

epay

## Merchant Acquiring Terms and Conditions

This document sets out the terms and conditions on which we, transact Elektronische Zahlungssysteme GmbH, whose registered office is Fraunhoferstrasse str. 10, 82152 Martinsried, Munich, Germany ("**epay**") will provide merchant acquiring and other services to you (the "**Merchant**"). Please note that these terms and conditions are for use only with:

- (a) incorporated entities (i.e. bodies corporate such as limited companies, public limited companies, and limited liability partnerships or similar entities in the Merchant jurisdiction); or
- (b) partnerships of:
  - (i) two or three partners, where all such partners are bodies corporate; or
  - (ii) in all other instances, four or more partners,
- (c) sole proprietors.

Please note that these Terms and Conditions are for use only on business-to-business relationships and, by no means shall be used with consumers as defined in the applicable consumer protection laws.

Please carefully read these terms and conditions and the Operating Guide that we provide to you as they contain details of binding legal arrangements between you and us. If there is anything you do not understand, please ask, and we will be happy to assist you.

Remember that once you sign the Application Form, and epay accepts your application, you will be bound by these terms and conditions. epay will notify you of its acceptance of your application in accordance with the terms set out below.

epay is a payment institution, authorised and regulated by the Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin. epay's registration number is 124138. BaFin's database of companies can be found at:

[https://portal.mvp.bafin.de/database/InstInfo/?locale=en\\_GB](https://portal.mvp.bafin.de/database/InstInfo/?locale=en_GB)

You should retain a copy of this document. epay can provide you with additional copies of these terms and conditions upon your request.

### 1. DEFINITIONS AND INTERPRETATION

1.1 The following terms when used in this Agreement or any document referred to herein shall have the following meaning:

"**ACH**" means the Automated Clearing House governed by the rules of the national and regional automated clearing house networks;

"**Affiliate**" means, in relation to a Person, any Person that directly or indirectly through one or more intermediaries controls or owns that Person, or is controlled or owned by that Person, or is under common control or ownership with that Person (for these purposes, "control" shall mean

ownership of a share greater than 50% of the other Person or the ability to direct or determine the decision making process of such Person);

"**Agreement**" means the Application Form, the general terms and conditions set out herein (the "**General Terms and Conditions**"), the Jurisdiction Specific Terms and Conditions, the Industry Specific Requirements and the other Schedules to this Agreement;

"**Application Form**" means the form submitted by the Merchant applying for services from epay to be provided under the terms of the Agreement.

"**Business Day**" means a day which banks are open in Munich or Madrid subject to which the Party has the corresponding obligation under the provisions of this Agreement;

"**Calendar Month**" means each of the twelve named periods into which a year is divided (January, February, etc);

"**Card**" means a credit, debit charge, purchaser or other payment card issued under a Card Scheme listed in Schedule 1 whose payments epay are able to process or acquire in accordance with the terms of this Agreement;

"**Cardholder**" in relation to any Card means the Person to whom the Card is issued;

"**Card or Payment Scheme**" means any card payment scheme and/or system (such as VISA, MasterCard®, American Express or others, including national or local systems) or bank payment scheme and/or system (such as direct banking systems, direct debit systems or bank transfer systems);

"**Change Notice**" has the meaning given in Clause 18.2;

"**Chargeback**" means a Transaction that is disputed by a Customer and there is a demand from a Customer's payment service provider or the operator of the Card or Payment Scheme to reverse and refund the amount of the Transaction;

"**Chargeback Claim**" means any amount claimed from epay or a refusal of any payment to epay by an issuer of any Card in relation to a Chargeback;

"**Chargeback Ratio**" means either the ratio between:

- (a) the number of Chargebacks to the number of Transactions; or
- (b) the value of Chargebacks to the value of Transactions,

during a one Calendar Month period.

"**Commencement Date**" has the meaning given in Clause 2.3 of this Agreement;

"**Commercial Card**" means any Card issued to undertakings or public sector entities or self-employed natural persons which is limited in use for business expenses where the payments made with such Cards are

charged directly to the account of the undertaking or public sector entity or self-employed natural person;

**"Conditions Precedent"** means the conditions set out in Schedule 2;

**"Contract Year"** means each period of twelve (12) months commencing on the Effective Date and each anniversary of the Effective Date;

**"Confidential Information"** means any information which is marked as "Confidential" or "Proprietary" or should be reasonably expected to be confidential having regard to the context of disclosure or the nature of the information; including, without prejudice to the generality of the foregoing, the terms of this Agreement, as well as business plans, data, strategies, methods, customer and client lists, technical specifications, transaction data and customer data;

**"Customer"** means any Cardholder who orders, purchases, leases or otherwise receives any Merchant Product/Service pursuant to a Transaction;

**"Data Protection Laws"** means applicable legislation protecting the Personal Data of natural persons, including GDPR, together with applicable legislation implementing or supplementing or replacing the same from time to time or otherwise relating to the Processing of Personal Data of natural persons, together with binding guidance and codes of practice issued from time to time by relevant supervisory authorities;

**"DCC"** means Dynamic Currency Conversion.

**"DCC Transaction"** means a Transaction as described and defined in Schedule 3 of this Agreement;

**"DCC Services"** means the services described and defined in Schedule 3 of this Agreement and provided pursuant to that Schedule;

**"Direct Debit Mandate"** or **"Direct Debit"** means a mandate in favour of epay, by which the Merchant has authorized (a) epay to send recurring instructions to a bank that maintains the Merchant Settlement Account to debit the Merchant Settlement Account and (b) the bank that maintains the Merchant Settlement Account to debit the Merchant's bank account in accordance with the instructions from epay;

**"Discount"** means in relation to any Transaction (and each per Transaction):

- (a) the amount equivalent to the product of the Transaction amount multiplied by the percentage Discount Rate, plus, if applicable, the Discount Rate in the fixed amount; plus
- (b) the applicable interchange fee (together with any applicable Card Scheme fees) for that Transaction; plus
- (c) any scheme and other network fees introduced or varied by the Card Schemes or card issuers that are levied on epay for that Transaction; plus

- (d) any tax payable in respect of or in relation to the Discount or the Services (other than a tax calculated on or by reference to income or profits);

If the Merchant has selected blended pricing or the Subscription Model in the Application Form, points (b) and (c) shall not apply;

**"Discount Rate"** the percentage amount and/or fixed amount per each Transaction as set out in the Application Form;

**"Effective Date"** means the day on date on which epay sends notification that it has accepted the Merchant's application;

**"epay Branding"** means trademarks, service marks, trade dress, get up and other representations of the branding of epay and/or its Affiliates, together with all related marketing and promotional materials;

**"Fees"** means the fees and charges payable by the Merchant to epay for the Services as set out in the Application Form;

**"Floor Limit"** means any monetary Transaction limit (as notified to the Merchant by epay from time to time) above which the Merchant must obtain epay's authorisation prior to completing a Transaction;

**"GDPR"** means Regulation (EU) 2016/679 of the European Parliament and of 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 as updated from time to time. The terms **"Controller"**, **"Processor"**, **"Data Subject"**, **"Personal Data"**, **"Personal Data Breach"** and **"Process/Processing/Processed"** as well as any other terms defined in GDPR shall be construed accordingly and in line with Schedule 11 of this Agreement;

**"Industry Specific Requirements"** means the additional terms and conditions (if any) set out in Schedule 6 of this Agreement;

**"Information Requirements"** means the information and the form of information that the Merchant is required to provide to epay in relation to a Transaction as set out in Schedule 8 of this Agreement;

**"Intellectual Property Rights"** means patents, copyrights, utility models, trademarks, design rights, database rights, trade secrets and other rights in confidential information, trade and business names and all other intellectual property rights of any kind, whether registered or unregistered, subsisting from time to time anywhere in the world;

**"Interested Party"** means epay or any of its respective Affiliates;

**"Jurisdiction Specific Terms and Conditions"** means the additional terms and conditions specifically applicable to the provision of Services to and/or receipt of Services by the Merchant in the relevant jurisdiction(s) as set out in Schedule 10 of this Agreement (if any);

**"Liability"** means any liability of one party to the other arising under or in connection with this Agreement including

liability for breach, anticipatory breach, misrepresentation (including pre-contractual misrepresentation) or repudiation and whether arising in contract, tort (including negligence), through an indemnity, under statute, in equity or at law and "Liabilities" shall be construed accordingly;

**"Merchant Acquiring Services"** means the services described in Clause 3 of this Agreement, subject to the terms of this Agreement;

**"Merchant Category Code (MCC)"** has the meaning set out in Clause 4;

**"Merchant Loss"** is any damage for which the Merchant is responsible, including liability for third parties and vicarious agents. Damage within the meaning of Merchant Loss also includes damage resulting from a breach of the rules of a Card or Payment Scheme for which the Merchant is responsible;

**"Merchant Product/Service"** means any good, product or service offered by a Merchant to its customers and which is ordered, purchased, leased, or otherwise provided to a Customer pursuant to a Transaction;

**"Merchant Representative(s)"** means the Merchant, its directors, officers, employees, members of staff, contractors (including those of its Affiliates) and/or third party sub-contractors who are engaged in, either directly or indirectly, the discharging of the Merchant's obligations under the Agreement;

**"Merchant Settlement Account"** means the Merchant's account as notified by the Merchant to epay in the name of the Merchant into which the Settlement Payment shall be made unless otherwise agreed in writing between the Parties;

**"Minimum Hire Period"** means the initial rental period expressed in months, set out in the Application Form and commencing on the date of delivery of a POS Terminal;

**"Operating Guide"** means the operating procedures issued by epay (and as amended from time to time) in relation to the Services, including relevant portions of the operating manuals, official rules, bulletins, notices and similar documents issued by Card or Payment Schemes or Payment Networks in effect from time to time;

**"Pay By Link"** means a web application service provided by epay that enables the Merchant to generate and send a secure payment link to a Customer, allowing the Customer to initiate a Transaction for remote payment of Merchant Products/Services;

**"Payment Instrument"** means any device, procedure or instrument made available to the Merchant as part of the Services for the purpose of facilitating Transactions, including cash, credit cards, debit cards and instant money transfer methods;

**"PCI DSS"** means the Payment Card Industry Data Security Standards laid down by the Card Schemes and published by the Payment Card Industry Data Security Standards Council, to minimise the potential for Card and Cardholder data to be compromised and used fraudulently.

**"PCI SSC"** means the Payment Card Industry Security Standards Council;

**"Payment Network"** means the procedures and systems used to settle and process certain financial transactions in connection with the Transactions;

**"Payment Services Directive"** means the Payment Services Directive (EU) 2015/2366 as amended and superseded from time to time;

**"Payment Services Laws"** means the Payment Services Directive and national laws and regulations made thereunder transposing such into domestic law, as amended from time to time;

**"Person"** means an individual, a body corporate, an association, a partnership, a trust or any other entity or organisation;

**"POS Terminal"** means a point-of-sale terminal (or comparable alternative) together with software to enable the Services.

**"POS Terminal Hire Period"** means the Minimum Hire Period and continuing thereafter until ended by either the Merchant or epay in accordance with Clause 28 of this Agreement;

**"Price Change"** means a change to the Fees, other than any change due to the application of any formula or mechanism set out in Schedule 4 that adjusts the Fees for Transaction volume, inflation or other factors;

**"Processed Personal Data"** means Personal Data relating to Transactions acquired or processed by epay in the course of providing the Services;

**"Prohibited Transaction"** has the meaning given in Clause 10.1 of this Agreement;

**"Refund"** means the reimbursement to a Cardholder of an earlier Transaction between that Cardholder and the Merchant.

**"Regulator"** means any government department or other regulatory, statutory and other entity, committee or body (including, without limit, Card or Payment Schemes or PCI SSC) which, whether under statute, rules, regulations, codes of practice or otherwise, is entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of epay or any of its Merchants;

**"Regulatory Requirements"** means any law, statute, regulation, order, judgment, decision, recommendation, rule, policy or guideline passed or issued by any government, Regulator or any competent court or authority or any payment scheme and/or system (including but not limited to bank payment systems, Card or Payment Schemes or any other payment, clearing or settlement system or similar arrangement that is being used for providing the services hereunder and including any applicable consumer protection laws, anti-money laundering laws and other laws and regulations), together with any applicable voluntary codes of practice or guidelines which are generally adhered to in the payment services

industry, including those endorsed by any Regulator in any jurisdiction;

**"Relationship Manager"** has the meaning given in Clause 31.2 of this Agreement;

**"Reserve Amount"** has the meaning given to it in Clause 6 of this Agreement and, if applicable from the Effective Date, as set out in the Application Form;

**"Rules"** means all applicable rules, regulations and guidelines of any third party (and any and all policies or procedures as may be provided by epay to the Merchant in connection with such rules, regulations and guidelines), as they may exist from time to time and as applicable to the Services provided under this Agreement, including without limitation those issued by those Card or Payment Schemes listed in Schedule 1 as well as those issued by the national and regional automated clearing house networks and any other Payment Network through which Transactions hereunder may be processed or acquired;

**"Schedule"** means a schedule to this Agreement;

**"Service Schedules"** means the Schedules describing each of the Services;

**"Services"** means the Merchant Acquiring Services, the DCC Services and ancillary elements detailed herein;

**"Settlement Payment"** means any payment made by epay to the Merchant Settlement Account for the purpose of settling Transactions under this Agreement to the Merchant, regardless of whether or not such payment is later reversed;

**"Term"** means the period commencing as of the Effective Date throughout which the Agreement will remain in force in accordance with the provisions hereof;

**"Terminal"** means a point of sale terminal and all other point of sale devices, hardware, associated equipment, software and other electronic computer and telecommunications devices and equipment used by the Merchant to process Transactions and which conforms with such requirements as are set by the applicable Card Schemes and by epay from time to time;

**"Third Party Terminal"** means a Terminal sold, hired, leased or otherwise provided to or on behalf of the Merchant by any Person other than epay;

**"Third Party Vendor"** means any Person providing or facilitating Value Added Services to the Merchant and which is not an Affiliate of epay and which complies with the PCI DSS;

**"Transaction"** means any transaction between the Merchant and a Customer in connection with which a Payment Instrument is used for the purchase or lease of Merchant Products/Services from the Merchant and/or a transaction for the reversal of such a purchase or lease. Transactions may be initiated via Pay By Link or other channels made available as part of the Services;

**"Transaction Data"** means all information required or used by an operator of a Card or Payment Scheme, or a Customer's payment service provider, in order to process a Transaction and any other information used or generated in

the processing of Transactions in connection with this Agreement;

**"Unregulated POS Terminal Hire Terms"** means the services provided, subject to the terms of this Agreement, in accordance with Schedule 9 of this Agreement; and

**"Value Added Services"** means any product or service provided by a Third Party Vendor to assist the Merchant in accepting Transactions under this Agreement and in connection with the Services, including internet payment gateways, Terminals, inventory management and accounting tools, loyalty programmes, fraud prevention programmes and any other product or service that participates in, or involves (directly or indirectly) the flow of Transaction Data.

