchant's promotion and advertising materials. In particular, the Merchant shall ensure that the Provider's position and size of the Provider's logotype and select buttons are substantially

similar to those of other alternative payment methods, available on the Merchant's website/checkout. The Merchant undertakes not to make disparaging or deceptive statements about the characteristics of the Provider and/or the Service. The Merchant further undertakes not to declare or indicate that any other payment methods are better or preferable than the Service.

- 13.7 The Provider is granted a right to expose the name of the Merchant and the Merchant's trademarks, in an appropriate manner, on its webpage and/or in the Provider's promotion and advertising materials. The Provider shall apply relevant service presentation requirements or branding guidelines if such are provided by the Merchant.
- 13.8 The Merchant agrees to activate a launch campaign when the Service is fully integrated. The campaign shall take place no later than three (3) months after the Go-Live Date and shall continue for at least one (1) month. The channels used for the campaign is at the discretion of the Merchant. The Merchant shall use the content (text, banners etc.) as provided by the Provider.

14. Limitation of liability and damages

- 14.1 Nothing in this Service Agreement shall exclude or limit any liability of any Party to it for:
- 14.1.1 fraud, death, personal injury or gross negligence;
- 14.1.2 in the case of the Merchant, to pay any Fees and other amounts due under this Service Agreement; or
- 14.1.3 otherwise to the extent that it cannot be lawfully excluded or limited.
- 14.2 The Provider shall not be liable for any events or activities originating outside the Provider's system (such as infrastructure failure, internet disturbances or malfunctioning in third party systems), except where such events were caused by our wilful misconduct or gross negligence or outside of the Provider's control, including decisions or actions by a third party such as a court, authority, bank, User, or the other Party.
- 14.3 No Party shall be liable to any other Party for:
- 14.3.1** any special, indirect, consequential, exemplary or incidental losses; and/or
- 14.3.2** loss of business profits, goodwill, reputation, business, contracts, opportunity, bargain and/or anticipated savings; business interruption; loss of business information, regardless of whether such losses are indirect, direct or consequential.
- 14.4 A Party's liability shall, during a period of twelve (12) months from when the alleged fault or damage occurred, be limited to an amount corresponding to the lowest of either GBP 10,000

or 50% of the Fees paid or payable by the Merchant under this Service Agreement during a period of twelve (12) months preceding the alleged fault or damage.

- 14.5 The limitations set out in Sections 14.1-14.4 shall not apply with respect to claims based on failure to comply with commitments regarding Section 13 (*Intellectual property rights and trademark representation*), Section 16 (*Confidentiality*) and Section 17 (*Personal Data*), including any sections with similar or identical headings and/or content in any current or future Attachments, addendum agreements or other agreements relating to the Service and/or this Service Agreement.
- 14.6 The Provider does not assume liability for any damages or losses suffered as a direct or indirect consequence of charge-backs, revoked payments, fraudulent, illicit or abusive use or similar use of the OBeP Solution by the Users.

15. Third party dependency

- 15.1 The availability and functionality of the Service (including the OBeP Solution) is significantly dependent on the full functionality of third-party systems, primarily those of banks. The Provider does not guarantee the functionality of the Service in the event of failure, malfunction or adjustments within such third-party system or lost access thereto. The Provider reserves the right to temporarily suspend the Service and/or User's ability to make payments via the OBeP Solution using a particular bank in case the Provider is experiencing issues in relation to such bank.
- 15.2 Funds are transferred via general clearing systems, meaning that it in exceptional cases, it may take up to three (3) Bank Days before funds from the Users are received by the Provider. The same time applies for Settlements requested by the Merchant to the Designated Account(s).

16. Confidentiality

- 16.1 When used in this Service Agreement, "**Confidential Information**" means any and all material and information provided by one Party to the other, whether disclosed before or after this Service Agreement was entered into, including but not limited to technical, practical, commercial, financial, information, or other, relating to the business, affairs or methods of one Party or any person associated with such Party (the "**Disclosing Party**"), given in whatever form under or in connection with this Service Agreement or the Services to be provided hereunder to the other Party (the "**Receiving Party**") or otherwise obtained by the Receiving Party and which it is reasonable to assume is confidential (and any copies thereof), excluding information which:
- a. is known or which will become known to the public other than by breach of the obligations herein contained;
 - b. the Receiving Party can show was in its possession prior to the disclosure; and

- c. the Receiving Party has received or will receive from a third party who lawfully acquired it and who is under no obligation restricting its disclosure.

