



# Terms and conditions: Acquiring

Payver Limited

## Content

1. Definitions.....	3
2. General.....	4
3. Integral Part of Agreement.....	4
4. Data Protection.....	5
5. Entire Agreement .....	5
6. Provider Services .....	6
7. Merchant Services.....	6
8. Conflict .....	6
9. Severance and Modification of Clauses.....	6
10. Scope.....	7
11. Transaction Types .....	8
12. Procedures.....	9
13. Authorisations .....	11
14. Virtual POS System and Virtual POS Key.....	11
15. The Transaction Receipt .....	12
16. Promotion, Trademarks and Merchant’s Identity.....	20
17. Security .....	20
18. Reserves and Guarantees .....	21
19. Disputes with Cardholders.....	22
20. Prohibitions .....	23
21. Merchant Liability .....	25
22. POS Terminal.....	26
23. Ongoing Monitoring .....	26
24. Duration and Termination .....	26
25. Other Matters .....	28
26. Limitation of Liability.....	30
27. Information from PAYVER and Merchant Communication.....	30
28. Assignment .....	30
29. General.....	30
30. Principal and Authority To Sign.....	31
31. Jurisdiction.....	32
32. Counter-Parts .....	32
33. Interpretation.....	32
34. Pledge.....	33
35. Default .....	33
36. Miscellaneous .....	34

PAYVER is a United Kingdom private company limited by shares, registered under No. 11692215 with Companies House; its registered address is New Court, Abbey Road North, Shepley, Huddersfield, United Kingdom, HD8 8BJ and principal place of business 134 Percival Road, Enfield, Middlesex, London, EN1 1QU, United Kingdom.

PAYVER is a registered Small Electronic Money Institution since 20/02/2020 with ref. No.: 901016, issued by the Financial Conduct Authority of United Kingdom. Under its registration, PAYVER may provide payment facilitation and acquiring processing services.

Whereas the Merchant wishes to engage the services of PAYVER to perform processing and settlement of its payment card Transactions; and

PAYVER is willing to provide its services to the Merchant subject to the conditions set forth in this Agreement.

Now therefore it is being agreed as follows:

## 1. Definitions

The following capitalized shall bear the meaning ascribed thereto:

- **1.1** “Agreement” shall mean this agreement in its entirety, including all schedules and annexes thereto and including the merchant application form and pricing agreement, as the same may be amended from time to time, in whatever form, whether substantial or otherwise;
- **1.2** “Authorisation” shall mean an affirmative response, by or on behalf of a Card Issuer to a request to effect a Transaction, that a Transaction is within the Cardholder’s available credit limit and that the Cardholder has not yet reported the Card lost or stolen. All Transactions require Authorisation;
- **1.3** “Business Days” shall mean a day when PAYVER is open for business except Saturdays, and also excluding Sundays, bank holidays and public holidays in United Kingdom;
- **1.4** “Card” shall mean any or all of all Visa, Visa Electron cards (in electronic environments), all MasterCard cards, all Maestro cards (in electronic environments), all JCB cards, all AmEx cards, all Discover, all UnionPay cards and any other cards that may be agreed to by the Merchant and PAYVER from time to time;
- **1.5** “Cardholder” shall mean the person or entity authorised to use a Card;
- **1.6** “Cardholder Activated Terminal (CAT Terminals)” means an unattended electronic POS terminal or a terminal, personal computer or other device that a Cardholder uses to initiate an Electronic Commerce Transaction;
- **1.7** “Card Schemes” shall mean Visa, Master Card, AmEx, Discover or any other similar schemes such as UnionPay;
- **1.8** “Card Issuer” shall mean a member of a Card Scheme that enters into a contractual relationship with a Cardholder for the issuance of one or more Cards;
- **1.9** “Chip and Pin Card” shall mean a Card embedded with a Chip that communicates information to a POS terminal and a personal identification numeric code is used to identify the Cardholder in an authorisation request;
- **1.10** “Chargeback” shall mean a Transaction which is successfully charged back on request of the Cardholder or the Card Issuer pursuant to the relevant rules resulting in a cancellation of a Transaction in respect of which a Merchant has been paid or was due to be paid.

- **1.11** “Fees” shall mean the fees or commission or other payment described in the merchant application form of this Agreement;
- **1.12** “General Conditions” shall mean these general terms and conditions regulating the relationship between PAYVER and the Merchant (including all annexes included therein);
- **1.13** “Merchant Application Form” means that form filled out by the Merchant and duly signed by the Merchant outlining the Merchant’s details, including but not to, the corporate details of the Merchant, shareholder identification details, Banking details and contact information.
- **1.14** “Merchant Operation Account” means a payment account in the Merchant’s name held at PAYVER, or another Payment or Credit Institution in one or more currencies utilised to settle Transactions processed by the Member pursuant to the Merchant Agreement and effecting appropriate debits and credits to and from such account.
- **1.15** “Point of Sale (POS)” shall mean an attended or unattended access device located in or at a Merchant’s premises that meets the Card Schemes requirements, and that permits a Cardholder to initiate and effect a Transaction for the purchase of products or services sold by such Merchant with a card in accordance with the Card Scheme Rules;
- **1.16** “Payment System” shall mean system used to settle financial Transactions through the transfer of funds with the employment of operational network.
- **1.17** “Personal Identification Number (PIN)” shall mean numeric code used in the process of authenticating or identifying a Cardholder to the Payment System and the Payment System to a Cardholder.
- **1.18** “Services” shall mean the services contained in Article 7 of this Agreement.
- **1.19** “Small Merchant” shall mean a merchant that processes less than EUR 20,000 per month, is a sole trader or where a corporate entity, has no more than 3 individual shareholders and whose industry qualifies as low risk in terms of PAYVER internal policy and no operating license is required.
- **1.20** “Transaction” shall mean the acceptance of a Card or information embossed on the Card, for payment for goods sold and/or leased and/or services provided to Cardholders by the Merchant, and receipt of payment from PAYVER, whether the Transaction is approved, declined or processed as a forced sale. The term ‘Transaction’ shall include credits, errors, returns and adjustments;

## 2. General

- **2.1** In consideration of the payment by the Merchant to PAYVER of the Fees, which the Merchant agrees to pay to PAYVER, PAYVER hereby undertakes to provide and perform all and any of the Services, as the same may be amended from time to time pursuant to this Agreement.  
**2.2** Use of the Services covered by this Agreement is deemed to be acceptance of such Merchant Acquisition Agreement in its entirety.
- **2.3** In the case of Small Merchants, Member reserves the right to review pricing terms should the Merchant no longer qualify as a Small Merchant in terms of this Agreement and to alter such pricing as it deems fit and at its absolute discretion.

## 3. Integral Part of Agreement

- **3.1** The Fees, the Merchant Application Form and the Pledge Agreement;

- **3.2** All and any guidelines, procedures, user guides, rules, regulations, notices, information, circulars or conditions issued by a Card Issuer and/or Card Schemes from time to time and which PAYVER is bound to follow (the “Card Conditions”);
- **3.3** All and any guidelines, procedures, user guides, rules, regulations, notices, information, circulars or conditions that PAYVER may issue or notify from time to time;
- **3.4** All and any documents relating to existing and future security on favour of PAYVER as may be requested from the Merchant; and
- **3.5** Any other documents that may be designated to form part of the Agreement by PAYVER and the Merchant.

## 4. Data Protection

- **4.1** To the extent that any of the details provided by the Merchant to the Company on this Agreement, together with such information as may be subsequently supplied by the Merchant in any manner, whether orally or in writing, constitutes personal data within the meaning of the EU General Data Protection Regulation, the Merchant consents to the processing of such data for the following purposes:
  - **4.1.1** for PAYVER to supply the Merchant with statements and provide its products and services;
  - **4.1.2** for assessment and analysis (including credit and/or behaviour scoring, market and product analysis);
  - **4.1.3** for the detection and prevention of fraud and other criminal activity which PAYVER is bound to report; and
  - **4.1.4** to develop and improve PAYVER’s products and services.
- **4.2** The Merchant consents to the disclosure of information to, and to the exchange thereof with, all PAYVER employees and its subsidiaries, associates, agents, fraud monitoring agents, and any other member or controlling body of the relative Payment System.
- **4.3** The Merchant consents to the usage and processing of the Merchant’s personal data for purposes concerning direct marketing, such as to inform the Merchant, by mail or otherwise, about other products and services supplied by PAYVER, its subsidiaries, associates, agents, by any other member or controlling body of the relative Payment System or by other carefully selected third parties, and for research purposes.
- **4.4** In the event that the Merchant opposes the processing of his/her personal data for purposes concerning direct marketing, the Merchant is required to inform PAYVER in writing.
- **4.5** The Merchant has the right to request access to, and rectification of, the personal data concerning the Merchant, which is held by PAYVER.
- **4.6** The Section 4 of this Agreement is merely indicative and more precise rights and obligations of Merchant and PAYVER are outlined in the Privacy Policy which may be found on a website of PAYVER.