1.2 Headings are for convenience only and shall not affect the construction or interpretation of this Agreement.

1.3 Unless the contrary intention appears, words in the singular include the plural and vice versa; words importing the masculine gender include the feminine and neuter and vice versa;

1.4 Any phrase introduced by the term "includes", "including", "in particular" or any similar expression shall be construed as illustrative only and shall not limit the sense of the words preceding that term.

1.5 Reference to any agreement, contract or document shall be construed as a reference to it as varied or supplemented from time to time.

1.6 If there is any conflict between the clauses of the terms of this Agreement and any of its Schedules, the conflict shall be resolved in accordance with the following order of precedence:

- (a) firstly, the applicable Jurisdiction Specific Schedules (if any);
- (b) the Service Schedules;
- (c) the other Schedules;
- (d) the other terms set out in the main body of this Agreement; and
- (e) lastly the Industry Specific Requirements (if any).

## 2. PROVISION OF SERVICES

2.1 epay shall provide the Services to the Merchant in accordance with the terms of this Agreement.

2.2 The Merchant undertakes to satisfy all Conditions Precedent within thirty (30) days of the Effective Date.

2.3 epay shall only be obliged to provide the Services to the Merchant at and from such time as epay has confirmed to the Merchant that the Conditions Precedent have been either satisfied or waived by epay (the **"Commencement Date"**).

2.4 The Merchant acknowledges that epay operates solely as a payment service provider and that epay:

- (a) under no circumstances acts as a seller, buyer, dealer, middleman, retailer, auctioneer, supplier, distributor, manufacturer, broker, agent or merchant of any Merchant Product/Service; and
  - (b) makes no representations or warranties in respect of any Merchant Product/Service and does not ensure the quality, safety or legality of any Merchant Product/Service.
- 2.5 Nothing in this Agreement shall oblige epay to take any action or make any omission in breach of Regulatory Requirements.
3. **PROVISION OF MERCHANT ACQUIRING SERVICES**
- 3.1 The Merchant Acquiring Services shall consist of:
- (a) acquiring Transactions between the Merchant and the Cardholders in accordance with Part A of Schedule 1;
  - (b) facilitating the processing of Transactions between the Merchant and the Cardholders in accordance with Part B of Schedule 1;
  - (c) providing a facility for dealing with merchant queries and complaints resolution in relation to the Services described in this Agreement; and
  - (d) providing the Merchant with a sufficient number of POS Terminals for the period of the Agreement on which Transactions may be initiated.
4. **MERCHANT CATEGORY CODE**
- Based on the information provided by the Merchant about its business, epay will, at its reasonable discretion in consideration of the Rules, assign a Card acceptor code (a "**Merchant Category Code**") to the Merchant.
5. **POS TERMINAL HIRE**
- 5.1 If the Merchant has requested to hire one or more POS Terminals from epay, epay will provide the POS Terminal(s) to the Merchant to hire in accordance with the Unregulated POS Terminal Hire Terms of Schedule 9. Alternatively, the Merchant may choose to purchase the POS Terminals, for a fee to be agreed in writing between the parties.
6. **SETTLEMENT**
- 6.1 Without prejudice to the provisions set out in Schedule 4, epay shall pay to the Merchant the total amount of the Transactions effected with the Merchant which have been properly submitted to epay by the Merchant pursuant to this Agreement and accepted for payment by epay under an independent payment obligation within the meaning of Sec. 780 of the German Civil Code less:
- (a) the aggregate Discount on all such Transactions or the applicable Tier Fee and the Discount (if applicable) as per Part C of Schedule 4 where the Merchant has selected the Subscription Model as set out in the Application Form in which case the Settlement provisions set out in the said section of Schedule 4 shall apply;
  - (b) any previous over-payment due to Refunds or credits granted by the Merchant;
  - (c) all Chargeback Claims or other claims under Clause 10 of this Agreement below (Disputed Transactions); and
  - (d) an amount equal to all deductions or withholdings in respect of tax (if any) as are applicable to or have been or will be taken into account in calculating payments to epay from a Card or Payment Scheme or card issuer in respect of or relating to the Transaction referred to in this Clause 6.1.
- Payment is made under the condition precedent (Sec. 158 (1) of the German Civil Code) that Transactions are properly transmitted by the Merchant in accordance with all requirements under this Agreement, in particular the requirements provided for in Clause 8, 10, 11, 14 and 16 and Schedule 5 Clause 1.2 (k) and (o) of this Agreement. In exchange, the Merchant assigns its claim against the Customer under the contractual relationship between the Merchant and the Customer to epay. epay accepts this assignment.
- 6.2 All payments to the Merchant shall be made to the Merchant's bank account as notified to epay by the Merchant from time to time.
- 6.3 Payments shall be made to the Merchant no later than the end of the next Business Day after the Merchant closes the daily batch file in accordance with the Operating Guide, provided the Merchant closes the daily batch file prior to the cut off time as set out in the Operating Guide. epay shall be entitled to deduct or withhold from such payments any deductions or withholding required by law.
- 6.4 It is important that the Merchant regularly checks the accuracy of any and all payments to the Merchant under Clause 6.1 of this Agreement to ensure any Transactions that have been incorrectly accounted for are identified and notified to epay at the earliest possible opportunity. The Merchant:
- (a) must notify epay as soon as it becomes aware that a Transaction may have been incorrectly accounted for in Settlement Payments and other payments and in any event within five (5) Business Days of discovering the reason for the objection or concern after the Transaction date, unless epay has failed to make available information on the Transaction as required by law; and
  - (b) shall notify epay of any objections to a statement pursuant to Clause 17.2 within 3 (three) months after the receipt of the respective statement of account. The objection must be in writing and must include details on the alleged incorrectness and why the Merchant is of the opinion that the statement of account is incorrect. If the Merchant fails to raise objections within this period of time or does not include the required details, the statement of account is deemed to have been authorized by the Merchant.

- 6.5 Any payment by epay in accordance with the terms of this Agreement shall be made without prejudice to any claims, rights or remedies that epay may have against the Merchant, and shall not constitute any admission or acknowledgment by epay that the Merchant has duly performed its obligations under this Agreement or of the correctness of the amount so paid.
- 6.6 epay has the right to, at any time and without notice, to offset any claims, costs, charges, penalties and expenses (including Merchant Losses) that it has incurred as a result of this Agreement against amounts it owes to the Merchant in accordance with Clause 6.1.
- 6.7 The Merchant pledges all payment claims under Clause 6.1 to epay as collateral for all current or future, including conditional, claims of epay against the Merchant resulting from or in connection with this Agreement. In particular, the pledge is collateral for Chargebacks and compensation due to a Merchant Loss. epay accepts the pledge.
- 7. DIRECT DEBIT AND RESERVE AMOUNT**
- 7.1 The Merchant will maintain during the Term of the Agreement a Direct Debit Mandate in favour of epay from the Merchant Settlement Account.
- 7.2 The Merchant will provide to epay funds equal to the amount specified by epay to the Merchant in the Application Form. This amount will be the "**Reserve Amount**" and shall be available to pay epay for all, actual and reasonably anticipated Merchant Losses. If the Reserve Amount due by the Merchant as at the Commencement Date is EUR 0.00 and is therefore not applicable at such date, the remaining provisions of this Clause 7 shall continue to apply.
- 7.3 epay may change the amount it requires the Merchant to provide by way of a Reserve Amount by notifying the Merchant at any time if in epay's reasonable view:
- (a) the risk profile of the Merchant changes;
  - (b) there has been an increase or reduction in:
    - (i) transaction volume or value of more than 30%;
    - (ii) Chargeback Ratio of more than 1%; or
    - (iii) Refunds transaction volume or value of more than 30%,
 in the course of a Contract Year in comparison to the previous Contract Year, or, for the first Contract Year, over the course of a Calendar Month in comparison to the previous Calendar Month;
  - (c) there has been a change in:
    - (i) the Merchant's business such that they would no longer be assigned the Merchant Category Code epay assigned to the Merchant in accordance with Clause 4;
    - (ii) ownership or control of a Merchant; and/or
- (iii) location of a Merchant;
  - (d) there is evidence of fraudulent activity on a merchant account or at point of sale;
  - (e) there is a risk of the Merchant becoming insolvent or otherwise unable to pay its debts as they fall due; and/or
  - (f) the Merchant will not be able to perform its obligations under this Agreement.
- 7.4 If epay notifies the Merchant that the Reserve Amount has increased, the Merchant shall promptly provide such additional funds such that it provides the full amount of the Reserve Amount as requested.
- 7.5 epay may review the Merchant's risk profile from time to time (although it shall not be under an obligation to do so) and, if in epay's reasonable opinion the risk presented by the Merchant has decreased, epay may decrease the Reserve Amount and pay back the difference to the Merchant.
- 7.6 epay will pay the Reserve Amount to the Merchant following termination of this Agreement once epay is satisfied that:
- (a) all relevant payments in connection with Chargebacks and Refunds have been made; and
  - (b) there is no reasonable prospect of incurring any fines or other Liabilities in respect of the Transactions.
- 8. FLOOR AND TRADING LIMITS**
- 8.1 Details of the Trading Limit and/or the Floor Limit (if any) are set out in the Operating Guide.
- 8.2 Where subject to a Trading Limit and/or a Floor Limit, the Merchant shall not exceed the Trading Limit or complete a Transaction in excess of the Floor Limit without epay's prior written approval.
- 9. REFUNDS**
- 9.1 If the Merchant accepts a return from a Customer of any goods or services, including software sold or licensed under a Transaction or agrees to make a Refund or provide a rebate to a Customer of the amount of the Transaction or any part thereof for any reason or if the Customer cancels the Transaction or is entitled under the Merchant's return, refund or rebate policy to a Refund or rebate of all or part of the amount of the Transaction, the Merchant shall issue a credit in the appropriate amount to the relevant Customer's Card account and submit the same to epay under this Agreement (and in no other way), as long as the Card is still valid. If epay notifies the Merchant that the Merchant owes any amount to epay due to any Refund or rebate processed, the Merchant shall promptly transfer such required amount to the bank account specified by epay.
- 10. DISPUTED TRANSACTIONS**
- 10.1 Notwithstanding any other provision of this Agreement or any authorisation and/or authorisation code numbers given in relation to the relevant Transaction, epay shall be entitled

to refuse payment to the Merchant of all or part of the amount of any Transaction less the Discount (where such Discount is applicable), or, if payment has been made, at epay's discretion, epay shall be entitled to send, on a basis of Direct Debit Mandate, recurring instructions to the bank that maintains the Merchant Settlement Account, or on the basis of any other payment instructions accepted by the bank that maintains the Merchant Settlement Account, to debit the Merchant's Settlement Account with such sum and/or to require immediate reimbursement from the Merchant of such sum, in any one or more of the following events:

- (a) the Customer disputes the nature, quality, quantity, use or fitness of the goods sold and/or services rendered under the Transaction, or alleges that the Merchant has breached the terms of the contract of sale or service entered into between the Merchant and the Customer or any representation or warranty made by the Merchant to the Customer;
- (b) the Customer disputes or denies that the contract of sale or service with the Merchant was entered into by him, or that delivery of the goods sold and/or performance of the services rendered under the Transaction was received by him, or alleges that the payment instruction has been given or altered without his knowledge, consent or authority;
- (c) the contract of sale or service entered into between the Merchant and the Customer in relation to the goods and/or services rendered under the Transaction is void or voidable at law or the use of the Card or the performance of any person's obligations under such contract of sale or service involves any illegal or unlawful act;
- (d) the Card used to effect the Transaction is counterfeit or the Customer alleges that the Transaction is in any way fraudulent or tainted or affected by fraud or forgery; whether or not the Merchant was aware thereof;
- (e) the Transaction is not submitted for settlement by the Merchant within three (3) Business Days of the Transaction Date;
- (f) payment in relation to the Transaction has been mistakenly or wrongly made by epay or by the Customer to the Merchant;
- (g) no authorisation has been sought by and/or granted to the Merchant for the Transaction, as required under this Agreement;
- (h) the Card used for the Transaction is not a valid Card;
- (i) the Merchant does not furnish to epay the original or copy or printout of any statement, bill or invoice or other document or record relating to the Transaction as soon as

reasonably possible upon request as required by epay;

- (j) in seeking authorisation for a Transaction, the Customer's name and/or Card or Card account number and/or the validity period of the Card and/or any other details were given to epay incorrectly (whether or not as a result of the Merchant's fault or neglect);
- (k) a Chargeback Claim relating to the Transaction is received by epay or the issuer of any Card refuses for whatever reason to honour any Transaction;
- (l) epay is of the opinion that there is any fraud, forgery or suspicious circumstances surrounding any Transaction; or
- (m) there has been a material breach by the Merchant of any other of its obligations under this Agreement, or of any security measures or guidelines issued by epay.

10.2 In the event epay cites to the Merchant the occurrence of any of the above circumstances, the Merchant shall be entitled to request epay to provide information reasonably sufficient to evidence the same and epay shall use reasonable efforts to obtain and provide the same, provided, however, that epay shall not be obliged to provide any information which is not in its possession or any information with respect to which it is under an obligation of confidentiality. epay shall be required to notify the Merchant within forty-five (45) calendar days from the date of epay's receipt of any Chargeback Claim from the issuing bank or other issuer of the Card.

10.3 With the exception of Clause 10.1(m) of this Agreement, epay's reasonable determination of whether any of the events in Clause 10.1 have occurred shall be final and binding on the Merchant unless the Merchant can provide evidence to epay's reasonable satisfaction that the event in question did not occur.

