

# SmarterPay Master Agreement

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Updated 03/04/2023

## Introduction

This agreement is between SmarterPay Limited, a company registered in England and Wales with company number 07333064 and its registered office at SmarterPay Limited, Suite A, 2nd Floor Utility House, 32-36 Prospect Street, Hull, United Kingdom, HU2 8PX ("SmarterPay") and the Customer identified on the Contract Order Form or Schedule to this Agreement ("Customer") for the provision of certain Services by SmarterPay to Customer.

The parties agree to enter into this agreement to govern the provision of software applications and platforms through different service offerings provided by SmarterPay ("Services"). The agreement outlines the terms and conditions under which SmarterPay will provide Services to Customer, and Customer will pay for and use such services or products.

This agreement may only be amended in writing, signed by authorised representatives of both parties.

This agreement constitutes the entire agreement between the parties and supersedes all prior negotiations and understandings unless otherwise agreed. The terms and conditions outlined in this agreement, and any attachments and schedules, define the entire understanding between the parties. The details of the parties, services, and payment terms and any agreed variation shall be defined in the Contract Order Form.

## 1. Definitions

- 1.1. **Add-On Applications:** additional software applications made available to the Customer by SmarterPay offering additional functionality for which an additional fee may be payable and the use of which may be subject to additional terms set out in a schedule to this Agreement;
- 1.2. **Add-On Application Fees:** any fees payable by Customer to SmarterPay in respect of the Add-On Applications which are not included in the Subscription Fees including, but not limited to one-off licence fees)
- 1.3. **Additional Support Services:** any support services requested by Customer and delivered by SmarterPay in excess of the Support Services;
- 1.4. **Additional Support Fees:** any fees payable by Customer to SmarterPay in respect of the Additional Support Services;
- 1.5. **Associated Companies:** an entity that directly or indirectly controls, is controlled by, or is under common control with, a party to this Agreement. For the purposes of this definition, "control" means the ownership of
  - (i) greater than fifty per cent of the voting power to elect directors of the entity, or
  - (ii) greater than fifty per cent of the ownership interest in the entity.
- 1.6. **Authorised Users:** those employees, agents and independent contractors of Customer who are authorised by Customer to use the Services and the

Documentation, as further described in clause 3.2 and 5.1.3 and are in accordance with the number of users permitted to use the Services as detailed in the Usage Limits;

- 1.7. **Claim Period:** means each successive period of twelve (12) months commencing on the Commencement Date specified in the Contract Order Form;
- 1.8. **Confidential Information:** information of a party that is proprietary or confidential and is either clearly labelled as such, identified as Confidential Information in clause 9, a reasonable person would understand to be confidential or proprietary at the time of disclosure;
- 1.9. **Business Day:** any day which is not a Saturday, Sunday or statutory public holidays in the UK;
- 1.10. **Business Hours:** 9.00 am to 5.00 pm local UK time each Business Day;
- 1.11. **Customer Data:** the data and information, including any personal data, provided by Customer to SmarterPay and/or input by Customer, Authorised Users, or SmarterPay on Customer's behalf for the purpose of using the Services or facilitating Customer's use of the Services or data collected and processed by or for Customer through Customer's use of the Services, but excluding SmarterPay Data;
- 1.12. **Data Protection Laws:** means
  - a) EU or Member State laws applicable to any Customer Personal Data in respect of which SmarterPay is subject including, without limitation, the GDPR for so long as it remains in legal effect; and
  - b) any other Applicable Law with respect to Customer Personal Data in respect of which any SmarterPay is subject.

GDPR means the Regulation (EU) 2016/679 of the European parliament and the Council of 27 April 2016 on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data, and repealing Directive 95/46/EC, as transposed into domestic legislation of each member state and as amended, replaced or superseded from time to time, including by the GDPR and laws implementing or supplementing the GDPR;

- 1.13. **Data controller, processor, data subject, data concerning health, personal data, personal data breach, processing and appropriate technical and organisational measures:** shall have the meanings given to them in the Data Protection Laws;
- 1.14. **Development Services:** means certain implementation, configuration, development and/or customisation by SmarterPay of the Software and/or Add-On Applications licensed by Customer as part of the Services as further described and agreed by the parties in the applicable Contract Order Form or Schedule;
- 1.15. **Development Services Fees:** the fees payable by Customer for the Development Services ordered as specified in the Contract Order Form or Schedule;
- 1.16. **Documentation:** the document(s) made available to Customer by SmarterPay which sets out a description of the Services and the user instructions for the Services;

- 1.17. **Fees:** the Subscription Fees, Add-On Application Fees, Development Services Fees, Transaction Fees, Additional Support Services Fees and Overage Fees and any other fees payable under this Agreement;
- 1.18. **Force Majeure Event:** acts, events, omissions or accidents beyond a party's reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, fire, flood or storm;
- 1.19. **Initial Subscription Term:** the initial term of the Subscription as set out in the Contract Order Form or Schedule;
- 1.20. **Inappropriate Content:** content which (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; (b) facilitates illegal activity; (c) depicts sexually explicit images; (d) promotes unlawful violence; (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or (f) causes damage or injury to any person or property;
- 1.21. **Intellectual Property Rights:** including without limitation, rights in patents, trademarks, service marks, trade names, other trade-identifying symbols and inventions, copyrights, design rights, database rights, rights in know-how, trade secrets and any other intellectual property rights arising anywhere in the world, whether registered or unregistered, and including applications for the grant of any such rights;
- 1.22. **Contract Order Form:** the Order Form(s) entered into and signed by both parties for the Services and products which includes details of the Services, Usage Limits, Initial Subscription Term, Subscription Fees, any Development Services to be provided and other any details, amendments or variations required, each attached as Schedule and forming part of this Agreement;
- 1.23. **Overage Fees:** means the fees payable by Customer calculated in accordance with the then current SmarterPay price list for Customer's use of the Services in excess of the agreed Usage Limits;
- 1.24. **Renewal Period:** has the meaning set out in clause 15.2 below;
- 1.25. **Service Level Agreement or SLA:** means the document setting out service level commitments and attached as a Schedule, if applicable;
- 1.26. **Services:** means the different service offerings from SmarterPay, which each include:
  - (i) the access to and use of the relevant Software; and
  - (ii) the access to and use of the Add-On Applications in accordance with this Agreement;
- 1.27. **SmarterPay Data:** means
  - (i) the information or data provided by SmarterPay to Customer as part of the Services; and
  - (ii) any meta data (except to the extent it consists of personal data) and/or other anonymised data which may be extracted by SmarterPay from Customer's use of the Services to be used to provide the Services, which may include without limitation feedback from Customer in respect of its use of the Services;

