



## METRIC PAYMENT SERVICE PROVISION - MASTER TERMS AND CONDITIONS

Metric Group Limited of Metric House, Westmead Industrial Estate, Westlea, Swindon, England, SN5 7AD (company number 2560839) ("MGL")

### 1 INTERPRETATION AND DEFINITIONS

1.1 The following definitions and rules of interpretation apply in this Agreement.

<b>Acquirer</b>	a bank, processor or other financial institution with which the Merchant uses for the acceptance of Transactions and for which MGL is capable of providing the Payment Services in respect of.
<b>Applicable Law</b>	applicable United Kingdom law, statute and regulation having the force and effect of law.
<b>Authorisation</b>	the validation of a Transaction by the Issuer.
<b>Bribery Laws</b>	means the Bribery Act 2010 (as amended or updated from time to time) and all other applicable legislation, statutory instruction and regulations in the United Kingdom relating to bribery or corruption in place from time to time.
<b>Card Scheme Rules</b>	the rules, compliance programs and validation requirements imposed by the Card Schemes.
<b>Card Scheme(s)</b>	the relevant card scheme(s) or brand(s) as relevant and supported by MGL.
<b>Cardholder Data</b>	means any card holder data including the primary account number, cardholder name, expiration date and service code and any other data classified as cardholder data by the PCI Security Standards Council from time to time.
<b>Confidential Information</b>	all confidential information (however recorded or preserved) disclosed by a party to the other party, concerning all information that would be regarded as confidential by a reasonable business person relating to the business, finances, transactions, trade secrets, customers, suppliers, intentions, processes, know-how, databases and software of the disclosing party including any information or analysis derived from the Confidential Information but shall exclude, information: (a) generally available to the public (other than as a result of breach of confidentiality obligations); (b) available or which comes available to the receiving party on a non-confidential basis before disclosure; or (c) independently developed without access to such Confidential Information.
<b>Contract Year</b>	a period of 12 months (or shorter period in the period immediately prior to the end of the Term) commencing on the Commencement Date or on an anniversary of the date of the Commencement Date.
<b>Customer Cause</b>	<ul style="list-style-type: none"> <li>a) any failure by the Customer to comply with any obligations, responsibilities or other activities set out under this Agreement;</li> <li>b) any act or omission by the Customer which would be reasonably likely to result in a service failure or otherwise be detrimental to the Services;</li> <li>c) any improper use, misuse or unauthorised alteration of the Services by the Customer;</li> <li>d) any use of the Services by the Customer in a manner inconsistent with the instructions of MGL;</li> <li>e) use of a non-current version or release of any software issued by MGL;</li> <li>f) failure by the Customer to comply with PCI Security Standards or Card Scheme Rules; and</li> <li>g) any failure, disruption or change in any part of the end-to-end payment solution not provided by MGL pursuant to this Agreement including the Public Network, banking system, Merchant Device and PEDs.</li> </ul>
<b>Customer IPR</b>	all IPR in the Customer Materials (whether proprietary or licensed to the Customer).
<b>Customer Materials</b>	all materials, information, data, documents and any other media and assistance provided by the Customer to MGL from time to time.
<b>Defect</b>	a reproducible and demonstrable defect which substantially hinders or prevents the Customer from using a material part of the functionality of the Service in accordance with this Agreement.
<b>Dispute Notice</b>	as set out in clause 13.2.
<b>Extended Term</b>	as set out in clause 2.2.
<b>Failure</b>	the rejection of a Transaction by the Issuer.
<b>Force Majeure Event</b>	<p>means the occurrence of any of the following:</p> <ul style="list-style-type: none"> <li>a) war, civil war, riot, civil commotion or armed conflict (or threat of);</li> <li>b) terrorism;</li> <li>c) nuclear, chemical or biological contamination;</li> </ul>

