

## **SmarterPay Limited**

### **Terms and Conditions of Business**

#### 1. **Definitions and Interpretation**

1.1. The following words will have the following meanings:

**Account** means the account to registered to the Customer under this Agreement through which the Customer (and any Authorised Users) will be granted access to the Software.

**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 an addendum to this Agreement.

**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).

**Additional Support Services:** any support services requested by Customer and delivered by SmarterPay in excess of the Support Services.

**Additional Support Fees:** any fees payable by Customer to SmarterPay in respect of the Additional Support Services.

**Affiliate** means a person or entity that directly or indirectly controls, is controlled by, or is under common control with another person or entity.

**Agreement** means a contract formed under these Terms and Conditions (**Terms**), including the Contract Order Form.

**API Licence Fees** means the fee payable to use any API provided by SmarterPay.

**Contact Details:** means 01482 240886 or [admin@smarterpay.com](mailto:admin@smarterpay.com)

**Contract Order Form:** means SmarterPay's order documentation detailing the Service and Software purchased by the Customer, forming part of this Agreement.

**Customer Data** means any data used in the Service on behalf of the Customer Group, 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;

**Customer Group** means the Customer and each of its Affiliates and holding companies and each Affiliate of those holding companies as may be permitted to use the Service in accordance with clause 5.1.

**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 addendum.

**Development Services Fees:** the fees payable by Customer for the Development Services ordered as specified in the Contract Order Form or in any addendum.

**Documentation** means the specification for the Service contained in the Contract Order Form, and any other documentation made available to the Customer by SmarterPay from time to time which sets out a description of the Service and the user instructions for the Service (including, for example, quick reference guides).

**Facilities Code** means the unique serial number provided to the Customer with the Licence Code, allocated to the Customer's copy of SmarterPay Software.

**Fees:** means the Subscription Fees, Add-On Application Fees, Development Services Fees, Transaction Fees, Additional Support Services Fees and Overage Fees, Licence Fees, API Licence Fees and any other fees payable under this Agreement;

**Installation Code** means the code given to some Customers for SmarterPay Software which will need to be upgraded to a Licence Code.

**IPR** means intellectual property rights in and to patents, trademarks, service marks, trade and service names, copyrights, database rights and design rights (regardless of registration, and including applications for registration), know-how, moral rights, trade secrets, confidential and proprietary information, all rights or forms of protection of a similar nature or having similar or equivalent effect to any of them which may subsist anywhere in the world now existing or hereafter arising.

**Licence Code** means the valid and current code provided to the Customer to be able to use SmarterPay Software.

**Licence Fee** means the annual fee payable to use SmarterPay Software.

**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.

**Service** means the different service offerings from SmarterPay, which each include: (i) the access to and use of the relevant Software either through SmarterPay Cloud or SmarterPay Software and (ii) the access to and use of the Add-On Applications including SmarterPay Cloud API, and any other services as set out in the Contract Order Form.

**Service User Number (SUN)** means the unique identifier issued by the a bank or sponsor to allow the submission of Bacs files to Bacs

**SmarterPay Cloud** means the online portal accessed via <https://smarterpaycloud.com/>.

**SmarterPay Cloud API** is an application programming interface and is based on a REST service using JSON-formatted requests and responses. The SmarterPay Cloud API is only available over HTTPS.

**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.

**SmarterPay Software** means the computer programs and any maintenance releases which are acquired by the Customer during the terms of this agreement.

**Software** means SmarterPay's 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, specified in the Contract Order Form and further set out in the Documentation, and including any third-party software that is incorporated within that software.

**Subscription** means the licence under which the Customer has selected to access and use the Software & Services on an annual subscription basis, for which the Subscription Fee and/or Licence Fee shall be applied.

**Subscription Fees** means the fee payable for the Service as specified in the Contract Order Form and as determined by the number of Users and Service Number Users as set out in the Order Form.

**Subscription Term:** shall be a minimum of 12 months from the Start Date (**Initial Period**) or as set out in the Contract Order Form. This will automatically be renewed for a further period as defined in the Contract Order Form (**Subsequent Period**), which will then automatically roll over for successive periods as defined in the Contract Order Form (**Renewal**) unless terminated in accordance with the terms and conditions. The Initial Period, Subsequent Period and Renewal are referred to generically and individually as Subscription Term.

**Support Policy:** means SmarterPay's standard support policy and service levels for the Services as set out in Schedule 1.