- 1.28. **Software:** Software applications, whether hosted over the internet or binary executables and additional modules provided by SmarterPay and accessed by Customer as part of the Services, as set out in the Contract Order Form and further described in the Documentation;
- 1.29. **Subscriptions:** subscriptions purchased by Customer under the Contract Order Form or Schedule for Customer use of the Services in accordance with the Agreement and limited by the Usage Limits as set out in the Contract Order Form or Schedule, which entitle Customer to access and use the Services and the Documentation in accordance with the Usage Limits and this Agreement;
- 1.30. **Subscription Fees:** the subscription fees payable by Customer to SmarterPay for Customer's and its Authorised Users' use of the Services and any other services made available by SmarterPay from time to time, as set out in the Contract Order Form or Schedule;
- 1.31. **Subscription Term:** means the Initial Subscription Term and any subsequent Renewal Periods;
- 1.32. **Support Services:** means the SmarterPay standard support services provided by SmarterPay in accordance with the relevant Schedule in respect of the Services, including the provision of any applicable Software maintenance releases during the applicable Subscription Term;
- 1.33. **Taxes:** any applicable taxes, including without limitation, withholding, sales, use, excise, value added tax and similar taxes but shall not include taxes based on SmarterPay's gross income;
- 1.34. **Usage Limits:** means the limits of use in respect of the Services as set out in the applicable Contract Order Form or Schedule;
- 1.35. **Virus:** any thing or device (including any software, code, file or programme) which may prevent, impair or otherwise adversely affect the access to or operation, reliability or user experience of any computer software, hardware or network, telecommunications service, equipment or network or any other service or device, including worms, trojan horses, viruses and other similar things or devices.

## 2. Services

- 2.1. Customer shall complete the details on the Contract Order Form for the purchase of Subscriptions for the Services (including Add-On Application Fees as appropriate). In consideration of the Subscription Fees and, as appropriate, Add-On Application Fees, payable by Customer as set out in the applicable Contract Order Form, SmarterPay shall provide the Services during the Subscription Term in accordance with the terms set out in the Contract Order Form, Schedule and this Agreement.
- 2.2. To the extent the parties agree in the applicable Contract Order Form for the right and license to use any of the Services in accordance with this Agreement to extend to Customer's Associated Companies, any such Associated Companies shall be entitled to perform any of the obligations and exercises any of Customer's rights under this Agreement, but only Customer shall be entitled to enforce the rights granted to Customer under this Agreement, for and on behalf of such

Associated Companies. Any act or omission of any such Associated Companies shall for the purpose of this Agreement be deemed to be an act or omission of Customer and Customer shall be liable for any breach of the terms of this Agreement by such Associated Companies. Any loss, damage, liability, costs and expenses incurred by any such Associated Companies in connection with this agreement, shall be deemed to be incurred by Customer.

### **3. License**

- 3.1. Subject to payment of the applicable Subscription Fees or License Fees, the restrictions set out in this clause 3 and the terms and conditions of this Agreement and the applicable Contract Order Form, SmarterPay hereby grants to the Customer a non-exclusive, non-transferable license to use the Services and the Documentation in accordance with and Usage Limits set out on the Contract Order Form during the Subscription Term and solely for Customer's internal business operations.
- 3.2. In relation to the Authorised Users, Customer undertakes that:
  - a) The maximum number of Authorised Users that it grants access to and use of the Services and Documentation shall not exceed the number of Authorised Users set out under the Usage Limits;
  - b) it will not allow more than one named individual user per Authorised User unless that Authorised User has been reassigned in its entirety to another individual user, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation. In particular, Customer shall not allow group or other sharing of an Authorised User login either within or outside of its organisation;
  - c) each Authorised User shall keep a secure password for its use of the Services and Documentation, take all necessary or recommended security measures in relation to password security and that each Authorised User password shall be kept confidential;
- 3.3. Customer shall permit SmarterPay to audit:
  - a) Customer's compliance with the terms of this Agreement generally; and
  - b) Customer's Use of the Services in order to establish the identity of each Authorised User and the number of Authorised Users is in accordance with the Subscription purchased. Without prejudice to SmarterPay's other rights, if any such audit reveal that the Services are being used by any individual who is not an Authorised User, Customer shall promptly disable such access; or, if SmarterPay agrees, at its sole discretion, shall pay an additional fee at SmarterPay's then current rates for such individual's continued use as an Authorised User.
- 3.4. Except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties, Customer shall not:

- a) except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means;
  - b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
  - c) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation;
  - d) use the Services and/or Documentation to provide services to third parties;
  - e) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users; or
  - f) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 3.
- 3.5. Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify SmarterPay.
- 3.6. In the event Customer's use of the Services exceeds the Usage Limits, Customer shall pay the Overage Fees in respect of such excess use in accordance with clause 4.

#### **4. Payment Terms**

- 4.1. Customer shall pay the Subscription Fees and any additional applicable Fees related to the Services as set out in the Contract Order Form or relevant price list to SmarterPay in accordance with this clause 4. Unless otherwise agreed in the Contract Order Form, SmarterPay may invoice the Customer for the Subscription Fees annually in advance on or after the Commencement Date specified in the Contract Order Form and thereafter on each anniversary of the initial invoice date for the duration of the Subscription Term.
- 4.2. Unless otherwise agreed in the applicable Contract Order Form or Schedule, SmarterPay may invoice the Development Services Fees on or after the date of the relevant Contract Order Form or Schedule for the purchase of the Development Services. Any reasonable expenses incurred by SmarterPay in connection with the Development Services will be invoiced separately and in addition to the Development Services Fees.
- 4.3. SmarterPay shall invoice Customer for Transaction fees, which are based on customer usage monthly in arrears unless otherwise specified on the Contract Order Form. Customer shall pay such invoices in accordance with clause 4.5 below.

