

SMARTERPAY LTD
GENERAL TERMS OF BUSINESS

INTRODUCTION

These Terms apply to and constitute the terms of all agreements and arrangements between the SmarterPay Limited company named in the Order Form (“we”) and any person to whom we provide any services (“you”). These Terms apply to the exclusion of any other terms that you might put forward. These Terms can only be varied by express variation in writing, signed by us. These Terms will apply in addition to one or more of our sets of specific terms or contracts. These Terms and those specific terms or contracts shall constitute the entire agreement between you and us.

1 DEFINITIONS

In these Terms, the following definitions apply:

Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
Contract	the specific contract or contracts (including the Order Form) between us and you for the supply by us of services, which shall incorporate these Terms as if they were set out in it in full;
Intellectual Property Rights	all patents, trademarks, copyright, database rights, design rights and all other intellectual property rights whether or not registered and whether or not registerable, in any part of the world;
Services	the services that we will supply to you as set out in the Order Form and Contract;
Documentation	the user guides, service description document and other documentation that we make available to you for the Services;
Terms	these Terms of Business.

2 INTERPRETATION

In these Terms, the following rules apply:

- 2.1 a person includes a natural person, corporate or unincorporated body;
- 2.2 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 2.3 the headings are for convenience only and shall not affect interpretation;
- 2.4 any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 2.5 a reference to writing or written includes e-mails.

3 SUPPLY OF SERVICES

- 3.1 We will provide the Services to you in accordance with the Documentation in all material respects.
- 3.2 You agree to access and use the Services solely for your own internal business purposes and undertake not to access or use the Services on behalf of or for the benefit of any other person or as part of any bureau facility.
- 3.3 We shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services; we will notify you in any such event.
- 3.4 We will provide the Services to you using reasonable skill and care.

4 YOUR OBLIGATIONS

You must:

- 4.1 co-operate with us in all matters relating to the Services;



- 4.2 provide us and our employees, agents, consultants and subcontractors, with access to your premises, office accommodation and other facilities as reasonably required by us to provide the Services;
- 4.3 provide us with such information and materials as we may reasonably require to supply the Services, and ensure that such information is accurate in all material respects.
- 5 **CUSTOMER DEFAULT**
If our performance of any of our obligations in respect of the Services is prevented or delayed by any act or omission by you or failure by you to perform any relevant obligation ("Customer Default"):
- 5.1 we shall have the right to suspend performance of the Services until you remedy the Customer Default, and to rely on the Customer Default to relieve us from the performance of any of our obligations to the extent that the Customer Default prevents or delays the performance of any of our obligations;
- 5.2 we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform any of our obligations; and 5.3 you will reimburse us on written demand for any costs or losses we sustain or incur arising directly or indirectly from the Customer Default.
- 6 **CHARGES AND PAYMENT**
- 6.1 The charges for the Services shall be as set out in the Order Form.
- 6.2 We may increase the charges in any renewal term by up to 7% above the charges in the prior term by giving you not less than 30 days' notice.
- 6.3 All charges for the Services set out in the Order Form on a monthly or other periodic basis will be invoiced in accordance with the billing frequency as set out in the Order Form and shall continue to be payable throughout the term until the Contract is properly terminated.
- 6.4 Unless otherwise agreed elsewhere in the Contract, you must pay each invoice we submit:
- 6.4.1 within 30 days of the date of the invoice; and
- 6.4.2 in full and in cleared funds to a bank account nominated in writing by us.
- 6.5 All amounts are expressed exclusive of value added tax which shall be charged, added and paid in addition.
- 6.6 If you fail to make any payment due to us under the Contract by the due date for payment, you shall pay interest on the overdue amount at the rate of 8%. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment.
- 6.7 If any payment is overdue, we may suspend our supply of the Services if you have still not paid the overdue amount three days after we give you notice indicating that supply of the Services will be suspended if payment is not received.
- 6.8 You shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. We may set off any amount owing to us by you against any amount payable by us to you.
- 7 **INTELLECTUAL PROPERTY RIGHTS**
- 7.1 Any Intellectual Property Rights that belong to you shall remain your property and any Intellectual Property Rights that belong to us shall remain our property.
- 7.2 All Intellectual Property Rights in or arising out of or in connection with the Services shall belong to us.
- 7.3 We will indemnify you against any claim that anything we provide under the Contract and your use of the Services as permitted by the Contract infringes the Intellectual Property Rights of any other person provided that you:
- 7.3.1 notify us promptly in writing of any claim you receive;
- 7.3.2 make no admission in respect of the claim and do not seek to settle the claim;
- 7.3.3 permit us to have sole conduct of the defence and settlement of the claim;
- 7.3.4 provide all assistance that we reasonably require in relation to the claim.
- 7.4 The limitation on liability in clause 11.2.2 shall not apply to the indemnity in clause 7.3.



