

STANDARD TERMS AND CONDITIONS FOR GATEWAY SERVICES

1. Interpretation

1.1 The following definitions and rules of interpretation apply to this Agreement:

Agreement: the contract between Handepay and the Merchant for the sale and purchase of the Services in accordance with these terms and conditions and the Order Confirmation.

Business Day: a day other than a Saturday, Sunday, bank or public holiday in England.

Charges: collectively, the **Fixed Charge**, **Throughput Charge** and any other additional amounts payable to Handepay by the Merchant pursuant to these terms and conditions as amended from time to time in accordance with these terms.

Commencement Date: the date as calculated in accordance with the Order Confirmation.

Contract Year: the 12 month period from the Commencement Date and each succeeding 12-month period.

Data Protection Legislation: all privacy laws applicable to the data which is processed under or in connection with this Agreement, including EU Directive 94/96/EC and 2002/58/EC, as interpreted by the Data Protection Act 1998 (or equivalent local laws), all regulations made pursuant to and in relation to such legislation and including the Privacy and Electronic Communications (EC Directive) Regulations 2003 (or equivalent local regulations) together with all codes of practice and other guidance on the foregoing issued by any relevant Data Protection Authority, all as amended from time to time and including the General Data Protection Regulation (Regulation (EU) 2016/679) (the "GDPR") from the date upon which the GDPR comes into effect (and any local implementing legislation including the Data Protection Act 2018).

Fixed Charge: an annual or monthly fixed charge as set out in the Order Confirmation, payable in advance either per annum or per calendar month of the Agreement in respect of the Merchant's being given access to the Services (including, without limitation, the issuing of a user name and password to the Merchant by Handepay for this purpose) and also the number of "Inclusive Transactions" set out in the Order Confirmation.

Handepay: Handepay Ltd (registered in England and Wales with company number 05504126) whose registered office is at Westway Park, Galway Crescent, Haydock, Merseyside, WA11 0GR.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Merchant: the person, firm or company detailed in the Order Confirmation including its officers, employees and agents requesting the supply of and subscription to the Services;

Merchant Equipment: any equipment, hardware, computer, systems, cabling or facilities provided by the Merchant and used directly or indirectly in the supply of the Services.

Merchant Information: data and any other materials (in whatever form) published or otherwise made available (directly or indirectly) by the Merchant or on behalf of the Merchant by using the Services or relating to the Services. Merchant Information may include information about the Merchant itself (including individual employees or representatives) or permitted users or clients of the Merchant (or prospective clients) that may include personal data subject to laws or regulations.

Order Confirmation: the confirmation of the Merchant's order for Services in Handepay's standard form.

PCI: the Payment Card Industry.

PCI:DSS: the Payment Card Industry Data Security Standard.

Retail Price Index (or RPI): the Retail Prices Index (as published by the Office of National Statistics) or any official index replacing it.

Services: the services to be provided by Handepay to the Merchant for the submission to an acquirer of credit and debit card Transactions together with the provision of the necessary interface through which authorisation and submission to an acquirer of credit/debit card Transactions takes place and the Support Services.

Support Services: the support services (which for the avoidance of doubt does not include Handepay dealing directly with any third party, including but not limited to the Merchant's customers) relating to diagnosis of errors, restoration of functionality and mandatory system upgrade by way of correction, re configuration, patch provision, driver update, software re-load, interface guideline update or user guidance to remedy a fault and the implementation of mandatory updates, adjustments, additions or modifications to the Services as Handepay may prescribe from time to time or as otherwise set out in the Order Confirmation.

Throughput Charge: a monthly charge payable in arrears in each calendar month based upon the actual number of Transactions processed by the Services in that calendar month (above any volume of "Inclusive

Transactions" included in the Fixed Charge as detailed on the Order Confirmation) at the rate set out in the Order Confirmation.

Transaction: means a successful or declined pre-authorisation, full authorisation or refund transaction; this includes 3D Secure authentication requirements.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Headings shall not affect the interpretation of this Agreement.

1.3 A reference to an Agreement or to any other agreement or document referred to in this Agreement is a reference to the Agreement (or other agreement or document) as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.

1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

1.5 A reference to **writing** or **written** when issued by Handepay includes fax and e-mail, but in the case of things issued by the Customer do not include fax or e-mail.

1.6 References to **clauses** are to the clauses of this Agreement.

1.7 A reference to a statute is a reference to it as amended, extended or re-enacted from time to time.

1.8 Terms defined in the Data Protection Legislation, such as "personal data" "processed" "data subject" "data processor" and "data controller" shall bear the same meanings where used in this Contract, as those definitions apply from time to time.