11. **PROHIBITED TRANSACTIONS**

11.1 The Merchant shall not use the Services in any way in relation to Transactions relating to goods, products or services that are notified to the Merchant by epay as prohibited from time to time (each, a "**Prohibited Transaction**"). Prohibited Transactions are listed in the Operating Guide.

12. **TERM**

12.1 This Agreement shall become effective on the Effective Date and shall, unless otherwise terminated in accordance with the provisions hereof, continue in effect indefinitely.

13. **THE MERCHANT'S GENERAL OBLIGATIONS**

13.1 In addition to its other obligations under this Agreement, the Merchant shall comply:

- (a) with the requirements set out in Schedule 10;

- (b) with the requirements set out in Schedule 9 (if it has required epay to provide to it POS Terminal(s) in accordance with Clause 5);
  - (c) with the Information Requirements set out in Schedule 8;
  - (d) with the requirements for specific Card or Payment Schemes, as set out in Schedule 5;
  - (e) with the applicable Rules and shall promptly cease any non-compliant activity immediately on receipt of notice from epay; and
  - (f) with the Industry Specific Requirements.
- 13.2 The Merchant shall not appoint sub-merchants or permit any third party to submit Transactions to epay without epay's express agreement in writing.
- 13.3 The Merchant shall prominently and unequivocally inform Customers of the identity of the Merchant at all points of interaction.
- 13.4 The Merchant shall ensure that the Customer understands that the Merchant is responsible for the Transactions, including delivery of the Merchant Product/Services, customer service and dispute resolution.
- 13.5 The Merchant acknowledges and agrees that any dispute regarding any Merchant Product/Service is between the Customer and the Merchant. In particular, any Transaction shall obligate only the Merchant in respect of the Merchant Product/Service. The Merchant shall not require epay to be a party to any resulting dispute between it and any Customer relating to any Merchant Product/Service including disputes over its performance and liability issues relating to its delivery, quality, quantity or use.
- 13.6 The Merchant shall provide epay with all information and assistance necessary or desirable to enable epay to provide the Services to it in accordance with the terms and conditions of this Agreement.
- 13.7 The Merchant shall comply with epay's instructions in relation to the receipt and use of the Services.
- 13.8 The Merchant shall not make the Services available to any other Person and shall immediately notify epay of any unauthorised access or attempted unauthorised access by any Person.
- 13.9 The Merchant agrees and confirms that the Merchant Product/Service shall, at all times, be marketed and/or distributed as Merchant Product/Service marketed/sold by the Merchant and the Merchant shall take all necessary steps and/or precautions to ensure that the Merchant Product/Service are not mistaken or misrepresented as being associated with, being sold or marketed by or being offered for sale by epay. epay will be entitled to require and the Merchant shall add to its website such disclaimers, warranties and indemnities as epay may require from time to time in this regard.
- 13.10 The Merchant shall ensure that the marketing and promotion of the Merchant Product/Service (including the contents of its relevant website(s)) and the Merchant Product/Service are at all times in compliance with

Regulatory Requirements and in accordance with public policy, including, without limitation, compliance with all applicable licensing regulations, customs, tax and other regulations. If in the view of epay or any regulatory, statutory, judicial or quasi-judicial authority, there is any breach in this regard, epay may call upon the Merchant to:

- (a) amend the content of the marketing and promotion of the Merchant Product/Service or any part of it; or
  - (b) remove or discontinue such marketing and promotion of the Merchant Product/Service or any part of it.
- 13.11 Other than as expressly provided in this Agreement, epay will not be responsible for any delivery, after-sales service, payment, invoicing or collection, customer enquiries (not limited to sales enquiries), technical support maintenance services and/or any other obligations or services relating to or in respect of the Merchant Product/Service. Such services shall be the sole responsibility of the Merchant and the Merchant shall bear any and all expenses and/or costs relating thereto.
- 14. COMPLIANCE WITH RULES AND THE OPERATING GUIDE**
- 14.1 The Merchant shall comply with and be subject to the Rules.
- 14.2 epay will notify the Merchant of the relevant requirements of Card Scheme or Payment Scheme Rules applicable to the Services and shall, from time to time and within a reasonable time following epay's receipt of notice of material changes in the Rules applicable to the Services, advise the Merchant of such changes.
- 14.3 At all times during the Term of this Agreement, the Merchant shall (and shall procure that the Merchant's Affiliates) comply with the Operating Guide.
- 15. MUTUAL WARRANTIES**
- 15.1 Each party represents, warrants and undertakes to the other party that:
- (a) it is a company duly incorporated and having the capacity, legal right and full power and authority to enter into this Agreement and perform its obligations thereunder;
  - (b) this Agreement is duly executed by its authorised representative(s); and
  - (c) it has obtained and shall maintain all necessary licences, permits, authorisations, approvals and consents necessary in order for it to enter into and perform its obligations under this Agreement in accordance with Regulatory Requirements.
- 16. MERCHANT WARRANTIES**
- 16.1 The Merchant represents, warrants and undertakes to epay that:
- (a) it shall deliver to the Customers the Merchant Products/Services sold to them in connection with the Transactions without undue delay

and otherwise comply with its terms and conditions of sale or supply, as the case may be;

- (b) it shall comply with all Regulatory Requirements relating to it, its business, the Services and any transactions conducted in connection with the Services;
- (c) the Merchant Products/Services that are made available to Customers and the sale or supply, as the case may be, shall comply with Regulatory Requirements and shall not infringe upon any third party's rights and interests, including without any limitation, any Intellectual Property Rights and proprietary rights;
- (d) it shall not submit any Transaction that the Merchant knows or should know to be illegal, fraudulent or not authorised by the Customer, or that it knows or should know to be authorised by the Customer colluding with the Merchant for a fraudulent purpose (for the purposes of this Clause 16, the Merchant is responsible for the conduct of its employees, agents and representatives);
- (e) it shall not submit Transactions or otherwise receive funds in connection with any illegal, fraudulent, deceptive or manipulative act or practice and shall not send or receive funds to or from an illegal source;
- (f) it will hold, secure and maintain the POS Terminals in its possession in good order during the Term of this Agreement and upon the expiration or termination of this Agreement return all such POS Terminals to epay (or its designated agent) in good working condition (save for any reasonable wear and tear);
- (g) it does not and shall not provide any onward payment services (under the Payment Services Laws) to any of its concessions and/or other third parties nor offer the Services under this Agreement on to third parties in a manner that would potentially see epay be in breach of said Payment Services Laws and/or any applicable Regulatory Requirements; and/or
- (h) it has and shall maintain and comply with at all times during the Term of this Agreement any consents, licences or permission that are required (regulatory or otherwise) to provide its goods and/or services to Customers, enter into and perform Transactions and to otherwise conduct its business.

**17. FEES**

17.1 The Merchant shall pay to epay the Fees and all other sums payable by the Merchant to epay in accordance with the terms and conditions of this Agreement. Unless otherwise indicated, Fees are quoted in Euros.

17.2 epay will provide statements to the Merchant in accordance with Schedule 7.

17.3 Value added tax is added to the Fees where applicable. In case value added tax, service tax, business tax or any other sales tax is or becomes chargeable, such tax shall be payable from the amount(s) payable to the Merchant, but epay shall, where required, provide information on the net amount, the amount of tax and the tax rate applied by way of statement(s) issued to the Merchant in accordance with Schedule 7.

17.4 Any fee payable by the Merchant and/or any related tax shall be deducted from the amount(s) payable to the Merchant.

17.5 Where epay is unable to deduct any Fees or other monies payable by the Merchant pursuant to this Agreement from a Settlement Payment:

- (a) epay will collect such amounts directly from the Merchant's bank account under the Direct Debit established, where such Direct Debit has been required to be established as set out in Schedule 2; or
- (b) epay will deduct such amounts directly from the Reserve Amount (if such Reserve Amount exists); or
- (c) where no such Direct Debit or Reserve Amount has been established in accordance with Clause 17.5(a) and (b), the Merchant shall pay to epay such amounts on demand.

Any amounts collected by way of Direct Debit, or otherwise, under this Clause 17.5 shall be reflected in the statements that epay provides to the Merchant in accordance with the provisions of Schedule 7.

17.6 The statutory provisions for overdue payments apply.

17.7 The Fees are subject to change in accordance with Clause 18 of this Agreement.

**18. CHANGE OF TERMS AND CONDITIONS**

18.1 This Agreement is subject to change from time to time.

18.2 Subject to Clause 18.3 and Clause 18.4 of this Agreement, changes may be made by notice from epay to the Merchant under the following procedure:

- (a) epay shall give the Merchant notice of any proposed change to this Agreement (each, a "Change Notice") two (2) months prior to the entry into force of the proposed change;
- (b) a Change Notice may be given by letter to the current or last known trading address of the Merchant or the Merchant's registered office or by email to any of the email addresses the Merchant has registered with epay for this purpose; and
- (c) the Merchant's consent is deemed to be given if the Merchant did not object to the proposed change to epay in writing before the

proposed entry into force of the proposed change. epay will inform the Merchant of this consequence in the Change Notice. In case of an objection, the Agreement will remain in place unchanged. Deviating from Sec 675g para. 2 Satz 2 of the German Civil Code, the Merchant may not terminate without notice the Agreement in the event of a Change Notice. Other termination clauses in this Agreement remain unaffected.

18.3 Amendments to this Agreement become effective before this date if the Merchant agrees. Changes to this Agreement in favour of the Merchant can be made without the Merchant's prior consent.

18.4 epay may amend the Operating Guide by giving written notice thereof at least fourteen (14) calendar days prior to the effective date specified in the notice. Clause 14.3 remains unaffected.

18.5 Notwithstanding the provisions of this Clause 18, epay may vary any currency exchange rate which is applied to payments (if any) made pursuant to this Agreement where such variation is due to a change in the reference rate or is more favourable to the Merchant. The applicable reference rates is made available to the Merchant by epay (e.g. on the epay website).

**19. INTELLECTUAL PROPERTY RIGHTS**

19.1 Except as expressly provided, nothing in this Agreement shall transfer, assign, license or otherwise grant either party any right, title or interest in or to the other party's or its Affiliates' Intellectual Property Rights.

19.2 The Merchant shall not use the epay Branding or mention epay 's name in any public communication without epay 's prior written consent in each case.

19.3 epay shall not use the Merchant's Intellectual Property Rights or mention the Merchant's name in any public communication without the Merchant's prior written consent in each case.

**20. MERCHANT LIABILITY**

20.1 The Merchant shall be responsible for all Merchant Losses and Liabilities including those arising out of the operation by the Merchant of its business (including credit risk, fraud risk, Chargeback risk), unless and solely to the extent that such losses and Liabilities are sustained as a direct result of the failure by epay to perform its obligations under this Agreement and the Merchant notifies epay of its failure within thirty (30) days of becoming aware of its occurrence. Accordingly, the Merchant shall upon written demand indemnify, defend, protect and hold harmless epay and its Affiliates from and against:

- (a) all Merchant Losses incurred or suffered by epay; and/or
- (b) all Liabilities arising as a result of or in connection with any amounts due to epay under this Agreement.

20.2 In addition to Clause 20.1 of this Agreement, the Merchant shall upon written demand indemnify, defend, protect and

hold harmless epay and its Affiliates from and against costs, expenses or losses arising as a result of or in connection with any third party claim(s) arising out of or in connection with:

- (a) a breach by the Merchant of the terms of this Agreement; or
- (b) any claim made or threatened by a third party (including any Customer) relating to any Merchant Product/Service.

20.3 For the avoidance of doubt, neither party shall be obliged to indemnify the other party in respect of any losses or Liabilities it has incurred, to the extent that its losses or Liabilities are caused by, arise out of, or relate to:

- (a) a breach of contract by the other party; or
- (b) the fraud or wilful misconduct of the other party.

**21. EPAY LIABILITY**

21.1 In the event of non-execution, late execution or of erroneous execution of a payment order epay is only liable pursuant to Sec. 675y of the German Civil Code if epay is responsible for this breach of duty.

21.2 The liability of epay for non-execution, late execution or of erroneous execution of a payment order which is not covered by Sec. 675y of the German Civil Code, is limited to 12.500 EUR in accordance with Sec. 675z sentence 2 of the German Civil Code. This limitation of liability does not apply to cases of intent or gross negligence, loss of interest or where epay made specific guarantees and representations under this Agreement.

21.3 As regards breaches of duty other than the non-execution, late execution or erroneous execution of a payment order, epay is only liable for intent or gross negligence, including intent or gross negligence of a statutory representative or an agent, and for a breach of a material duty under the Agreement for which epay is responsible. Material duties under the Agreement are duties which epay has to perform in accordance with the content and purpose of this Agreement and such duties which are required for the performance of this Agreement and on which the Merchant may rely.

21.4 If material duties are breached within the meaning of this definition with slight negligence, epay is only liable up to an amount of 10.000 EUR for each individual event of a claim. This limitation of liability also applies where agents of epay breach the duties under this Agreement with slight negligence.

21.5 The limitation of liability provided for in this Clause 21 does not apply in cases of damage to life, body and health.

**22. CONFIDENTIALITY**

22.1 During the Term of this Agreement and thereafter, each party shall use and reproduce the other party's Confidential Information only for purposes of this Agreement and only to the extent necessary for such purpose and shall make disclosure of the other party's Confidential Information only to its employees, consultants or independent contractors

with a need to know and shall not otherwise disclose the other party's Confidential Information to any third party without the prior written approval of the other party.

22.2 The party using, reproducing and/or disclosing any Confidential Information of the other party will be referred to in this Clause 22 as the "**Disclosing Party**".

22.3 Notwithstanding Clause 22.1 of this Agreement, it shall not be a breach of this Agreement for either party to disclose Confidential Information of the other party if required to do so under law or in a judicial or governmental investigation or proceeding or as may be necessary to discharge Regulatory Requirements or as may be necessary in relation to any applicable securities exchange.

22.4 The confidentiality obligations shall not apply to information that:

- (a) is or becomes public knowledge through no action or fault of the Disclosing Party;
- (b) is known to the Disclosing Party without restriction, prior to receipt from the other party under this Agreement, from its own independent sources as evidenced by such party's written records, and which was not acquired, directly or indirectly, from the other party;
- (c) either party receives from any third party reasonably known by such receiving party to have a legal right to transmit such information, and not under any obligation to keep such information confidential; or
- (d) information independently developed by the Disclosing Party's employees or agents provided that the disclosing party can show that those same employees or agents had no access to the Confidential Information received hereunder.

