SmarterPay

Licence Agreement

LICENCE AGREEMENT

IMPORTANT
Read the following Terms and Conditions carefully before opening the enclosed package containing the distribution media. By opening that package, you ("the Licensee") are to become bound by the Terms and Conditions of this Agreement. If you do not accept these Terms and Conditions promptly return the package unopened for a full refund.

WHEREAS
The Application that SmarterPay Limited ("SPL") provides is in a non-reusable form for first use by the Licensee.

The Licensee wishes to take, and SPL wishes to grant the Licensee the right to use the Application, in accordance with the Terms and Conditions of this Agreement, while running their business.

In consideration for the grant of rights the Licensee will, at the Commencement Date of this Agreement, pay SPL or Distributor an initial charge and on subsequent anniversaries of the Commencement Date pay SPL or Distributor an ongoing Licence fee.

1   DEFINITIONS

1.1   "Application" means the binary executables that constitute the computer program SmarterPay.

1.2   "Commencement Date" means the despatch date of the Application to the Licensee by SPL or a Distributor.

1.3   "SPL Retail Price List" means the price at which SPL offers its products and services to its standards customers.

1.4   "Distributor" means an organisation or individual duly authorised by SPL to distribute SPL licensed material.

1.5   "Licence Period" means a period of twelve (12) months starting on the Commencement Date or an anniversary thereof.

2   LICENCE

2.1   SPL grants the Licensee a non-exclusive, non-assignable, revocable right to operate the Application on a single computer that is under the sole control of the Licensee, in the country that it is delivered to the Licensee by SPL or a Distributor, for the duration set out in clause 3.1.

2.2   SPL grants the Licensee the right to transfer from time to time the Application to another computer provided that only one instance of the licensed material is installed at any one time.

2.3   SPL does not grant the Licensee the right to use the Application on behalf of third parties without prior written permission from SPL.

2.4   The Licence is personal to the Licensee and SPL does not grant the Licensee, in respect of the whole or any part of the Application or its associated documentation, the right to sell, transfer, rent, lease, sub-licence, loan, copy, modify, adapt, merge, translate, reverse engineer, de-compile, disassemble, reproduce or deal in the same in any way.

2.5   From time to time SPL may change the Terms of this Agreement. When any Terms are changed, SPL will notify the Licensee by post and/or e-mail, and such notice will be effective thirty (30) days after despatch. If the Application is used after that time those notified changes shall be incorporated into the Agreement and the Agreement so changed shall be the Agreement between the parties in respect of the Application. If the Licensee does not wish to accept the changes, the Licensee should make representation to SPL in writing within seven (7) days and the notified changes will not be effective until the commencement of the next Licence Period unless the Licensee terminates this Agreement at or before that date.

3   DURATION
3.1 The Agreement shall commence on the Commencement Date for the Licence Period and thereafter shall continue for successive consecutive Licence Periods unless terminated pursuant to clause 4.

4   TERMINATION
4.1   The Licence will be terminated by any of the following events:
a) either party gives the other party at least ninety (90) days' notice in writing to terminate this Agreement on the end of any Licence Period; or

b) either party commits a material breach of the Terms and Conditions of this Agreement and such breach is not rectified within thirty (30) days after written notice; or

c) if the other party has a receiver manager administrative receiver or administrator (or local equivalent under its law) appointed over the whole or a substantial part of its assets or ceases to carry on business; or

d) if any order is made or any resolution passed for the winding up of the other party (except for the purposes of amalgamation or reconstruction) or local equivalent under its law.

4.2   If the Licence is terminated for any reason (other than by notice given by SPL pursuant to clause 4.1a or 4.3, as the Application is in a non-reusable form, the Licensee shall not be entitled to any refund for any part of the Licence Period and shall be liable to pay to SPL any outstanding monies due hereunder.