	d) earthquakes, fire, storm damage or severe flooding (if in each case it affects a significant geographical area); e) interruption or failure of utility service; f) any blockade or embargo (if in each case it affects a significant geographical area); and/or g) epidemics and pandemics
<b>Indemnified Party</b>	as set out in clause 6.3.
<b>IPR</b>	patents, utility models, rights to inventions, copyright (including source code) and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) 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 that subsist or will subsist in any part of the world.
<b>IPR Claim</b>	as set out in clause 6.3.
<b>Issuer</b>	a bank or other financial institution issuing a payment card on behalf of a Card Scheme or issuing a payment card directly.
<b>Merchant Contract</b>	a valid contract entered into between a Merchant and an Acquirer.
<b>Merchant Device</b>	device used by the Merchant to process Transactions, which may include (as applicable and as supported by MGL): (a) Contactless Payment Device; and/or (b) other credit/debit card processing device supplied by MGL and is installed or linked to a MGL parking terminal.
<b>Merchant PED / PED</b>	merchant pin entry device.
<b>Merchant(s)</b>	the merchants (which shall be the same legal entity as the Customer) which use the Services to accept payment cards as payment for goods and/or services
<b>MGL IPR</b>	all IPR in the Services and all other IPR arising out of the performance of this Agreement (excluding the Customer IPR).
<b>Non-Performance</b>	as set out in clause 14.1.
<b>PA DSS</b>	the payment application data security standards (published at <a href="http://www.pcisecuritystandards.org">www.pcisecuritystandards.org</a> ).
<b>PA DSS Validation</b>	a PA DSS validation which has been assessed for compliance by a payment application qualified security assessor using the payment application data security standard.
<b>Parties</b>	means MGL and the Customer and each being a <b>party</b> .
<b>PCI DSS</b>	the payment card industry data security standards (published at <a href="http://www.pcisecuritystandards.org">www.pcisecuritystandards.org</a> ).
<b>PCI DSS Certificate</b>	a PCI DSS certificate issued by the Payment Card Industry Security Council.
<b>PCI Security Standards</b>	payment card industry security standards published from time to time by the Payment Card Industry Security Standards Council including PCI DSS and PA DSS.
<b>Public Network</b>	a public communications network (which may be established and operated by a telecommunications provider), including the internet, wireless and mobile technologies and Transaction Network Services.
<b>Sensitive Authentication Data</b>	security-related information used to authenticate cardholders and/or authorised payment card transactions including card validation codes/values, full magnetic-stripe data, PINs and PIN blocks and any other data classified as cardholder data by the Payment Card Industry Security Standards Council from time to time.
<b>Services</b>	as set out in clause 3.1.
<b>Settlement</b>	the process by which the Acquirer pays the Merchant for the cardholder purchase and the cardholder's bank bills the cardholder.
<b>Term</b>	the Initial Term together with any Extended Term.
<b>Transaction(s)</b>	an electronic payment card transaction.
<b>Variation Notice</b>	as set out in clause 7.8.
<b>Working Days</b>	a day (other than a Saturday or Sunday or bank/public holiday in England or Wales).

1.2 Unless the context otherwise expressly requires:

- 1.2.1 references to "**including**" or "**includes**" shall be deemed to have the words "without limitation" inserted after them;
- 1.2.2 writing or written includes e-mail;
- 1.2.3 reference to a clause, Annex or Appendix is a reference to a clause of, or Annex or Appendix to, this Agreement.

1.3 Clause, Schedule, and Appendix headings do not affect the interpretation of this Agreement.

## 2 COMMENCEMENT AND DURATION

2.1 This Agreement shall commence on the Commencement Date and continue (unless terminated earlier in accordance with clause 16) for the Initial Term.

2.2 The term shall automatically extend at the end of the Initial Term (and at the end of each Extended Term) for one year

("Extended Term"), unless either party gives written notice to the other party (not later than three 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 relevant Extended Term).