22.5 The Merchant shall not disclose to any third party any Customer account information obtained by reason of a Transaction, except to epay, epay 's Affiliate or epay 's third party servicers, or to the Merchant's third party service providers whom the Merchant shall bind to the applicable confidentiality provisions of this Clause 22, or as required by Regulatory Requirements.

22.6 To prevent any unauthorised disclosure to third parties, the Merchant shall (and shall procure that any person to whom the Merchant transfers such data shall) destroy or delete all material containing the Customer's account information and other Customer data when such transaction data is no longer needed by the Merchant or such other person, or as otherwise may be required by Regulatory Requirements or this Agreement.

22.7 The Merchant shall take any and all actions required to ensure Customer data is not disclosed, other than in accordance with this Agreement, or otherwise misused in any manner.

22.8 The Merchant authorises epay to disclose the Merchant's and Merchant's Affiliates' name, address and any other information:

- (a) to the Card or Payment Schemes as reasonably required for epay to exercise its rights and comply with its obligations under this Agreement, the relevant Rules and Regulatory Requirements;
- (b) to any epay Affiliate; and
- (c) to any third party which otherwise has a reason to know such information for the purpose of performing any obligation hereunder.

**23. DATA PROTECTION**

23.1 Each party will at all times during the term of the relationship undertake all necessary steps to ensure that it operates within the requirements of the Data Protection Laws.

23.2 For the provision of the Services, epay will process the Personal Data of the Merchant and Merchant's Affiliates'. While processing Merchant's Personal Data, epay will comply with all Personal Data protection obligations. Merchant and Merchant's Affiliates' may exercise their rights, according to the GDPR, in particular Article 15. The Personal Data processed by epay in order to provide the Services will be limited to the data provided in the Agreement and in the Application Form. In the event of any inquiries regarding Personal Data, the Merchant shall contact epay's Data Protection Officer at [dpo@euronetworldwide.com](mailto:dpo@euronetworldwide.com).

23.3 The parties will throughout the Term of this Agreement comply with the Data Processing Agreement set out in Schedule 11 of this Agreement, which addresses all processing occurring in the context of and for the purposes of this Agreement, including the Cardholders' Personal Data.

23.4 Any breach of this clause and/or the Data Protection Laws by the Merchant shall be deemed a material breach of the Agreement.

**24. REPORTING AND MANAGEMENT INFORMATION**

epay shall provide such information, and at such times, as is further set out in Schedule 7 of this Agreement (Reporting and Management Information).

**25. INSPECTIONS**

25.1 The Merchant authorises epay to make, at any time during the Term of this Agreement, any credit inquiries which, in epay's opinion, may be necessary or prudent.

25.2 If requested to do so by epay, the Merchant shall provide the written consent of any person for which an inquiry has been or is to be made if such person has not executed this Agreement and will provide any financial statements, income tax and business tax returns and other financial information as epay may consider necessary to perform initial or periodic reviews of its financial stability and business practices.

25.3 The Merchant shall allow representatives of epay, or those of a Regulator, during normal business hours or, in the case of emergency, at any other time, to inspect, audit and make copies of the Merchant's books, accounts, records and files

pertaining to any Services, including any Transactions, acquired or processed by epay or epay's Affiliate. The Merchant shall provide all reasonable access, co-operation and information in connection with any such inspection and/or audit, as may be required for the purposes of complying with epay's regulatory obligations.

**26. THIRD PARTY VENDORS**

26.1 The Merchant shall not use any Value Added Services of any Third Party Vendor without the prior written consent of epay. If such consent has been given, the Merchant shall:

- (a) procure that such Value Added Services and the Third Party Vendor are fully compliant with all Regulatory Requirements;
- (b) ensure, where the Third Party Vendor provides Customer data processing, storing, and/or transmitting services (or any combination of these to the Merchant), that any such Third Party Vendor is registered with each of the Card Schemes and listed on such Card Schemes' website; and
- (c) be bound by the acts and omissions of the Third Party Vendor.

26.2 The Merchant shall provide, maintain and pay for all power and telecommunication connections necessary to operate any Third Party Terminal, including payment for all related charges incurred by the Merchant in gaining access to and using the Services.

26.3 If the Merchant uses Value Added Services for the purpose of data capture and/or authorisation or otherwise with respect to Third Party Terminals, the Merchant agrees that:

- (a) the Third Party Vendor providing such Value Added Services will be the Merchant's agent in the delivery of Transactions to epay; and
- (b) assume full responsibility and liability for any failure of that Third Party Vendor to comply with the Laws, the Card Scheme Rules and the Agreement.

26.4 epay shall not be responsible for any losses or expenses incurred by the Merchant or any third party as a result of any error by a Third Party Vendor, or of any failure by the Merchant to operate the Third Party Terminal in accordance with any applicable operating instructions or by any malfunction in a Third Party Terminal.

**27. NOTIFICATION OF MATERIAL CHANGES TO MERCHANT**

27.1 The Merchant shall provide epay with no less than thirty (30) calendar days' advance written notice of:

- (a) any transfer, sale or liquidation of all or substantially all of its consolidated assets;
- (b) any change in the basic nature of its business, including selling different products or services not related to its current business;
- (c) any change in ownership or transfer of control of its business;

(d) forming any joint venture, partnership or similar business arrangement whereby any person or entity not a party to this Agreement assumes any substantial interest in its business; or

(e) any change in its business operations that will likely cause account activity to materially exceed its historical monthly volume,

each a "Merchant Material Change".

27.2 The Merchant shall notify epay in writing:

- (a) immediately in the event of any bankruptcy, receivership, insolvency, levy or similar action initiated by or against it or any of its principals;
- (b) of any material change to its financial condition or the information contained in its Merchant Application (within three calendar days of such occurrence); or
- (c) immediately if it is threatened with or becomes party to any action, suit or proceeding at law or in equity that could substantially impair its right to carry on its business or materially adversely affect its financial condition or operations.

**28. TERMINATION**

28.1 The Merchant may terminate the Agreement by giving one (1) month notice. epay may terminate the Agreement by giving two (2) months' notice.

28.2 epay 's and the Merchant's right to terminate for cause remains unaffected by Clause 28.1. In particular, there is a cause for termination if:

- (a) the Merchant is in breach of any obligation under this Agreement;
- (b) the Merchant is in breach of Regulatory Requirements;
- (c) epay is no longer allowed to accept Transactions of the Merchant due to a change to Regulatory Requirements;
- (d) if epay is no longer in position to offer the payment method, which the Merchant requires, for any reason;
- (e) there is a reasonable suspicion that the Merchant acts fraudulently or submits Transactions which are connected to a crime;
- (f) the Chargeback Ratio exceeds 1% of Transactions by volume, or 1% of the aggregate amounts and the Merchant has failed to bring the Chargeback Ratio below this level within two (2) months following receipt of written notice of the excess;
- (g) there is a negative change in the business or financial situation of the Merchant which

might affect the Merchant's capability to fulfil all or specific duties or debts under this Agreement; and/or

- (h) the Merchant fails to comply with a justified request for information, in particular with respect to anti-money laundering or counter-terrorist financing checks.

28.3 epay and the Merchant may only terminate the Agreement for cause after the expiration of a reasonable period for remedying the breach or a fruitless warning where the cause for termination is a breach of this Agreement; unless an instant termination of cause is justified when taking into the account the interests of both parties.

**29. CONSEQUENCES OF TERMINATION**

29.1 The termination of this Agreement, however it arises, shall not affect any actual or contingent liabilities or claims of either party which accrue before this Agreement terminates. Any clauses or other provisions of this Agreement which are intended, either expressly or by implication, to continue post termination shall continue in effect following termination, including, without limit the provisions of Clauses 15, 16, 18, 19, 20, 21, 22, 24, 27, 28, 29, 30, 33, 35, 36, 37 and Schedule 5 of this Agreement.

29.2 Fees levied on a regular basis shall be payable by the Merchant only proportionally up to the termination of the Agreement. Fees paid in advance, such as annual Fees, shall be reimbursed proportionally.

29.3 Without prejudice to Clause 29.1 above, the Merchant shall continue to be responsible for all Merchant Losses resulting from Transactions processed under this Agreement prior to its date of termination, for all other amounts which are due or become due after the termination of this Agreement and any breaches of any rules of a Card or Payment Scheme and/or Regulatory Requirements which are notified to epay at any time after this Agreement has ended.

29.4 On termination of this Agreement, the Merchant shall:

- (a) promptly return to epay any materials and/or POS Terminals supplied by epay;
- (b) cease to use all and any Confidential Information made available to it pursuant to or in connection with this Agreement and shall return the same to epay (or at epay 's option, destroy or erase the same);
- (c) immediately pay all outstanding amounts and unpaid amounts due and owing to epay; and
- (d) immediately cease using the name of epay and any epay Branding which have been directly or indirectly provided or made available to the Merchant and/or any Card or Payment Scheme brands the use of which has resulted from operation of this Agreement.

29.5 All promotional materials, advertising displays, emblems, charge forms, credit vouchers and other materials of any nature whatsoever together with the POS Terminals supplied by epay to Merchant, if any, will (as between epay

and the Merchant) remain the property of epay and will be immediately returned to epay upon termination of this Agreement. The Merchant shall be liable for, and shall upon written demand indemnify epay against, any and all losses, costs and expenses suffered or incurred by epay arising out of the failure to return (or destroy if so requested by epay) any of the items referred to in this Clause 29.5.

**30. ASSIGNMENT & SUB-CONTRACTING**

30.1 The Merchant may not assign any of its rights under this Agreement to a third party without the prior written consent of epay.

30.2 The Merchant may not sub-contract or out-source the performance of any of its obligations under this Agreement without the prior written consent of epay.

30.3 epay may assign or transfer rights in whole or in part without prior consent of the Merchant.

30.4 epay may transfer this Agreement as a whole to a third party (referred to as "**Transferee**") by way of a take-over of the Agreement without prior consent of the Merchant if the third-party is capable of performing the duties under this Agreement and possesses the necessary competence, reliability, solvency and, as the case may be, relevant regulatory permissions and if epay informs the Merchants at least eight (8) weeks prior to the planned take-over of the Agreement in writing.

30.5 In the event of a take-over of this Agreement pursuant to Clause 29.4, the Merchant may terminate the Agreement for cause without prior notice. epay will inform the Merchant of the Merchant's right to terminate the Agreement for cause in the notification regarding the planned take-over of the Agreement.

30.6 epay may share information about the Merchant with a prospective Transferee or person providing funding (to epay or to the prospective Transferee), regardless of whether epay actually assigns or transfers all or epay 's rights and/or obligations to such Transferee or the funding is actually provided.

30.7 Where epay assigns or transfers (including by declaration of trust) all or any part of epay 's rights and/or obligations under this Agreement to a Transferee, references in this Agreement to epay shall become references to that Transferee, with effect from such assignment or transfer.

**31. RELATIONSHIP OF THE PARTIES AND DISPUTE RESOLUTION**

31.1 The Merchant and epay are independent contractors under this Agreement, and nothing herein shall be construed to create a partnership, joint venture or agency relationship between them. Neither party has authority to enter into agreements of any kind on behalf of the other.

31.2 The parties may each appoint representatives ("**Relationship Managers**") and, if Relationship Managers have been appointed, each party shall notify the identity of their Relationship Managers to the other in accordance with Clause 33 within ten (10) days of the appointment.

31.3 If the Relationship Managers have been appointed, the Relationship Managers shall meet (in person or by

- conference call) at least annually to review the relationship between the parties.
- 31.4 The parties shall attempt to resolve any dispute in relation to any aspect of, or failure to agree any matter arising in relation to, this Agreement informally through discussion. If the Relationship Managers have been appointed such discussion shall be between the Relationship Managers.
- 31.5 If, within fifteen (15) Business Days of the dispute having been referred to the other party or to the Relationship Managers if such persons have been appointed in accordance with Clause 31.2 above, or such longer period as the parties may agree, no agreement has been reached, the dispute may be referred to and finally resolved by the courts specified in Clause 34.2 of this Agreement.
32. **NON-SOLICITATION OF EMPLOYEES**
- The Merchant undertakes that it shall not for the Term of this Agreement and a period of six (6) months thereafter on its own behalf or on behalf of any person directly or indirectly canvass, solicit or endeavour to entice away from epay or epay Affiliate any person who has at any time during the Term of this Agreement been employed or engaged by epay or epay Affiliate.
33. **NOTICES**
- 33.1 Any notice to be given under or in connection with this Agreement must be given in writing and delivered either by hand, first class prepaid post or other recognised delivery service, or by facsimile. Notwithstanding the foregoing, epay may give notice to the Merchant by sending an email to any of the email addresses registered with epay.
- 33.2 Notices shall be sent to the address of the relevant party as set out in this Agreement or as otherwise notified by a party to the other from time to time in accordance with this Agreement. Any notice given in accordance with this Clause 33 shall be deemed to have been received:
- (a) if delivered personally, at the time of delivery;
  - (b) in the case of pre-paid first class post, special or other recorded delivery on the second Business Day after the date of posting; and
  - (c) in the case of facsimile, on the date it is transmitted.
- 33.3 Where epay serves notices by email, the provisions of Clause 33.2(c) above relating to the service of notices by facsimile shall apply to the service of such notices by email.
- 33.4 The parties agree to conduct all communication in relation to this Agreement in English.
34. **GOVERNING LAW AND JURISDICTION**
- 34.1 This Agreement and any legal relationship between the parties arising in connection with it shall be governed by German law (excluding CISG).
- 34.2 This Agreement is subject to the exclusive jurisdiction of the competent courts in Munich.
35. **WAIVER**
- Any waiver of a right under this Agreement by either party shall only be effective if agreed or declared in writing. A delay in exercising a right or the non-exercise of a right shall not be deemed a waiver and shall not prevent a party from exercising that right in the future.
36. **COSTS AND EXPENSES**
- Except as expressly provided by the terms and conditions of this Agreement, each party shall be solely responsible for its own costs and expenses of negotiating, preparing and executing this Agreement and for its costs and expenses of performing its obligations under this Agreement.
37. **SEVERABILITY**
- If any part of this Agreement is found to be invalid, unlawful or unenforceable then such part shall be severed from the remainder of this Agreement, which shall continue to be valid and enforceable to the fullest extent permitted by law.
38. **ENTIRE AGREEMENT**
- This Agreement including all Schedules and other documents referred to in this Agreement represents the entire agreement of the parties in relation to its subject matter. Each party acknowledges that it has entered into this Agreement in reliance only on the representations, warranties, promises and terms contained in this Agreement and, save as expressly set out in this Agreement, neither party shall have any liability in respect of any other representation, warranty or promise made prior to the date of this Agreement unless it was made fraudulently.
39. **VARIATION**
- Subject to Clause 18 of this Agreement, no variation or amendment to this Agreement shall be effective unless recorded in writing and signed by the duly authorised representatives of both parties. This also applies to any amendment or modification of this clause.
40. **COMPLAINTS PROCEDURE**
- 40.1 If you have reason to complain about epay, you should contact "Merchant Acquiring Call Centre" in the first instance. Contact details are available at [www.epaymerchantservices.es](http://www.epaymerchantservices.es).
- 40.2 Information about epay 's complaints handling procedures is available at: Contact details are available at [www.epaymerchantservices.es](http://www.epaymerchantservices.es). You agree that we may answer complaints by e-mail.
- 40.3 epay participates in the dispute resolution procedure of the conciliation body at the Deutsche Bundesbank. The details of the conciliation procedure are governed by the Financial Conciliation Board Ordinance, which will be made available to the customer upon request. Further details of the conciliation procedure can be found on Deutsche Bundesbank's website ([www.bundesbank.de](http://www.bundesbank.de)). The Merchant has the option of calling the conciliator at Deutsche Bundesbank to settle a dispute with epay. The request must contain the minimum information specified in Section 7(1) of the Financial Conciliation Board Ordinance.