- 4.4. SmarterPay shall invoice Customer for any Overage Fees and Additional Support Services Fees annually in arrears and Customer shall pay such invoices in accordance with clause 4.5 below.
- 4.5. Unless otherwise specified in the Contract Order Form, Schedule or the price list, all Fees and any approved expenses shall be paid by Customer in full and without deduction within thirty (30) days of the date of invoice to the bank account nominated in writing by SmarterPay. SmarterPay may offset any amount owing to them by the Customer against any amount payable by SmarterPay to Customer.
- 4.6. If SmarterPay has not received payment for any invoices which are not the subject of a bona fide dispute by the due dates and without prejudice to any other rights and remedies of SmarterPay, SmarterPay may:
  - a) by giving three (3) Business Days prior written notice to Customer, without liability to Customer, disable Customer's password, account and access to all or part of the Services and SmarterPay shall be under no obligation to provide any or all of the Services and/or Development Services while the invoice(s) concerned remain unpaid; and
  - b) charge interest which shall accrue daily on such due amounts at the higher of:
    - (i) an annual rate equal to 4% above the base rate of the Bank of England; or
    - (ii) the standard statutory interest rate under applicable law.
- 4.7. Once a License Key has been issued, or Customer has begun using a Service, all related amounts and Fees stated or referred to in this Agreement are non-refundable.
- 4.8. All Fees referred to are exclusive of all Taxes. Customer shall be solely responsible for, and paying all applicable Taxes relating to this Agreement, and the use or access to the Services.
- 4.9. Subject to Clause 4.10, below, SmarterPay shall invoice for each Renewal Period no less than 25 days prior to the start of such Renewal Period. Customer shall provide reasonable assistance in estimating their usage during that Renewal Period as may reasonably be required by SmarterPay.
- 4.10. SmarterPay shall be entitled to increase the annual Subscription Fees payable up to the consumer price index plus 3% with effect from the start of each Renewal Period. If the proposed increase in Subscription Fees for the Renewal Period exceeds the consumer price index plus 3%, then SmarterPay will raise the invoice not less than 90 days' prior to the start of the Renewal Period and the terms of clause 4.11, below, shall apply. Notwithstanding the foregoing, in the event that third party costs (outside the control of SmarterPay) are increased during the Initial Term or any Renewal Period, SmarterPay shall be entitled to adjust its pricing accordingly. If the effect of such increase is that the Subscription Fees increase by more than the consumer price index plus 3%, then clause 4.11 below shall apply.

- 4.11. If SmarterPay increases prices by more than the consumer price index plus 3% Customer shall have the option to provide notice of termination provided always that:
- a) in the case of a renewal, such notice is received no later than 30 days prior to the start of the Renewal Period and such notice expires at the end of the then current period; and
  - b) in the case of an increase due to third party cost increase, provided such notice is received not later than 30 days following the date of the notice of increase and giving not less than 30 days written notice.

## **5. Customer Obligations**

- 5.1. Customer shall:
- a) Provide all necessary co-operation and information as may be reasonably required by SmarterPay in order to provide the Services or Statement of Work. In the event of any delays in Customer's provision of such assistance, SmarterPay may adjust any agreed timetable or delivery schedule as reasonably necessary. Where Customer requires the delivery of the Service without all information being provided, SmarterPay may charge Customer at its standard rates for an additional work required to carry this out;
  - b) Comply with any Customer Obligations set out in the relevant SLA.
  - c) Procure that its Authorised Users:
    - (i) use the Services and Documentation in accordance with the terms and conditions of this Agreement;
    - (ii) comply with all applicable laws and regulations with respect to its activities under this Agreement;
    - (iii) only use the Services for lawful purposes; and
    - (iv) conduct Customer's business with the highest of ethical standards and fairness. Customer shall be liable for any Authorised User's breach of this Agreement;
  - d) Procure that only one instance of any SmarterPay licensed material is installed at any given time and that any use of such licensed material on behalf of third parties is prohibited without prior written consent from SmarterPay.
  - e) Be solely responsible for procuring and maintaining its network connections and telecommunications links and all problems, conditions, delays and delivery failures arising from or relating to Customer's network connections or telecommunications links;
  - f) Use all reasonable efforts to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify SmarterPay;

- g) Be solely responsible for the accuracy, completeness, design, appropriateness, creation, maintenance, and updating thereof of all Customer Data in the use of the Services. SmarterPay shall not be liable for any errors or inaccuracies in
  - (i) any information provided by Customer;
  - (ii) any Customer Data, or
  - (iii) any changes or modifications to any Customer Data made by SmarterPay upon Customer's written instructions beyond its responsibility to accurately reproduce such Customer Data on Customer's instruction;
- h) Be responsible for obtaining all necessary licenses and consents required to use Customer Data (if any and including without limitation those from the owners or licensees of any third party information and personal data provided to SmarterPay) and as part of the Services and Customer warrants and represents that such licenses and consents have been obtained.
- i) Promptly report any suspected faults or errors in operation of the Services to SmarterPay using the channels provided in the Documentation.

5.2. Customer shall not upload, input, access, store, distribute or transmit any Viruses, or any material, including without limitation Customer Data during the course of its use of the Services that:

- a) is Inappropriate Content;
- b) is unlawful (including breach of Intellectual Property Rights of any other party), harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- c) facilitates illegal activity; or is otherwise illegal or causes damage or injury to any person or property;

and SmarterPay reserves the right, without liability or prejudice to its other rights to Customer, to:

- d) disable Customer's access to any material that breaches the provisions of this clause and to
- e) remove any such content where, in SmarterPay's sole and reasonable discretion, SmarterPay suspects such content to be Inappropriate Content.

## **6. Intellectual Property Rights**

- 6.1. Customer acknowledges and agrees that SmarterPay and its licensors and suppliers own all Intellectual Property Rights in the Software, Services, SmarterPay Data, the Development Services and the Documentation. Except as expressly stated herein, this Agreement does not grant Customer any Intellectual Property Rights or any other rights or licenses in respect of the Software, Services, Development Services or the Documentation.