## 5. Entire Agreement

- **5.1** The Parties agree that this Agreement forms the entire agreement between the parties in relation to the subject matter hereof. Neither of the parties has relied on any verbal or written information provided by the other unless it is set out or expressly referred to in those documents, except that PAYVER has relied and will continue to rely on all verbal and written information provided by the Merchant in relation to its business and/or status

## 6. Provider Services

- **6.1** During the Term and subject to the terms and conditions of this Agreement, the Provider agrees to perform certain services (Provider Services), in order to allow the Merchant to accept and process Transactions. The Provider shall provide the Merchant with the following services:
  - **6.1.1** Fraud monitoring;
  - **6.1.2** Remittance of Authorisations and clearing/Settlement requests to Member;
  - **6.1.3** Issuing statements to the Merchants of Transactions processed and associated Charges, Fees and Assessments;
  - **6.1.4** Engaging in all communications to Merchant regarding the Transactions;
  - **6.1.5** Enable the technical integration of the Merchant to the member via its systems;
  - **6.1.6** Shall provide payment gateway services;
  - **6.1.7** Any and all supporting ancillary services to the above as amended from time to time by PAYVER, subject to the terms and conditions of this Agreement, of the Agreement separately entered into between PAYVER and the Provider, and the Provider and the Merchant. The Merchant and the Provider agree and the Provider authorises PAYVER to collect on its behalf, directly from the Merchant any fees due to it by the Merchant for the provision of the Provider Services;
  - **6.1.8** It is understood and agreed that the Provider shall conduct its business and provide the services to the Merchant independently from PAYVER. The Provider is not an agent or employee of PAYVER.

## 7. Merchant Services

- **7.1** PAYVER shall provide and perform all and any of these services as agreed to from time to time between the Parties:
  - **7.1.1** Shall act as an acquiring/authorisation processor and supply/perform all necessary ancillary services for the Merchant to be able to accept payments for Transactions by means of VISA, MasterCard, AmEx, UnionPay and Discover payment Cards and any other cards that may be agreed to from time to time.
  - **7.1.2** Shall make available and provide Fraud Protection Services in order to enable the Merchant to manage and reduce the risk of fraud in its online business.
  - **7.1.3** Shall clear and settle authorised Transactions on behalf of the Merchant with the relevant Card Schemes.

## 8. Conflict

- **8.1** In the event of any conflict between any part of the Agreement and the Card Conditions, to the extent permissible under United Kingdom laws and regulations, the Card Conditions shall prevail.

## 9. Severance and Modification of Clauses

- **9.1** If any of the clauses or part thereof of this Agreement is or becomes invalid or unenforceable for any reason whatsoever, the validity of the remaining clauses or part thereof will not in any way be affected or impaired.

- **9.2** If any invalid or unenforceable clause or part thereof of this Agreement would be valid or enforceable if its form or effect were modified in any way, it shall be deemed to have the modified form or effect provided that PAYVER gives its consent in a written form.

## 10. Scope

- **10.1** Unless otherwise agreed, the Merchant agrees to accept as payment for all goods and services supplied within the normal range of its activity and without discrimination all and any Cards (as the same is defined in the Agreement).
- **10.2** The Merchant undertakes that all Transactions submitted for authorisation through PAYVER shall be cleared and settled through PAYVER.
- **10.3** Unless otherwise required in terms of applicable law, the Merchant shall not discriminate between persons paying for goods or services in cash or by utilizing a Card. Accordingly, the Merchant shall not impose any minimum or maximum Transaction values and shall not apply different prices or other conditions.
- **10.4** The Merchant is required to notify PAYVER in writing of any changes in the method in which it conducts its business, its products or service offerings or its establishment address.
- **10.5** PAYVER reserves the right to:
  - **10.5.1** Amend any one or more of these General Conditions, including, but not limited to, and notwithstanding anything which may be provided in the Merchant Registration Form, the floor limits, the commission rates payable, any monthly and/or annual Transaction capping and/or any maximum Transaction capping and the amount of the reserve; and/or
  - **10.5.2** To introduce any new condition regulating such membership, including any of the aforementioned floor limits, commission rates, monthly and/or annual Transaction or maximum Transaction capping, and/or the reserve, from time to time, by giving the Merchant one (1) month written notice of such amendment (or such other shorter notice period as allowed by the law).
- **10.6** Provided that immediate or no notice may be given as above described where the amendment is necessitated in one of the following cases:
  - **10.6.1** By circumstances which give rise or are likely to give rise to a breach of this Agreement, or any applicable laws or regulations; and/or
  - **10.6.2** By circumstances which give rise or are likely to give rise to the Merchant's inability to comply with the Merchant's obligations under this Agreement and/or at law; and/or
  - **10.6.3** In the event of any changes imposed on PAYVER by any of the International Payment Systems; and/or
  - **10.6.4** In the event of any changes in the way the Merchant accepts to process Transactions including, the authorisation method or the method of submission to PAYVER; and/or
  - **10.6.5** In the event of the Merchant's Card turnover, Transaction volumes and/or average values over 12 calendar months being less than those quoted in the merchant application form of this Agreement; and/or
  - **10.6.6** In the event of any other serious or valid reason (including but not limited to the right of PAYVER described in paragraph 10.5 and 10.6).
- **10.7** These amendments shall be without prejudice to the Merchant's right to terminate this Agreement by giving a notice in writing to PAYVER in terms of clause 24 below.

- **10.8** PAYVER reserves the right to modify the Services from time to time in its' reasonable discretion and upon reasonable written notice to the Merchant, provided that such modifications shall not diminish the functionality of the Services.
- **10.9** The Merchant agrees that PAYVER shall have an undisputed right to suspend the provision of the Services and the effects of the Agreement in the event that, in its sole view, the Merchant experiences an escalation of Chargebacks in a given period of time. Such suspension shall not require prior notice provided that, upon the determination by PAYVER that it shall suspend its services/the effects of this Agreement, it shall notify the Merchant in writing of the same and requiring the Merchant to carry out all corrective measures it deems necessary. In the event that the Merchant does not comply with the corrective measures within the time stipulated in the notice, PAYVER shall be entitled to terminate the Agreement forthwith.
- **10.10** The Merchant represents and warrants in favour of PAYVER that, as at the date of the Agreement and throughout the term of this Agreement:
  - **10.10.1** It shall be in possession of all licenses, permits, approvals whether regulatory or otherwise required in terms of applicable law to carry out its business lawfully;
  - **10.10.2** It shall inform PAYVER promptly in the event of an occurrence or the likelihood of an occurrence pursuant to which the carrying out of its business would or is likely to be considered unlawful under the applicable law;
  - **10.10.3** It shall ensure that its business is carried on lawfully;
  - **10.10.4** Unless otherwise permitted in terms of applicable law, it shall not provide any services to minors;
  - **10.10.5** It shall inform PAYVER promptly in the event that it is or is likely to be unable to pay its debts as and when they become due;
  - **10.10.6** It shall promptly inform PAYVER of the happening of any event which has or may have a negative impact on its obligations pursuant to this Agreement or on the rights of PAYVER pursuant to this Agreement;
  - **10.10.7** It is lawfully constituted under the laws of jurisdiction of its incorporation;
  - **10.10.8** It has a legal personality and the power to own its assets, to be sued and sue in its own name and to enter into legal obligations under applicable law;
  - **10.10.9** It shall immediately inform PAYVER upon their being a change in control of the Merchant.