The complaint must be sent in text form (letter, fax, e-mail) to: Deutsche Bundesbank - Conciliation Board, P.O. Box 111232, 60047 Frankfurt am Main; fax: +49 (0)69-709 090 9901; e-mail: [schlichtung@bundesbank.de](mailto:schlichtung@bundesbank.de). The Merchant's right to appeal to a court of law shall remain unaffected.

41. **PSD2 OPT-OUT**

The Parties agree that section 675d (1) sentence 1, subsections (2) to (5), section 675f (5) sentence 2, sections 675g, 675h, 675j (2) and section 675p, as well as sections 675v to 676 of the German Civil Code, do not apply; they may also agree a time-limit other than that provided for in section 676b of the German Civil Code.



## SCHEDULE 1

### Part A: Acquiring Services

epay will acquire Visa, MasterCard, Diners (including Discover), JCB, Alipay and Union Pay International Transactions.

As at the date of this Agreement, WeChat Transactions are not yet included in the Acquiring Services, but the parties agree that upon written notice from epay to the Merchant, We Chat Transactions will be so included (on the relevant terms, including pricing, set out in this Agreement) from the date stated in such notice.

epay will also acquire and process Visa and Mastercard Transactions initiated via Pay By Link. As at the date of this Agreement, Pay By



Link Transactions are supported for Visa and Mastercard only and do not include American Express or other Card Schemes.

**Part B: Processing Services**

epay will process American Express Transactions.

**SCHEDULE 2**

**Conditions Precedent**

1. The Merchant must complete and sign the Merchant Application Form.
2. As part of the application, the Merchant must provide the following:
  - (a) details of the level of card turnover;
  - (b) evidence of PCI Compliance, if applicable;
  - (c) the Merchant's:
    - (i) business registration details;
    - (ii) business address;
    - (iii) contact information;
    - (iv) contact person; and
    - (v) relevant banking details (including Business Identifier Codes and International Bank Account Numbers);
  - (d) the Merchant's Certificate of Incorporation, Article of Association;
  - (e) photo ID of Merchant contact person;
  - (f) the latest two years of financial statements for the previous year; if the Merchant is required by law to have its financial statements audited, then the latest two years of audited financial statements for the previous year;
  - (g) acquiring and/or processing statements for the previous six months;
  - (h) evidence of the ultimate beneficial owner;
  - (i) photos of the retail store of the Merchant, and
  - (j) proof of activity document with activity code(s) reference,
  - (k) any other information reasonably requested by epay,
  - (l) Direct Debit Mandate in favour of epay from the Merchant Settlement Account. For the avoidance of doubt, even if not requested by epay as part of the Merchant Application Form, epay reserves its right to request a Direct Debit Mandate from the Merchant at any time throughout the Term of this Agreement.
3. As part of the application, the Merchant may be required to provide the following:
  - (a) evidence of regulatory licences (if any);
  - (b) copies of guarantees/warranties;
  - (c) management accounts for the previous year;
  - (d) latest two years of financial statements for the previous two years; if the Merchant is required by law to have its financial statements audited, then the latest two years of audited financial statements for the previous two years;
  - (e) acquiring and/or processing statements for the previous twelve months;
  - (f) copies of current marketing material used by the Merchant (if applicable);
  - (g) a copy of guarantees/warranties offered to consumers (if applicable); and
  - (h) any other information reasonably requested by epay,
  - (i) a copy of a refund policy offered by the Merchant to Cardholders.

**SCHEDULE 3**

**Dynamic Currency Conversion**

**1. INTRODUCTION**

- 1.1 Dynamic Currency Conversion (“**DCC**”) enables the Merchant to allow payment for Merchant Product/Services in a currency other than Euro to a Customer whose Card is not denominated in Euro. epay will convert the price in Euro into the currency of the Customer. epay does not provide services in relation to DCC to Customers.
- 1.2 epay have developed a solution which enables Merchants to offer DCC Services to non-Euro denominated Cardholders.
- 1.3 epay will provide the DCC Services on the Merchant’s POS Terminals for certain eligible Cardholders.
- 1.4 DCC Transactions initiated by Cardholders on the Merchant’s POS Terminals will be routed via epay’s payment gateway that is connected to each of the Card or Payment Scheme.

**2. Training**

- 2.1 epay will provide an initial training session to the Merchant’s nominated employees at each of the Merchant locations to ensure the general standard of the DCC Services offered complies with the Card or Payment Scheme Rules.
- 2.2 After epay have provided the training, the Merchant will be responsible for ensuring that its nominated employees train the remaining employees at each Merchant location.
- 2.3 The Merchant hereby commits to inform its employees at each Merchant location of the DCC Services and the requirements in order to be in compliance with this Agreement.

**3. ELIGIBLE CURRENCIES**

- 3.1 The DCC Services will be available for a specific list of currencies which are supported by each of the Card or Payment Schemes.

**4. DCC TRANSACTION REVENUES**

- 4.1 For each DCC Transaction, epay will use the currency exchange rates as provided by the Card or Payment Schemes and valid for the calendar day when the DCC Transaction takes place.
- 4.2 The currency exchange rates that will be offered to Cardholders on the Terminals at the Merchant locations will include a margin set by epay (“**DCC Margin**”) on top of the currency exchange rates received from the Card or Payment Schemes.
- 4.3 The applicable DCC Margin will be determined by epay from time to time in its absolute discretion.
- 4.4 The DCC Rebate as set forth in Schedule 4 of the Agreement shall offset the Discount and any other Fees payable by the Merchant.

**5. SETTLEMENT OF DCC TRANSACTIONS**

- 5.1 Each Business Day, epay shall be responsible for performing the settlement of the DCC Transactions with the Card or Payment Schemes as part of the regular daily settlement process.
- 5.2 The Merchant’s DCC Rebate shall be settled to the Merchant Settlement Account on a monthly basis. For the avoidance of doubt, the settlement of the amount of the Transactions shall take place in accordance with the relevant provisions of the Agreement (i.e. Clause 6 and Schedule 4).
- 5.3 The Merchant undertakes vis-à-vis epay that the Merchant will comply with its disclosure duties vis-à-vis the cardholder in accordance with Article 248 Sec. 17 of the Introductory Code to the German Civil Code.

## SCHEDULE 4

### Fees

#### Part A – applicable to the Merchant who selected “interchange plus plus” (unblended) pricing in the Application Form

1. **Fees:** The Merchant will pay the following in accordance with the terms of this Agreement:

##### 1.1. Discount:

epay shall charge Fees on an “interchange plus plus” basis. This means, in addition to the Discount Rate as described below which covers epay’s Transaction processing costs, overheads and margin and any tax payable in respect of or in relation to the Discount or the Services (other than a tax calculated on or by reference to income or profits), the Merchant will pay:

- (a) the applicable interchange fee for that Transaction; plus
- (b) any Card or Payment Scheme fee and other network fees introduced or varied by the Card Schemes or card issuers that are levied on epay for that Transaction,

exactly as those fees are applied by the Card or Payment Schemes. Such fees are set out in the Application Form and are subject to change and any changes to the interchange fee and/or Payment or Card Scheme and other network fees will be applied accordingly and without prior notice to the Merchant.

- (c) Discount Rate (is as set out in the Application Form).

##### 1.2. Other Fees:

- (a) **Terminal Repair Fee:** The Merchant shall pay to epay a POS Terminal repair fee not exceeding €250 per POS Terminal (the “**POS Terminal Repair Fee**”) payable in accordance with the terms of Schedule 9.
- (b) A monthly fee as set out in the Application Form for the rental of each POS Terminal (the “**POS Terminal Rental Fee**”) payable in accordance with the terms of Schedule 9.
- (c) A fee set out in the Application Form for the return of the rental POS Terminal to epay (the “**POS Terminal Return Fee**”) payable in accordance with the terms of Schedule 9.
- (d) A fee set out in the Application Form per authorisation (the “**Authorization Fee**”) for each successful Transaction and pre-authorization made via a POS Terminal.
- (e) A fee set out in the Application Form for each successful refund Transaction (the “**Refund Fee**”) unless the refund transaction occurs within the same Business Day as the Transaction to which such refund transaction relates.
- (f) A fee set out in the Application Form for each Chargeback which is processed on behalf of the Merchant. (the “**Chargeback Fee**”).

1.3. **DCC Rebate:** The Merchant shall receive the DCC rebate for each DCC Transaction processed. The applicable percentage of DCC Rebate is set out in the Merchant Application Form.

## 2. Settlement:

- 2.1. In the event of a difference between the settlement terms set forth in this Schedule 4 and Clause 6 of the Agreement, then this Schedule 4 shall take precedence over Clause 6 of the Agreement.
- 2.2. The DCC Rebate on all DCC Transactions shall be paid to the Merchant on a monthly basis by net settlement against the amount of the Discount and any other Fees payable by the Merchant.
- 2.3. If the amount of the Discount and any other payable Fees less the DCC Rebate from the previous month exceeds the daily settlement amount on the first Business Day of the month, then the Discount and any other Fees payable shall be deducted from the daily settlement amount until fully paid.
- 2.4. Upon the termination or expiry of this Agreement, if the amount of the Discount and any other payable Fees less the DCC Rebate is not paid to epay by net settlement against the daily settlement of the Transactions into the Merchant Settlement Account or if epay is unable to offset the amount payable by Merchant against any other amounts payable to epay, then Merchant shall pay the amount of the Discount and any other Fees owed to epay by wire transfer within ten (10) Business Days after the termination or expiry of this Agreement.

the amount payable by Merchant against any other amounts payable to epay, then Merchant shall pay the amount of the Discount and any other Fees owed to epay by wire transfer within ten (10) Business Days after the termination or expiry of this Agreement.

**Part B – applicable to the Merchant who selected blended pricing in the Application Form**

1. **Fees:** The Merchant will pay the following amounts in accordance with the terms of this Agreement:

1.1. **Discount:**

epay shall charge Fees on a “blended” basis. This means the Merchant will pay the Discount Rate (as set out in the Application Form).

1.2. **Other Fees:**

- (a) **Terminal Repair Fee:** The Merchant shall pay to epay a POS Terminal repair fee not exceeding €250 per POS Terminal (the “**POS Terminal Repair Fee**”) payable in accordance with the terms of Schedule 9.
- (b) A monthly fee as set out in the Application Form for the rental of each POS Terminal (the “**POS Terminal Rental Fee**”) payable in accordance with the terms of Schedule 9.
- (c) A fee set out in the Application Form for the return of the rental POS Terminal to epay (the “**POS Terminal Return Fee**”) payable in accordance with the terms of Schedule 9.
- (d) A fee set out in the Application Form per authorisation (the “**Authorization Fee**”) for each successful Transaction and pre-authorization made via a POS Terminal.
- (e) A fee set out in the Application Form for each successful refund Transaction (the “**Refund Fee**”) unless the refund transaction occurs within the same business day as the Transaction to which such refund transaction relates.
- (f) A fee set out in the Application Form for each Chargeback which is processed on behalf of the Merchant (the “**Chargeback Fee**”).

1.3. **DCC Rebate:** The Merchant shall receive the DCC rebate for each DCC Transaction processed. The applicable percentage of DCC Rebate is set out in the Merchant Application Form.

2. **Settlement:**

- 2.1 In the event of a difference between the settlement terms set forth in this Schedule 4 and Clause 6 of the Agreement, then this Schedule 4 shall take precedence over Clause 6 of the Agreement.
- 2.2 The DCC Rebate on all DCC Transactions shall be paid to the Merchant on a monthly basis by net settlement against the amount of the Discount and any other Fees payable by the Merchant.
- 2.3 If the amount of the Discount and any other payable Fees less the DCC Rebate from the previous month exceeds the daily settlement amount on the first Business Day of the month, then the Discount and any other Fees payable shall be deducted from the daily settlement amount until fully paid.
- 2.4 Upon the termination or expiry of this Agreement, if the amount of the Discount and any other payable Fees less the DCC Rebate is not paid to epay by net settlement against the daily settlement of the Transactions into the Merchant Settlement Account or if epay is unable to offset

## Part C – applicable to the Merchant who selected the Subscription Model in the Application Form

1. **Fees:** The Merchant will pay the following amounts in accordance with the terms of this Agreement:

### 1.1. Tier Fee:

- (a) Based on the tier bands set out in the Application Form, Merchant shall pay the corresponding fixed monthly fee set out therein. In the event that the last tier band is exceeded in the course of any one Calendar Month, the Merchant will pay the fixed monthly fee of the highest tier plus an amount equal to the total amount of the product of the Transactions in excess of the last such tier multiplied by the percentage Discount Rate specified in the Application Form (the "**Tier Fee**"). For the avoidance of doubt, the Tier Fee corresponding to the first tier band shall be payable as a minimum by the Merchant irrespective of whether Transactions are being performed using the POS Terminal/s.