16.2 Each Party, including its employees and officers, undertakes not to use or disclose, directly or indirectly to any third party, any Confidential Information of the other Party and not use Confidential Information for any other purposes than those set forth in this Service Agreement, and only to the extent necessitated by this Service Agreement. The confidentiality undertaking shall not apply with regard to disclosures:

- a. to individuals listed in Section 16.3 when necessary for a Party to perform its obligations and/or exercise its rights pursuant to this Service Agreement, and always subject to the requirements set out in Section 16.3;
- b. made in the form of a mutually agreed press release stating that an agreement has been entered into between the Parties; or
- c. required to be disclosed by Applicable Law or by any Regulatory Authority having jurisdiction over the Receiving Party, or by rules of any listing authority or stock exchange on which the Receiving Party's shares are listed or traded or as required by banks due to AML and CTF Regulations.

16.3 Each Party shall ensure that employees, employees of its Affiliates, officers and consultants to whom Confidential Information is disclosed are at all times required to keep such information confidential to the same extent as the Parties themselves are bound by this Section 16. Each Party assumes responsibility for the actions of the individuals and companies to whom Confidential Information is disclosed pursuant to this Section 16.3.

16.4 Prior to any disclosure in accordance with the above Section 16.2c, the other Party shall be notified in writing, unless such notification is prohibited in accordance with Applicable Law.

16.5 The Parties acknowledge that damages may not be an adequate remedy for a breach of this Section 16. Each Party shall be entitled to seek any legal or equitable relief, including injunctive relief or specific performance, upon the breach (or reasonably anticipated breach) of any part of this Section 16.

16.6 Upon written request by the Disclosing Party, the Receiving Party shall immediately:

- a. return all Confidential Information belonging to the Disclosing Party; and
- b. destroy or permanently erase all Confidential Information in its possession or control, and procure the same of individuals and companies referred to in Section 16.3, save to the extent the Receiving Party or third party is required to retain Confidential Information by Applicable Law or by any Regulatory Authority.

17. Personal data

17.1 In performing its obligations under this Service Agreement, a Party may disclose personal data related to Users to the other Party. The personal data provided by the Merchant to the

Provider contains an identifying id for the transaction (allowing the Merchant to identify the transaction), User identifying information (such as first name and last name of the User, e-mail address of the User and information relating to the User's device (such as IP-address and type of device and operating system). The data provided by the Provider to the Merchant normally contains User identifying information (corresponding to the information provided by the Merchant to the Provider), identifying id for the transaction (corresponding to identifying id provided by the Merchant to the Provider), message-id, order-id and financial information pertaining to the transaction (such as amount and currency). In addition, the Merchant will provide the Provider with personal data in accordance with what is set out in this Agreement and as otherwise necessary for the Provider to fulfil any obligations under applicable law, including AML and CTF Regulations. Any and all such personal data transferred between the Parties, are hereinafter referred to as "**Personal Data**".