## 11. Transaction Types

- **11.1** The Merchant acknowledges that whilst there are different types of Card Transactions which can be processed, the Merchant is only authorised to accept the types of Transactions as follows:
  - **11.1.1** Visa;
  - **11.1.2** MasterCard
  - **11.1.3** Visa Electron
  - **11.1.4** EDC Maestro
  - **11.1.5** AmEx
  - **11.1.6** Discover
  - **11.1.7** UnionPay



- **11.2** PAYVER’s approval in writing is required before the Merchant may accept other types of Transactions and the Merchant acknowledges that different rules may apply depending on the Transaction type.
- **11.3** Card Present (CP) Transactions:
  - **11.3.1** ”CP Transactions” means such Transactions where the Card and the Cardholder are physically present at the point of sale and the Merchant accepts the Card via the terminal either by reading the card chip or the card magnetic stripe.
- **11.4** Card Not Present Transactions:
  - **11.4.1** “CNP Transactions” means such Transactions where the Card and the Cardholder are not physically present at the point of sale but the Merchant receives an instruction from the Cardholder to debit his account. These include:
    - **11.4.1.1** Mail Orders;
    - **11.4.1.2** Telephone Orders;
    - **11.4.1.3** Fax Orders;
    - **11.4.1.4** Delayed or Amended Charges.
  - **11.4.2** The undertaking of CNP Transactions will be solely at the Merchant’s risk, regardless of:
    - **11.4.2.1** the amount of the Transaction; and
    - **11.4.2.2** whether any request for authorisation or other enquiries have been made to PAYVER.
  - **11.4.3** PAYVER can give the Merchant no assurance that any CNP Transaction will be honoured or that PAYVER will not exercise Chargeback or other rights of reduction or set-off under this Agreement in relation to such CNP Transaction.
- **11.5** Internet Transactions
  - **11.5.1** “Internet Transactions” means such form of CNP Transactions where the Cardholder gives his Card details to the Merchant over the Internet for the purpose of processing payment. Merchants also comply with the requirements set out in Annex A of this Agreement.
- **11.6** Recurring Transactions:
  - **11.6.1** A “Recurring Transaction” occurs when a Cardholder gives a Merchant the authority to charge fixed or variable amounts at specific intervals over a period of time or until further notice such as in the case of subscription payments or regular payment of premium.

## 12. Procedures

The Merchant may only accept Card payments for goods and services it offers in its normal line of business. The payments can be processed either electronically or by such other methods depending on the equipment and procedural guidelines provided to the Merchant by PAYVER. Special rules apply for certain lines of business as outlined below.

The Terminal or other equipment must always be used by the Merchant and/or his authorised staff and never by the Cardholder, unless the latter is required to enter the PIN.

- **12.1** Accepting a Card Payment.
  - **12.1.1** Before honouring a Card, the Merchant agrees to verify that all of the following is present:

- o **12.1.1.1** A valid authorisation must be obtained for each Transaction;
- o **12.1.1.2** The printed 4 digits above the embossed Card Number match the first 4 digits of the Card number. Quasi-Cash Merchants, such as casinos and exchange bureaus, must write down the printed 4 digits on the ‘Merchant’s Copy’ of the POS chit;
- o **12.1.1.3** The signature on the Transaction Receipt matches the name embossed on the face of the Card, the signature of the Card and the signature on the identification presented, if applicable;
- o **12.1.1.4** The presenter of the Card is the person whose name is embossed on the face of the Card;
- o **12.1.1.5** The embossed account number on the face of the Card matches the printed number on the back of the Card and the account number of the Transaction Receipt;
- o **12.1.1.6** The Card, and in particular the signature panel, must not be visibly altered or mutilated;
- o **12.1.1.7** The Card has not expired;
- o **12.1.1.8** If applicable, that the presenter of the Card resembles the person depicted in any photograph intended for identification on the Card.
- o **12.1.2** In addition:
  - o **12.1.2.1** The Card must be kept by the Merchant until the Cardholder signs;
  - o **12.1.2.2** If the Card is not signed or the signature differs, identification should be requested. In this case, the name and signature must be matched with the identification presented;
  - o **12.1.2.3** When the Card is a Chip and PIN Card, the Merchant is to process the Card as prompted by the terminal and Transaction completed by the inputting of the PIN by the Cardholder, when and if prompted by the POS.
- o **12.1.3** Before presenting a Card for authorisation, the Merchant agrees to verify that the Merchant will not present for payment a Transaction which has failed any one or more of the authentication checks attempted for that Transaction type.
- o **12.1.4** Such authentication checks include but are not limited to CVV2/CVC2 and/or 3D Secure authentication.
- **12.2** Transaction Floor Limits:
  - o **12.2.1** Each Transaction being processed and acquired by PAYVER is subject to a floor limit, which the Merchant agrees to respect. These limits are set out in the merchant application form of this Agreement and may be amended by PAYVER, from time to time, at its sole discretion. PAYVER is entitled to refuse the total value of a Transaction, which exceeds its respective limit and which was otherwise previously authorised by PAYVER. In the event that PAYVER accepts such a Transaction, the Merchant acknowledges that such Transaction may be charged back in total to the Merchant at a later date.
  - o **12.2.2** The Merchant agrees not to evade this limit by splitting a Transaction into two or more smaller ones.
  - o **12.2.3** Despite the foregoing, a Transaction may exceed these limits if authorisation to that effect is previously obtained through PAYVER’s systems.
  - o **12.2.4** CNP Transactions and Internet Transactions:
    - o **12.2.4.1** The Merchant acknowledges that in the case of CNP Transactions and Internet Transactions, the floor limit is ZERO (0) and therefore all such CNP Transactions and Internet Transactions must be previously authorised by PAYVER.

- o **12.2.4.2** If the goods are to be collected by the Cardholder, the Card must be presented by the Cardholder upon collection, and the Merchant is to comply with any and all requirements relating to Card Present Transactions.

## 13. Authorisations

- **13.1** Merchants must request prior authorisation from PAYVER for all Transactions that exceed the floor limit as aforesaid.
- **13.2** Each such request for authorisation shall be for the total original Transaction amount, including applicable taxes.
- **13.3** Authorisation can only confirm the availability of funds and that the Card has not been reported lost or stolen. Authorisation shall not be deemed or construed to be a representation, promise or guarantee that PAYVER will accept the Transaction and that the Merchant will receive payment, nor that the person making the Transaction is the Cardholder.
- **13.4** Authorisation may not be sought or obtained on behalf of any third party.
- **13.5** Authorisation may be obtained electronically in the form determined by PAYVER from time to time.
- **13.6** Regardless of the Transaction amount, the Merchant must request a manual telephone authorisation, in the following cases:
  - o **13.6.1** the Card signature panel is not signed in the case of signature authenticated Transactions;
  - o **13.6.2** the Merchant is suspicious of the Transaction;
  - o **13.6.3** if the Merchant is in receipt of a negative or stop-list from an issuer of a Card.
- **13.7** Where goods are to be shipped or delivered or the services performed more than thirty (30) days after the original authorisation, the Merchant is required to obtain a new authorisation number before shipping or delivering the goods or performing the services.
- **13.8** A Merchant must also request authorisation for each Recurring Transaction. This authorisation may be obtained as provided in \*\*13.5 above.

## 14. Virtual POS System and Virtual POS Key

- **14.1** General
- **14.1.1** The Virtual POS key shall be granted to Merchant by PAYVER in order to allow said Merchant access to the Virtual POS system which system shall allow Merchant to do the following:
  - o **14.1.1.1** Process MOTO Transactions;
  - o **14.1.1.2** Perform manual refunds, where applicable.
- **14.1.2** The Virtual POS key/s shall be provided to the merchant free of charge. Each authorised user of the Merchant shall be provided with a Virtual POS key.
- **14.1.3** If Virtual POS key lost or stolen you must report it immediately to PAYVER Support Service:
  - o **14.1.3.1** [merchantsupport@payver.io](mailto:merchantsupport@payver.io)
  - o **14.1.3.2** UK phone: +442074896480
- **14.1.4** Merchant shall not have access to the Virtual POS system unless and until a new Virtual POS key is issued by PAYVER to Merchant. The issuance of a new Virtual POS key is at

PAYVER's absolute discretion and PAYVER shall not be bound to issue any such key within any particular period of time.