**Support Services:** means the SmarterPay standard support services provided by SmarterPay in respect of the Services, including the provision of any applicable Software maintenance releases during the applicable Subscription Term in accordance with its Support Policy.

**User/System User** means those individuals (including employees, agents, independent consultants and contractors), subject to the maximum Usage Limits licensed by SmarterPay and detailed in the Contract Order Form, who are authorised by the Customer or its Affiliates (i) in writing, (ii) through the Service's security designation, or (iii) by system integration or other data exchange process, to use the Service.

**Usage Limits:** means the limits of use in respect of the Services as set out in the Contract Order Form.

1.2. Use of the terms **include**, **including**, and any similar expressions, will be read without limitation.

## 2. **Agreement**

SmarterPay agrees to supply the Services to Customer, and Customer agrees to purchase the Service from SmarterPay, on the terms of the Agreement.

## 3. **Basis of Contract**

3.1. On receipt of a request for information from the Customer, SmarterPay will email the Customer with a quote for the relevant Services which will remain valid for 30 days from the date it is sent.

3.2. The Customer may accept the quote by responding to the email, at which time SmarterPay will send the Contract Order Form and an invoice for the Subscription Fees (to include any Add-on Application Fees and/or Licence Fee as appropriate).

3.3. A Contract Order Form will only be binding on the earlier of the Customer's signature on the Contract Order Form or payment of the invoice, at which time a contract will be formed and this agreement shall come into effect and shall continue in force until such time as it is terminated in accordance with these terms.

3.4. If there is any conflict or inconsistency between the provisions contained in the Contract Order Form and these Terms, the Contract Order Form will take precedence.

3.5. To the extent the parties agree in the Contract Order Form for the right and license to use any of the Services in accordance with this Agreement to extend to Customer's Group, any such Affiliates

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

## 4. **Subscription Term and Account Registration**

4.1. The Customer is required to confirm the Users and Service User Numbers to be registered to the Customer under the Subscription, and any Add-on Applications, for the Subscription Term, in order to access the Software. Such options selected shall determine the available Services, Software functionality and applicable Fees.

4.2. The Subscription shall continue for the Subscription Term as set out in the Contract Order Form, subject to clause 4.5, unless either party serves the other party 30 days' written notice that it wishes to terminate the Agreement to expire at the end of the Initial Period or Subsequent Period or Renewal as applicable. Should neither party serve such notice, the Agreement will automatically continue for another Renewal. If the Successive Period or Renewal is not defined in the Contract Order Form, the default will be 12 months.

4.3. After the Initial Period, the Customer may terminate the Agreement during an ongoing Successive Period or Renewal by providing no less than 3 months' written notice to SmarterPay, where the term is 12 months, provided that the Customer shall pay an early termination fee in an amount of the Subscription Fee pro-rated to the number of months remaining in the then current Subscription Term, then no further sums will be due. For the avoidance of doubt, it is noted that a pre-paid Licence Fee is not refundable.

4.4. SmarterPay may, at its discretion, give the Customer no less than 6 months' written notice or such notice as will expire at the end of the current Subscription Term, that it intends to discontinue the Service or Add-on Application. In that event, the Customer will be entitled to receive a reimbursement of any Fees that it has already paid in advance to SmarterPay prorated to any remaining part of the Subscription Term that would have continued past the expiry of that notice had it not been given.

4.5. SmarterPay will be entitled to increase the Fees at any time after the Initial Period in accordance with clause 9.7. SmarterPay will send a reminder of upcoming renewal at least 60 days prior to the end of the current Subscription Term, with details of the fee increase for the next Renewal Period.

4.6. On payment of the first Fees, the Customer will receive a confirmation email, containing details of how to complete Account registration. If the Customer has ordered the SmarterPay Software, this email will contain a Licence Code or Installation Code and a Serial Number, in accordance with clause 6.

4.7. SmarterPay performs such due diligence checks as it deems sufficient to determine the suitability of a Customer on registration and during the term of the Agreement, as reasonably necessary to ensure the security reputation of the Software and Services. SmarterPay reserves the right to refuse Account registration at its discretion. In the event SmarterPay is unable to or chooses not to complete Account registration, any Subscription Fee already paid will be refunded within 14 days of refusal via the same payment method.

4.8. Once registered for the Account, the Customer is required to provide details of any Users, who shall be provided with separate secure log-in details unique to them.