- 6.2. SmarterPay will indemnify Customer against any Intellectual Property Right infringement claims from third parties in connection to Customers use of Software, Services, SmarterPay Data, Development Services and Documentation, providing that Customer:
- a) Notifies SmarterPay promptly in writing of any claim received by Customer;
  - b) Makes no admission in respect of the claim and do not seek to settle the claim;
  - c) Permits SmarterPay to have sole conduct of the defence and settlement of the claim;
  - d) Provides all assistance that SmarterPay reasonably require in relation to the claim.

## **7. Customer Data**

- 7.1. Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, appropriateness, completeness, reliability, accuracy and quality of the Customer Data.
- 7.2. Solely to enable SmarterPay to provide the Services and any Development Services to Customer and only to the extent required to enable SmarterPay to comply with this Agreement, Customer grants SmarterPay and its Associated Companies who require access to the Customer Data in order to provide the Services, Software and any Development Services, a non-exclusive licence to:
- a) host, transmit and display Customer Data and to incorporate the Customer Data with the SmarterPay Data; and
  - b) where necessary, to transfer Customer Data to any third party service providers used by SmarterPay, only as required for the provision of the Services, Development Services and for any specific Software functionality.
- 7.3. Customer acknowledges that responsibility for all Customer Data and any communications with others while using the Services is the sole and exclusive responsibility of Customer and that SmarterPay will not be held responsible in any way for any Intellectual Property Right infringement or violation, the violation of any other person's rights or, with the exception of SmarterPay's obligations under GDPR in relation to the processing of personal data within the Customer Data, the violation of any laws, arising or relating to Customer Data. Customer agrees to indemnify and hold harmless SmarterPay from and against all losses, damages, actions or causes of action, suits, claims, demands, penalties and interest arising in connection with or out of any such Customer Data, to the extent not caused by SmarterPay's wilful misconduct.
- 7.4. SmarterPay shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy as such document may be amended by SmarterPay in its sole discretion from time to time, with any such amended version to be made available to Customer. In the event of any loss or damage to Customer Data, Customer's sole and exclusive remedy shall be for SmarterPay to use commercially reasonable efforts to restore the lost or damaged Customer Data from the latest back-up of

such Customer Data maintained by SmarterPay in accordance with the archiving procedure described in its Back-Up Policy. SmarterPay shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party, (except those third parties sub-contracted by SmarterPay to perform services related to Customer Data maintenance and back-up) unless solely caused by SmarterPay's negligence or wilful misconduct.

- 7.5. Customer acknowledges that SmarterPay is not obliged to and nor is it able to edit or modify Customer Data (including third party information) without the express written permission of Customer. However, SmarterPay reserves the right to remove any Customer Data (or third-party information) which SmarterPay reasonably believes breaches any laws or regulations or any third party's rights or this Agreement and/or is deemed Inappropriate Content. SmarterPay will notify Customer if it removes any Customer Data (or third-party information) in accordance with this clause. To the extent permitted by law, SmarterPay disclaims all liability of any kind in respect of third-party products, services, information and any other material or services which can be accessed using the Services. SmarterPay expressly disclaims all liability for any fraud committed in connection with the Services.

## **8. Data Protection**

- 8.1. General. To the extent that the Customer Data contains personal data, the parties agree that the Customer is the data controller in respect of such personal data and that SmarterPay is the data processor. The terms of this clause 8 are the data processing agreement between them.

In some cases, however, the Customer is the data processor and its customers are the data controllers in relation to their customer's personal data. In such cases, SmarterPay is a sub-processor to the Customer and the provisions in this clause 8 apply in that context.

The parties agree to comply with their obligations relating to personal data under the Data Protection Laws. In particular Customer shall ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to SmarterPay for the duration and purposes of this Agreement and in order to process the personal data as set forth in clause 8.13 below.

SmarterPay shall only process personal data contained within Customer Data for the purposes of providing and enabling the delivery of the Services and shall only process the personal data in accordance with Customer's documented instructions. Customer shall ensure that such instructions are in compliance with the Data Protection Laws. Notwithstanding the foregoing, SmarterPay may process the personal data in conflict with or outside of the instructions if a failure to do so would infringe or potentially infringe the Data Protection Laws. SmarterPay shall promptly inform Customer if it believes that any instruction provided by Customer infringes the Data Protection Laws.

SmarterPay shall keep records to demonstrate its compliance with its obligations under this clause 7.

- 8.2. **Data Processing Details:** The processing comprises the types of Customer personal data and the categories of data subjects as specified in clause 8.13.
- 8.3. **Security:** Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, SmarterPay will implement and maintain appropriate technical and organisational measures to ensure the security of all personal data against unauthorised or unlawful processing or accidental loss, destruction or damage and to ensure that it complies with the requirements set out in this clause 7 and the Data Protection Laws.
- 8.4. **No Transfer:** Nothing in this Agreement shall operate to transfer, assign or otherwise grant to SmarterPay any right or interest to the Customer Data, unless otherwise expressly.
- 8.5. **Data Transfers outside of EU or EEA:** SmarterPay (and its applicable sub-processors) shall not transfer personal data to a country outside the EU or EEA which the EU Commission has found does not provide an adequate level of protection unless the parties have agreed to such transfer and SmarterPay ensures that such processing is performed under appropriate safeguards and otherwise complies with the statutory requirements regarding the Processing personal data outside of the EU/EEA.
- 8.6. **Assistance:** SmarterPay shall provide reasonable assistance, as requested by Customer from time to time, in undertaking any data protection impact assessments or investigation or consultation with any data privacy supervisor authority that Customer may reasonably undertake.

Taking into account the nature of the personal data and SmarterPay's obligations under this Agreement, SmarterPay shall, to the extent it is reasonably practicable to do so, co-operate with Customer to enable Customer to comply with any exercise of rights by a data subject under the Data Protection Laws.

SmarterPay shall promptly notify Customer if SmarterPay receives a request from a data subject under any Data Protection Laws in respect of Customer personal data; and shall not respond to that request except on the documented instructions of Customer or as required by Data Protection Laws in which case SmarterPay shall to the extent permitted by Data Protection Laws inform Customer of that legal requirement before the responding to the request.

- 8.7. **Employee Obligations:** SmarterPay shall take reasonable steps to ensure the reliability of any employee, agent or contractor who may have access to the Customer personal data, ensuring in each case that access is strictly limited to those individuals who need to access the personal data in order to perform the Services. SmarterPay shall ensure that all such individuals are subject to

confidentiality undertakings or professional or statutory obligations of confidentiality.