4.3   SPL may, at its discretion, give the Licensee not less than six (6) months' notice or such notice as will expire at the end of the then current Licence Period that it intends to discontinue the Application. In that event, the Licensee will be entitled to receive a reimbursement of monies that have been paid to SPL pro rata in relation to the remaining part of the Licence Period if any extends beyond the expiry of such notice.

4.4   Upon termination or expiry of this Agreement for any reason, the Licensee agrees to make no further use of the Application, remove it from all applicable computer systems, and return all copies of the Application and any associated documentation to SPL.

5   FEES AND CHARGES
5.1   In consideration for the grant of rights by SPL to the Licensee in this Agreement, the Licensee shall pay to SPL the Initial Charge against an invoice raised by SPL in respect thereof.

5.2   Upon subsequent anniversaries of the Commencement Date, the Licensee shall pay to SPL the Annual Licence Fee against an invoice raised by SPL in respect thereof.

5.3   Transportation costs of any deliverables necessary under the terms of this agreement shall be borne by the Licensee and paid to SPL by an invoice raised by SPL in respect thereof.

5.4   All payments to be made against invoices sent by SPL to the Licensee in relation to this Agreement shall be paid within the terms specified on the pertinent invoice. If the package containing the Application is obtained from a Distributor rather than directly from SPL, each reference to "SPL" within this Fees and Charges clause means and refers to the Distributor from which the package was acquired.

6   WARRANTIES, LIMITATIONS AND LIABILITIES

6.1   SPL warrants that it is the copyright owner of the Application and the documentation and that it has full rights to grant the Licence.

6.2   In no event will SPL be liable for any loss, liability or damage of any kind whether direct or consequential (except personal injury or death resulting from SPL's negligence) including but without limitation any economic loss or other loss of profits business or goodwill arising from the Licensee's use of, or inability to use, the Application, or from errors or deficiencies in it, whether caused by negligence or otherwise, except insofar as any such claim may arise from:

a) Any breach of this Agreement by the SPL
b) Any invalidity or defect in title of SPL

In no event shall SPL's liability exceed the amounts paid to SPL for the then current Licence Period.

7   FORCE MAJEURE

7.1   Neither party will be liable to the other party in any way whatsoever for destruction, damage, delay or any other matters of any nature whatsoever arising out of any circumstance or event outside the reasonable control of such party including without limitation war, rebellion, civil commotion, strikes, lock-outs or industrial disputes, fire, explosion, earthquake, acts of God, flood, drought or bad weather; the unavailability of deliveries, supplies, software, disks or other media or the requisitioning or other act or order by any government department, council or other constituted body.

8   ASSIGNMENT

8.1   The Licensee shall not be entitled to assign this Agreement.
8.2   SPL shall be entitled to assign this Agreement without reference to the Licensee.

9   GENERAL

9.1   If any provision of this Agreement is found to be invalid by any court having competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this Agreement that shall remain in full force and effect.

9.2   This Agreement forms the entire agreement between the parties relating to its subject matter. Any variation of this Agreement (except for any variations arising out of clause 2.5) shall be binding only if it is recorded in a document signed by or on behalf of all the parties.

9.3   Failure or delay by either party to exercise any right or remedy under this Agreement does not constitute a waiver or bar to exercise of that right or remedy.

10 NOTICE

10.1 Any notice or other document to be given under this Agreement shall be in writing and shall be deemed to have been duly given if left at or sent by hand or by registered post facsimile or other electronic media to the party at the address set out at the head of this Agreement or such other address as one party may from time to time designate by written notice to the other. Any such notice or other document shall be deemed to have been received by the address two working days after the same has been posted if sent by registered post or simultaneously with the delivery or transmission if left or sent by hand or if given by facsimile or other electronic means.

11 JURISDICTION

11.1 This Agreement shall be governed by English law and subject to the non-exclusive jurisdiction of the English Courts.

12 HEADINGS TO PARAGRAPHS AND CLAUSES

12.1 Headings to paragraphs and clauses shall not be considered in the interpretation of this agreement.