**IMPORTANT NOTE:** It is hereby clarified that with respect to a Transaction falling partly within the last tier band and partly outside it, the percentage Discount Rate is applied not on the total amount of the Transaction but only on the amount of the Transaction by which the last such tier band is exceeded.

For example, if the last tier band offered to a Merchant is €20,000 – 40,000 and a Transaction is effected in the amount of €600,00, bringing the total product of the Transactions to €40,300, this Transaction shall be charged with the percentage Discount Rate only for the amount of €300 whereas the remainder amount of €300 shall be included in the fixed monthly fee.

- (b) For the purposes of determining the tier band and calculating the applicable Tier Fee, the following rules shall apply:
- (i) AMEX Transactions shall be excluded;
  - (ii) Successful and non-voided Refunds and Chargebacks shall be deducted;
  - (iii) In the case of Unique Transactions (as defined in Clause 1.2 of this Schedule 4 Part C), these shall be excluded;
  - (iv) Only successful and non-voided sales and representations for Transactions will be taken into account.

### 1.2. Discount

For certain Transaction categories expressly excluded from the subscription tier band calculation as these may be listed in the Application Form (the "**Unique Transaction/s**"), the Merchant shall pay the Discount Rate set out in the Application Form.

### 1.3. Other Fees:

- (a) **Terminal Repair Fee:** The Merchant shall pay to epay a POS Terminal repair fee not exceeding

€250 per POS Terminal (the "**POS Terminal Repair Fee**") payable in accordance with the terms of Schedule 9.

- (b) A monthly fee as set out in the Application Form for the rental of each POS Terminal (the "**POS Terminal Rental Fee**") payable in accordance with the terms of Schedule 9.
- (c) A fee set out in the Application Form for the return of the rental POS Terminal to epay (the "**POS Terminal Return Fee**") payable in accordance with the terms of Schedule 9.
- (d) A fee set out in the Application Form for each Chargeback which is processed on behalf of the Merchant (the "**Chargeback Fee**").

- 1.4. **DCC Rebate:** The Merchant shall receive the DCC rebate for each DCC Transaction processed. The applicable percentage of DCC Rebate is set out in the Merchant Application Form.

## 2. Settlement:

- 2.1. In the event of a difference between the settlement terms set forth in this Schedule 4 and Clause 6 of the Agreement, then this Schedule 4 shall take precedence over Clause 6 of the Agreement.
- 2.2. Without prejudice to any other rights or remedies that epay may have under this Agreement, the Tier Fee and Discount (if applicable as per clause 1.2 hereof) shall be payable by the Merchant on a monthly basis and shall be deducted from the last settlement in respect of each Calendar Month (i.e., from the settlement corresponding to the last day of a Calendar Month).
- 2.3. The DCC Rebate on all DCC Transactions shall be paid to the Merchant on a monthly basis by net settlement against the amount of the Tier Fee and Discount (if applicable as per clause 1.2. hereof) for the respective Calendar Month and any other Fees payable by the Merchant.
- 2.4. If the amount of the Tier Fee and the Discount (if applicable as per clause 1.2. hereof) and any other Fees payable by the Merchant less the DCC Rebate for any given Calendar Month exceeds the amount of the last settlement in respect of the said Calendar Month as set out in clause 2.2. above, then the Tier Fee and the Discount (if applicable as per clause 1.2. hereof) plus any other Fees payable by the Merchant shall be deducted from the daily settlement amount until fully paid.
- 2.5. Upon the termination or expiry of this Agreement, if the amount of the Tier Fee and the Discount (if applicable as per clause 1.2. hereof) plus any other Fees payable by the Merchant less the DCC Rebate is not paid to epay by net settlement against the daily settlement of the Transactions into the Merchant Settlement Account or if epay is unable to offset the amount payable by Merchant against any other amounts payable to epay, then Merchant shall pay the amount of the Tier Fee and the Discount (if applicable as per clause 1.2. hereof) plus any other Fees owed to epay by wire transfer within ten (10) Business Days after the termination or expiry of this Agreement.

SCHEDULE 5

Specific Card or Payment Scheme Requirements

1. **MASTERCARD TRANSACTIONS**

1.1 In this paragraph 1, the following terms shall have the following meanings:

**MasterCard Acceptance Mark** means the MasterCard Brand Mark placed on a dark blue acceptance rectangle;

**MasterCard Brand Mark** means the MasterCard Word Mark as a custom lettering legend placed within the MasterCard Interlocking Circles Device;

**MasterCard Mark** means any one of the names, logos, trade names, logotypes, trademarks, service marks, trade designations, and other designations, symbols, and marks, including but not limited to the MasterCard Brand Mark and the MasterCard Word Mark, that MasterCard International Incorporated and/or its affiliates or subsidiaries own, manage, license, or otherwise control and make available for use by customers and other authorised entities;

**MasterCard Word Mark** means the word "MasterCard," which should be followed by a registered trademark ® symbol or the local law equivalent;

**MasterCard Standards** means the Amended and Restated Certificate of Incorporation, bylaws, rules, and policies, and the operating regulations and procedures of MasterCard International Incorporated, including but not limited to any manuals, guides or bulletins, as may be amended from time to time;

**MasterCard Transaction** means a Transaction made using a Card issued by a MasterCard member; and

**Transaction Information Document (or "TID")** has the meaning give to it in paragraph 1.2(k) of this Schedule.

1.2 Where the Services include the acquiring of MasterCard Card Transactions, the following provisions apply:

(a) to the extent that the Merchant is permitted under this Schedule to use a MasterCard Mark:

(i) such usage must be in accordance with the MasterCard Standards, including the reproduction, usage and artwork standards, as may be in effect from time to time; and

(ii) such permission will terminate effective with the termination of this Schedule or upon notification by MasterCard International Incorporated (or one of its subsidiaries or affiliates) to discontinue such use;

(b) the use or display of any MasterCard Mark does not give the Merchant any ownership or interest in the Mark;

(c) the Merchant shall display the MasterCard Acceptance Mark:

(i) at the first point of customer interaction; and

(ii) wherever payment options are presented. No other acceptance mark, symbol or logo may appear more prominently or in such a way as to cause confusion concerning the acceptance of MasterCard Cards;

(d) the MasterCard Acceptance Mark shall be displayed as a free-standing mark and may not be displayed so as to suggest that it is either a secondary means of payment to a local or regional acceptance brand, or exclusively linked to a local or regional acceptance brand, and visual parity must be maintained between the MasterCard Acceptance Mark and any other such acceptance mark;

(e) the Merchant must comply with the MasterCard Standards and, in particular, with the standards set forth in section 2.1 of the MasterCard Chargeback Guide;

(f) the Merchant shall honour all valid Cards without discrimination when properly presented for payment, and shall maintain a policy that does not discriminate among customers seeking to make purchases with a MasterCard Card;

(g) when required by the MasterCard Standards, the Merchant shall obtain an authorization before completing a MasterCard Transaction;

(h) the Merchant shall not refuse to complete a MasterCard Transaction solely because a Customer who has complied with the conditions for presentation of a Card refuses to provide additional identification information, except as specifically permitted or required by the MasterCard Standards;

(i) the Merchant shall not refuse to complete an e-commerce MasterCard Transaction solely because the Cardholder does not have a digital certificate or other secured protocol;

(j) the Merchant shall submit to epay records of valid MasterCard Transactions only between the Merchant and a bona fide Cardholder;

(k) the Merchant must submit records of valid MasterCard Transactions to epay no later than 24 (twenty-four) hours after the Card Transaction date and time, except:

(i) the record must not be presented until after the products are shipped or the services are performed unless, at the time of the MasterCard Transaction, the Cardholder agrees to a properly disclosed delayed delivery of the products or services;

(ii) when the Merchant receives Cardholder authorization for a delayed presentment (in which case the words "Delayed Presentment" must be noted

- on the "**Transaction Information Document**" (or "**TID**");
  - (iii) when the Merchant is obligated by law to retain the TID or return it to a buyer upon timely cancellation, in which case the Merchant should present the record within 10 Business Days after the Transaction date; or
  - (iv) when the Merchant has multiple locations and uses a central facility to accumulate and present records to epay in which event the Merchant must present the record in accordance with Regulatory Requirements and, in any event, within 2 (two) calendar days of the Transaction date;
- (l) the Merchant must not engage in any acceptance practice that discriminates against or discourages the use of a MasterCard Card in favour of a Card issued by any other Card or Payment Scheme;
- (m) the Merchant must not directly or indirectly require any Cardholder to pay a surcharge or any part of any the Merchant discount or any contemporaneous finance charge in connection with a MasterCard Transaction. The Merchant may provide a discount to its customers for cash payments. The Merchant is permitted to charge a fee (such as a bona fide commission, postage, expedited service or convenience fees, and the like) if the fee is imposed on all like transactions regardless of the form of payment used, or as epay has expressly permitted in writing;
- (n) the Merchant must not require, or indicate that it requires, a minimum or maximum transaction amount to accept a valid and properly presented Card;
- (o) the Merchant must not submit for payment into interchange any MasterCard Transaction that:
  - (i) represents the refinancing or transfer of an existing Cardholder obligation that is deemed to be uncollectible,
  - (ii) arises from the dishonour of a Cardholder's personal check, or
  - (iii) arises from the acceptance of a Card at a terminal that dispenses scrip;
- (p) the Merchant must not accept any payment from a customer in any other form (for example, cash or check) with respect to a charge for products or services reflected on a TID resulting from the use of a Card. The Merchant also must not accept a Card as payment for products or services for which the Merchant has received or expects to receive payment in any other form, whether from the customer or a third party;
- (q) the Merchant must not submit for payment into interchange any MasterCard Transaction that is illegal, or in the sole discretion of MasterCard, may damage the goodwill of MasterCard or reflect negatively on the MasterCard Marks; and

- (r) the Merchant must not sell, purchase, provide, exchange or in any manner disclose Card account number, transaction, or personal information of or about a Cardholder to anyone other than epay (or such other person as epay may from time to time require), to MasterCard, or in response to a valid government demand.

## 2. VISA TRANSACTIONS

2.1 In this paragraph 2.1, the following terms shall have the following meanings:

**Visa Rules** means the operating regulations, bylaws and other requirements of Visa as amended from time to time; and

**Visa-Owned Marks** means any one of the names, logos, trade names, logotypes, trademarks, service marks, trade designations, and other designations, symbols, and marks that Visa Incorporated and/or its affiliates or subsidiaries own, manage, license, or otherwise control and make available for use by customers and other authorised entities.

2.2 Where the Services include the acquiring of Visa Card Transactions, the following provisions apply:

- (a) the Merchant shall accept Visa-branded products for payment. If the customer indicates that he or she wants to pay with a Visa product, the Merchant must complete and process the Visa transaction as defined in the Visa Rules;
- (b) the Merchant may not refuse to accept a Visa product that is properly presented for payment, for example, on the basis that the card is foreign-issued, or co-branded with the Merchant's competitor's mark. The Merchant may attempt to steer customers who initially present a Visa card to an alternative method of payment, such as by providing discounts for cash, but may not do so in a confusing manner that denies consumer choice;
- (c) the Merchant agrees to accept Visa cards for payment of goods or services without charging any amount over the advertised or normal price as a condition of Visa card acceptance, unless local law requires that merchants be permitted to engage in such practice; and
- (d) the Merchant shall comply with the Visa Rules regarding use of the Visa-Owned Marks.

## 3. UPI TRANSACTIONS

3.1 In this paragraph 3.1, the following items shall have the following meanings:

**UPI Rules** means the operating regulations, bylaws and other requirements of UPI as amended from time to time

3.2 Where the Services include the acquiring of UPI Card Transactions, the following provisions apply:

- (a) The Merchant undertakes to display UnionPay Acceptance Marks prominently at the premise of the Merchant's business.

- (b) The Merchant undertakes to honour all valid UnionPay Cards.
- (c) Unless otherwise permitted by the local regulator and UPI, and an additional surcharge has already been imposed on other Card Brands, the Merchant shall undertake not to impose an additional surcharge on a UnionPay Cardholder and accept UnionPay Cards at the same price and terms as cash.
- (d) The Merchant undertakes to not retain account number, PIN, and other transaction data and to maintain confidentiality on all UnionPay Card information.
- (e) The Merchant undertakes the responsibility for the storage and maintenance of terminals.

4. **JCB TRANSACTIONS**

4.1 Where the Services include the acquiring of JCB Card Transactions, the following provisions apply:

- (a) A Merchant must accept JCB Cards, the types of which will be agreed upon in the Merchant Agreement, as a means of payment at the same price and otherwise on the same terms as they are supplied by the Merchant for cash.
- (b) A Merchant must adequately display the appropriate JCB Program Materials provided by an Acquirer to inform the public that JCB Cards are honored at the Merchant's place of business.
- (c) Merchants must display the JCB Emblem at the Merchant's place of business.
- (d) Note: The JCB Debit logo mark and JCB Prepaid logo mark are for Issuer use only. They may not be displayed at the Merchant's place of business.
- (e) If the Merchant does not deal with the public at large or if trade association rules or general practice prohibits such displays, such display need not be a part of the Merchant Agreement.
- (f) Upon termination or expiration of a Merchant Agreement, the Acquirer must make its best efforts to recover any relevant JCB Program Materials furnished by the Acquirer to the Merchant.
- (g) **Electronic Signature Capture:** A Merchant using an electronic signature capture device must:
  - (i) store and reproduce a signature on each Transaction;
  - (ii) ensure to store the data in a safe and secure manner; and
  - (iii) submit the signed Sales Draft or other applicable documents in response to a Retrieval Request.
- (h) **Authorisation Requirements:** A Merchant must request Authorizations prior to completion of sales on the Transaction date if the total amount of such Transaction is over the Floor Limit. Refer to Chapter 7 for details.

(i) **Returned Merchandise and Adjustments:** If a Merchant accepts cancellation for any Transaction, the Merchant must not make a cash refund to a Cardmember, but instead must refund the JCB Card that was used for the original Transaction, except where required by law or governmental regulations.

(j) **Delivery of Sales Draft Copies:** A Merchant must:

- (i) Deliver a genuine and complete copy of a Sales Draft or suitable receipt evidencing a Transaction to a Cardmember at the time of delivery of goods or performance of services; and
- (ii) Not require a Cardmember to sign a Sales Draft until the final Transaction Amount is indicated in the "Total" column.