## 5. **Software and Services**

- 5.1. SmarterPay grants to the Customer, and the Customer Group if specified in the Contract Order Form (subject to clause 3.5) or as otherwise agreed in writing with SmarterPay a fully paid up, royalty-free, non-exclusive, non-sublicensable licence to access and use the Services as set out in the Contract Order Form, including by the Authorised Users, for its ordinary business purposes and for no other purpose and subject to Usage Limits.
- 5.2. Customer shall permit SmarterPay or SmarterPay's designated auditor to audit the Service in order to establish Customer's compliance with the terms of this Agreement generally and the number and identity of users match the Users. Each such audit may be conducted on reasonable notice no more than once per year, at SmarterPay's expense, in such a manner as not to substantially interfere with the Customer's normal conduct of business. In any event, SmarterPay shall monitor such user volume and identity through its operation of the Service.
- 5.3. If any of the audits referred to in clause 5.2 reveal that the Customer has permitted access to the Software for more users than the maximum Users, then without prejudice to SmarterPay's other rights, Customer shall pay to SmarterPay the Overage Fees as calculated in accordance with the then current Subscription Fee price. Such payment to be made within 7 Business Days of the date of the relevant audit and the increased Subscription Fees, reflecting such additional Users will then apply on an ongoing basis on the terms of this Agreement in accordance with clause 9.5.
- 5.4. SmarterPay will provide the Service:
- (a) using reasonable skill, care, and diligence;
  - (b) in compliance with all applicable UK laws and regulations; and
  - (c) in accordance with any timescales set out in the Contract Order Form (or, if there are none, within a reasonable time), save that time shall not be of the essence in respect of the Service, unless specified as being so within the Contract Order Form.
- 5.5. SmarterPay warrants that, when the Service is used in accordance with the terms of the Agreement and in accordance with the Documentation and any technical specification, that the Service will comply with that specification in all material respects and will be free from material errors and defects.
- 5.6. SmarterPay may modify or update the Software (and its specification) from time to time, provided that SmarterPay will:
- (a) provide updated Documentation and specification in respect of any material modification or update and make this available to Customer upon written request;
  - (b) ensure that the modification or update does not: (i) materially degrade or adversely affect the performance of the Software or its functionality; or (ii) materially adversely affect, or require the significant modification or replacement of, any of the standard integrations or existing deliverables; both of the preceding restrictions apply save as may be required to ensure compatibility with internet service providers and cloud computing requirements.
- 5.7. SmarterPay is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and

Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

## 6. **SmarterPay Software**

- 6.1. On payment of the first Licence Fee, the Customer will receive an activation email, which will include a Licence Code and Facilities Code. The Customer will need to enter these into the administrator and configure the Software. Full guides on how to do this can be found in our online guides at <https://wiki.smarterpay.com/smarterpayonpremise/203/administrator>
- 6.2. Some Customers may have an Installation Code instead of a Licence Code. This will need to be upgraded to a full Licence Code by registering the Software. The Customer will need to provide additional information and a contact email address, which will be used to email the Customer the Licence Code. The Licence Code can then be used to access SmarterPay Software in accordance with clause 6.1.
- 6.3. Licence Codes are valid for one year at a time, after which they will automatically expire. To continue using SmarterPay Software the Customer will have to pay an annual Licence Fee to renew them for another year. When the Licence Code is nearing its expiry date, a warning message will appear. Licence Codes are invoiced automatically each year, and once the invoice has been paid a new Licence Code will be emailed to the Customer. The Customer should ensure prompt payment of the invoice before the expiry date to avoid any access problems. The Customer will then need to enter the new Licence Code under the Licence Codes section of the SmarterPay administrator.

## 7. **SmarterPay Cloud API**

- 7.1. To start using the SmarterPay Cloud API, the Customer will require API credentials, which can be found within the SmarterPay Cloud Portal or from the Customer's SmarterPay representative. Further guidance can be found at <https://wiki.smarterpay.com/smarterpaycloud/api/gettingstarted>
- 7.2. If the Customer has any issues with SmarterPay Cloud API, it can contact support, either by telephone on +44 (0)1482 240886, or by email at [support@smarterpay.com](mailto:support@smarterpay.com). See also clause 8 (Support).