1.9 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.10 Any words following the terms **including**, **include**, or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.11 Any obligation on Handepay or the Merchant under this Agreement to do, or refrain from doing, any act or thing shall include an obligation on Handepay or the Merchant respectively to ensure that its employees, agents and sub-contractors (if any) also do, or refrain from doing, such act or thing.

2. The Agreement

2.1 This Agreement governs the overall relationship of the parties in relation to the provision of the Services to the exclusion of any other terms that the Merchant seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealings.

2.2 The Merchant may request that Handepay provides other services from time to time. If Handepay agrees to provide such other services, the parties will sign a new Order Confirmation which shall form the basis of a new Agreement.

2.3 Each Order Confirmation shall be signed by the Merchant and Handepay, and (together with these Standard Terms) forms a separate contract between the parties.

2.4 Any samples, drawings, descriptive matter, or advertising produced by Handepay and any descriptions or illustrations contained in Handepay's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Agreement or have any contractual force.

2.5 Unless otherwise agreed by Handepay, any quotation can be withdrawn or amended by Handepay at any time prior to an Agreement being formed.

3. Commencement and duration

3.1 The provision of the Services will commence (or be deemed to have commenced) on the Commencement Date and will continue, unless terminated earlier in accordance with this Agreement, for a period of 12 months ("**Initial Term**"), when it shall automatically extend for a further period of 12 months ("**Extended Term**") at the end of the Initial Term and at the end of each Extended Term. Either Party may give written notice to the other party, not later than 3 months before the end of the Initial Term or the relevant Extended Term, to terminate this Agreement at the end of the Initial Term or the relevant Extended Term, as the case may be.

3.2 For the avoidance of doubt, termination or expiry of an Order Confirmation shall not affect any other Order Confirmation still in existence.

4. Handepay's Rights and Obligations

4.1 Handepay shall use reasonable endeavours to provide the Services to the Merchant, in accordance (in all material respects) with this Agreement.

4.2 Handepay shall be entitled to suspend the Services (or any part thereof) at any time with immediate effect:

4.2.1 for operational reasons such as repair, maintenance, improvement provided that Handepay shall endeavour to give the Merchant as much as notice as is reasonably possible before doing so and shall restore the Service as soon as reasonably practicable following any such suspension;

4.2.2 where Handepay reasonably believes that the continued provision of the Services represents a threat or potential threat to the operation, security or functionality of any or all of the following (or any part thereof):