8 CONFIDENTIALITY

- 8.1 Each of us ("receiving party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party ("disclosing party"), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain.
- 8.2 The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract.
- 8.3 The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. 8.4 This clause 8 shall survive termination of the Contract.

9 DATA PROTECTION

- 9.1 Both you and we agree to comply with all applicable principles and laws relating to the protection of personal data and to indemnify the other against any claims, costs and liabilities that the other party may suffer or incur as a result of any failure to comply.
- 9.2 In situations where you are a data controller and we are a data processor, the provisions of the Schedule to these Terms shall apply.

10 WARRANTIES

- 10.1 We warrant that we will perform our obligations under the Contract diligently and with reasonable skill and care, using suitably skilled and experienced personnel.
- 10.2 Any software or software-based services we provide are not warranted to be uninterrupted or error free.

11 LIMITATION OF LIABILITY: YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 11.1 Nothing in these Terms shall limit or exclude the liability of either party for:
- 11.1.1 death or personal injury caused by negligence, or the negligence of its employees, agents or subcontractors;
 - 11.1.2 fraud or fraudulent misrepresentation; or
 - 11.1.3 any statutory provision which cannot be excluded.
- 11.2 Subject to clause 11.1:
- 11.2.1 neither party shall under any circumstances whatever be liable to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of goodwill, contract or revenue or failure to make anticipated savings or for any indirect or consequential loss arising under or in connection with the Contract; and
 - 11.2.2 our total liability to you in respect of all losses, costs, claims and/other liabilities arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed an amount equal to the amount payable by you under the Contract in respect of the 12 months prior to the first date on which the events giving rise to the claim occurred.
- 11.3 We have no responsibility for and shall have no liability in respect of the performance or non-performance of or any matters to the extent they arise in connection with any third party products or services including hardware, software and/or communications networks.
- 11.4 All terms that might otherwise be implied into the Contract by statute are, to the fullest extent permitted by law, excluded from the Contract.
- 11.5 Any action of any kind by either party based on or arising in relation to the Contract must be commenced not later than 2 years after the date the cause of action first accrued.
- 11.6 This clause 11 shall survive termination of the Contract.

12 TERM AND TERMINATION

- 12.1 Subject to the other provisions of this clause 12, the Contract shall commence on the Start Date and remain in force for an initial term as stated in the Order Form. It shall automatically renew and continue after that initial term for successive renewal terms of one year or such other period stated in the Contract unless and until terminated by either party giving the other not less than 30 days' notice, such notice to expire on the last day of that initial term or of any renewal term. All charges will continue to be payable throughout the term until the Contract is properly terminated in accordance with its



terms. 12.2 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- 12.2.1 the other party commits a material breach of its obligations under this Contract and (if the breach can be remedied) fails to remedy that breach within 28 days after receipt of notice in writing specifying the breach and requiring it to be remedied;
- 12.2.2 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- 12.2.3 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
- 12.2.4 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- 12.2.5 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events described in clause 12.2.1 to clause 12.2.4 (inclusive).
- 12.3 We may terminate the Contract with immediate effect by giving you written notice if you fail to pay any amount due under this Contract on the due date for payment and have not paid that amount within 14 days of us giving you notice that the payment is overdue and that we may terminate the Contract if it is not paid within that period.