- 17.2 The Parties have evaluated the processing of Personal Data that is made under this Service Agreement and found that the processing is made between two data controllers, within the meaning of the GDPR. Each Party is an independent data controller (for the avoidance of doubt, the Parties are not joint data controllers) and is consequently responsible to ensure that its own processing of Personal Data under this Service Agreement is made in accordance with the GDPR and other applicable data protection legislation ("**Data Protection Legislation**"). In the interest of ensuring a high standard of data security, the Parties have agreed on a number of principles regulating the exchange of Personal Data between the Parties.
- 17.3 The receiving Party shall process Personal Data provided by the disclosing Party (i) only for the purposes of the Provider providing its payment services to the Merchant and (ii) for the Merchant to be able to verify payments made by or to Users, in accordance with each Party's obligations and undertakings set forth in this Service Agreement or as otherwise agreed to in writing by the Parties, and/or for the Merchant's fraud prevention purposes.
- 17.4 As independent data controllers' of the Personal Data processed under this Service Agreement, each Party shall be responsible to comply with applicable Data Protection Legislation.
- 17.5 Each Party warrants and undertakes to ensure the security of the Personal Data in accordance with the requirements set out in applicable Data Protection Legislation.
- 17.6 Each Party shall maintain a publicly accessible privacy notice that satisfies transparency disclosure requirements of Data Protection Legislation and warrants and represents that it has provided data subjects with appropriate transparency regarding data collection and use and all required notices, in accordance with articles 13 and 14 of the GDPR. Where either Party collects Personal Data and discloses such Personal Data to the other Party, the disclosing Party shall ensure it has lawful grounds, in order for itself to transfer such Personal Data to the receiving Party as set out in this Service Agreement. Each Party will cooperate in good faith in order to identify the information necessary to comply with the information disclosure

requirements in articles 13-14 of the GDPR, and each Party hereby permits the other Party to use the other Party's company name in the other Party's privacy policy.

- 17.7 The Parties shall provide each other with commercially reasonable assistance in order for the other Party to comply with its undertakings pursuant to Data Protection Legislation. This may include commercially reasonable assistance to assist with requests from data subjects, assistance in relation to personal data breach notifications, impact assessments and consultations with supervisory authorities or other regulators. The Party providing assistance in accordance with this Section 17.7 is entitled to fair compensation for its efforts to provide assistance to the requesting Party and can refuse to provide assistance when the Parties cannot agree on the level of compensation.

18. Force majeure

- 18.1 Neither Party shall be liable for any economic loss, delay or failure in performance of any part of this Service Agreement to the extent that such loss, delay or failure is caused by directly or indirectly, forces beyond its reasonable control, including, without limitation, strike, lock out or other form of industrial action where replacement staff are not reasonably and upon reasonable commercial terms available, acts of God , outbreak of hostilities, riot, civil disturbance or acts of terrorism, fire, explosion or flood, theft, malicious damage, interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services, termination of vital agreements by third parties or similar.

19. Matters of suspected criminal activity etc.

- 19.1 The Provider reserves the right to unilaterally decide to take immediate and appropriate measures to suspend its Services under this Service Agreement, in whole or in part, for actual or suspected security reasons including in the event of de facto or reasonably suspected criminal or illicit activity, for example, where it is suspected that the Merchant's Backoffice account has been compromised, imminent civil actions by third parties to jeopardize the continued delivery of the Service or any other act or omission that might expose the Provider or the Merchant to harm. The Provider, however, undertakes to practice its discretionary right under this provision in a manner consistent with the spirit of this Service Agreement to the utmost extent possible, choosing a path of action causing the least harm to the Merchant.
- 19.2 A Party shall notify the other Party without undue delay of observations that indicates such activity mentioned in Section 19.1. The Parties shall, upon such notification, take prompt and reasonable actions to eliminate potential exposures to harm for either Party.

20. Miscellaneous financial provisions

- 20.1 Upon delay in payment of any amount due and owing from the Merchant to the Provider (which for any reason has not been deducted directly from the Settlement Amount in accordance with Section 11.2), the Provider reserves the right to deduct an amount

corresponding to due and undisputed charges from the Settlement Amount provided that the Provider has sent a reminder to the Merchant and the charges remain unpaid ten (10) days after the sending of the reminder.

- 20.2 Subject to the remainder of this Section and unless the Sign-up form states or the parties agree otherwise, Settlements and Pay-outs shall not attract any Fees charged by the Provider for the Merchant or its Users (though third party costs may be applied to the Merchant or the User). The Merchant agrees to fully compensate the Provider upon demand for any unforeseeable charges, fees, costs and expenses regardless of its nature which might arise with respect to Settlements and Pay-outs, including but not limited to the Provider's internal costs for investigating any such third party fees or other charges.
- 20.3 The Merchant acknowledges and agrees that its Settlement Balance does not earn interest.
- 20.4 In the event that a User has made a payment using the OBeP Solution as a consequence of fraud, mistake or similar reason and the relevant amount has been paid to the Merchant by way of Settlements, the Merchant and Provider shall use commercially reasonable efforts to ensure that the User (or third party as the case may be) does not incur a loss, e.g. if the Merchant has not yet shipped goods/provided services to the User, the Merchant shall withhold its performance so that the Provider or the Merchant (as the case may be) can refund the Transaction by way of Pay-out.