## 8. **Support**

- 8.1. SmarterPay will provide its standard customer support services as defined in its Support Policy as set out in Schedule 1. SmarterPay shall also perform maintenance on the Software as also defined in the Support Policy and the infrastructure supporting the Software, as required but with the objective of minimising the frequency and duration of Incidents. SmarterPay will also provide any additional support services as may be agreed in the Contract Order Form.
- 8.2. SmarterPay shall use commercially reasonable endeavours to make the Service available 24 hours a day, seven days a week, except for:
- a) planned maintenance carried out during a maintenance window notified in advance to the Customer; and
  - b) unscheduled, emergency maintenance. SmarterPay shall give the Customer at least 6 hours' notice in advance of such emergency maintenance.

## 9. **Fees and Payment**

- 9.1. The Customer shall pay the Fees as set out in the Contract Order Form, or as otherwise agreed in writing with SmarterPay, in accordance with this clause 9.

9.2 Unless otherwise agreed in the Contract Order Form, SmarterPay may invoice the Customer:

- a) for the Subscription Fees annually in advance on or after the Contract Order Form Effective Date and thereafter on each anniversary of the initial invoice date for the duration of the Subscription Term;
- b) for the Development Services Fees on or after the date of the Contract Order Form Effective Date Form 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;
- c) for the Transaction fees, monthly in arrears;
- d) for any Overage Fees and Additional Support Services Fees annually in arrears
- e) For the Licence Fees, annually in advance; and
- f) For the API Licence Fees.

9.3 SmarterPay's Fees are exclusive of VAT and any other applicable sales or services tax but inclusive of all other taxes, duties and levies.

9.4 Customer will only be required to pay SmarterPay's expenses incurred in connection with the performance of the Service where the expenses have been reasonably incurred and have been approved by Customer in writing in advance. Such expenses will be reimbursed at cost upon SmarterPay furnishing Customer with the relevant receipts evidencing their incurrence.

9.5 Customer shall pay all invoices and approved expenses within 30 days of the date of the invoice in cleared funds and to the bank account nominated in writing by SmarterPay. SmarterPay may set-off any amount owing to them by the Customer against any amount payable by SmarterPay to Customer.

9.6 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) after giving 3 working days prior written notice to Customer, without liability to Customer, disable Customer's password, account and suspend 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 the Customer interest on the overdue sum from the due date until payment of the overdue sum. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

9.7 The Subscription Fee and Licence Fee are determined by the number of Users and Service User Numbers. In the event the Customer wishes to increase the number of Users under its Subscription then it may do this by notifying SmarterPay in advance. The Customer shall then pay an additional Subscription

Fee and/or Licence Fee for such additional on a pro rata basis for the rest of the Subscription Term.

9.8 In the event the number of Users or Service User Numbers exceeds the permitted User volume then the Subscription Fee and/or Licence Fee shall be automatically increased in accordance with clause 9.7 and Overage Fees charged in accordance with clause 5.3.

9.9 If the Customer wishes to decrease the number of Users or Service User Numbers under its Subscription, this may be done at the end of the Subscription Term by making a request to SmarterPay and such request shall take effect at the end of the Subscription Term and be reflected in the Subscription Fee and/or Licence Fee for the next Subscription Term.

9.10 The Subscription Fees and Licence Fees may increase on each and any Renewal under clause 4.2 by up to the average increase in Consumer Price Index as determined by the Office for National Statistics in the UK plus 3%. In the event that third party costs (outside the control of SmarterPay) are increased during the Subscription Term, SmarterPay shall be entitled to adjust its pricing accordingly and pass on those costs to Customer. SmarterPay will give the Customer reasonable notice of the price increases with evidence of any third party costs being passed on, and the date they will come into effect, subject to the Customer's right to terminate in accordance with clause 14.3.

## 10 Data

10.1 Customer grants SmarterPay a non-exclusive, non-transferable license to store, transmit, and process the Customer Data solely to the extent necessary for SmarterPay to improve and provide the Service in accordance with the Agreement, which includes but is not limited to:

- a) hosting, transmitting and displaying 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.

10.2 Customer agrees it shall not use or exploit SmarterPay products and services in any manner, except as expressly permitted in this Agreement,

10.3 SmarterPay will take appropriate physical, technical and organisational measures (aligned with good industry practice) to maintain the confidentiality, availability, security and integrity of the Service and Customer Data.