- i. the integrity of any computer server hardware;
 - ii. the Merchant's Equipment;
 - iii. the system or operation of any third party;
 - iv. any aspect of services provided to a third party by Handepay or Handepay's service providers; or
 - v. where Handepay identifies or reasonably suspects any out of character traffic profile attributable or connected to the utilisation of the Services by the Merchant. The right to suspend is designed to protect the Service from risks such as a Distributed Denial of Service and all reasonable steps will be taken to maintain the service.
- 4.3 Handepay reserves the right to amend the provision of the Services if required by any applicable statutory or regulatory requirements, law or industry standard (including without limitation PCI standards, guidelines or best practice).
- 4.4 Handepay shall be entitled to change the technical specification of the Services for purely operational reasons provided that any change to technical specification will not materially reduce the performance of the Services.
- 4.5 Handepay shall use reasonable endeavours to perform the Services with a reasonable level of care, skill and diligence in accordance with common practice in Handepay's industry, profession or trade, including the PCI:DSS.
- 4.6 Handepay shall have the right, at any time, and for any reason whatsoever to decline to allow any prospective third party customer, (for example, a customer of the Merchant's who may wish to use the Merchant as a payments bureau), to utilise the Services or any part thereof.
- 4.7 The Services shall not include training of personnel utilised by the Merchant.
- 4.8 Any additional services, not specified in an Order Confirmation may be requested by the Merchant in accordance with Clause 15.
- 4.9 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.
- 5. Merchant Obligations**
- 5.1 The Merchant shall:
- 5.1.1 co-operate with Handepay (and its sub-contractors and service suppliers) in all matters relating to the Services;
 - 5.1.2 provide access to premises, equipment and data, and other facilities as may reasonably be requested by Handepay for the purpose of providing the Services;
 - 5.1.3 if applicable, be responsible (at its own cost) for providing the telecommunications services and correctly configured Merchant Equipment that is needed to connect to the Services;
 - 5.1.4 provide to Handepay, in a timely manner, such Merchant Information and other information as Handepay may reasonably require to ensure the safe and compliant provision of the Service;
 - 5.1.5 provide details of a systems administrator who, on behalf of the Merchant, will be familiar with the Services and available to be contacted by Handepay to provide details of any change to the contact details of the system administrators;
 - 5.1.6 if applicable, be responsible for configuration and management of access to the Services including configuration of network, firewall, DNS, routers and any personal computers as well as any integration of the Service into a website or call centre application;
 - 5.1.7 allow Handepay to incorporate the Merchant Information into the Handepay databases;
 - 5.1.8 where material compliance issues in the Merchant's processes are identified, the Merchant shall implement the recommendations given by Handepay or their own appointed PCI Qualified Security Assessor in relation to the Services;
 - 5.1.9 deliver, obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services and the use by Handepay of any Merchant Information;
 - 5.1.10 comply with all legislation, instructions or guidelines issued by any regulatory authority, relevant licensees and any other codes of practice that apply to the Merchant and that relate to the provision of the Merchant Information or in any way in relation to the Services (including without limitation any PCI Standards);
 - 5.1.11 be responsible for the security and proper use of all user identities ("User IDs") and passwords in connection with the Services (including changing passwords on a regular basis) and agrees to ensure that User IDs are kept confidential, secure, used properly and not disclosed to any unauthorised person and to inform Handepay immediately if there has been (or is likely to be) a breach of security or misuse of the Service;
 - 5.1.12 promptly change any or all of the passwords used in connection with the Service when requested to do so by Handepay where Handepay reasonably believes that there is or is likely to be a breach of security or misuse of the Services;
- 5.1.13 promptly inform Handepay if any of the information supplied on or in relation to the online registration changes;
- 5.1.14 not store card details on their systems whether in plain text or encrypted form. Where a Merchant, with the agreement of its acquiring bank, needs to store card details on its systems whether in plain text or encrypted form, the Merchant agrees to notify Handepay in order to be assessed for their adherence to PCI:DSS. In such a case, the Merchant will be authorised by Handepay to maintain a store of card numbers only if those aspects of the Merchant's systems have a current PCI:DSS class 1 approval, in which case the annual certificate from the Merchant's QSA must be provided to Handepay without delay;
- 5.1.15 only access the Services as permitted by the Agreement and shall not make any attempt to circumvent the system security of the Services or those of Handepay at any time;
- 5.1.16 immediately notify and appropriately indemnify Handepay if it becomes aware of any unauthorised use of all or any part of the Services.
- 5.2 The Merchant acknowledges and agrees that if Handepay receives any complaints from the Merchant's customers, Handepay will direct the customer to the Merchant. The Merchant shall be responsible for any complaints with its customers, including but not limited to those directed to it by Handepay and it will work in good faith to promptly resolve any such complaints. If a customer continues to contact Handepay regarding the Merchant's services provided to that customer, Handepay will make reasonable attempts to discuss the matter with the Merchant but reserves the right to either:
- 5.2.1 suspend the provision of all or any part of the Services to the Merchant until such time as Handepay reasonably believes that the complaint has been resolved; or
 - 5.2.2 terminate this agreement under clause 12.1.2.
- 5.3 If Handepay's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Merchant, its agents, subcontractors, consultants or employees, Handepay shall not be liable for any costs, charges or losses sustained or incurred by the Merchant that arise directly or indirectly from such prevention or delay.
- 5.4 The Merchant shall be liable to pay to Handepay, on demand, all reasonable costs, charges or losses sustained or incurred by Handepay (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Merchant's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this Agreement, subject to Handepay confirming such costs, charges and losses to the Merchant in writing.
- 5.5 Notwithstanding any information Handepay may provide to the Merchant, the Merchant is responsible for maintaining its own records and books relating to the Services and Transactions and for reconciling these with its own bank account data and other accounting records.
- 6. Charges and Payment**
- 6.1 In consideration for the provision of the Services the Merchant shall pay to Handepay the Charges.
- 6.2 The Charges for the provision of the Services can be increased by Handepay at anytime on 30 days' notice, provided that such increases will not be effective on or before the first anniversary of the Commencement Date.
- 6.3 Handepay also reserves the right to increase the Charges in the event that a statutory change to legislation or other compulsory or recommended requirement, including without limitation changes required to comply with the requirements of a licensing or authorising bodies, means that further costs must be expended by Handepay. Any increases shall be notified to the Merchant in writing as soon as practicably possible.
- 6.4 Handepay will be entitled to issue invoices in advance for the fixed charges set out in the Order Confirmation and in arrears for the Throughput Charges as set out in the Order Confirmation. Handepay shall invoice the Merchant monthly with the first invoice being issued on the Commencement Date and then subsequently on or around the equivalent date in subsequent months. The Merchant shall pay each invoice submitted by Handepay in pound Sterling by debit or credit card immediately on issue.
- 6.5 During account setup, the initial credit or debit card used will become subject to the automated recurring credit or debit card transaction process. This credit or debit card will be used to automatically pay for invoices raised by Handepay. By contacting Handepay, a credit or debit card can be updated at any time. The Merchant can opt out of recurring credit or debit card transactions if requested. If the Merchant opts out of reoccurring debit or credit card payments, Handepay shall be entitled to:
- 6.5.1 terminate this Agreement in accordance with clause 12.1.2; or
 - 6.5.2 suspend the Services until such time as the reoccurring payment authorisation has been reinstated.
- 6.6 Time for payment shall be of the essence of the Agreement.