### **3 SCOPE OF SERVICES**

- 3.1** MGL shall, during the Term, provide to the Customer in accordance with the Permitted Purpose and within the Territory, the:
- 3.1.1 Payment Services; and
  - 3.1.2 Optional Services (if any),
- together the "**Services**".
- 3.2** The Optional Services must only be used in conjunction with the Payment Services (and with no other third-party payment provider).
- 3.3** Provided that such changes do not adversely affect the Services, MGL shall be entitled to make changes to the Services from time to time. In addition to its rights in the previous sentence, MGL shall be entitled to make changes to the Services from time to time (whether such change adversely affects the Services or not) for the purpose of:
- 3.3.1 maintaining the security and/or performance and/or availability of the Services; or
  - 3.3.2 complying with PCI Security Standards, Card Scheme Rules or other Applicable Laws.
- 3.4** The Customer acknowledges and accepts that MGL may display its company logo, name or any other company branding in the provision of the Services (including display on signage, terminals, web pages and applications).
- 3.5** The Customer shall only use the Services for its own internal business purposes.

#### **Customer responsibilities**

- 3.6** The Customer shall promptly:
- 3.6.1 perform all its obligations and responsibilities under this Agreement;
  - 3.6.2 cooperate with MGL and provide MGL with all reasonably requested Customer Materials;
  - 3.6.3 notify MGL of any service failure, degradation and/or any other concern with the Service (including any possible abuse or threatened abuse); and
  - 3.6.4 ensure that MGL is the only provider operating on the Merchant Device.

#### **Authorisation and settlement**

- 3.7** The Customer acknowledges and accepts that MGL shall have no responsibility for nor any liability in respect of Authorisation and/or Settlement.
- 3.8** The Customer must immediately notify MGL if it becomes aware of any discrepancy or concern related to Authorisation and/or Settlement.

### **4 WARRANTIES**

- 4.1** Each party warrants and represents to the other that:
- 4.1.1 it has full capacity and authority to enter into and to perform this Agreement; and
  - 4.1.2 this Agreement is executed by its duly authorised representative.
- 4.2** MGL warrants and represents to the Customer that:
- 4.2.1 the Customer's use of the Services in accordance with this Agreement does not infringe the IPR of any third party;
  - 4.2.2 the Services will comply, in all materials respect, with this Agreement; and
  - 4.2.3 it will provide the Services in accordance with good industry practice.
- 4.3** The Customer warrants and represents to MGL that:
- 4.3.1 MGL's use of the Customer Materials in accordance with this Agreement does not infringe the IPR of any third party;
  - 4.3.2 it will only use the Services in accordance with this Agreement; and
  - 4.3.3 it will promptly notify MGL in writing if it becomes aware of its breach (or potential breach) of PCI Security Standards and/or Card Scheme Rules (as applicable to the Customer) and/or Applicable Law in so far as such breach (or potential breach) relates to the Services.
- 4.4** The sole remedy for breach of the warranties in clause 4.2.1 are set out in clause 6. The sole remedy for breach of the warranties in clauses 4.2.2 and 4.2.3 shall be for MGL to use its reasonable efforts to correct Defects within a reasonable time from notification in writing by the Customer of the Defect that constitutes such breach.
- 4.5** The warranties set out in clause 4.2 are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose. Without limitation, MGL specifically denies any implied or express representation that the Services will operate:
- 4.5.1 in conjunction with: (a) any third-party services, in each case, other than those that are expressly set out in this Agreement; or
  - 4.5.2 uninterrupted or error-free.
- 4.6** Any unauthorised modifications, unauthorised use or improper installation of the Services by the Customer shall render all MGL's warranties and obligations under this Agreement null and void.
- 4.7** MGL shall not be obliged to rectify any Defect if attempts to rectify such Defect other than by normal recovery or diagnostic procedures have been made by the Customer without the permission of MGL.