- 8.8. **Sub-Processors:** Customer agrees that SmarterPay shall be entitled to use sub-processors to process personal data on its behalf in connection with this Agreement. The sub-processors that SmarterPay wishes to appoint are set out in SmarterPay's Privacy Policy and Customer agrees that such sub-processors may process Customer personal data.

If SmarterPay wishes to appoint additional or replacement sub-processors, it shall inform Customer and will give Customer the opportunity to object to such appointment. Any objection shall not be binding on SmarterPay but Customer is entitled to terminate this Agreement if it has reasonable grounds to object to the sub-processor that SmarterPay appoints.

SmarterPay shall impose upon any sub-processor the same obligations related to the processing of personal data as set out in this Agreement by a written agreement between SmarterPay and sub-processor including terms which offer at least the same level of protection for Customer personal data as those set out in this Agreement.

- 8.9. **Data Breaches:** In case of any data breaches and other events where the security of Customer personal data has been compromised or SmarterPay suspects it may have been compromised, SmarterPay shall, without delay, notify Customer of the data breach and shall provide all pertinent information relating to the breach.
- 8.10. **Deletion or Return of Customer Personal Data:** SmarterPay may only process personal data for so long as it is providing the Services. However, If, or to the extent applicable law requires it, any Customer personal data needs to legally remain in the possession of SmarterPay, SmarterPay shall inform Customer and shall ensure the confidentiality of all such personal data and shall ensure that such personal data is processed only when necessary for the required purpose(s).

Subject to the above paragraph, the Customer may by written notice to SmarterPay within 14 days of the end of the Services require SmarterPay to return, at Customer's sole cost, a complete copy of all Customer personal data to the Customer. If SmarterPay does not receive such request, it shall delete and procure the deletion of all copies of Customer personal data in line with its data retention policies.

- 8.11. **Audit:** On reasonable notice (which shall not be less than 14 days) Customer, or such professional auditor appointed by Customer, may audit the compliance of SmarterPay with the data processing terms of this Agreement and the Data Protection Laws. Such audit must be conducted so as to reduce the impact on SmarterPay and SmarterPay cannot be compelled to provide information relating to third parties.  
Customer shall reimburse SmarterPay's reasonable costs in complying with the audit.

8.12. **Changes in Data Protection Laws:** Where applicable, SmarterPay may by at least 30 calendar days' written notice from time to time make any variations to these data protection provisions if the applicable law or the Data Protection Laws require.

8.13. **Description of Data Processing:**

<b>Categories of Data Subjects</b>	Customer clients (or Customer's customer's clients (e.g. Bureaux))
<b>Categories of Customer Personal Data</b>	Name, Bank Account, Payment Details
<b>Duration of Processing</b>	Duration of the supply of the Services
<b>Nature and purpose of Processing</b>	To process payments in accordance with the description of the Services

## 9. Confidentiality

9.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:

- a) is or becomes publicly known other than through any act or omission of the receiving party;
- b) was in the other party's lawful possession before the disclosure;
- c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
- e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

9.2. Each party shall:

- a) hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement; and
- b) take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third-party.

9.3. Customer acknowledges that details of the Software, Documentations, Services, Development Services, SmarterPay Data, feedback on the Services and the results of any performance (including security) tests of the Services, constitute SmarterPay's Confidential Information. SmarterPay acknowledges that the Customer Data is the Confidential Information of Customer.

9.4. On termination of this Agreement or when requested to do so in writing by the disclosing party, the receiving party shall promptly:

- a) permanently delete, destroy and erase all electronic copies of the Confidential Information from any computer or data storage system into which the Confidential Information was entered; and
- b) make no further use of the Confidential Information.

Clause 9.4.a shall not apply to personal data contained in the Customer Data in respect of which SmarterPay is the processor and the Customer is the controller where Customer requests the personal data be returned rather than deleted.

The above obligations shall not apply should applicable law require SmarterPay to retain possession of any Confidential Information. In such case, SmarterPay shall inform Customer and shall ensure the confidentiality of all such Confidential Information and shall ensure that it is used only when necessary for the required purpose.

9.5. The receiving party, if requested by the disclosing party, shall confirm in writing that the provisions of clause 9.4 have been complied with. The obligations of confidentiality under this clause 9 shall survive any expiration or termination of this Agreement.

## **10. Warranty and Disclaimer**

10.1. SmarterPay warrants that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care for the Subscription Term. SmarterPay warrants that it will comply with the service levels set out in the SLA or Schedule for each respective Service.

10.2. The warranties provided in clause 10.1 shall not apply to the extent of any non-conformance which is caused by:

- a) Customer's use of the Services contrary to SmarterPay's instructions or the Documentation; or
- b) modification or alteration of the Services by any party other than SmarterPay or SmarterPay's duly authorized contractors or agents.

10.3. If the Services do not conform with the warranty provided in clause 10.1, SmarterPay will, at its expense, use commercially reasonable efforts to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes Customer's sole and exclusive remedy, and

SmarterPay's sole and exclusive liability for any breach of the warranty.  
Notwithstanding the foregoing, SmarterPay:

- a) does not warrant that Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by Customer through the Services will meet Customer's requirements;
  - b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from Customer's access to and use of the Services and/or third-party applications or the transfer of data over communications networks and facilities, including the internet, and Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities;
  - c) is not responsible for any Virus which was not detected by SmarterPay using reasonable current commercial methods of detection or transmitted through any third-party services;
  - d) nor its suppliers or third-party service providers or software vendors, shall have any liability whatsoever for the accuracy, completeness, or timeliness of Customer Data, or for any decision made or action taken by Customer, any Authorized User, or any third party in reliance upon any Customer Data.
- 10.4. Except as expressly provided for in this clause 10, SmarterPay (and its Associated Companies and its suppliers) to the extent permitted by law, disclaims all other warranties, express, implied or statutory, including warranties, terms and conditions of merchantability, accuracy, correspondence with description, fitness for a particular purpose or use and satisfactory quality, and non-infringement.
- 10.5. This Agreement shall not prevent SmarterPay from entering into similar Agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

## **11. Limitation of Liability**

- 11.1. The exclusions in this clause 11 shall apply to the fullest extent permissible at law but neither party excludes liability for
- a) death or personal injury caused by its negligence or that of its officers, employees, contractors or agents;
  - b) fraud or fraudulent misrepresentation;
  - c) or any other liability which cannot be excluded by law.
- 11.2. Except with respect to amounts owed by Customer to SmarterPay hereunder and subject to clause 11.1, the aggregate liability of each party for or in respect of any loss or damage suffered by the other party (whether due to breach of

contract, tort (including negligence) or otherwise) under or in connection with this Agreement in any Claim Period shall be limited to the total amount of Fees paid by Customer during such Claim Period.