10.4 Both parties shall comply with relevant data protection laws in their performance of this Agreement, with SmarterPay providing a minimum assurance of compliance with the UK General Data Protection Regulation and Data Protection Act requirements. When processing personal data under the Agreement, SmarterPay's the Data Processing Policy shall apply which can be found at [www.smarterpay/legal](http://www.smarterpay/legal).

10.5 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.

- 10.6 Subject to clause 10.5, each party undertakes that it shall not at any time disclose to any person any confidential information concerning the products, services, business, affairs, customer, Customers or suppliers or the other party or of any member of the group of companies to which the other party belongs, except that each party may disclose the other party's confidential information (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information in connection with this Agreement and providing the disclosing party ensures compliance with this clause 10.6; or (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.7 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.
- 10.8 During the term of the Agreement, SmarterPay will perform and maintain regular secure and encrypted back-ups of all Customer Data on media from which the data can be reloaded and in a commonly-used machine readable format. SmarterPay will make back-ups of Customer Data available to Customer upon written request. 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. 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 as set out: [www.smarterpay/legal](http://www.smarterpay/legal).
- 10.9 No more than once every 12 months, if the Customer gives 30 days' written notice to SmarterPay, SmarterPay shall allow the Customer's authorised representatives during business hours to enter SmarterPay's premises to inspect, audit and take copies of relevant records and other documents necessary to verify SmarterPay's compliance with the terms and conditions of this agreement.

## 11 **Customer Obligations**

- 11.1 Customer shall not allow group or other sharing of a User login either within or outside of its organisation. 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.
- 11.2 The Customer shall not access, store, distribute or transmit any material during the course of its use of the Service that is offensive, facilitates illegal activity or violence, causes damage or injury, or is otherwise illegal.
- 11.3 **Security:** The Customer shall not:

- (a) introduce, store, transfer, distribute viruses, or permit or suffer the same, into SmarterPay's network and information systems or in its use of the Service;
- (b) access or attempt to gain access to the Service or related systems or networks other than in the manner set forth in the Documentation; or
- (c) interfere with or disrupt performance of the Service, SmarterPay's network and information systems or any data stored therein.
- 11.4 The Customer shall not, except as may be allowed by any applicable law which is incapable of exclusion and to the extent expressly permitted under this Agreement:
- (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Service or Documentation in any form or media or by any means; or
- (b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software.
- 11.5 The Customer shall ensure that only the Users may access the Service and that the Users at all times comply with the requirements contained in these Terms and the Documentation, and SmarterPay reserves the right to suspend access to the Service for any User(s) in breach of these Terms.
- 11.6 The Customer shall:
- (a) ensure that its network and systems are suitable to access and use the Service in accordance with the Documentation provided by SmarterPay from time to time; and
- (b) be, to the extent permitted by law and except as otherwise expressly provided in this agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the SmarterPay data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.
- 11.7 SmarterPay reserves the right, without liability or prejudice to its other rights to Customer, to disable Customer's access to any material that breaches the provisions of this clause 11 and remove any such content.

## 12 **Intellectual Property Rights Infringement and Indemnity**

- 12.1 SmarterPay represents that it has all necessary rights, licences and permissions to provide the Service to Customer on the terms of the Agreement.
- 12.2 Customer shall, at its sole cost and expense, indemnify, defend and hold harmless SmarterPay and its Affiliates from and against all losses, liabilities, costs, damages and expenses, including but not limited to reasonable legal fees and expenses (**Losses**), incurred or suffered by any of them as a result of third party claims, actions or demands, including, as applicable, investigations and audits by regulators (**Claims**), arising out of or in connection with (i) the unauthorized use of the Service, (ii) violations of applicable law; or (iii) Customer Data and other Customer materials, including without limitation failure by Customer to secure all necessary rights, licenses and approvals such that SmarterPay can utilize them as part of the Service in the manner contemplated hereunder.
- 12.3 Subject to Clause 12.4, SmarterPay will indemnify the Customer from and against all Losses that are sustained or incurred by Customer in connection with any Claim that the receipt and/or the use (in accordance with the terms of the Agreement) of the Service

by Customer infringes the rights (including the intellectual property rights) of any third party.

12.4 SmarterPay will not be liable under Clause 12.3 to the extent that the Infringement Claim arises as a result of the use by the Customer (or Affiliates) of the Service in combination with software, goods or materials that have not been supplied, made available or approved by (or on behalf of) SmarterPay where without such combination the claim would not have arisen.