- 6.7 All amounts and fees stated or referred to in this Agreement are exclusive of VAT, which shall be added to Handepay's invoice(s) at the appropriate rate.
- 6.8 The Charges do not include any call charges or service charges incurred by the Merchant in accessing the Services via the internet or via a third party internet service provider. The Merchant agrees to pay these charges directly to the relevant service provider.
- 6.9 Without prejudice to any other right or remedy that it may have, if the Merchant fails to pay the Charges to Handepay on the due date:
- 6.9.1 the Merchant shall pay interest on the overdue amount at the rate of 4% per annum above the Royal Bank of Scotland's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Merchant shall pay the interest together with the overdue amount; and
- 6.9.2 Handepay may suspend all Services (and all other services it provides to the Merchant under any other agreement) until payment has been made in full.
- 6.10 All sums payable to Handepay under this Agreement shall become due immediately on its termination. This clause 6.10 is without prejudice to any right to claim for interest under the law, or any such right under this Agreement.
- 6.11 Handepay reserves the right at any time to require that the Merchant pay all or any part of the Charges in advance of provision of all or any part of the Services or a deposit in advance or to provide a guarantee as security for payment of future invoices in respect of the Services to be provided if the Merchant gives legitimate cause for concern by defaulting on or being late in paying due Handepay invoices.
- 6.12 All amounts due by the Merchant under this Agreement shall be paid in full to Handepay without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). Handepay may, without prejudice to any other rights it may have, set off any liability of the Merchant to Handepay against any liability of Handepay to the Merchant.
- 6.13 Any additional services or products requested by the Merchant, not detailed in the Order Confirmation, will be charged at Handepay's standard rates that apply on the date of delivery of that service (unless a different rate is agreed between the parties in writing).
- 7. Intellectual Property Rights**
- 7.1 The Merchant acknowledges that all of Handepay's Intellectual Property Rights relating to material existing prior to this Agreement or arising or created in connection with the Services, belong to Handepay or the relevant third-party owners (as the case may be). Handepay licenses all such rights to the Merchant on a non-exclusive, worldwide basis to such extent as is necessary for the sole purpose of enabling the Merchant to make reasonable use of the Services. If this Agreement expires or terminates, this licence shall automatically terminate simultaneously at the time of such termination.
- 7.2 Any Intellectual Property Rights in the Merchant Information shall belong to the Merchant or the relevant third party owner (as the case may be) and the Merchant shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Merchant Information. The Merchant grants a worldwide, non-exclusive, royalty free, sub-licensable irrevocable licence to copy, use and modify the Merchant Information for the purpose of carrying out its obligations in this Agreement.
- 7.3 The Merchant warrants, represents and undertakes that:
- 7.3.1 any Merchant Information provided to or used by Handepay is owned by the Merchant; and/or
- 7.3.2 it has received the necessary consents or permissions to use the Merchant Information in accordance with this Agreement and any Order Confirmation from the applicable owner(s).
- 7.4 The Merchant shall indemnify Handepay:
- 7.4.1 against all damages, losses and expenses arising as a result of any action or claim that the Merchant Information breaches the warranties, representations or undertakings set out in clause 7.3; or
- 7.4.2 against all damages, losses, expenses, claims or legal proceedings brought or threatened against Handepay by a third party where:
- i. the act and/or omissions of the Merchant have resulted in the Services not being used in accordance with this Agreement; or
 - ii. use of the Services in conjunction with other software and special services not supplied by Handepay by the Merchant has caused a third party's Intellectual Property Rights to be infringed.
- 7.5 All materials, equipment and tools, drawings, specifications and data supplied by either party shall, at all times, be and remain the exclusive property of the originating party (or any relevant third party as the case may be), but shall be held by the other party in safe custody at its own risk and maintained and kept in good condition by the receiving party until returned to the disclosing party and shall not be disposed of or used other than in accordance with written instructions or authorisation of the other party.