- 11.3. To the maximum extent permitted by applicable law, in no event will either party be liable to the other for special, consequential, incidental or other indirect damages, or for loss of profits, anticipated savings, business opportunity, goodwill, or loss of revenue, loss of use or loss of data (including corruption of data), or costs of procurement of substitute goods or services arising of this Agreement, howsoever caused and under any theory of liability (including contract, tort, negligence or otherwise) even if the other party has been advised of the possibility of such damages. The parties acknowledge that the amounts payable hereunder are based in part on these limitations and further agree that these limitations shall apply notwithstanding any failure of essential purpose of any limited remedy. SmarterPay accepts no liability for failure to maintain any level of availability of the Services other than where it is in breach of its obligations under this Agreement.
- 11.4. In addition to the other exclusions set out in this clause 11, SmarterPay has no liability:
- a) for any other third party products or services accessed and/or used by Customer through the Services;
  - b) where any failure to provide the Services is caused by a network, hardware or software fault in equipment which is not under the control of SmarterPay, including without limitation Bacs or other third-party banking and information systems;
  - c) any act or omission of Customer;
  - d) use of the Services in breach of this Agreement; or
  - e) any unauthorised access to the Services as a result of a default or the negligence of the Customer including a malicious breach of the Customer's security.

In the event of any loss or damage to Customer Data, Customer's sole and exclusive remedy shall be as set out in clause 7.4.

- 11.5. Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by Customer, and for any results or conclusions drawn from such use. SmarterPay shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to SmarterPay by Customer in connection with the Services or any actions taken by SmarterPay at Customer's direction.
- 11.6. SmarterPay does not and cannot control the flow of data to or from the network where the Software and Services reside and other portions of the internet including denial of service attacks (an attack which send a flood of incoming messages to the target system forcing the system to shut down, thereby

denying service to legitimate users). Such flow depends in large part on the performance of internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt Customer's connections to the internet (or portions thereof). SmarterPay cannot guarantee that such events will not occur. Accordingly, SmarterPay, its suppliers and subcontractors, if any, disclaim any and all liability resulting from or related to such events and Customer shall have no claim in respect thereof.

- 11.7. Any timings given for Development Services carried out by SmarterPay are estimates only and SmarterPay have no liability if timings are not met, provided SmarterPay provide and perform the Development Services within a reasonable time after the due date.

## **12. Dispute Resolution**

- 12.1. If any difference or dispute arises between Customer and SmarterPay relating to the Contract, SmarterPay will use respective reasonable endeavours to resolve it between us including escalating the dispute to senior management level in line with SmarterPay's Customer Complaints Policy.
- 12.2. If SmarterPay are not able to resolve any issues that arise, SmarterPay will attempt to resolve them by mediation through a recognised impartial party agreed by both parties.
- 12.3. Ultimately this Agreement and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) will for all purposes be solely and exclusively governed, construed and enforced in accordance with the laws of England and Wales (without regard to the conflicts of law provisions thereof). Both parties submit to the exclusive jurisdiction of the courts of England.

## **13. Force Majeure**

- 13.1. 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.
- 13.2. 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.

## **14. Term and Termination**

- 14.1. This Agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Commencement Date specified in the Contract Order Form and shall continue until the expiration, or earlier termination, of the Subscription Terms of all Subscriptions.
- 14.2. Each Subscription shall commence on the date set out on the Contract Order Form or Schedule and shall continue for the Initial Subscription Term. Thereafter, the Subscription shall automatically renew for successive periods of 12 months (or such other period as specified in the applicable Contract Order Form or Schedule) (each a "Renewal Period"), unless either party terminates with not less

than thirty (30) days' written notice prior to the end of the Initial Subscription Term or relevant Renewal Term or otherwise terminates in accordance with the provisions of this Agreement. The Initial Subscription Term together with any subsequent Renewal Periods shall constitute the "Subscription Term". Without a Renewal Period in place, Customer's access and use of the Service shall automatically terminate.

- 14.3. Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement and/or the Services without liability to the other at any time with immediate effect upon written notice if the other party:
- a) is in material breach of any of its obligations under this Agreement and/or Schedule or Contract Order Form and, in the case of a breach which is capable of remedy, fails to remedy such breach within thirty (30) days following notice of the breach; or
  - b) voluntarily files a petition under bankruptcy or insolvency law; shall have a receiver or administrative receiver appointed over it or any of its assets; or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business; or is subject to any analogous event or proceeding in any applicable jurisdiction; or
  - c) Customer objects with reasonable grounds to the appointment of a sub-processor pursuant to clause 8.8.
- 14.4. After the initial period as defined in the Contract Order Form, Customer may terminate a Subscription with three (3) months' written notice, provided that Customer shall pay an early termination fee in an amount equal to the number of months remaining in the then current Initial Subscription Term or Renewal Period multiplied by the monthly Subscription Fees as set out in such Contract Order Form, Schedule or price list.
- 14.5. SmarterPay may, at its discretion, give Customer no less than six (6) months' notice or such notice as will expire at the end of the then current Subscription Term that it intends to discontinue the Service or Application. In that event, Customer will be entitled to receive a reimbursement of monies that have been paid to SmarterPay pro rata in relation to the remaining part of the Subscription Period if any extends beyond the expiry of such notice.
- 14.6. On termination of this Agreement and/or the Services for any reason:
- a) Customer's rights of use granted under this Agreement for the relevant Services shall immediately terminate and Customer shall immediately cease the use of the Services, Documents and Applications;
  - b) Customer shall:
    - (i) in the case of termination of the Agreement, promptly pay all monies due or to become due under this Agreement to the effective date of

termination, including any fees in respect of early termination pursuant to clause 14.4; and

- (ii) in the case of termination of certain Services only where the Agreement and remaining valid Subscriptions will continue in full force and effect, promptly pay all monies due or to become due, including any fees in respect of early termination pursuant to clause 14.4;
- c) each party shall return and make no further use of any equipment, property, Software, Services and Documentation and other items (and all copies of them) belonging to the other party.
- d) Subject always to SmarterPay's legal obligation to retain records, SmarterPay may destroy or otherwise dispose of any of Customer Data in accordance with its data retention policies. If SmarterPay receives, no later than thirty (30) days after the effective date of the termination of this Agreement, a written request for the delivery to Customer of the then most recent back-up of the Customer Data, SmarterPay shall deliver the back-up to Customer. Customer shall pay all reasonable fees and expenses incurred by SmarterPay in returning the Customer Data.