- **14.1.5** Where the Virtual POS key is lost or stolen a new key will be provided to Merchant in exchange of payment of EUR100.00.
- **14.1.6** The Merchant shall appoint an Authorised User/s to make use of the Virtual POS key and gain access to the Virtual POS system.
- **14.1.7** No other person, save for the Authorised User/s, shall make use of the Virtual POS system.
- **14.2** Use of the Virtual POS System
  - **14.2.1** For information on how to use the Virtual POS key and system please refer to the RSA SecurID User Guide.
- **14.3** Information Security Best Practices
  - **14.3.1** The following are precautions that the Merchant must take to ensure a reasonable level of security when using the Virtual POS service:
    - **14.3.1.1** The Virtual POS key must only be used by the authorised User/s to whom it was provided by PAYVER designated as such by the Merchant;
    - **14.3.1.2** You require a PIN to gain access to the Virtual POS system. When choosing a PIN do NOT use number combinations that may be easily guessed, such as consecutive numbers (ex. 3456, 9876) or using repetitive numbers (ex. 1111 or 2222). Such combinations will facilitate the breach of the security code.
    - **14.3.1.3** Do not disclose your PIN to any person.
    - **14.3.1.4** Do not write down the PIN or store it on your Computer or other medium.
    - **14.3.1.5** Keep your Virtual POS key in a safe place.
    - **14.3.1.6** Do not respond to electronic mail that ask you for your PIN and other related security information, especially those that may seem to have been sent by PAYVER. PAYVER's Staff does not need to ask for such information.
    - **14.3.1.7** Never leave your PC unattended while logged on to Virtual POS system.
    - **14.3.1.8** The Virtual POS system provides the merchant with the time and date of the last online session after initial login. Check this information each time you log on to ensure that no other unauthorised session was carried out.
    - **14.3.1.9** A Virtual POS session remains active for 15 (fifteen) minutes without any client intervention, therefore do not leave your PC unattended throughout the duration of the session. Please be sure to log off to terminate the session.

## 15. The Transaction Receipt

- **15.1** Unless otherwise agreed, the Transaction Receipt shall record:
  - **15.1.1** The truncated card number and the expiry date of the Card;
  - **15.1.2** The date of the Transaction;
  - **15.1.3** The amount of the Transaction, including applicable taxes;
  - **15.1.4** The authorisation number, where applicable;
  - **15.1.5** The name, address and number of the outlet (location);
  - **15.1.6** The Cardholder's signature (if applicable) in case of CP Transactions;
  - **15.1.7** The words "Delayed Delivery" if it has been agreed with the Cardholder that the goods or services will not be dispatched or rendered on the date the Transaction is made. In case of such Transactions:

- o **15.1.7.1** The Merchant must not require the Cardholder to sign the Transaction Receipt until the final Transaction amount is entered on the Transaction Receipt;
  - o **15.1.7.2** The Transaction Receipt is the Cardholder's official acknowledgment of debt and no alteration may be made after the signature;
  - o **15.1.7.3** A copy of the Transaction receipt must be given to the Cardholder.
- **15.2** CNP and Internet Transactions: The Merchant must ensure and/or procure that the Cardholder is made aware of any Terms and Conditions or Cancellation Policy of the Merchant regulating the Transaction prior to completing the Transaction.
  - **15.3** On the Transaction Receipt, the Merchant is to write:
    - o **15.3.1** The date upon which the goods or services are delivered or shipped or the services rendered to the Cardholder; and
    - o **15.3.2** The words "Mail Order", "Telephone Order", "Internet Order" or similar applicable wording.
  - **15.4** A copy of the Transaction Receipt shall at all times be sent to the Cardholder, whether physically or electronically, or both.
  - **15.5** The Merchant is to retain proof that the Cardholder or the Cardholder's agent signed a carrier delivery receipt for goods delivered to the Cardholder's address.
  - **15.6** Document Retention Periods
    - o **15.6.1** Transaction Receipts and other documents supporting the Transaction must be kept by the Merchant for a minimum period of two (2) years from the date from when the goods are shipped or delivered or the services are performed. Such documents may include, but are not limited to the Cardholder's signed declarations, orders, applications, electronic Transaction messages, rental agreements, hotel registration forms and invoices as applicable.
    - o **15.6.2** Within this retention period, the Merchant must provide a copy of the relevant documents to PAYVER immediately upon a request.
    - o **15.6.3** If a Transaction is disputed before the expiration of the retention period, all records relevant to the Transaction must be stored until the dispute is finally resolved.
    - o **15.6.4** Recurring Transactions: the Merchant must retain a copy of the written agreement entered into between the Merchant and the Cardholder for a period of two (2) years from the date of payment of the last Recurring Transaction and must provide it to PAYVER immediately upon request. If the Recurring Transaction is disputed before the expiration of the retention period, the agreement must be retained until the dispute is finally resolved.
      - o **15.6.4.1** The written agreement between the Merchant and the Cardholder must include all of the following:
        - **15.6.4.1.1** Card type and number;
        - **15.6.4.1.2** Card expiry date;
        - **15.6.4.1.3** Cardholder's name;
        - **15.6.4.1.4** Address and telephone number;
        - **15.6.4.1.5** Document date and recurring payment dates;
        - **15.6.4.1.6** Validity period of agreement;
        - **15.6.4.1.7** Transaction amount and currency;
        - **15.6.4.1.8** A statement as to whether the Transaction amount is constant or subject to change. Where the amount is subject to change, the Cardholder must be advised in writing by the Merchant of the exact value at least 14 days prior to each Transaction being debited to the Cardholder's account;

- **15.6.4.1.9** Merchant's name and address;
    - **15.6.4.1.10** Description of goods or service;
    - **15.6.4.1.11** Acknowledgement by the Cardholder that discontinuation of Recurring Transactions can be made at any time by notifying the Merchant in writing at least 15 calendar days prior to settlement date.
  - **15.6.4.2** The Transaction will not be honoured if one of the following occurs:
    - **15.6.4.2.1** The Cardholder withdrew his authority to charge his account with the Recurring Transaction 15 calendar days prior to settlement date.
    - **15.6.4.2.2** The Cardholder's account was closed before Transaction was processed.
    - **15.6.4.2.3** The Card issuer charged back the initial membership Transaction, by mail or phone, and the Cardholder did not expressly renew.
    - **15.6.4.2.4** There is any other valid reason.
  - **15.6.4.3** In the event that this Agreement is terminated for any reason, the Merchant, at his own cost, shall advise all Cardholders for which he was then submitting Recurring Transactions that, and as from when, he will no longer be accepting the Card.
  - **15.6.4.4** In the event that the Merchant processes Recurring Transactions for services such as insurance services, the Merchant acknowledges and agrees that PAYVER undertakes no responsibility on the Merchant's behalf for the collection from or timely remittance of premiums or other dues by the Cardholders and the Merchant agrees to indemnify and hold PAYVER harmless from and against any claim, loss and/or liability to a Cardholder (or former Cardholder) arising out of the termination of his or her service coverage including insurance service cover.
- **15.7 Refunds**
- **15.7.1** The Merchant agrees that he shall not make any cash refund to the Cardholder with respect to the return of any merchandise or services previously purchased with his Card. In such cases, the refund shall be made, by crediting the account on which the original Transaction was carried out.
  - **15.7.2** Refund Transactions can only be made to reverse previously processed Transactions.
  - **15.7.3** The Merchant must process a reversal or an adjustment if a Transaction Receipt was processed in error and this within 14 days.
  - **15.7.4** Cardholder Refunds Rights: Where the Cardholder's authorisation did not specify the exact amount of the payment Transaction when the authorisation was made (typically known as 'Pull' Transactions such as car rental Transactions and accommodation Transactions) and the amount of the Transaction exceeded the amount the Cardholder could reasonably have expected taking into account his or her previous spending pattern, the conditions in his or her agreement with the Merchant and other relevant circumstances of the case (but not fluctuations in the rates of exchange where applicable), then, provided the Cardholder asks for a refund within eight (8) weeks from the debit date to the Cardholder's account, PAYVER will refund the Cardholder's account with the full amount of the Transaction by debiting the Merchant's Account. At PAYVER's request, the Merchant shall provide factual elements related to the conditions of the Cardholder's Agreement with the Merchant.
- **15.8** Delayed or Amended Charges