12.5 As between the parties, all right, title and interest, including all IPR in SmarterPay's products and services, including the Service and any components thereof are and shall remain the sole and exclusive property of SmarterPay. On prior written notice and with consent granted by the Customer (not to be unreasonably withheld or delayed), SmarterPay may use the Customer's (or any of its Affiliates') name and logo in its lists of customers (including on its website and in any marketing materials).

12.6 Customer shall not use SmarterPay's trade names, trademarks and service marks, alone or in connection with any other words(s) or logo(s) without SmarterPay's consent.

12.7 In respect of a claim under an indemnity in this clause 10:

- (a) upon becoming aware of a potential or actual claim, the indemnified party will promptly notify the indemnifying party in writing;
- (b) the indemnified party will (at the indemnifying party's sole cost and expense) provide reasonable cooperation to the indemnifying party in the defence and settlement of the claim; and
- (c) the indemnifying party will, upon its written request, be given sole authority to defend or settle such claim, provided that (a) indemnifying party, to the extent it is legally permissible, keeps indemnified party reasonably informed of the progress of its defence or settlement; and (b) indemnifying party does not compromise or settle such claim without releasing each member of the indemnified party's group of companies of liability in respect of such claim.

### 13 **Liability**

13.1 Nothing will limit a party's liability for wilful misconduct or deliberate default or any liability that cannot be excluded or limited by law.

13.2 Except for the representations and warranties expressly set forth in this Agreement and only to the extent permitted by applicable law, SmarterPay specifically disclaims any and all warranties and representations, express or implied, including the implied warranties of merchantability and fitness for a particular purpose or use (whether or not the purpose or use has been disclosed), warranties of title and non-infringement, any implied indemnification obligations, or other warranties that arise from trade usage or custom, with respect to any aspects of SmarterPay Service and any components thereof or its use in conjunction with Customer Data or the output or results obtained from such use, any decisions made or actions taken in reliance thereupon or as to the performance thereof (whether performed in whole, part or not at all). Except for the representations and warranties expressly set forth in this Agreement SmarterPay does not guarantee the adequacy, accuracy, timeliness or completeness of the Service or any components or output thereof or that they will be error free or free from computer viruses or other infirmity or corruption. Therefore, SmarterPay shall not be subject to any damages or liability for any errors, omissions or delays therein, other than as specifically provided for under this Agreement.

13.3 Subject to Clause 13.1:

(a) neither party will be liable, whether in contract, tort (including negligence and breach of statutory duty) or otherwise, for any indirect or consequential loss; and

(b) each party's total liability in contract, tort (including negligence and breach of statutory duty) or otherwise in connection with the Agreement, will be limited to an amount equal to the total fees paid and payable (whether invoiced or not) to SmarterPay under the Agreement during the 12 months immediately preceding the date on which the claim arose.

### 14 **Termination and suspension**

14.1 In addition to the termination provisions in clause 4, either party may terminate (and SmarterPay may suspend performance of) this Agreement with immediate effect by giving written notice if the other party:

- (a) is in material breach of this Agreement and, if the breach is capable of remedy, the breaching party has failed to remedy the breach within 30 days of the date of written notice requiring it to do so; or
- (b) becomes unable to pay its debts or becomes insolvent or enters into or proposes any composition or arrangement with its creditors generally, or anything analogous to any of these events occurs.

14.2 SmarterPay will retain all Customer Data for the period set out in the SmarterPay Retention Policy, which can be found using the following link: [www.smarterpay/legal](http://www.smarterpay/legal) after which time it will be automatically deleted. Any retained Customer Data will remain subject to the applicable terms of the Agreement including Clauses 10.3, 10.6 and 10.7).

14.3 If the Customer does not agree to the price increases notified to it by SmarterPay under clause 9.10, it may give SmarterPay 30 days written notice to terminate the agreement

14.4 If Customer terminates the Agreement under Clause 14.1 or clause 14.3, then SmarterPay will promptly refund any portion of the Service Fees and/or Subscription Fees paid by Customer that relate to the period after the date of termination on a pro rata basis.

14.5 Termination or expiry of the Agreement will not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry. Any provision of the Agreement that is intended to continue in force on or after termination or expiry will remain in full force and effect.

### 15 **General**

15.1 If any provision, or part of a provision, of the Agreement is found by any authority of competent jurisdiction to be illegal, invalid or unenforceable, it shall be deemed to have been deleted and the legality, validity and enforceability of the remaining provisions of the Agreement will not be affected.