### **5 OWNERSHIP**

#### **Customer intellectual property rights**

- 5.1** Customer IPR are, and shall remain, the property of the Customer (as between the Customer and MGL). MGL acknowledges and accepts that it acquires no rights in or to Customer IPR.
- 5.2** MGL shall promptly report to the Customer any infringement of Customer IPR that comes to its attention.

#### **MGL intellectual property rights**

- 5.3** MGL IPR are, and shall remain, the property of the MGL (as between the Customer and MGL). The Customer acquires no

rights in or to MGL IPR other than those expressly granted by this Agreement.

- 5.4 The Customer shall (at the request and expense of MGL) do (and shall use all reasonable endeavours to procure that any necessary third party shall do) all necessary acts and execute all documents that MGL may reasonably request to perfect the right, title, and interest of the MGL IPR.
- 5.5 The Customer shall promptly report to MGL any infringement of MGL IPR that comes to its attention.
- 5.6 Save where expressly agreed in writing by the parties, the Customer acknowledges and accepts that nothing in this Agreement shall prevent or restrict MGL from exploiting and or licensing any of the MGL IPR to any third party.
- 5.7 The Customer warrants that it shall:
  - 5.7.1 not attempt to copy, duplicate, modify, convert, create derivative works from or distribute all or any portion of the Services (except to the extent expressly set out in this Agreement or allowed by any Applicable Law which is incapable of exclusion by agreement between the parties);
  - 5.7.2 not attempt to reverse compile, disassemble, reverse engineer, or otherwise reduce to human-perceivable form all or any part of the Services (except allowed by any Applicable Law which is incapable of exclusion by agreement between the parties);
  - 5.7.3 only use the Services for its own organisational purposes;
  - 5.7.4 prevent any unauthorised access to, or use of, the Services.
- 5.8 Subject to the terms of this Agreement including, where applicable any Appendices, MGL hereby grants to the Customer a non-exclusive licence during the Term to the MGL IPR exclusively to such extent as is strictly necessary to enable the Customer to make reasonable use of the Services within the Territory.
- 5.9 In the event of the termination or expiry of this Agreement, the licence referred to in clause 5.8 shall terminate automatically.

## 6 INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- 6.1 MGL shall indemnify the Customer against all claims, losses or damages suffered by the Customer and arising out of, or in connection with, any claim made by a third party against the Customer for actual or alleged infringement of that third party's IPR arising out of, or in connection with, the Customer's use of the Services in accordance with this Agreement (save to the extent that such is a result of MGL's use of Customer Materials).
- 6.2 The Customer shall indemnify MGL against all claims, losses or damages suffered by MGL and arising out of, or in connection with, any claim made by a third party against MGL for actual or alleged infringement of that third party's IPR arising out of, or in connection with, MGL's use of the Customer Materials.
- 6.3 If a third party makes a claim, or notifies an intention to make a claim, against either party ("**Indemnified Party**") which may reasonably be considered likely to give rise to a liability under clauses 6.1 or 6.2 ("**IPR Claim**"), the Indemnified Party shall:
  - 6.3.1 immediately notify the other party of the IPR Claim;
  - 6.3.2 provide the other party with such reasonable assistance, documents, records, and information as requested;
  - 6.3.3 not make any admission of liability, agreement, or compromise; and
  - 6.3.4 allow the other party to conduct all negotiations and proceedings.
- 6.4 Nothing in this clause shall restrict or limit the Indemnified Party's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this clause 6.