- **15.8.1** A Merchant offering accommodation services, services on board a cruise liner or car rental services may process delayed or amended charges if the Cardholder has consented in writing to be liable for such delayed or amended charges.
  - **15.8.2** These services may include room, food or beverage charges, taxes, fuel, insurance, rental fees, damage to rental vehicles, parking tickets and other traffic violations, and goods and services purchased aboard a Cruise Line vessel.
  - **15.8.3** Solely with respect to MasterCard and, the Merchant is required to obtain a separate authorisation from the Cardholder before processing the delayed or amended charge. Unless a separate authorisation is obtained, the delayed or amended charge will be subject to full recourse in case of dispute.
  - **15.8.4** A delayed or amended charge must be processed to the Cardholder's account within 30 calendar days of the original Transaction date.
  - **15.8.5** In these cases, the Merchant must process a CNP Transaction and include the words 'Signature on File' on the Transaction Receipt. The Merchant must also send a copy of the Transaction Receipt to the Cardholder's address shown on the rental contract, hotel or cruiser liner registration, as applicable.
- **15.9** Gaming Merchants
  - **15.9.1** Each Internet gaming Merchant must request that Cardholders identify the state or foreign country where they are physically located at the time of the Transaction. The Merchant must record the response and retain it, along with the Card account number, the Transaction amount, and the Transaction date. The Merchant must retain this information for a minimum of one year from the Transaction date and provide it to PAYVER upon request.
  - **15.9.2** Each Internet gaming Merchant must post a notice on each of its Web sites (in a position such that the notice will be displayed before requesting a Card account number, such as a click-through notice) stating that assertions have been made that Internet gaming may not be lawful in some jurisdictions, including the United States, and suggesting that the Cardholder check whether Internet gaming is lawful under applicable law or regulations.
  - **15.9.3** An Internet gaming Merchant must not sell credits or other value that can be used, directly or indirectly, to game at locations other than those that the Merchant wholly owns.
  - **15.9.4** A Merchant must not credit winnings, unspent credit, or other value usable for gaming to a Card account.
- **15.10** Car Rental Merchants
- **15.10.1** When a Cardholder wishes to use the Card to hire a vehicle from the Merchant, the Merchant must sign a Rental Agreement with the Cardholder and procure that such Cardholder acknowledges all applicable Terms and Conditions.
- **15.10.2** The Merchant shall obtain authorisation for the full estimated amount of the Transaction ("Estimated Rental Transaction"). The Estimated Rental Transaction shall be determined by multiplying the rate by the rental period reserved by the Cardholder. The Merchant shall not overestimate this amount and shall not include an amount for any possible damage to or theft of the vehicle. If the Merchant fails to obtain authorisation for the Estimated Rental Transaction and the Cardholder fails to pay the Transaction for any reason, PAYVER shall have recourse for the full amount of the Transaction. Upon return of the vehicle, the following terms shall apply:
  - **15.10.2.1** If the final Transaction is no greater than the Estimated Rental Transaction plus 15% of such Estimated Rental Transaction, no further authorisation shall be necessary;
  - **15.10.2.2** If the final Transaction is greater than the Estimated Rental Transaction by more than 15%, the Merchant shall obtain authorisation for any additional amount of the

Transaction which is greater than the Estimated Rental Transaction. If the Merchant fails to request such authorisation for the additional amount, or authorisation is declined, and the Cardholder fails to pay the Transaction for any reason, PAYVER shall have recourse for the amount of the Transaction in excess of the Estimated Rental Transaction. PAYVER shall have the right to periodically monitor the Merchant with the authorisation procedures set forth above.

- **15.10.3** A Car Rental Merchant should also comply with the following:
  - **15.10.3.1** For a parking ticket or traffic violation, the Merchant must provide documentation from the appropriate civil authority, including the license number of the rental vehicle, the time and location of the violation, the statute violated, and the amount of the penalty in local currency.
- **15.10.4** For rental car damage, the Merchant must provide all of the following:
  - **15.10.4.1** Copy of the signed Rental Agreement and the Terms and Conditions;
  - **15.10.4.2** Estimate of the cost of the damages from an organization that can legally provide repairs in the car rental company's country;
  - **15.10.4.3** Civil authority's accident report;
  - **15.10.4.4** Documentation showing the Cardholder's consent to pay for damages with his Card. Such consent must be evidenced either:
    - **15.10.4.4.1** By the Cardholder's signature on the Rental Agreement on the same page as, and close to, the description of the charges that may be covered by the Delayed or Amended Charges Transaction; or
    - **15.10.4.4.2** By the Cardholder's signature on the Rental Agreement and the Cardholder's initials on each page of the Rental Agreement, where the Cardholder's signature is not set out on the same page as the description of the charges which may be covered by the Delayed or Amended Charges Transaction. In case of MasterCard and Amex, the Merchant must obtain a separate acknowledgement of responsibility for the damage from the Cardholder.
    - **15.10.4.5** Any other pertinent documentation available to demonstrate Cardholder liability;
    - **15.10.4.6** Copy of the Merchant's insurance policy, if the Merchant requires that the Cardholder pays an insurance deductible for damages. In lieu of the Merchant's insurance policy, the car rental company may provide a copy of the car rental agreement showing the Cardholder's consent to be responsible for the insurance deductible as indicated by his signature or initials. The Cardholder's signature must be in proximity to the disclosure;
    - **15.10.4.7** Copy of the written confirmation which is to be provided by the Merchant to the Cardholder within 10 business days of the return of the rented vehicle containing the details of the damage, cost of the damage, and currency in which the cost of repairing the damage will be charge;
    - **15.10.4.8** The Cardholder may within 10 business days of receiving this confirmation, and at no cost to the Merchant, provide an alternative written estimate for the cost of repairing the damage;
    - **15.10.4.9** If agreement is not reached between the Merchant and the Cardholder for the cost of repairing the damage, and if the Merchant processes the Delayed or Amended Charge Transaction, the Cardholder retains the right to dispute the Delayed or Amended Charge Transaction.
- **15.10.5** The Merchant must wait 20 business days from the date of the confirmation receipt provided to the Cardholder before processing a Delayed or Amended Charge Transaction.



- **15.11 Accommodation Merchants**
- **15.11.1** When a Cardholder wishes to use the Card to pay for lodging, the Merchant must procure that the Cardholder signs the Registration Form and acknowledges all applicable Terms and Conditions. A Card imprint must be obtained.
- **15.11.2** At the time of check-in, the Merchant is required to obtain authorisation for the full estimated amount of the Transaction based upon the room rate and the number of days that the Cardholder expects to stay, plus taxes and other known ancillary amounts (“Estimated Transaction”). The Merchant shall not overestimate this amount. If the Merchant fails to obtain such authorisation, and the Cardholder fails to pay for any reason, PAYVER shall have recourse for the full amount of the Transaction.
- **15.11.3** Upon check-out:
  - **15.11.3.1** If the final Transaction is no greater than the Estimated Transaction plus 15% of the Estimated Transaction, no further authorisation is necessary;
  - **15.11.3.2** If the final Transaction is greater than the Estimated Transaction by more than 15%, the Merchant is to obtain authorisation for any additional amount of the Transaction which is greater than the Estimated Transaction. If the Merchant fails to obtain such authorisation, or authorisation is declined, and the Cardholder fails to pay for any reason, PAYVER shall have recourse for the amount of the Transaction in excess of the Estimated Transaction.
- **15.11.4** An Accommodation Merchant is entitled to charge a Cardholder one night’s lodging in the event that the Cardholder has either not registered by check-out time the day following the scheduled arrival date or has not properly cancelled a reservation in which case PAYVER’s prior authorisation is required. The Cardholder must be advised of this condition when making the reservation.
- **15.11.5** If a Cardholder has not claimed or cancelled an accommodation reservation by the specified time, the Accommodation Merchant must hold the rooms available according to the reservation until check-out time the following day.
- **15.11.6** The Accommodation Merchant may then process a Card Transaction in the form of a CNP Transaction and complete a Transaction Receipt that must contain the following:
  - **15.11.6.1** The amount of one night’s lodging plus applicable tax; ▪
  - **15.11.6.2** The Cardholder’s name, card number and expiry date; ▪
  - **15.11.6.3** The words ‘No Show’ on the signature line.
- **15.12 Timeshare Merchants**
- **15.12.1** A “Timeshare Transaction” means an arrangement under which a purchaser receives an interest in real estate and the right to use an accommodation or amenities, or both, for a specified period and on a recurring basis.
- **15.12.2** Any Transaction meeting this definition may be considered as Timeshare and will be subjected to the International Payment System’s regulations on Timeshare Transactions.
- **15.12.3** For the purpose of this Agreement, ‘International Payment System’ shall mean Visa International, Europay/ MasterCard, Amex, Discover, Union Pay and/or any other card scheme as may be applicable to the Merchant from time to time.
- **15.12.4** A Timeshare Merchant must provide a full credit refund for a previously processed CNP Transaction when the Cardholder cancels a Transaction within 10 calendar days of the original Transaction date.
- **15.13 Parking**
- **15.13.1** If a Cardholder agrees with the Merchant to leave a motor vehicle with the Merchant for a specific number of days, the Merchant is to submit the Transaction within 3 Business Days of the date of such agreement.