## **15. Assignment and Delegation**

- 15.1. Neither SmarterPay nor Customer may assign or otherwise transfer this Agreement or any of its rights or obligations or purport to do any such acts under it to any third party without prior written consent from the other party, such consent not to be unreasonably withheld or delayed.
- 15.2. Notwithstanding anything to the contrary, SmarterPay shall have the right, upon written notice to Customer, to assign this Agreement to any of its Associated Companies, or to an entity resulting from a merger, acquisition or other business reorganization of SmarterPay.
- 15.3. SmarterPay shall have the right to sub-contract any of its obligations hereunder to a third party, provided that SmarterPay shall continue to remain responsible for the performance of the Services hereunder.
- 15.4. Any attempted assignment, sub-contracting or other transfer in violation of this clause 15 shall be null and void.

## **16. General**

- 16.1. **Marketing and use of Customer name:** SmarterPay may request the consent of Customer to:
  - a) use Customer's name or logo on SmarterPay's website;
  - b) use Customer's name or logo in SmarterPay's collateral marketing materials;
  - c) issue a press release announcing Customer's use of the Subscriptions and/or Services;

- d) write and publish a case study detailing Customer's use of the Subscriptions and/or Services, the project(s) for which the Subscriptions and/or Services were used, and the business and technical benefits arising from the project(s);  
or
- e) use Customer as a reference for the Subscriptions and/or Services.

Customer may grant or refuse such consent.

- 16.2. **Entire Agreement.** This Agreement together with any Contract Order Form and its Schedules sets out the entire Agreement and understanding between the parties and supersedes any previous Agreement between the parties relating to its subject matter. Unless otherwise expressly agreed in writing this Agreement applies in place of and prevails over any terms or conditions contained in or referred to in any correspondence or elsewhere or implied by trade custom or course of dealing. Any general terms of business or other terms and conditions of any order or other document issued by Customer in connection with this Agreement shall not be binding on SmarterPay. In entering into this Agreement each party acknowledges and agrees that it has not relied on any representations made by the other except as set forth in this Agreement. Any such representations are excluded.
- 16.3. **Waiver:** A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.
- 16.4. **Invalid provisions:** If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 16.5. **Third Party Rights:** A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 (the "Act") to enforce, or to enjoy the benefit of, any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from the Act or that is expressly provided for under this Agreement.
- 16.6. **Independent Contractor:** The parties to this Agreement are independent contractors. Customer bears all risk and cost of operating its own business, including risk of loss. Nothing in this Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind or employment relationship between the parties, nor constitute any party an employee or agent of another party for any purpose. No party shall have authority to act as employee or agent for, or to bind, the other party in any way.

- 16.7. **No partnership or agency:** Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 16.8. **Notices:** All notices to be given under this Agreement shall be given in English in writing to the address stated at the beginning of this Agreement, or to such other address as shall be given by either party to the other in writing. Any notice involving non-performance, termination, or renewal shall be hand-delivered or sent by recognized overnight courier or by registered post. All notices shall be deemed to have been given and received on the earlier of actual receipt or three (3) days from the date of postmark.
- 16.9. **Variations:** Save as otherwise expressly stated in this Agreement, this Agreement may only be modified or varied in writing executed by duly authorized representatives of both parties, any variations shall be set out in the Contract Order Form.
- 16.10. **Survival:** In addition to those provisions which by their nature are intended to survive any termination of this Agreement, clauses 6, 7, 8, 9, 10, 11, 14, and 16 of this Agreement shall survive such termination or expiration of this Agreement.
- 16.11. **Counterparts:** This Agreement may be executed and delivered in any number of counterparts, each of which is an original and which, together, have the same effect as if each party had signed the same document.
- 16.12. **Export Control:** The Services, Software, Documentation, Development Services and SmarterPay Data are subject to the export control laws of various countries, including without limitation the laws of the UK. Customer agrees that it will not submit the Services, Software, Documentation, Development Services or SmarterPay Data to any government agency for licensing consideration or other regulatory approval without the prior written consent of SmarterPay, and will not export the Service, Software, Documentation, Development Services or SmarterPay Data to countries, persons or entities prohibited by such laws. Customer shall also be responsible for complying with all applicable governmental regulations of the country where Customer is registered, and if relevant any foreign countries with respect to the use of the Services, Software, Documentation, Development Services or SmarterPay Data by Customer and its users. Customer will not engage in any activity that would cause SmarterPay to be in violation of any such export control laws and regulations.
- 16.13. **Non-Solicitation:** During the term of this Agreement and for a period of 12 months after its termination, the Customer shall refrain from directly or indirectly enticing or attempting to entice any SmarterPay employee who is or has been involved in connection with this Agreement to terminate their employment with SmarterPay.



## Schedule A: Service Levels and Support

This Schedule sets out the service levels for the Services ("Service Levels" or "SLA") and is subject to and made a part of the SmarterPay Master Agreement. It may be modified from time to time at the sole discretion of SmarterPay.