- 8. Data Protection**
- 8.1 The Merchant acknowledges and agrees that details of the Merchant's name, address and payment record may be submitted to a credit reference agency and personal data will be processed by and on behalf of Handepay and its suppliers in connection with the Services.
- 8.2 Each party shall comply with its respective obligations under the Data Protection Legislation and as specified in this clause 8. Neither party shall do any act that puts the other party in breach of its obligations set out in this clause 8 and nothing in this Agreement shall be deemed to prevent any party from taking the steps it reasonably deems necessary to comply with the Data Protection Legislation.
- 8.3 The parties acknowledge and agree that Handepay processes personal data on the Merchant's behalf when performing its obligations under this Agreement, and the parties record their intention that the Merchant shall be the data controller and Handepay shall be a data processor and in any such case:
- 8.3.1 the Merchant shall ensure that it is entitled to transfer the relevant personal data to Handepay so that Handepay may lawfully use, process and transfer the personal data in accordance with this Agreement on the Merchant's behalf;
- 8.3.2 the Merchant shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
- 8.3.3 the Merchant agrees that Handepay can appoint a sub-contractor to process the personal data (and at this date that sub-contractor is Cardstream Partners Limited and if the sub-contractor changes Handepay will notify the Merchant), but shall ensure that any contract with the sub-contractor reflects the terms of this clause 8.
- 8.3.4 Handepay agrees that it will
- i. only process the personal data in accordance with instructions from the Merchant, which may be specific instructions or standing instructions of general application in relation to the Services, whether set out in this Contract or otherwise notified to Cardstream;
 - ii. unless otherwise agreed in writing, only process the personal data to the extent and in such manner as is necessary for the provision of the Services or as is required by law or any regulatory body or otherwise as appropriate including where necessary involving credit reference, fraud prevention and law enforcement agencies and other organisations in relation to preventing fraud and money laundering;
 - iii. maintain sufficient technical and organisational measures to prevent unauthorised or unlawful processing of personal data and to prevent any loss, destruction or unauthorised disclosure of personal data having regard to the nature of the personal data to be protected and inform the Merchant promptly and in any event within 48 hours of any breach of security affecting or compromising the Merchant's personal data;
 - iv. promptly notify the Merchant if it receives a request from a data subject (as defined in the Data Protection Legislation) to have access to personal data or any other complaint or request relating to the Merchant's obligations under the Data Protection Legislation and provide full co-operation and assistance to the Merchant in relation to any such complaint or request (including, without limitation, by allowing data subjects to have access to their personal data);
 - v. not transfer the personal data outside of the EEA without the consent of the Merchant; and
 - vi. otherwise provide reasonable assistance to the Merchant as necessary to allow the Merchant to comply with the Data Protection Legislation.
- 8.4 The Merchant warrants and undertakes that any instructions given by it to Handepay (whether specific or non-specific) in respect of the processing of personal data shall at all times be in accordance with the requirements of the Data Protection Legislation and that compliance with such instructions by Handepay in its provision of the Services shall not put the Merchant or Handepay in breach of the Data Protection Legislation.
- 8.5 The Merchant recognises that a breach of the Data Protection Legislation would severely impact the reputation and shareholder value of Handepay and therefore agrees that it will on demand fully and effectively indemnify Handepay and keep Handepay fully indemnified against any loss, liability and costs incurred as a result of any breach of the Data Protection Legislation by the Merchant.
- 8.6 Any obligation on Handepay or the Merchant under this clause 8 to do, or refrain from doing, any act or thing shall include an obligation on Handepay or the Merchant respectively to procure that its employees, agents and sub-contractors (if any) also do, or refrain from doing, such act or thing.
- 8.7 As a data processor, Handepay will process personal data in accordance with its Privacy Policy. A copy of the Policy is available on the Handepay website and an electronic copy can be requested at any time."