(k) **Cardmember Identification:** A Merchant may complete a Transaction only if the signature on the Sales Draft appears to be the same as the signature on the reverse side of the JCB Card. If such identification is uncertain or if the Merchant suspects the validity of the JCB Card, the Merchant must contact the Acquirer for instructions. For J/Smart Transactions, PIN verification can be a substitute for signature. For No Signature Required Payment, a Merchant is exempt from obtaining the Cardmember's signature.

(l) **Sales Draft Requirements:** Sales Draft must include:

- (iii) Card Number
- (iv) Merchant's name
- (v) Merchant Control Number
- (vi) Transaction Amount in the Transaction Currency
- (vii) Currency symbol or words denoting the Transaction Currency
- (viii) Authorization Approval Code
- (ix) Transaction date
- (x) Cardmember signature

*NOTE: It is recommended that the Cardnumber be disguised or suppressed at least 4 digits, except the last 4 digits, on the Cardmember receipts generated by existing and newly installed POS Terminals. But the recommendation does not apply to Cardmember receipts created by imprinters.*

(m) **Prohibition of Surcharges:** No merchant may impose any surcharge on Transactions unless local laws or regulations specifically state that Merchants are permitted to impose such surcharge on Transactions. If the Merchant imposes any such surcharge, or any tax, such

amounts must be included in the total Transaction Amount and not collected separately in cash.

- (n) **Split Transactions:** A Merchant may not split a single Transaction into 2 or more Transactions to avoid Authorization.
- (o) **Credit Transactions:** A Merchant may conduct a Credit Transaction to a JCB Card, unless otherwise required, only when:
  - (xi) a valid Transaction was previously processed with the same JCB Card; and
  - (xii) a reimbursement is necessary for this previously processed Transaction because the Cardmember or Merchant (if applicable) wishes to cancel the Transaction and/or has returned the purchased goods.

*" NOTE: This requirement is not applicable to VAT refund Transactions conducted by the VAT refund service Merchants. An Acquirer must obtain the prior approval of JCBI to acquire a VAT refund service Merchant, as specified in Section 4.3.8.*

- (p) **Currency:** A Merchant must supply goods and/or services in a Transaction Currency specified by an Acquirer.

*" NOTE: If an Acquirer wishes to allow Merchants to supply goods and/or services in a currency other than the Transaction Currency, the Acquirer must obtain the prior approval of JCBI.*

- (q) **Opt-out Provision:** If required by applicable laws and/or regulations, a Merchant will have an express option to opt-out of accepting certain types of JCB Cards by refusing to accept such cards, while accepting other types of JCB Cards. If an opt-out provision is included in the Merchant Agreement, the types of JCB Cards to be accepted by the Merchant as a means of payment shall be agreed upon in the Merchant Agreement. The Acquirer shall bear all risks that occur as a result of failing to include an opt-out provision in the Merchant Agreement. If an opt-out provision is included in the Merchant Agreement, the Acquirer must put in place appropriate measures to enforce such provision.



**SCHEDULE 6**

**Industry Specific Requirements**

No Industry specific requirements apply.

This Schedule has been left intentionally blank.

**Reporting and Management Information****1. Merchant statement**

epay is to provide an electronic statement on a monthly basis to the Merchant for each of Merchant's locations. The statement shall contain the following:

- Transaction summary, including:
  - a reference enabling the Merchant to identify the Transaction and the payer, and any information transferred with the Transaction;
  - the amount of Transaction in the currency in which the funds are at the Merchant's disposal;
  - the credit value date;
  - where applicable, the exchange rate used in Transaction and the amount of the Transaction before the currency conversion
- year to date reporting values
- volume recap
- daily deposit summary
- daily fee activity
- Chargebacks and adjustments
- Fees (Card scheme and other), in particular the amount of any charges payable by the Merchant and, where applicable, a breakdown of the amounts of such charges.

epay will grant the Merchant access to the merchant portal maintained by epay or on behalf of epay under URL that epay shall notify to the Merchant in writing from time to time. Information referred to in section 1 and 2 of this Schedule 7 will be made available by epay to the Merchant through the portal.

**2. Reconciliation report**

If requested by Merchant, epay will provide an electronic reconciliation report on a daily basis to the Merchant for each Merchant ID and split per Terminal ID. The reconciliation report contains the following information on Transaction level:

- Card type, card number and expiry date
- Transaction date, type, amount and currency reference
- Terminal ID and batch number

**Information Requirements**

The Merchant is to advise which of the following communication and electronic access will be provided by the Merchant to facilitate the provision of the Services:

- Standard and functional electric power plug prepared within 1 (one) meter of the Terminal's location
- Internet via Ethernet (broadband) with available RJ45 receptacle or WiFi. In case of local network firewall, enable device's communication traffic pass through ports 9514 and 8504
- Digital Public Switched Telephone Network (PSTN) with available RF 11 receptacle
- GPRS availability (subject to POS terminal capability)
- Internet via wireless fidelity (WIFI) based communication with the following requirements:
  - *A dedicated, firewall capable 802.11 WLAN Router must be used for the communication. No other devices can be connected to the router but the POS Terminal*
  - *The router must be placed in a secure location not accessible for the public. For example, mount the router on ceilings, use routers with chassis or mounting options that prevent physical access to ports and reset buttons*
  - *The router's administrator accounts and passwords must be changed from the default and be known only by the responsible person*
  - *The router's guest access must be disabled/blocked*
  - *Only the required Ports for the POS Terminals (9514; 8504) toward the internet or the internal firewall*
  - *Default SSID (Service Set Identifier) must be changed to a unique name, not showing the usage of the WLAN. Words 'POS', 'Terminal', 'Payment' and 'Transaction' etc must not appear in the name.*
  - *The SSID must be hidden means non-visible for public search*
  - *WPA2 personal mode and AES encryption has to be used – a minimum 13 character passphrase is required, containing capitals, numbers and special*

**Unregulated POS Terminal Hire Terms**

**1. INTRODUCTION**

1.1 The following terms and conditions in this Schedule 9 are in addition to the terms and conditions set out in the Agreement.

**2. RENTAL**

2.1 The Merchant shall hire from epay, and epay shall provide to the Merchant, the number of POS Terminals notified as required by the Merchant, together with other equipment necessary for its installation (including a power cable, a telecommunication cable), together with other facilities necessary to support the system at the Merchant location(s) for the POS Terminal Hire Period, and the Merchant shall comply with the requirements set out in the Operating Guide.

2.2 For the avoidance of doubt, such hire periods apply in relation to each Terminal from the date of its delivery.

2.3 The Merchant shall pay to epay the POS Terminal Rental Fee in respect of each POS Terminal provided and any additional service charges payable under the terms of this Schedule 9 of which the Merchant is notified from time to time.

2.4 For the avoidance of doubt, the fees payable under this Schedule (including the POS Terminal Rental Fee and where applicable the POS Terminal Repair Fee and the POS Terminal Return Fee) shall form part of the Fees and shall be payable in accordance with the provisions of Clause 17 of the Agreement and are in addition to any other fees and charges payable under the Agreement. Such fees shall be due and payable as administrative fees irrespective of whether Transactions are being performed using the POS Terminals. The Merchant acknowledges that the amount of such fees is reasonable, fair and actual, as well as proportionate to the value of the services offered by epay.

**3. INSTALLATION**

3.1 Subject to paragraph 3.2 of this Schedule 9, epay shall install the POS Terminal(s) at each Merchant location.

3.2 The Merchant shall be responsible for providing each POS Terminal with power and telecommunication access and any associated costs and/or expenses for such provision shall be paid by the Merchant. epay will not be under any obligation to install any POS Terminal if such links are not in place.

3.3 Any POS Terminal being installed or awaiting installation on the Merchant premises shall be at the Merchant's sole risk.

**4. OPERATION**

4.1 The Merchant will use the POS Terminal(s) only in the Merchant's legitimate trading premises, being premises in which the Merchant have

previously informed epay that the POS Terminal(s) are to be installed and in which epay has installed such POS Terminal(s).

4.2 The Merchant must not use the POS Terminal(s) with any service provider other than epay, and must not sublease the POS Terminal(s) or assign or concede their use to any third party.

4.3 The Merchant shall be solely responsible for the operation and maintenance of all equipment, and at all times operate and maintain the equipment in accordance with the Operating Guide or instructions in existence from time to time together with any instructions issued by epay from time to time, and pursuant to any approval from epay (if and when required).

4.4 The Merchant will only use such materials in connection with the POS Terminal(s) as have previously been approved by epay. Damage to, or malfunction of, the equipment or materials resulting from the use of non-approved equipment and materials will be the Merchant's responsibility.

4.5 The Merchant will give epay three (3) months' notice in writing of any proposed changes to any electrical power supplied or to the telecommunication links in or to the premises where the POS Terminal(s) are located. epay reserves the right to terminate the Merchant's hire of such POS Terminal(s) upon three (3) months' notice if epay reasonably considers that the aforementioned change or changes will or could affect the operation of the POS Terminal(s).

**5. MAINTENANCE**

5.1 Support for each POS Terminal will be provided by epay through its "Merchant Acquiring Call Centre" on [www.epaymerchantservices.es](http://www.epaymerchantservices.es).

5.2 epay will make available to the Merchant maintenance releases of its software periodically. In the event the devices are unable to update automatically, the Merchant shall follow the procedure(s) in the Operating Guide to download software updates.

5.3 In the event a POS Terminal is inoperable, epay will provide a replacement POS Terminal to the Merchant.

5.4 The Merchant will take reasonable care of each POS Terminal it hires, will keep such POS Terminal in a safe condition and in good working order and will not alter, amend or interfere with it.

5.5 The Merchant will report to epay any malfunction or damage to any POS Terminal immediately upon becoming aware of such malfunction or damage.

5.6 In the event of malfunction, damage, abuse or negligence of any POS Terminal such that epay is required to repair the POS Terminal, the Merchant will pay to epay a POS Terminal Repair Fee in respect of each POS Terminal that epay is required to repair.

5.7 The Merchant will permit epay, epay's agents, sub-contractors or any other person authorised

by epay, to enter the Merchant's premises (or, if necessary, will obtain permission for epay, epay's agents, sub-contractors or any other person authorised by epay, to do so) at all reasonable times for the purpose of inspecting, repairing, maintaining or removing the POS Terminals and will give such persons all reasonable assistance.

**6. OWNERSHIP OF POS TERMINALS**

6.1 The POS Terminal(s) will remain the property of epay. The Merchant shall not sell, charge, encumber, part with possession or otherwise dispose of any POS Terminal(s).

6.2 epay may assign ownership of the POS Terminal(s) without the Merchant's consent.

**7. RETURN OF THE TERMINALS**

7.1 If the POS Terminal Hire Period terminates (for whatever reason) then the Merchant will pay to epay upon termination or expiry of the rental period:

- (1) all arrears of POS Terminal Rental Fees outstanding for hire of the POS Terminal(s) up to and including the month of termination;
- (2) damages for any breach of the terms contained in this Agreement and/or the POS User Guide and all costs, expenses and fees incurred by epay in recovering possession of the POS Terminals and/or enforcing our rights under this Agreement; and
- (3) if the POS Terminals are not recovered by epay within thirty (30) days after termination of the hiring, an amount equal to epay's reasonable estimate of the market value of the Terminals at the date of termination of the hiring.

If the POS Terminal Hire Period (and thereby the hiring) terminates (for whatever reason) before the expiration of the Minimum Hire Period then the Merchant shall pay to epay upon termination of the rental period the POS Terminal Return Fee in addition to the amounts specified in paragraph 7.1 of this Schedule 9.

7.2 Upon termination or expiry of the POS Terminal(s) hire arrangement hereunder, the Merchant will immediately, and in any event within three (3) Business Days, deliver the POS Terminal(s) to epay at such place within Spain as epay may reasonably require, in good order repair and condition (fair wear and tear only excepted).

7.3 In the event that the Merchant fails to comply with the requirements of paragraph 7.2 of this Schedule 9, epay shall be entitled to retake possession of the POS Terminal(s) and for that purpose and without notice to enter any premises where the POS Terminal(s) are, or where epay reasonably believes them to be, without incurring liability to the Merchant or any person claiming through the Merchant, or to setoff an amount equal to the POS Terminal(s) undepreciated value against any amounts due by epay to the Merchant.

**8. LIABILITY**

8.1 The Merchant will insure against loss of, or damage to, the POS Terminal(s).

8.2 The Merchant recognizes as valid and binding all entries to be made through the POS Terminals to be installed in its premises and waives its right to dispute any entry and/or to seek compensation for any damage or malfunction due to entries made through such POS Terminals. epay shall bear no liability to the Merchant or any third party in case of incorrect entry of a Transaction by the Merchant.

8.3 The Merchant shall pay epay on demand an amount equal to:

- (1) all actions, proceedings, costs, claims, demands, charges, expenses (including legal expenses), losses and damages, whether arising in tort, contract, for breach of statutory duty or otherwise, which epay may suffer or incur (including the cost of repairing, replacing or removing the POS Terminal(s)) by reason of, or in any way attributable to, the Merchant's use of the POS Terminal(s); and
- (2) all losses, costs, expenses (including legal expenses), damages and liabilities whatsoever that may be caused to or by the POS Terminal(s) and which result from the Merchant's act or omission, in particular as a result of the Merchant's breach of the Agreement, Operating Guide or fraudulent activity.

**Jurisdiction Specific Terms and Conditions**

**SPAIN**

Below are the specific Regulatory Requirements applicable pursuant to the Spanish Payment Services Laws.

In case of conflicts of any of the provisions set out in the Agreement and the provisions set out in this Jurisdiction Specific Terms and Conditions, this Jurisdiction Specific Terms and Conditions shall prevail in accordance with Clause 1.6.

epay is a payment institution authorised by BaFin and duly passported to operate in Spain under the freedom of services regime for the provision of the Merchant Acquiring Services and the DCC Services.

The provisions set out below supplement, amend or replace, as the case may be, the Clauses of the Agreement where necessary under the Spanish Payment Services Laws.