13 CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- 13.1 you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, we shall submit an invoice, which you shall pay immediately on receipt;
- 13.2 you and we shall each return all property and materials belonging to the other;
- 13.3 your right to access and use the Services shall cease;
- 13.4 any accrued rights and remedies as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

14 FORCE MAJEURE

- 14.1 Neither party shall be liable to the other for any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.
- 14.2 For the purposes of the Contract, "Force Majeure Event" means an event beyond the reasonable control of the relevant party including but not limited to strikes, lock-outs or other industrial disputes (whether involving that party's workforce or that of any other person), failure of a utility service (including the internet) or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 14.3 The party affected by a Force Majeure Event shall notify the other party as soon as practicable and shall perform the affected obligations as soon as practicable after the Force Majeure Event ceases to have effect.

15 ASSIGNMENT

- 15.1 We may at any time assign or deal in any other manner with all or any of our rights under the Contract and may subcontract or delegate in any manner any or all of our obligations under the Contract to any third party.
- 15.2 You shall not, without our prior written consent, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of your rights or obligations under the Contract.

16 DISPUTE RESOLUTION

- 16.1 If any difference or dispute arises between you and us relating to the Contract, we will use our respective reasonable endeavours to resolve it between us including escalating the dispute to senior management level.
- 16.2 If we are not able to resolve any issues that arise between ourselves, we will attempt to resolve them by mediation through a recognised mediation organisation that we agree.



17 NON-SOLICITATION

17.1 You shall not, for the duration of the Contract, and for a period of 12 months following termination, directly or indirectly induce or attempt to induce any of our employees who has been engaged in connection with the Contract to leave employment with us.

18 NOTICES

18.1 Any notice under the Contract shall be in writing and shall be delivered or sent to the registered office of the relevant party or to the email address provided by the relevant party for this purpose.

18.2 Notices:

18.2.1 delivered in person or by courier shall be deemed served on delivery; or

18.2.2 sent by first class, pre-paid, recorded delivery post, shall be deemed served on the second Business Day after the day of posting, or sent by airmail shall be deemed served on the fifth Business Day after the day of posting; or

18.2.3 sent by email shall be deemed served when sent unless the sender receives a machine generated message that the email was not delivered.

18.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

19 SEVERANCE

19.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable.

19.2 If such modification is not possible, the relevant provision or part-provision shall be deemed deleted.

19.3 Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

20 WAIVER

20.1 A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default.

20.2 No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy.

20.3 No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

21 THIRD PARTIES

A person who is not a party to the Contract shall not have any rights to enforce its terms.

22 VARIATION

No variation of these Terms, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by us.

23 PUBLICITY

You agree that we may make reference to you, including use of your trading names and logos, and our work for you, including by way of case studies, in our promotional materials.

24 GOVERNING LAW AND JURISDICTION

24.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including noncontractual disputes or claims) shall be governed by and construed in accordance with laws that depend on the Data Interchange legal entity with which you are contracting.

24.2 Each party irrevocably agrees that the courts that shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims) shall be determined by the Data Interchange legal entity with which you are contracting.



DATA PROTECTION SCHEDULE

- 1.1 In this Schedule, "Data Protection Legislation means the General Data Protection Regulation (EU 2016/679) and any amendment or replacement of it in force in England from time to time.
- 1.2 You must ensure that you have all necessary and appropriate consents and notices in place to enable lawful transfer of personal data to the us for the duration and purposes of the Contract.
- 1.3 We shall, in relation to any personal data processed in connection with the performance of our obligations under the Contract:
- 1.3.1 process that personal data only on your written instructions;
- 1.3.2 ensure that we have in place appropriate technical and organisational measures, reviewed and approved by you, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by us;
- 1.3.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- 1.3.4 not transfer any personal data outside of the European Economic Area unless the following conditions are fulfilled: i. we have provided appropriate safeguards in relation to the transfer; ii. the data subject has enforceable rights and effective legal remedies; iii. we comply with our obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and iv. we comply with your reasonable instructions notified to it in advance with respect to the processing of the personal data;
- 1.3.5 assist you in responding to any request from a data subject and in ensuring compliance with your obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 1.3.6 notify you without undue delay on becoming aware of a personal data breach;
- 1.3.7 at your written direction, delete or return personal data and copies thereof to you on termination of the Contract unless required by applicable law to store the personal data;
- 1.3.8 maintain records and information to demonstrate our compliance with these provisions.