- **15.13.2** Where the Merchant provides a parking pass for a pre-determined number of days, the Merchant is to submit the Transaction within 3 Business Days of the date of the provision of the parking pass.
- **15.13.3** Where the number of parking days is not known when the Cardholder leaves the motor vehicle with the Merchant, the Merchant shall not submit the Transaction until the last day of parking.
- **15.14** Customer Activated Terminals (“CAT”)
- **15.14.1** PAYVER will accept Transactions which are activated at the terminal by a Cardholder and unattended by the Merchant, subject to the following:
  - **15.14.1.1** Authorisation, including provision of the full magnetic strip datastream, must be obtained for every Transaction;
  - **15.14.1.2** The authorisation and clearing messages should be flagged with a CAT indicator;
  - **15.14.1.3** Petrol dispensers should initiate an authorisation request for a nominal amount before any fuel is dispensed, valid for the maximum Transaction amount shown on the Application or as is otherwise notified to the Merchant;
  - **15.14.1.4** Cashback must not be provided through a CAT terminal;
  - **15.14.1.5** The Merchant agrees that PAYVER will have the absolute right to be reimbursed by the Merchant or PAYVER can offset such amounts due to the Merchant for any and all Transactions PAYVER purchased from you which are for any reason uncollectable due to fraud regardless of whether PAYVER had notice of such defect at the time of the purchase. PAYVER will have this right even if the Merchant has received an authorisation approval code and has complied with all other provisions of this Agreement;
  - **15.14.1.6** For the avoidance of doubt, CAT terminals do not include payphones.
- **15.15** Cash and Quasi-Cash Merchants The Merchant must validate the Cardholder’s identity. The Merchant agrees to:
  - **15.15.1** Obtain a valid authorisation for each Transaction;
  - **15.15.2** Swipe the Card through the terminal, or obtain a manual imprint;
  - **15.15.3** Ask for photo identification to validate the Cardholder’s identity;
  - **15.15.4** If the Card bears a photograph intended for identification, verify that the Cardholder resembles the person depicted in this photograph;
  - **15.15.5** Indicate the positive identification on the Transaction Receipt, including:
    - **15.15.5.1** Description of identification, including any serial number;
    - **15.15.5.2** Notation that the Cardholder’s identity was verified by the photograph on the card, if applicable.
  - **15.15.6** Verify that the signature on the Card matches the signature on the Transaction Receipt and the identification presented; o
  - **15.15.7** Process the PIN if applicable.
- **15.16** Settlement
  - **15.16.1** Transactions must be submitted to PAYVER for payment within 3 Business Days of the Transaction date. If any payment is received by the Merchant from or on behalf of a Cardholder for any purchase made with the Card, such payment is to be endorsed and sent by the Merchant to PAYVER immediately.
  - **15.16.2** The submission for payment can be done electronically or manually, in the case of Transactions accepted manually.

- o **15.16.3** Any Transactions submitted for settlement manually (i.e. by mail, fax, email or any other communication channel outside PAYVER's standard electronic communication channels) are at the sole risk of the Merchant.
- o **15.16.4** PAYVER cannot be held liable for Transactions received for settlement more than 3 Business Days after the Transaction date, and in such cases, reserves the right to withhold payment until such time as all the Cardholder rights to reclaim the funds have expired.
- o **15.16.5** Transactions shall not be submitted for settlement until the goods are delivered into the hands of the Cardholder or shipped or the services are performed.
- o **15.16.6** Provided that the Merchant has generally complied with all terms of the Agreement, including that the Transaction data is complete and that the Merchant is permitted to accept such Transactions under the Agreement, PAYVER will credit the Merchant's account with the value of the Transactions after deducting from the gross amount of each Transaction a commission and/or Transaction fee as indicated in the merchant application form of this Agreement.
- o **15.16.7** In the case of refunds, PAYVER will either deduct the full amount of the refund less the commission and/or Transaction fee from subsequent payments due to the Merchant or bill the Merchant for that refund.
- o **15.16.8** Upon submission of a Transaction for clearance, the rights of the Merchant in respect of that Transaction automatically rest with PAYVER.
- o **15.16.9** All payments PAYVER receives from Cardholders for Transactions will first be used to satisfy any Transactions for which PAYVER does not have recourse. Payments will then be applied to any Transactions for which PAYVER has recourse. If the Cardholder pays PAYVER for Transactions for which PAYVER has already exercised its right to recourse, PAYVER will credit the Merchant with the relevant amounts.
- o **15.16.10** The Merchant must maintain a current or payment account (Merchant Operation Account) with any Bank or Payment Institution acceptable to PAYVER for the purpose of receiving payments due from PAYVER and give irrevocable instructions to the bank authorising PAYVER to debit from that account any sums payable by the Merchant to PAYVER in terms of this Agreement either by direct debit or otherwise, freeze any funds, and/or hold reserves in terms of Clause 17 and 18 of these General Conditions, and the Merchant is to retain with its bank or payment institution such instructions to effect all such debits for not less than one (1) year after the Agreement has ended for any reason. The Merchant is to give PAYVER at least thirty (30) days notice in writing of its intention to change this account or any substitute account. If PAYVER consents to the Merchant changing the account to any other bank or payment institution, the Merchant must immediately irrevocably authorise the said bank or payment institution to make payments due to PAYVER under this Agreement.
- o **15.16.11** CNP Transactions and Internet Transactions: Provided that the terms and conditions of this Agreement have been respected, PAYVER undertakes to pay the Merchant within 3 Business Days from receipt of the Transactions and after deduction of the above-mentioned commission. However, payment is always subject to recourse pursuant to the fact that the Card would not have been sighted at the time of the Transaction. It shall not be incumbent on PAYVER to verify whether the Cardholder's complaint is justified or not.

## 16. Promotion, Trademarks and Merchant's Identity

- **16.1** The Merchant will prominently display all the Card logos accepted at his outlet/site as well as the latest promotional material made available by PAYVER. The said promotional material is to be removed by the Merchant immediately at PAYVER's request or upon termination of the Agreement for any reason whatsoever.
- **16.2** The Merchant has the right to refer to its membership of the International Payment Systems in all its advertising or publications: provided that the Merchant is to submit all such advertising or publications which refer to PAYVER or to any Card for PAYVER's prior approval.
- **16.3** This Agreement does not give either PAYVER or the Merchant any rights in the other party's name, logo, trademarks, trade names, services marks or similar proprietary designation marks. No use may be made of a party's marks or other intellectual property rights without the prior written consent of that party.
- **16.4** At all points of Cardholder interaction, the Merchant's identity must be clear to the Cardholder so that the Cardholder can readily distinguish the Merchant from any supplier of goods or services to the Merchant or from any other third party.