1. **[ONLY IN CASE OF MERCHANTS HAVING A STATUS OF MICRO-ENTERPRISES] CLAUSE 1 (DEFINITIONS AND INTERPRETATION)**

Following definition shall be added:

*“Micro-enterprise” means any enterprise which, at the Effective Date, does not exceed the limits of the following criteria:*

- (a) annual turnover and/or annual balance sheet total below EUR 2 million;*
- (b) number of employees: fewer than ten (10) people”.*

2. **CLAUSE 6 (SETTLEMENT)**

2.1 *[Only in case of customers micro-enterprises] Clause 6.4(a) shall be replaced as follows:*

*“(a) must notify epay as soon as it becomes aware that a Transaction may have been incorrectly accounted for in Settlement Payments and other payments and in any event within thirteen (13) months from receiving the amount of the Transaction, unless epay has failed to make available information on the Transaction as required by law; and”*

2.2 Clause 6 shall be supplemented as follows:

*“6.8 For the purposes of Clause 6 epay will provide the Merchant with information regarding the exact amount deducted from the total amount it owes to the Merchant in accordance with the Transactions.*

*6.9 In the course of the first quarter each year, epay will provide the Merchant, free of charge, with a specific document summarising the total amount of Fees that have been debited by epay over the last civil year in relation to Merchant acquiring and DCC Services. This statement makes a distinction, for each category of product or services, between the subtotal of the Fees*

*debited and the number of corresponding products or services.”*

3. **CLAUSE 7 (RESERVE AMOUNT)**

3.1 Clause 7.3. shall be replaced as follows:

*“7.3 epay may change the amount it requires the Merchant to provide by way of a Reserve Amount by notifying the Merchant at any time if:*

*(a) the risk profile of the Merchant changes in epay’s reasonable view based on objective ratios and parameters;*

*(b) there has been an increase or reduction in:*

*(i) transaction volume or value of more than 30%;*

*(ii) Chargeback Ratio of more than 1%; or*

*(iii) refunds transaction volume or value of more than 30%,*

*in the course of a Contract Year in comparison to the previous Contract Year, or, for the first Contract Year, over the course of a calendar month in comparison to the previous calendar month;*

*(c) there has been a change in:*

*(i) the Merchant’s business such that they would no longer be assigned the Merchant Category Code Transact assigned to the Merchant in accordance with Clause 4;*

*(ii) ownership or control of a Merchant; and/or*

*(iii) location of a Merchant;*

*(d) there is evidence of fraudulent activity on a Merchant account or at point of sale;*

*(e) there is a risk of the Merchant becoming insolvent or otherwise unable to pay its debts as they fall due; and/or*

*(f) the Merchant will not be able to perform its obligations under this Agreement.”*

4. *[Only in case of customers micro-enterprises] Clause 18 (Change of Terms and Conditions)*

4.1 Clause 18.2 (c) is replaced as follows:

*“(c) the Merchant’s consent is deemed to be given if the Merchant did not object to the proposed change to epay by the same mean of communication as it has been informed about the proposed change before the proposed entry into force of the proposed change. In case of an objection, the Agreement will remain in place unchanged. In any case, the Merchant has the right to terminate the Agreement at any time free*

- of charges before the entry into force of the proposed change. epay will inform the Merchant of the above in the Change Notice."*
- 4.2 Clause 18.3 is replaced as follows:
- "18.3 Amendments to this Agreement become effective before this date if the Merchant agrees."*
5. *[Only in case of Merchants having a status of micro-enterprises]* Clause 21 (epay Liability)
- 5.1 Clause 21.1 and 21.2 are replaced as follows:
- "In the event of non-execution, late execution or of erroneous execution of a payment order epay is only liable if epay is responsible for this breach of duty. In such case, it shall be liable to the Merchant for correct transmission of the Customer's payment order and shall ensure that the amount of the Transaction is at the Merchant's disposal according to Clause 6. The provision under Clauses from 21.3 to 21.5 apply without prejudice to the epay liability provided under the Payment Services Law".*
6. Clause 28 (Termination)
- 6.1 Clause 28.1 is replaced as follows:
- "28.1 The Merchant may terminate the Agreement at any time free of charges. epay shall execute the termination notice within twenty-four (24) hours after receiving the Merchant's notice. epay may terminate the Agreement by giving two (2) months' notice. This applies also in case of a cause for termination according to Clause 28.2".*
- 6.2 *[ONLY IN CASE OF MERCHANTS HAVING A STATUS OF MICRO-ENTERPRISES]* Clause 28.3 does not apply.
7. *[Only in case of Merchants having a status of micro-enterprises]* Clause 29 (Consequences of termination)
- 7.1 Clause 29.2 is replaced as follows:
- "29.2 Fees for payment services levied on a regular basis shall be payable by the Merchant only proportionally up to the termination of the Agreement. Fees paid in advance, such as annual Fees, shall be reimbursed proportionally."*
8. Clause 30 (Assignment)
- 8.1 Clause 30.4, shall be supplemented as follows:
- "Any transferee to whom epay wishes to make the transfer must be capable of performing epay's obligations under this Agreement and must be duly authorised in its home Member State and, where established in an EU Member State other than Spain, it is also duly passported (whether in a freedom of establishment or freedom of services basis) to provide payment services in Spain."*
- 8.2 *[ONLY IN CASE OF MERCHANTS HAVING A STATUS OF MICRO-ENTERPRISES]* Clause 30.5 does not apply.
9. Clause 40 (Complaints procedure)
- 9.1 Clause 40 shall be supplemented as follows:
- "40.4 The Merchant has the right to submit any complaint regarding the provision of the Merchant Acquiring Services and the DCC Services to the Merchant Acquiring Call Centre or, if appointed, to the Relationship Manager indicated under Clause 31.2. epay undertakes to acknowledge receipt of the complaint within ten (10) Business Days (unless a definitive answer is given within such delay). epay will reply to any such complaint on paper or any other durable medium within fifteen (15) Business Days following receipt of the complaint. In exceptional cases, if a response cannot be given within fifteen (15) Business Days for reasons outside epay's control, epay will issue a pending response clearly explaining the reason for the additional period needed to address the complaint and indicating the deadline by which the Merchant will receive a final response. In any event, the Merchant will receive a final response no later than thirty (30) Business Days after epay receives the complaint."*
10. Clause 41 (PSD2 Opt-out)
- 10.1 *[ONLY IN CASE OF MERCHANTS HAVING A STATUS OF MICRO-ENTERPRISES]* Clause 41 does not apply.

## 11.1 Data Processing Agreement

This Schedule will be governed by the General Terms and Conditions set out in the Merchant Acquiring Terms and Conditions ("Agreement"). Capitalized terms used but not defined in this Schedule shall have the meanings given to them in the Agreement unless the context requires otherwise.

In this Schedule, Data Protection Laws means any law, enactment, regulation, regulatory policy, by law, ordinance or subordinate legislation relating to the processing of Personal Data, as applicable to epay, the Merchant Representatives, and/or the Services, including, but not limited to the Regulation of the European Parliament and of the Council 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 (General Data Protection Regulation) (GDPR), and any corresponding or equivalent national laws or regulations, in each case, as in force and applicable, and as may be amended, supplemented or replaced from time to time.

The parties acknowledge and agree that this Schedule forms an integral part of the Agreement.

To the extent that any terms or provisions of the Agreement (including its Schedules) conflict with the terms or provisions of this Schedule 11, the terms of this Schedule shall prevail over the Agreement.

### 1. DEFINITIONS

The definitions of Art. 4 GDPR apply; in particular, the following definitions are relevant in the context of this Data Processing Agreement:

- 1.1. „Personal Data“ means any information relating to an identified or identifiable natural person (hereinafter referred to as the 'Data Subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
- 1.2. „Processing“ means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.
- 1.3. „Profiling“ means any form of automated processing of Personal Data consisting of the use of Personal Data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements;
- 1.4. „Controller“ means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data; where the purposes and means of such Processing are determined by Union or Member State law, the Controller or the specific criteria for its nomination may be provided for by Union or Member State law;
- 1.5. „Processor“ means a natural or legal person, public authority, agency or other body which processes Personal Data on behalf of the Controller;
- 1.6. „Third-Party“ means a natural or legal person, public authority, agency or body other than the Data Subject, Controller, Processor and persons who, under the direct

authority of the Controller or Processor, are authorised to process Personal Data;

- 1.7. „Auditor“ means internal and external auditors of the Controller, e.g. the internal audit of the Processor, its auditors and, if applicable, auditors of supervisory authorities (e.g. Federal Financial Supervisory Authority (hereinafter referred to as "BaFin"), German Central Bank (hereinafter referred to as "Bundesbank"), Federal Office for Information Security (hereinafter referred to as "BSI")).

### 2. PERSONAL DATA OF THE REPRESENTATIVES

By entering this Agreement, epay, the Merchant Representatives shall process the signatories' Personal Data, including and limited to personal data of each other's partners, affiliates, officers, directors, managers, members, employees, agents, representatives, or advisors ("Representatives"). Each party shall comply with its respective obligations for applicable Data Protection Laws and inform the Representatives of the content of the provisions of this clause and fulfil any other requirements that may be applicable for the communication of their Personal Data, without the other party having to carry out any additional action in terms of information or consent requirements.

### 3. ROLE OF THE PARTIES, PURPOSES AND SCOPE

The purpose of this Schedule is to define the conditions under which each party will communicate certain Personal Data processed under its responsibility to the other party.

In this sense, the communicated data between the parties will be those indicated below:

- 3.1 Purpose of the processing: The purpose of disclosing personal data between the parties is to comply with the obligations set out in the Agreement and provide the Service.
  - 3.2 Legal basis: The communication of Personal Data is necessary for the execution of the Agreement.
  - 3.3 Type of data: The types of Personal Data that will be disclosed between the parties will include any of the following:
    - 3.3.1 Personal details, such as information which may identify a Data Subject, name, title, residential or business address, email, telephone or fax numbers and other contact information, date of birth, gender, images, signature, passport/visa/identification card details, and names and personal details of beneficiaries.
    - 3.3.2 Financial details, such as information relating to a Data Subject's payment data and bank account obtained for the purposes of providing the Service.
    - 3.3.3 Transactional details, such as an identifier of any transaction done, and the amount transferred.
  - 3.4 Data subjects: The categories of Data Subjects whose Personal Data will be disclosed between the Parties will include any of the following:
    - 3.4.1 Cardholders
    - 3.4.2 Signatories of the Agreement or the parties' Representatives.
- ### 4. OBLIGATIONS OF THE PARTIES
- 4.1 The parties agree that they each separately determine the purposes and means of processing of Personal Data and are therefore each separately responsible for such Processing. The parties will each comply with their respective privacy and data

protection obligations as required by applicable Data Protection Laws. Such obligations may include but are not limited to:

- 4.1.1 Ensuring lawfulness of processing of Personal Data;
  - 4.1.2 Responding to individuals' rights request;
  - 4.1.3 Providing adequate notice to the individuals regarding the processing of Personal Data;
  - 4.1.4 Complying with cross-border data transfer obligations;
  - 4.1.5 Appropriately handling data security incidents;
  - 4.1.6 Responding to and cooperating with regulatory requests and investigations;
  - 4.1.7 Keeping records of all processing activities;
  - 4.1.8 Ensuring security of Personal Data; and
  - 4.1.9 Deleting any information or data when it is no longer needed for the processing.
- 4.2 The parties acknowledge that, to keep the data as secure as possible, they will apply security measures, including but not limited to the following:
- 4.2.1 Hold Personal Data in strict confidence and will not disclose Personal Data to any third party without appropriate contractual safeguards.
  - 4.2.2 Establish, maintain, and comply with a written information security program that contains administrative, technical, and physical safeguards to ensure the security, confidentiality, and integrity of Personal Data and to protect against threats or hazards to the integrity and security of, the unauthorized or accidental destruction, loss, alteration or use of, and the unauthorized access to, Personal Data (the "Data Safeguards"). The parties will ensure that all the Personal Data made available to the other party will have security measures in order to avoid unauthorized access;
  - 4.2.3 The Data Safeguards will meet or exceed the requirements of applicable law (including but not limited to Data Protection Laws);
  - 4.2.4 Maintain appropriate access controls, including, but not limited to, limiting access to Personal Data to the minimum number of their Personnel who require such access, and to the minimum extent necessary, and provide their Personnel with appropriate training relating to information security.
  - 4.2.5 Test, assess, review, and revise the Data Safeguards from time to time in accordance with prevailing industry standards.
- 4.3 The parties acknowledge and agree that each one is acting independently as Data Controller with respect of Personal Data and the parties are not acting as joint-controllers or co-controllers, as each one decides the purposes of the Processing activities and will ensure the Data Subjects are duly informed, complying with all their legal obligations.

## 5. OBLIGATION TO DATA SECRECY

- 5.1 The Merchant and Merchant's Affiliates shall ensure that the persons entrusted with access to the Personal Data of Cardholders:
  - 5.1.1 do not use the Personal Data for purposes not related to the Services and/or if they do, comply with information and transparency obligations towards the Cardholders; and
  - 5.1.2 are subject to a corresponding confidentiality and/or secrecy obligations.

The same applies to further confidentiality and/or protection provisions under Data Protection Laws, insofar as relevant (e.g. confidentiality of telecommunications according to sec. 88 Telecommunications Act (TKG) and/or professional secrecy). The confidentiality/non-disclosure obligation remains in force after completion of the Service.

## 6. LIABILITY

- 6.1 The obligations to data protection listed in this Schedule 11 including its Annexes represent essential contractual obligations.
- 6.2 Both Parties shall indemnify and hold harmless the other Party and their agents, sub-contractors, employees and Affiliates against all claims, damages, debts, losses, fines, penalties, costs and expenses, including reasonable attorneys' fees, arising out of any breach by either Party of any of the obligations contained in this Personal Processing Agreement and/or in the applicable Data Protection Laws.
- 6.3 Each party, acting as an independent controller, is independently liable towards the Data Subjects (Gesamtschuldner) in accordance with the provisions of Art. 82 GDPR.
- 6.4 Each party shall bear internal liability for the breach of data protection provisions and/or a violation of this Schedule 11, subject to the limitations on liability established in the Agreement; this shall not apply if the claimed party is not or only partially responsible for the breach of duty.
- 6.5 Any liability relief in the relationship between the Controller and the Data Subject shall also apply in favour of the other party with the provision that the other party is not obliged to reimburse what the Controller does not have to compensate the Data Subject due to the liability relief in the external relationship.

## 7. TERM AND TERMINATION

This Schedule enters into force on [date] and will remain in force for as long as the Agreement continues in force.