## 7 PAYMENT

- 7.1 MGL shall submit invoices for the Charges and the Customer shall pay all such invoices in full and cleared funds within 30 days of the date of the invoice.
- 7.2 The Customer shall settle any amount due to MGL by bank transfer.
- 7.3 Unless stated otherwise all fees, charges, and other payments to be made by the Customer under this Agreement are exclusive of VAT and all other relevant taxes, for which the Customer shall be responsible.
- 7.4 Where Charges are stated to be on a Support Services basis:
  - 7.4.1 additional Support Services shall be charged (and paid by the Customer) at MGL's current DevOps half day / full day rate.
- 7.5 If the Customer fails to pay any amount, in full and cleared funds, due by it under this Agreement, MGL may charge the Customer interest on the overdue amount (payable by the Customer immediately on demand) from the due date up to the date payment is received, after as well as before judgment, at the rate of 4% per annum above the base rate for the time being of the Bank of England. Such interest shall accrue on a daily basis and be compounded monthly until the date that full payment is received.
- 7.6 MGL reserves the right to suspend provision of the Services (or part of) where the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default for not less than 10 days after being notified in writing to make such payment.
- 7.7 The Charges are to be paid by the Customer in full and the Customer is not entitled by reason of set-off, counterclaim, abatement, or other similar deduction to withhold payment of any amount due to MGL.
- 7.8 MGL reserves the right to vary the Charges from time to time to take into account any increase in the costs incurred by MGL in the provision of the Services including but not limited, causes by (i) any increase in the costs or charges of any third-party supplier; or (ii) changes to PCI Security Standards, Card Scheme Rules or other Applicable Laws. MGL shall provide the Customer 60 days written notice of any variation of the Charges pursuant to this clause ("**Variation Notice**"). Where the Customer does not accept the varied Charges set out in the Variation Notice it may terminate this Agreement by providing 30 days written notice of termination to MGL (providing that such written notice is received by MGL within 30 days of the date of the Variation Notice). If no such termination notice is received such charges shall automatically apply at the end of the 60 days' notice provided.

## 8 PAYMENT CARD INDUSTRY SECURITY STANDARDS

- 8.1 Each party warrants that it shall:
  - 8.1.1 protect and not disclose any Cardholder Data which it may receive (except as otherwise required by PCI Security Standards, Card Schemes, or other Applicable Law); and

- 8.1.2 not store any Sensitive Authentication Data; and
- 8.1.3 promptly notify the other party in writing if it becomes aware of any breach (or potential breach) of PCI Security Standards in so far as such breach (or potential breach) relates to the Services.

**8.2** MGL warrants and represents that:

- 8.2.1 as at the Commencement Date, it maintains PA DSS Validation;
- 8.2.2 as at the Commencement Date, the Sub-Processor as listed in Appendix 3 holds a valid PCI DSS Certificate; and
- 8.2.3 the Services are compliant with PCI DSS requirements (as applicable to such Services).

**8.3** The Customer shall comply with all PCI Security Standards applicable to the Customer.

**9 CARD SCHEME RULES**

**9.1** The Customer shall, on becoming aware of such, inform MGL of all Card Scheme Rules affecting the Service and provide MGL as much advance notice as reasonably possible of any prospective changes to the Card Scheme Rules.

**9.2** In the event of notification to a Card Scheme Rules change, MGL shall endeavour to ensure that the Services comply with any change in the Card Scheme Rules by the date of implementation of that change or as soon as is reasonably practicable thereafter. Notwithstanding the previous sentence MGL reserves the right to charge the Customer for any costs and expenses incurred by MGL as a result of the change in Card Scheme Rules (including any development work). Such shall be agreed between the parties in writing prior to such being incurred by the Customer.

**9.3** The Customer shall comply with all Card Scheme Rules applicable to the Customer.

**10 DATA PROTECTION**

**10.1** Each party shall comply with its respective obligations under Data Protection Laws.

**11 COMPLIANCE WITH LAW**

**11.1** The Customer shall comply with all Applicable Law as applicable to the Services and this Agreement.

**11.2** MGL shall comply with all Applicable Law as applicable to the Services and this Agreement.

**12 CONFIDENTIALITY AND PUBLICITY**

**12.1** Any confidentiality obligations under this clause 12 are in addition to (and not a substitution for) all other confidentiality obligations agreed between the parties.