9. Confidentiality

- 9.1 Each party undertakes that it shall not at any time (during the term of this Agreement or afterwards) disclose to any person any confidential information concerning the activities, affairs, customers, clients or suppliers of the other party, except as permitted by clause 9.2. For the purpose of this clause 9, confidential information means information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, services, charges, clients, customers, products, affairs and finances of the parties for the time being confidential to the parties and trade secrets including, without limitation, technical data and know-how relating to the business of the parties or their suppliers, clients, customers, agents, distributors, shareholders or management, whether or not such information (if in anything other than oral form) is marked confidential.
- 9.2 Each party may disclose the other party's confidential information:
- 9.2.1 to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the party's obligations under this Agreement. Each party shall ensure that its suppliers, employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 9; and
- 9.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 9.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under this Agreement.
- 9.4 The Merchant agrees that once the Agreement has been entered into, Handepay may issue a press release (or any other form of public communication) relating to the entry into of this Agreement. The Merchant will have the opportunity to approve such a release and such approval shall not be unreasonably withheld or delayed.
- 9.5 The Merchant agrees that Handepay shall be entitled to use analytical data that it receives as part of the service to identify relevant products offered by Handepay or which it sells on behalf of others that the Merchant may be interested in or benefit from.
- ## 10. Service Levels
- 10.1 Handepay shall use reasonable endeavours to provide an uninterrupted Service with 99.0% availability (excluding scheduled or emergency service maintenance, of which Handepay shall use its reasonable endeavours to give the Merchant reasonable notice to ensure minimum disruption to the Merchant). It shall be the responsibility of the Merchant to act in accordance with Handepay's reasonable instructions in such circumstances).
- 10.2 Subject to clause 10.3, in the event that the Services are available for less than 99.0% (excluding scheduled or emergency service maintenance) of the time within a given calendar month (with the Handepay system log measurements being the conclusive record of this availability), then the Merchant's sole remedy in this respect shall be a credit by Handepay to the Merchant of an amount equal to the following calendar month's Fixed Charge provided that the Merchant shall notify Handepay in writing of any claim under this clause 10.2 within 20 (twenty) days of the incident of the Services' being unavailable for the period being claimed. This will be the sole remedy of the Merchant and any implied Service warranty or other remedy is hereby expressly excluded.
- 10.3 Service credit(s) will:
- 10.3.1 be granted only if the Merchant has afforded Handepay reasonable endeavours to assist in testing and any other work in order to remedy the cause of the service outage at the time of occurrence;
- 10.3.2 be granted only if the Merchant has made its claim for service credits within 20 (twenty) days of the incident of the Services being unavailable for the period being claimed;
- 10.3.3 not be provided where there is a loss of service availability caused by issues beyond Handepay's reasonable control, including, without limitation, denial of service or similar attacks, mail bombs, DNS resolution, domain name expiration, hardware failure, internet availability, the Merchant's portion of any network, IP transit provider issues, SYN attacks, or any other Force Majeure Event will be excluded from service availability calculations;
- 10.4 Handepay's records and data will be the sole basis for all service credit calculations and determinations (save in the case of manifest error, in determining the alleged existence of which, the Merchant shall bear all costs including but not limited to forensic analysis and temporary server equipment).
- 10.5 In order to maintain performance and security of the Services and full PCI:DSS compliance, where there is a loss of service availability caused when Handepay performs Scheduled Maintenance within its published maintenance windows that may require specific Services to be suspended during the maintenance period this will not be taken into account when calculating availability. Loss of Service availability due to scheduled maintenance will not be included in the calculation of Service availability. Handepay will use commercially reasonable efforts to notify the Merchant in advance of any Scheduled Maintenance that may adversely affect the Merchant's use of the Services;
- 10.6 Handepay may need to perform emergency maintenance, including security patch installation or hardware replacement. Handepay will not be able to

provide the Merchant with advanced notice in case of emergency maintenance. Loss of service availability due to emergency maintenance will be excluded from calculations for service availability.