## 17. Security

- **17.1** Merchants should not complete a Transaction if one of the following occurs:
  - **17.1.1** PAYVER requests the Merchant to retain the card. This may be done verbally through telephone, by written advice or through receipt of the appropriate code when electronic authorisation is requested;
  - **17.1.2** The printed 4 digits above (or below) the embossed Card Number do not match the first 4 digits of the Card number;
  - **17.1.3** The Card appears to be physically tampered with in any way;
  - **17.1.4** Cardholder behaviour gives rise to suspicion of fraudulent activity;
  - **17.1.5** The Merchant is for any reason suspicious of an illegal or fraudulent Transaction.
- **17.2** PAYVER reserves the right to freeze all funds, or a part thereof, representing proceeds of Transactions and/or withhold from the Merchant any payment due to the Merchant under this Agreement if in PAYVER's reasonably exercised judgment the Merchant is or may be engaged in fraudulent or suspicious activity and/or there is a risk that the Merchant will be unable or unwilling to meet his contractual obligations under this Agreement or any other Agreement the Merchant may have with PAYVER, including but not limited to excessive Chargebacks incurred by the Merchant and this without prejudice to any funds held in the Client Accounts as Rolling Reserve. These funds are to be used to offset future Chargeback liability, fraud loss, and/or any payment of fines that may be imposed by any regulatory authority or Card Schemes against the Merchant or against PAYVER due to an act or omission of the Merchant and will be released in the eventuality that no Chargebacks arise. In particular, but without limitation, PAYVER shall be entitled to:
  - **17.2.1** change the Merchant's floor limit and/or payment plan;
  - **17.2.2** suspend or stop payments to the Merchant; and
  - **17.2.3** introduce additional authorisation procedures.

- o **17.2.4** In all cases, PAYVER shall immediately notify the Merchant in writing of the action PAYVER has taken, with the exception of 17.2.3 above of which PAYVER shall give the Merchant prior written notice.
- **17.3** PAYVER further reserves the right to hold all funds held by PAYVER and belonging to Merchant, following the termination of this Merchant Agreement, for one hundred and eighty (180) Business Days (hereinafter referred to as the ‘Chargeback Period’). Settlement to the Merchant of funds so held shall be released to Merchant at the expiration of the month in which the Chargeback Period expires plus five (5) Business Days.
- **17.4** PAYVER reserves the right to use and enforce said frozen funds to pay Chargebacks, other Fees, and/or any payment of fines that may be imposed by any regulatory authority or Card Schemes against the Merchant or against PAYVER due to an act or omission of the merchant and to set-off any fees and/or reimbursements payable and due to it in terms of this Agreement from monies held by it for the benefit of the Merchant, even if the Merchant declares bankruptcy or insolvency and to retain said frozen funds for a period of six (6) months after the termination of the Agreement and this notwithstanding The Payment Services Regulations 2017 Nr.752 (Safeguarding of Funds).
- **17.5** The obligations in this clause shall survive the termination or expiry of this Agreement.

## 18. Reserves and Guarantees

- **18.1** Without prejudice to the foregoing and to PAYVER’s rights, in terms of this agreement, PAYVER reserves right to freeze funds and/or withhold any payments due to the Merchant, PAYVER shall also be entitled to withhold and retain from the Merchant any sums/payments due to the Merchant under this Agreement or any other agreement the Merchant may have with PAYVER as a security against any sums due (including Chargebacks) to PAYVER by the Merchant under this Agreement. This sum (Reserve) may take the form either of an initial deposit or of a percentage of each Transaction (Rolling Reserve) as may be agreed by PAYVER and the Merchant from time to time. Moreover, a bank guarantee from the Merchant or/and a personal guarantee/s and/or any other guarantee or security may be required from the proprietors of the Merchant as a security against potential Chargebacks should the business of the Merchant fail.
- **18.2** Merchant hereby gives its irrevocable consent to PAYVER to use funds held by it pursuant to this Clause 18.1; to provide Security and/or any other guarantee as may be required from time to time to the Card Schemes for payment against potential Chargebacks and/or payments of any charges/assessments and/or fines to the said Card Schemes.
- **18.3** PAYVER reserves the right to use and enforce the reserve and/or the personal guarantee and/or any other guarantee or security to pay Chargebacks and/or other Fees, even if the Merchant declares bankruptcy or insolvency and to retain the reserve and/or the personal guarantee/s and/or any other guarantee or security for a period of one hundred and eighty (180) Business Days (the ‘Chargeback Period’) after the termination of the Agreement and this notwithstanding The Payment Services Regulations 2017 Nr.752 (Safeguarding of Funds). Settlement to the Merchant of funds so held shall be released to Merchant at the expiration of the month in which the Chargeback Period expires plus five (5) Business Days. Funding of the Rolling Reserve shall be resumed at the expiration of this one hundred and eighty (180) Business Days and release shall be in accordance with this Merchant Agreement.
- **18.4** The Reserve amount is determined on the Merchant Registration Form and PAYVER reserves the right to review this Reserve from time to time.
- **18.5** In addition and without prejudice to the Reserve:

- o **18.5.1** PAYVER may retain all or part of the Transaction amounts generated by a Merchant over and above any monthly and/or annual Transaction capping and/or any maximum Transaction capping as provided in the Merchant Registration Form or as notified to the Merchant from time to time; and
- o **18.5.2** As a cover against losses from Chargebacks and/or Fees which cannot be recovered by PAYVER, PAYVER may block and retain a percentage or the full amount of the Transactions processed. The retention rate will be directly related to the Chargeback Rate as provided in the merchant application form or as may be amended by PAYVER from time to time.
- **18.6** PAYVER shall be entitled to retain all of the interest earned from the maintenance of any monies held by PAYVER for the benefit of the Merchant.
- **18.7** PAYVER undertakes that any funds held by PAYVER for the benefit of the Merchant shall at all times not be commingled with PAYVER's money and assets in accordance with the applicable legislation.
- **18.8** PAYVER is authorised by the merchant to deduct and set-off any fees and/or reimbursements payable and due to it in terms of this Agreement from monies held by it for the benefit of the Merchant and this notwithstanding The Payment Services Regulations 2017 Nr.752 (Safeguarding of Funds).
- **18.9** It is hereby acknowledged by the Parties that the Transaction(s) entered into between them (and the holding or control of the funds by PAYVER) does not constitute a loan and that the Merchant's funds have not been given on the sole condition of being returned in the same amount and of the same kind and quality.
- **18.10** The obligations in this clause shall survive the termination or expiry of this Agreement.

## 19. Disputes with Cardholders

- **19.1** The Merchant must supply the goods and services which have been paid for by a Card in accordance with the terms of its agreement with the Cardholder. The Merchant must accept and process all Transactions lawfully and in good faith.
- **19.2** PAYVER will not, under any circumstances, interfere with, or accept responsibility for, any disputes arising between the Merchant and a Cardholder in respect of goods or services acquired with a Card. PAYVER reserves the right to deduct from its settlement the amount under dispute if this amount would not have been paid by the Cardholder. In such cases, the Merchant is entitled to undertake all such steps as may be necessary to recover this amount, and the right to obtain payment from the Cardholder will be assigned by PAYVER to the Merchant.
- **19.3** "Chargeback" shall mean an unpaid Transaction, which is returned to PAYVER by a Card issuer.
  - o **19.3.1** PAYVER has the right to debit the Merchant or to otherwise recover from the Merchant by any means the amount of a Chargeback. PAYVER's rights to do this are not affected by any arrangement entered into between the Merchant and the Cardholder.
  - o **19.3.2** Card issuers may refuse to settle a Transaction undertaken and processed by a Merchant in any, but not to the following cases and events:
    - **19.3.2.1** The signature on the Transaction Receipt is different from that on the Card;
    - **19.3.2.2** The Transaction was not authorised by the Cardholder and/or no clear instruction was received from the Cardholder;