21. Amendments

- 21.1 The Provider may amend the provisions of this Service Agreement at any time. The Provider shall give the Merchant at least two months' prior written notice of any intended change to this Service Agreement. If the Merchant does not agree with the proposed change, the Merchant must notify the Provider before that change takes effect (the "**Effective Date of Change**"), otherwise the Merchant will be deemed to have accepted the change to this Service Agreement.
- 21.2 If the Merchant does not accept a change to this Service Agreement and the Provider does not withdraw the change in writing, then the Merchant shall be entitled to terminate this Service Agreement immediately by serving written notice on us no later than the Effective Date of Change and the provisions of Section 27 will apply.
- 21.3 Neither the change notice period nor the Merchant's right to terminate in clauses 21.1 and 21.2 will apply where the change is implemented in order to comply with Applicable Law or the requirements of any Regulatory Authority or for the addition of a new service or existing functionality to the existing Service and in such instances, the change will be made and shall become effective in accordance with the terms contained in the change notice to the Merchant.

22. Entire agreement

This Service Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter of this Service Agreement and supersedes any prior agreements, representations, understandings or arrangements between the Parties (oral or written) in relation to such subject matter.

23. Assignment

23.1 This Service Agreement is personal to the Merchant and the Merchant shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Service Agreement.

23.2 The Provider may at any time:

23.2.1 assign any or all of its rights under this Service Agreement to any third parties;

23.2.2 transfer (by novation or otherwise) all or any of its obligations under this Service Agreement to any person (a "Transferee") provided that no transfer of its obligations shall be effective until the Transferee has confirmed to the Merchant in writing that it is bound by the terms of this Service Agreement.

23.3 The Provider may outsource any of its obligations under this Service Agreement to third parties (which may or may not be Companies) provided that the Provider remains liable to the Merchant for fulfilling any such outsourced obligations.

23.4 This Service Agreement shall be binding upon the Parties and their successors and permitted assignees.

24. Exclusion of third party rights

24.1 Unless expressly provided in this Agreement, no term of this Service Agreement is enforceable by any person who is not a party to it whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

25. Severance

25.1 If any court or competent authority finds that any provision of this Service Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision (or part) shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Service Agreement shall not be affected.

25.2 If any invalid, unenforceable or illegal provision of this Service Agreement would be valid, enforceable and legal if some part of it were deleted, 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.

26. Code of conduct

- 26.1 The Provider finds it important to take an active part in promoting a sustainable society. The Provider emphasises the importance of respect for human rights, the need to observe sound business ethics and minimize adverse environmental impacts. The Parties hereby agree to observe high ethics throughout the aforementioned areas, implementing for instance: fair employment practice, (including but not limited to prohibition of child labour, prohibition of discrimination and/or harassment, observance of health and safety standards) and actions to prevent corruption. The Parties shall endorse the freedom of expression and other human rights related matters.
- 26.2 The Parties shall ensure that proper measures are implemented so that matters are complied with. In case of non-compliance with the aforementioned, and where such non-compliance is not cured within twelve (12) months upon one Party notifying the other, this shall constitute a material breach of this Service Agreement which is no longer capable of remedy, giving the other Party the right to immediately terminate this Service Agreement in accordance with Section 27.3.1.