- 10.7 Service credit(s) shall be deducted from the charges payable by the Merchant hereunder and shall be expressly indicated on the Merchant's invoice (provided that if any service credits are outstanding following termination, such sums shall be a debt payable to the Merchant).
- 10.8 For the purpose of this clause 10, availability means availability of the back end system used in the provision of the Services.
- 10.9 The Merchant acknowledges and agrees that from time to time Handepay may use the information collected from the Merchant to make suggestions and recommendations to the Merchant about goods or services that Handepay believes may be of interest to the Merchant.
- ## 11. Limitation of Liability
- 11.1 This clause sets out the entire financial liability of Handepay (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Merchant in respect of:
- 11.1.1 any breach of the Agreement;
- 11.1.2 any use made by the Merchant of the Services, or any part of them; and
- 11.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.
- 11.2 Unless otherwise set out in this Agreement, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.
- 11.3 Nothing in this Agreement limits or excludes Handepay's liability for:
- 11.3.1 death or personal injury caused by its negligence;
- 11.3.2 fraud or fraudulent misrepresentation;
- 11.3.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
- 11.3.4 any other liability which cannot be limited or excluded by applicable law.
- 11.4 Subject to clause 11.1, Handepay shall not be liable to the Merchant, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:
- 11.4.1 loss of profits;
- 11.4.2 loss of sales or business;
- 11.4.3 loss of agreements or contracts;
- 11.4.4 loss of anticipated savings;
- 11.4.5 loss of or damage to goodwill;
- 11.4.6 loss of use or corruption of software, data or information; or
- 11.4.7 any indirect or consequential loss.
- 11.5 Subject to clause 11.1 and clause 11.4, in respect of all claims (connected or unconnected) arising in any Contract Year (or following expiry or termination of this Agreement), Handepay's total liability to the Merchant, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to a sum equivalent to the total Charges paid by the Merchant in that period (or for claims arising after termination or expiry of this Agreement the Charges paid in the last Contract Year).
- 11.6 Without prejudice to Clause 5.1.6 and the Client's responsibility to be responsible for the configuration of the Service, Handepay may make available "plug-ins" to assist a Client to connect the Service to its e-commerce solution (or other facilities). Such plug-ins are provided on an as-is basis and the Client acknowledges that the effectiveness of such plug-ins may be affected by the configuration of other elements of the Client's or third parties' software or infrastructure (or any subsequent changes made to the Client's or third parties software or infrastructure) and therefore no guarantee is given that the plug-in will operate to interface the Service with the relevant e-commerce solution. It is the Client's responsibility to check the operation of any such plug-in prior to making it publically available and to check the operation of the plug-in on an ongoing basis.
- ## 12. Early Termination
- 12.1 Without affecting any other right or remedy available to it, Handepay may terminate this Agreement with immediate effect by giving written notice to the Merchant if:
- 12.1.1 the Merchant party fails to pay any amount due under this Agreement (or any other agreement between the parties) on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- 12.1.2 the Merchant commits a material breach of any other term of this Agreement (or any other agreement between the parties) which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 21 days after being notified in writing to do so;
- 12.1.3 the Merchant repeatedly breaches any of the terms of this Agreement (or any other agreement between the parties) in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it