15.2 The Agreement contains the whole agreement between the parties and replaces all prior arrangements relating to its subject matter.

15.3 Any waiver under this Agreement must be in writing. A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.

15.4 Neither party shall be in breach of this Agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (force majeure). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 1 month, the party not affected may terminate this agreement immediately by giving written notice to the affected party.

- 15.5 **Variations:** Save as otherwise expressly stated in this Agreement, this Agreement may be modified or varied in writing by SmarterPay on giving written notice to the Customer. Any variations shall be set out in the Contract Order Form.
- 15.6 **Anti-slavery and human trafficking.** In performing its obligations under the agreement, SmarterPay shall:
- a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force (**Anti-Slavery Laws**) including but not limited to the Modern Slavery Act 2015;
  - b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct had been carried out in England and Wales;
  - c) notify the Customer as soon as it becomes aware of any actual or suspected breach of clause 15.6(a) and 15.6 (b);
  - d) maintain a complete set of records to trace the supply chain of all Services provided to the Customer in connection with this agreement; and permit the Customer and its third party representatives to inspect SmarterPay's premises, records, and to meet SmarterPay's personnel to audit SmarterPay's compliance with its obligations under this clause 15.6.
- e) SmarterPay represents and warrants that it has not been convicted of any offence involving slavery and human trafficking or been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.
  - f) Breach of this clause 15.6 shall be deemed a material breach under clause 14.1 (a).
- 15.7 **Anti-bribery and anti-corruption** The Supplier shall during the term of this agreement:
- a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
  - b) notify the Customer (in writing) if it becomes aware of any breach of clause 15.7 (a) or has reason to believe that it has received a request or demand for any undue financial or other advantage in connection with the performance of this agreement;
  - c) Breach of this clause 15.7 shall be deemed a material breach clause 14.1 (a).
- 15.8 The Agreement and any disputes arising out of or in connection with it or its subject-matter or formation (whether contractual or non-contractual) will be governed by the laws of England & Wales and subject to the exclusive jurisdiction of the courts of England.

## **Schedule 1**

### **Support Policy**

This Support Policy sets out the service levels for the Services ("Service Levels" or "SLA") and is subject to and made a part of the main agreement. It may be modified from time to time at the sole discretion of SmarterPay on written notice to the Customer.

#### **1. Definitions**

1.1. These definitions apply in this Support Policy:

**Severity Level:** means a metric used to classify and prioritise incidents impacting the services provided under the SLA. The following severity levels shall apply:

**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.

**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.

**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.

**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.

**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/>.

**Support Consultancy:** refers to software upgrades, server moves, help with back-ups and restores, administration, configuration services and remote diagnostic services.

**Project Consultancy:** refers to 3 or more consecutive consultancy days required to deliver a common objective.

**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.

**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**

- 4.1. 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
> or = 99.7%	0%
<99.7%	5%
<99.5%	10%
<99.0%	20%

- 4.2. 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**

- 5.1. SmarterPay will provide SLA reports showing Services availability and Service Levels, on request.
- 5.2. To claim a remedy under the SLAs, the Customer will need to 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 (or where a Subscription Term ends on a date other than the last day of a calendar month, any claim related to that subscription must be submitted within 20 business days after the subscription end date).
- 5.3. All claims will need to be verified against SmarterPay's system records before being deemed valid.
- 5.4. Should SmarterPay dispute any period of unavailability alleged by the Customer, SmarterPay will provide a record of Services availability for the applicable period in good faith to the Customer.

**6. Contact**

- 6.1. Client Services can be contacted using the customer portal, which can be signed into from the SmarterPay website. Alternatively, the Customer can e-mail support using [support@smarterpay.com](mailto:support@smarterpay.com).
- 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 the 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 during Business Hours
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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, when included as part of the subscription package:

<b>Severity Level</b>	<b>Response Time during Business Hours</b>
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 online resource found at [wiki.smarterpay.com](http://wiki.smarterpay.com).
- 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.
- 8.5. If this is not possible, SmarterPay will use reasonable endeavours to provide support via other means.
- 8.6. If, despite its efforts at 8.5 above, SmarterPay can't proceed without remotely connecting to the customers' system, the Customer acknowledges that SmarterPay will not be liable for any further problems arising from that issue.