**12.2** Each party undertakes that it shall not at any time, disclose to any person any Confidential Information, except as permitted by clause 12.3.

**12.3** Each party may disclose the other party's Confidential Information:

- 12.3.1 to its employees, officers, sub-contractors, representatives, or advisers who need to know such information for the purposes of carrying out the party's obligations under this Agreement. Each party shall procure that its employees, officers, representatives, or advisers to whom it discloses the other party's confidential information shall comply with this clause 12 and all other provisions relevant to the confidential information under this Agreement; and
- 12.3.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

**12.4** No party shall use any other party's Confidential Information for any purpose other than to perform its obligations under this Agreement.

**12.5** Notwithstanding clause 12.4, MGL shall not make public announcements about the relationship and this contract between the parties without the prior written consent (such consent not to be unreasonably withheld or delayed) of the Customer (including statements on social media, on its website or elsewhere).

**13 DISPUTE RESOLUTION**

**13.1** All disputes, including any differences or questions at any time arising between the Company and the Customer as to the construction, existence, validity or termination of this agreement or as to any matter or thing arising out of the agreement or in any way connected therewith except any dispute relating in any way to payment shall be referred to the arbitration of a single arbitrator who shall be agreed between the Company and the Customer or who failing such an agreement shall be appointed at the request of either party by President for the time being of the Law Society. The arbitration shall be in accordance with the Arbitration Act 1996 and any statutory modification or re-enactment thereof for the time being in force.

**13.2** For the purpose of this clause 13, a dispute shall be deemed to have arisen when one party serves on the other a notice in writing, stated to be a dispute notice and setting out the nature of the dispute ("**Dispute Notice**").

**13.3** For the purpose of this clause 13, such Dispute Notice will only be accepted by MGL if the instance which gave rise to the dispute has occurred within a period of 12 months in the past.

**13.4** For the purposes of clause 13.1 the language to be used in the arbitral proceedings shall be English.

**14 CUSTOMER CAUSE**

**14.1** Notwithstanding any other provision of this Agreement, if MGL has failed to comply with its obligations under this Agreement due to a Customer Cause ("**Non-Performance**"), then MGL shall:

- 14.1.1 not be treated as being in breach of this Agreement;
- 14.1.2 be entitled to invoice the Customer for all costs and expenses it has incurred as a result of the Customer Cause; and
- 14.1.3 be entitled to the Charges as if the Non-Performance had not occurred (including, any minimum charges).

**15 LIMITATION OF LIABILITY**

**15.1** This clause 15 sets out the entire financial liability of each party to the other in respect of:

- 15.1.1 any breach of this Agreement;
- 15.1.2 any representation statement or tortious act or omissions (including negligence) arising under or in connection with this Agreement; and

- 15.1.3 any other liability to the other party whatsoever.
- 15.2** Nothing in this agreement shall be deemed to exclude or limit the liability of either Party for:
- 15.2.1 death or personal injury caused by its negligence; or
  - 15.2.2 wilful or deliberate breach of contract; or
  - 15.2.3 any damage or liability incurred as a result of fraud or fraudulent misrepresentation; or
  - 15.2.4 any act or omission, liability for which may not be limited under Applicable Law.
- 15.3** Nothing in this clause shall limit the Customer's payment obligations under this Agreement.
- 15.4** Subject to clause 15.2, neither party shall have any liability to the other (howsoever arising, including any liability in tort) under or in connection with this Agreement for any:
- 15.4.1 loss of profits or anticipated savings;
  - 15.4.2 loss of revenue;
  - 15.4.3 loss or damage to reputation or goodwill;
  - 15.4.4 loss of opportunity;
  - 15.4.5 wasted management or other staff time;
  - 15.4.6 losses or liabilities under or in relation to any other agreement,
  - 15.4.7 other indirect, special and/or consequential loss or damage.
- 15.5** Subject to clause 15.2, each party's total aggregate liability in respect of:
- 15.5.1 the indemnity in clause 6 shall be £1 million; and
  - 15.5.2 all other liabilities in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement (including all non-contractual liability) shall not exceed:
    - 15.5.2.1 in respect of any one event (or series of connected events) exceed the total Charges paid by the Customer to MGL in the immediately preceding 12 months; and
    - 15.5.2.2 in aggregate shall not exceed the total Charges paid by the Customer to MGL under this Agreement:
- 15.6** The Customer acknowledges and accepts that the Services are subject to the limitations and issues inherent in the use of the bank system and Public Network (including denial of service attacks and telephony connections) and MGL is not responsible for and shall not be liable to the Customer for breach of this Agreement due to any problems or other damages resulting from such limitations or issues.
- 15.7** Unless the Customer notifies MGL that it intends to make a claim in respect of an event within the notice period, MGL shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