27. Term and termination

- 27.1 The term of this Service Agreement shall be one (1) year commencing from the Effective Date. If a Party has not terminated this Service Agreement at least three (3) months prior to the expiration of the term of this Service Agreement, this Service Agreement shall automatically renew for further one (1) year periods, with a three (3) months mutual termination period before the end of the next term.
- 27.2 Without prejudice to any right or remedy the Provider may have against the Merchant for breach of this Service Agreement, the Provider may, with immediate effect by notice in writing to the Merchant, terminate this Agreement at any time if the Provider is unable to carry out its obligations under this Service Agreement due to a change in Applicable Law or the requirements of a Regulatory Authority.
- 27.3 Without prejudice to any right or remedy a Party may have against the other for breach of this Service Agreement, either Party may, with immediate effect by notice in writing to the other Party, terminate this Service Agreement on or at any time after the happening of any of the following events:
- 27.3.1 the other Party commits a material breach of any of the terms and conditions set out in this Service Agreement provided that where such breach is capable of remedy it has been advised in writing of the breach and has not rectified it within thirty (30) days of receipt of such advice. For the purposes of this Section 27.3.1, a breach shall be considered capable of

remedy if time is not of the essence in performance of the obligation and if the other Party can comply with the obligation within the thirty (30) day period;

- 27.3.2 the other Party passes a resolution for its winding-up or a court of competent jurisdiction makes an order for the winding-up or the dissolution of the other Party;
- 27.3.3 any steps are taken for the making of an administration order or the appointment of an administrator under the out-of-court procedure under the Enterprise Act 2002 or notice is given of an intention to appoint an administrator in relation to the other Party or any steps are taken for the appointment of a receiver or administrative receiver, or an encumbrancer takes possession of or sells any of the other Party's assets;
- 27.3.4 the other Party makes an arrangement or composition with its creditors generally or makes an application to a court of competent jurisdiction for protection from its creditors generally;
- 27.3.5 the other Party ceases to carry on business at any time for thirty (30) consecutive days;
- 27.3.6 the other Party is unable to pay its debts (within the meaning of that term under section 123, Insolvency Act 1986);
- 27.4 Termination shall in all cases, in order to be valid, be made in writing to the other Party and as further set out in Section 28.
- 27.5 Upon termination (for whatever reason), all rights and obligations of the Parties shall cease to have effect immediately on termination of this Service Agreement except that termination shall not affect:
 - 27.5.1 the accrued rights and obligations of the Parties at the date of termination;
 - 27.5.2 the right to claim damages for losses whenever they occur provided they arise out of an event occurring on or before termination of this Service Agreement; and
 - 27.5.3 the continued existence and the validity of the rights and obligations of the Parties under any provisions of this Service Agreement which expressly or by implication are intended to be enforceable notwithstanding termination of this Service Agreement and any provisions of this Service Agreement necessary for the interpretation or enforcement of this Service Agreement.
- 27.6 Termination shall not affect accrued rights, obligations and liabilities of any Party as at the date of such termination. Both Parties agree that they shall be, and remain, liable after termination for any obligations and/or liabilities which occur post termination in relation to Transactions which are initiated by Users and submitted to the Provider for processing prior to such termination or in relation to Settlements or Pay-outs.

28. Notices and representatives

- 28.1 Any notice, request, consent and other communication to be given by a Party under this Service Agreement (hereinafter called a **"Notice"**) shall be in the English language and deemed to be valid and effective if personally served on the other Party or sent by prepaid registered mail or by e-mail, using the contact details provided in the Sign-Up Form or, with respect to Notices to the Provider, to the relevant Account Manager as informed by the Provider.
- 28.2 A Notice shall be deemed to have been given in the case of personal service: at the time of service; in the case of prepaid registered mail: at the latest five (5) days after the date of mailing; in the case of e-mail: on the date the e-mail is sent by the relevant Party.
- 28.3 Where there are any changes of company details (such as company name, registered address, contact person), ownership structure, management personnel or business activities of the Merchant, in comparison to what was submitted to the Provider by the Merchant as part of the KYC documentation, the Merchant shall without delay notify the Provider of the change as set out in this Section 28, using the contact details provided to the Merchant.

29. Governing law and disputes

- 29.1 This Service Agreement and any dispute, claim or obligation (whether contractual or non-contractual) arising out of or in connection with it, its subject matter or formation shall be governed by English law.
- 29.2 The Parties irrevocably agree that the English courts shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) arising out of or in connection with this Service Agreement, its subject matter or formation.