- having the intention or ability to give effect to the terms of this Agreement; or
- 12.1.4 the Merchant suspends, or threatens to suspend, payment of its debts or is unable to pay its debts; or goes into administration or liquidation either compulsorily or voluntarily (save for the purposes of solvent reconstruction or amalgamation); or the Merchant (being an individual) is the subject of a bankruptcy petition or order; or if a receiver or administrative receiver is appointed in respect of the whole or any part of its assets; or if the Merchant makes an assignment for the benefit of or composition with its creditors generally; or if it ceases to trade; or threatens to do any of the aforementioned things; or if any analogous events occur with respect to the Merchant in any jurisdiction to which it is subject; or
- 12.1.5 there is a change of control of the Merchant (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 12.2 On termination or expiry of this Agreement:
- 12.2.1 the Merchant shall immediately pay to Handepay all of Handepay's outstanding unpaid invoices and interest and, for Services and/or Equipment for which no invoice has been submitted, Handepay shall submit an invoice, which shall be payable by the Merchant immediately on receipt;
- 12.2.2 all rights and licenses granted to the Merchant under this Agreement shall cease;
- 12.2.3 within 10 days after the date of termination the Merchant shall promptly destroy or, if Handepay shall so elect, deliver to Handepay or any other person designated by Handepay, at the Merchant's expense, all material owned by Handepay in its possession;
- 12.2.4 Handepay may destroy or otherwise dispose of any of the Merchant Information in its possession unless Handepay receives, no later than 10 Business Days after the effective date of the termination of this Agreement, a written request for the delivery to the Merchant of the Merchant Information. Handepay shall use reasonable endeavours to deliver a copy of the Merchant Information to the Merchant within 30 days of its receipt of such a written request, provided that the Merchant has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Merchant shall pay all reasonable expenses incurred by Handepay in returning or disposing of Merchant Information;
- 12.2.5 the Merchant shall promptly return all and any of Handepay's Equipment. If the Merchant fails to do so, then Handepay may enter the Merchant's premises and take possession of them and the Merchant grants to Handepay an irrevocable licence for his purpose. Until they have been returned or repossessed, the Merchant shall be solely responsible for their safe keeping;
- 12.2.6 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
- 12.3 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.
- 13. Force majeure**
- 13.1 Handepay shall have no liability to the Merchant under the Agreement if it is prevented from, or delayed in performing, its obligations under the Agreement or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of Handepay or any other Party); failure of a utility service or transport network; failure of or interruption to the internet or any other communication network; act of God and natural disaster; war, riot, civil commotion, malicious damage; compliance with any law or governmental order, rule, regulation or direction; accident; breakdown of plant or machinery; fire, flood, or storm.
- 14. Conflict**
- 14.1 If there is an inconsistency between any of these terms and those set out in an Order Confirmation, the provisions in the Order Confirmation shall prevail. If there is more than one Order Confirmation for the same type of Services, the terms of the latest Order Confirmation shall prevail.
- 15. Variation**
- 15.1 Without prejudice to any other provision of this Agreement (including clauses 4.3 and 4.4) Handepay will be entitled to vary the scope of the Services or the terms of this Agreement by giving the Merchant 30 days' notice ("Change Notice Period"). If such change materially and adversely impacts the Merchant, the Merchant will be entitled to terminate the Agreement by giving Handepay 30 days' written notice prior to the expiry of the Change Notice Period. If (where the Merchant is entitled to terminate the agreement because the change materially and adversely impacting the Merchant) the Merchant fails to provide such notice within the Change Notice Period they shall be deemed to have accepted such change.
- 15.2 If the Merchant wishes to change the scope or execution of the Services, it will submit details of the requested change to the other in writing.
- 15.3 If the Merchant requests a change to the scope or execution of the Services, Handepay shall, if it is willing to provide such amended services, within a reasonable time, provide a written estimate to the Merchant of:
- 15.3.1 the likely time required to implement the change;
- 15.3.2 any necessary variations to Handepay's charges arising from the change; and
- 15.3.3 any other impact of the change on this Agreement.
- 15.4 If the Merchant wishes Handepay to proceed with the change, Handepay has no obligation to do so unless and until the parties have agreed the necessary variations to its charges, the Services and any other relevant terms of this Agreement to take account of the change, including (as applicable) the entering into of a new Order Confirmation in accordance with clause 2.2. Once the change has been agreed, this Agreement shall be deemed to have been varied in accordance with clause 15.
- 15.5 To avoid any doubt, unless otherwise agreed between the parties in writing, if either party wishes to terminate a Service, or reduce its requirements for a Service, it shall serve notice in writing in accordance with clauses 3.1 or 12.
- 15.6 Except as set out in these Standard Terms (including clauses 4.3, 4.4, 6.2 and the remainder of this clause 15), no variation of the Agreement shall be effective unless it is agreed in writing and signed by both Handepay and the Merchant.
- 16. General**
- 16.1 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.
- 16.2 The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 16.3 The Merchant having rights under the Agreement is acting on its own behalf and not for the benefit of another person.
- 16.4 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 16.5 Notwithstanding clause 16.4, if any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 16.6 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 16.7 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 16.8 Nothing in this clause shall limit or exclude any liability for fraud.
- 16.9 The Merchant shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without prior written consent of Handepay.
- 16.10 Handepay may at any time assign, transfer, mortgage, charge subcontract and deal in any other manner with any or all of its rights and obligations under this Agreement.
- 16.11 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 16.12 No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 17. Notices**
- 17.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid recorded first-class post or other next working day recorded delivery service at its registered office (if a company) or its principal place of business (in any other case) and if served by Handepay may be served by e-mail to the e-mail provided by the Merchant in the Order Confirmation.
- 17.2 Any notice shall be deemed to have been received:
- 17.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- 17.2.2 if sent by pre-paid recorded first-class post or other next working day recorded delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service;

- 17.2.3 if sent by Handepay by e-mail at the time of issuing such e-mail, provided it did not receive an e-mail notifying it that delivery had failed.
- 17.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 17.4 For the purposes of this clause, "writing" shall not include e-mails sent by the Merchant.

18. Governing law and Jurisdiction

- 18.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 18.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).