## **16 TERMINATION**

- 16.1** Either party may at any time terminate this Agreement with immediate effect by giving written notice to the other party if:
- 16.1.1 the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 10 days after being notified in writing to make such payment;
  - 16.1.2 the other party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 10 Working Days after being notified in writing to do so; or
  - 16.1.3 is dissolved, becomes insolvent, fails or is unable or admits in writing its inability to pay its debts, institutes or has instituted against it proceedings seeking a judgement of insolvency; has a resolution passed for its winding up or liquidation; seeks or becomes the subject of the appointment of an administrative receiver or similar official in respect of its assets or enters into any arrangement or composition with its creditors.
- 16.2** The Customer may terminate this Agreement in accordance with clause 7.8.
- 16.3** MGL may at any time terminate this Agreement with immediate effect by giving written notice to the Customer, where the Customer:
- 16.3.1 is in breach of PCI Security Standards, Card Scheme Rules or other Applicable Law and such breach is likely (in the reasonably opinion of MGL) to:
    - 16.3.1.1 adversely affect MGL's reputation (including goodwill); or
    - 16.3.1.2 cause MGL or its Sub-Processor to be in breach of applicable PCI Security Standards, Card Scheme Rules or Applicable Law.

## **17 CONSEQUENCES OF TERMINATION**

- 17.1** The following provisions shall survive expiry or termination of this Agreement: clauses 1, 5, 7, 12, 14, 15, 17, 18, 19 and 20.
- 17.2** Notwithstanding any other provision of this Agreement, all licenses granted by MGL under this Agreement shall automatically terminate on termination or expiry of this Agreement.
- 17.3** On termination or expiry, the Customer shall immediately pay any outstanding unpaid invoices and interest due to MGL under this Agreement. MGL shall submit invoices for any services that it has supplied, or work completed, but for which no invoice has been submitted, and the Customer shall pay these invoices immediately on receipt.
- 17.4** Termination of the Agreement, for any reason, shall not affect the accrued rights, remedies, obligations, or liabilities of the parties existing at termination.

## **18 RESTRICTIVE COVENANTS**

- 18.1** The Customer will not, during the Term and for 12 months from expiration of the Term (for whatever reason) offer (or procure or facilitate the making of any such offer) employment to, enter into a contract for the services of, or attempt to entice away from MGL any individual who is at the Commencement Date an employee of MGL.

## 19 RIGHT TO AUDIT

- 19.1 MGL may during the Term and for a period of 12 months following the Term (but not more than twice in any Contract Year), conduct an audit for the following purposes:
- 19.1.1 to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Agreement);
  - 19.1.2 to verify the Customer's use of the Services (including, verification of the number of terminals); and
  - 19.1.3 to review the Customer's compliance with this Agreement.
- 19.2 MGL shall provide reasonable notice of its intention to conduct an audit.
- 19.3 If an audit identifies that the Customer has underpaid any Charges, the Customer shall pay to MGL the amount underpaid within 10 Working Days. If an audit identifies that the Customer has overpaid any Charges, MGL shall pay to the Customer the amount overpaid within 10 Working Days.