### 1. Definitions

- 1.1. **"Severity Level"** means a metric used to classify and prioritise incidents impacting the services provided under the SLA. The following severity levels shall apply:
- 1.2. **"Critical"** refers to an incident where the customer has experienced a total loss of service that affects a business-critical process or multiple users within a business-critical application.
- 1.3. **"Important"** refers to an incident where the customer has experienced an incomplete loss of service or where incidents affect multiple users but are not business-critical, or where there is a requirement for corrective action with minimal delay.
- 1.4. **"Normal"** refers to an incident where the customer has experienced a limited loss of service, or where the incident affects one or a small percentage of users, or where the incident is not business-critical but causes inconvenience, or where the incident does not require immediate corrective action.
- 1.5. **"Low"** refers to an incident where the customer has experienced limited inconvenience or where the customer would like to make a service request that does not require immediate action.
- 1.6. **"Knowledge Base"** is a website dedicated to displaying information such as policies, guides and frequently asked questions to customers relating to SmarterPay's products and Services, currently this can be found here: <https://wiki.smarterpay.com/>.
- 1.7. **"Support Consultancy"** refers to software upgrades, server moves, help with back-ups and restores, administration, configuration services and remote diagnostic services.
- 1.8. **"Project Consultancy"** refers to 3 or more consecutive consultancy days required to deliver a common objective.
- 1.9. **"Service Failure Diagnostics"** refers to Investigation of service failure. Consultancy is limited to internal bug fixes. Where integration fails caused by external system or process change then consultancy charges may apply.
- 1.10. **"PaaS"/"SaaS"** refers to Platform-as-a-Service and Software-as-a-Service respectively, this encompasses any service or software that is not installed and run directly on Customer's systems.

### 2. Supported Versions

- 2.1. SmarterPay shall provide support to Customer providing Customer is using the latest version of the software providing the software hasn't been discontinued and deemed "out of support" by SmarterPay.
- 2.2. Customers who are subscribed to SmarterPay's Cloud Based Services will always be using the latest version of the software.
- 2.3. The version of the software is denoted by a sequence of numbers and is either visible at all times or accessible via menus.

- 2.4. If Customer can't find a version number on the software they are using, Customer should contact SmarterPay via one of the methods described in this schedule to determine whether they are covered.

### 3. Availability

- 3.1. SmarterPay shall use commercially reasonable efforts to make the Services available for 99.7% of the time measured 24x7 per calendar month based on the monthly average percentage availability and calculated as the total actual uptime minutes divided by total possible uptime minutes in the month, excluding the following:
- 3.1.1. Planned maintenance carried out during each maintenance window on Saturday's between 09:00 – 10:00 UTC
  - 3.1.2. Unscheduled maintenance performed outside normal Business Hours, providing that SmarterPay has used reasonable commercial endeavours to give Customer at least 6 Business Hours' notice in advance.
  - 3.1.3. any unavailability caused by a Force Majeure event or third-party Internet service provider failures or delays;
  - 3.1.4. Service interruptions of less than 30 seconds;
  - 3.1.5. congestion whereby high traffic levels result in service disruption, caused by the Customer exceeding any agreed capacity;
  - 3.1.6. issues with Customer's local area network, Customer's provided internet connectivity or software;
  - 3.1.7. Customer inaccessibility: if, for any reason, the Customer cannot be reached to correct an availability issue, then time will be frozen until SmarterPay can make contact with the Customer to begin fixing the availability issue;
  - 3.1.8. issues resulting from problems caused by Customer's failure to follow agreed procedures, or caused by unauthorized changes to the Services by the Customer;
  - 3.1.9. material breach by Customer of the terms of this Agreement.

### 4. Service Credits:

Should SmarterPay fail to make any of its PaaS or SaaS products available as set forth in the Schedule in a calendar month, Customer may continue to use the Services but receive a service credit for a percentage of Subscription Fees ("Service Credit") for the applicable Subscription on the affected Services in that month.

Service Availability Achieved	% Discount
>=99.7%	0%
<99.7%	5%
<99.5%	10%
<99.0%	20%

Service credits are in the form of a discount in Fees due for the month claimed.

The remedies described in this paragraph shall be the sole and exclusive remedy available to Customer for breach of the SLA.

## 5. Reporting, Claims and Notices

SmarterPay will provide Customer on request SLA reports showing Services availability and Service Levels. To claim a remedy under the SLAs, Customer shall send SmarterPay a notice within 20 business days after the end of each calendar month. Claims may be made on a calendar-month basis only and must be submitted within 20 business days after the end of the applicable month, except where a Subscription Term ends on a date other than the last day of a calendar month, in which case any claim related to that subscription must be submitted within 20 business days after the subscription end date. All claims will be verified against SmarterPay's system records. Should SmarterPay dispute any period of unavailability alleged by Customer, SmarterPay will provide to Customer a record of Services availability for the applicable period. SmarterPay will provide such records only in response to claims made by Customer in good faith.

## 6. Contact

- 6.1. Client Services can be contacted using the details found here: <https://smarterpay.com/support/>
- 6.2. The contact details on this page may be updated from time to time at SmarterPay's discretion.
- 6.3. Any change to the contact details will be communicated to Customer.

## 7. Support Services

- 7.1. SmarterPay will provide Support Services to Customer on every Business Day between the hours of 0900 – 1700 UTC excluding public holidays.
- 7.2. Depending on the Severity Level of the support request the following response times will apply for SmarterPay's Standard Support offering:

Severity Level	Response Time
Critical	4 Hours
Important	16 Hours
Normal	24 Hours
Low	32 Hours

- 7.3. And the following response times will apply for SmarterPay's Premium Support offering:

Severity Level	Response Time
Critical	1 Hour
Important	2 Hours
Normal	8 Hours
Low	16 Hours

## **8. Customer Responsibilities**

- 8.1. Before any support request is made to SmarterPay, users shall attempt to resolve their problems and identify the cause of the given problem using SmarterPay's Knowledge Base.
- 8.2. The Customer will gather any evidence relating to the support request that may assist SmarterPay in supporting the Customer, such as error messages, screenshots and communications with third parties and provide them to SmarterPay when making a support request.
- 8.3. The Customer will ensure a system administrator is available to assist SmarterPay with changes that may need to be made on the Customer's side.
- 8.4. In some cases it may be a requirement for SmarterPay to connect to the Customer's systems to fulfil its support obligations. If this is not possible, SmarterPay will try and provide support via other means. If there is no other way and SmarterPay can't proceed without remotely connecting to the customers system, SmarterPay will not be able to provide the requested support and the Customer acknowledges SmarterPay will not be liable for any further problems arising from that issue.