## 20 ANTI-BRIBERY AND CORRUPTION

- 20.1 For the purposes of this clause 20, the terms "adequate procedures" and "associated with" shall be construed in accordance with the Bribery Act 2010.
- 20.2 The Customer shall ensure that its employees, personnel, sub-contractors, and all other persons associated with it does not, by any act or omission, place MGL in breach of any Bribery Laws and shall ensure that it has adequate procedures in place to prevent any breach of Bribery Laws.
- 20.3 The Customer shall immediately notify MGL if it becomes aware of any breach of suspected breach of clause 20.2.
- 20.4 Any breach of this clause 20 shall be deemed a material breach of this Agreement that is not remediable and entitle MGL to immediately terminate this Agreement without liability to the Customer.

## 21 ANTI-SLAVERY

- 21.1 The Customer warrants, undertakes and represents that:
- 21.1.1 neither the Customer nor any of its offices, employees, agents, or subcontractors has:
    - 21.1.1.1 committed an offence under the Modern Slavery Act 2015 (a "**MSA Offence**"); or
    - 21.1.1.2 been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
    - 21.1.1.3 become aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015.
  - 21.1.2 it shall comply with the Modern Slavery Act 2015 and MGL's Anti-Slavery Policy as notified by MGL to the Customer from time to time;
  - 21.1.3 it shall notify MGL immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents, or sub-contractors have breached or potentially breached any of the obligations in this clause 21.
- 21.2 Any breach by the Customer of this clause 21 shall be deemed a material breach of this Agreement and shall entitle MGL to immediately terminate this Agreement.

## 22 GENERAL

- 22.1 **Capacity.** Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter into and perform the Agreement and that those signing the Agreement are duly authorised to bind the party for whom they sign.
- 22.2 **Assignment and other dealings.** The Customer shall not, except as expressly provided in the Agreement, assign, sub-contract, transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights and obligations under the Agreement without the prior written consent of MGL.
- 22.3 MGL may assign, sub-contract, transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights and obligations under the Agreement without the prior written consent of the Customer.
- 22.4 The rights provided under this Agreement are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer.
- 22.5 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 22.6 **Entire agreement.** Without prejudice to clause 12.1, the Agreement constitutes the entire agreement and understanding of the parties in respect of its subject matter and supersedes all prior agreements, negotiations, discussions and any previous practice or course of dealing between the parties relating to the same. In particular but without limit to the generality of the preceding sentence, the Customer acknowledges and accepts that it has not entered into the Agreement in reliance of any verbal or written communication with any representative of MGL nor is it relying on any statement or comment made in any MGL literature (including without limit its website). Nothing in this clause shall limit or exclude any liability for fraud.
- 22.7 **Variation.** No variation or addition to the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 22.8 **Severance.** If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal, or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Agreement shall not be affected. If any invalid, unenforceable or illegal provision of the Agreement would be valid, enforceable, and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid, and enforceable, and, to the greatest extent

possible, achieves the parties' original commercial intention.

- 22.9 Third party rights.** A person who is not a party to the Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 22.10 Force majeure.** Neither party shall in any circumstances be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from a Force Majeure Event.
- 22.11 Notices.** Any notice or other communication required to be given under the Agreement, shall be in writing and shall be delivered personally, or sent by prepaid first-class post or recorded delivery, by commercial courier or email to the other party required to receive the notice or communication to the address or email set out at the top of this Agreement or as otherwise specified by the relevant party by notice in writing to each other party.
- 22.12 Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 22.13** No counterpart shall be effective until each party has executed at least one counterpart.
- 22.14 Governing law.** This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England & Wales and each party irrevocably submits for all purposes in connection with the agreement to the exclusive jurisdiction of the Courts of England and Wales.