- **19.3.2.3** The Transaction Receipt is altered after the cardholder has signed it;
- **19.3.2.4** The Transaction Receipt is for any reason incomplete;
- **19.3.2.5** The Card has expired at the time of the Transaction;
- **19.3.2.6** The amount charged does not correspond to the value of the goods and/or services purchased or rendered;
- **19.3.2.7** The sale price is in excess of the authorised floor limit and no authorisation has been obtained from PAYVER;
- **19.3.2.8** A negative authorisation response was given or no authorisation number was given or if given, was not properly recorded or authorisation was not properly requested or obtained;
- **19.3.2.9** The Merchant does not follow the acceptance procedure for Chip and PIN Cards as indicated in Clauses 12, 13, and 15;
- **19.3.2.10** The Cardholder disputed the Transaction because the goods were not received or were defective, or the services were not performed or were inadequate;
- **19.3.2.11** The Transaction was made with a counterfeit or altered Card;
- **19.3.2.12** The Transaction was for any reason fraudulent, ineligible or illegal;
- **19.3.2.13** The Transaction was split into two or more Transactions;
- **19.3.2.14** There has been any departure from the terms of this Agreement in relation to that Transaction.
- **19.3.3** PAYVER may, at its discretion, but shall not be obliged to, elect to treat any such Transaction as valid.
- **19.3.4** In case of such disputes, the Cardholder's issuing bank may request PAYVER to provide a copy of the Transaction Receipt. PAYVER will request this copy and any other documentation, information or explanation relevant to the Transaction from the Merchant in writing. The Merchant is obliged to provide the foregoing within the stipulated time indicated in PAYVER's request, for onward transmission to the Cardholder's issuing bank, in default of which, PAYVER shall have recourse for the gross Transaction amount. For the avoidance of doubt, PAYVER's right of recourse to the gross Transaction amount applies to all Transactions.
- **19.3.5** In addition, PAYVER shall have the right to recourse in the event that the Merchant's loss to billings percentage exceeds in any given month, for any reason whatsoever, five per cent (5%), or such other percentage as PAYVER shall from time to time notify to the Merchant.
- **19.3.6** CNP Transactions are subject to full recourse; the Merchant is fully liable for such Transactions.
- **19.4** Fines Imposed by International Payment Systems
  - **19.4.1** Without prejudice to the provisions of this Agreement, the Merchant shall be liable for all and any fines which may be imposed on the Merchant by an International Payment System in connection with chargebacks and/or fraud.
  - **19.4.2** These fines are over and above PAYVER's Chargeback Handling Fee identified in the merchant application form.

## 20. Prohibitions

- **20.1** The Merchant is prohibited from the following:
  - **20.1.1** Subject to the provisions of this Agreement, refusing to accept payment by any of the Cards listed in clause 11.1;

- o **20.1.2** Requiring any Cardholder to pay a surcharge, whether through any increase in price or otherwise, or allowing a discount for accepting other payment methods, unless specific country laws allow the Merchant to impose a surcharge. In any event, the Merchant must include the surcharge amount in the Transaction amount, not separately. For the purposes of this Agreement, ‘surcharge’ means any fee, charged directly or indirectly to the Cardholder, that is not charged if another payment method is used. The prohibitions in this paragraph do not apply to discounts for payments in cash or for charges (such as bona fide commissions, fees for special handling or expedited service, postage and handling) that are charged to the Cardholder regardless of the form of payment;
- o **20.1.3** Accepting a Card for goods and/or services which fall outside the nature of the business indicated in the Merchant Agreement and/or, in the case of a corporate Merchant, which fall outside its objects as specified in its Memorandum and Articles, statute or similar constitutional document; o
- o **20.1.4** Accepting a Card for prostitution or for goods or services for which the provision thereof is illegal by means of national and/or international law (e.g. drug trafficking, money laundering, terrorist financing, etc.);
- o **20.1.5** Accepting a Card for sales where the amounts charged do not correspond with the value of the goods or services purchased or rendered;
- o **20.1.6** Accepting a Card for sales made under a trade or business name, business affiliation and/or industry which is different from that indicated in the Merchant Application Form; o
- o **20.1.7** Accepting a Card for damages, penalties, fines, charges, costs or fees of any kind which are beyond the normal value of the goods or services purchased or provided;
- o **20.1.8** Accepting a Card for amounts which do not represent a bona fide sale of goods or services at the Merchant’s outlet;
- o **20.1.9** Accepting a Card for a Transaction which the Merchant knows or should know to be fraudulent or not authorised by the Cardholder;
- o **20.1.10** Accepting a Card to collect or refinance an existing debt;
- o **20.1.11** Accepting Cardholder payments for previous Card charges;
- o **20.1.12** Disbursing funds in the form of cash, unless specifically authorised in writing to do so;
- o **20.1.13** Accepting any cash payments with respect to charges for goods or services that are included on a Transaction Receipt resulting from the use of a Card;
- o **20.1.14** Processing a Transaction for collection of a dishonoured cheque;
- o **20.1.15** Accepting the Card or submitting Transactions for settlement on behalf of another Merchant or other third party;
- o **20.1.16** Revoking, or in any way changing/altering any instructions given to the Merchant’s bank, by which PAYVER was authorised in terms of this agreement to debit any sums from the Merchant’s bank account;
- o **20.1.17** Prejudice in any way, PAYVER’s rights under this agreement, to debit any sums/payments due by the Merchant from the Merchant’s bank account;
- o **20.1.18** Splitting the total amount into smaller amounts, to avoid authorisation. Exceptions to this rule are:
  - **20.1.18.1** Purchases in separate departments of a multiple-department store;
  - **20.1.18.2** Individual airline or cruise tickets issued to each passenger if required by airline or cruise line policy;



- **20.1.18.3** Partial amount paid by the Cardholder in cash, cheque or both at the same time;
- **20.1.18.4** Delayed Delivery Transactions: meaning a single Transaction where a Cardholder completes two separate Transaction Receipts. The first Transaction Receipt functions as a deposit for goods or services; the second is to pay the balance due to the Merchant.
- **20.1.19** Retaining Card numbers in full either in paper or in electronic format;
- **20.1.20** Storing any CVV2/CVC2 data in any form for longer than required for the completion of a Transaction;
- **20.1.21** Presenting for payment a Transaction which has failed any one or more of the authentication checks attempted for that Transaction type. Such authentication checks include but are not limited to Cardholder ID, Cardholder signature, PIN, CVV2/CVC2 and 3D Secure authentication. (CVV2/CVC2 = Card Verification Value printed on the back of the Card in or next to the signature panel).
- **20.2** Applicable to AMEX Cards only: The Merchant is prohibited from accepting the Card for gaming goods or services.

## 21. Merchant Liability

- **21.1** If the Merchant has more than one owner or principal, liability under the Agreement rests with all such parties involved on a joint and several basis. This includes liability for Chargebacks.
- **21.2** For the fulfilment of all obligations under this Agreement, the Merchant shall be responsible for the actions of his or her employees or agents.
- **21.3** The Merchant is liable for and shall indemnify, and hold harmless PAYVER, its subsidiaries and any International Payment System from any losses, costs, claims, actions, proceedings and demands (including reasonable legal costs, any penalties or fines imposed by International Payments Systems on PAYVER, any increase in the card issuer interchange fee payable by PAYVER to card issuers which is attributable to the Merchant's breach of the Agreement as well as chargebacks including Chargebacks arising during a 'Chargeback window' as imposed by any International Payment System as part of a monitoring programme for merchants identified and listed on global bulletins as having an excessive fraud or Chargeback activity) that arise out of or in connection with this Agreement, any Transaction or the goods or services relative to the Transaction, any promotion or marketing of any goods or services sold by the Merchant, improper activity of the Merchant, any misrepresentation by the Merchant to the Cardholder or any breach of any obligation or duty that the Merchant owes to the Cardholder, any investigations into Transactions which are shown to involve fraudulent or criminal activity on Merchant's part, any breach of, or failure by the Merchant or his employees, agents or contractors to comply with, the Agreement, any act or omission done wilfully or negligently by the Merchant, his employees, agents or contractors as well as any violation by the Merchant, his employees, agents or contractors of any applicable laws or regulations.
- **21.4** The Merchant shall assist PAYVER as it may require in the handling of any claims or actions brought against PAYVER by any Cardholder or Card issuer and PAYVER shall be entitled to settle or otherwise deal with such claims or actions at its sole discretion.
- **21.5** The parties hereby agree that all fees, charges or assessments assessed directly to the Merchant by the Card Scheme Rules, or to PAYVER by the Card Scheme Rules in connection

with any act or omission done wilfully or negligently by the Merchant, shall be the liability of the Merchant and shall be charged to the Merchant.

- **21.6** Without prejudice to any other rights which PAYVER may have:
  - **21.6.1** Notwithstanding anything contained in The Payment Services Regulations 2017 Nr.752 (Safeguarding of Funds), PAYVER shall be entitled to debit all or any of the Merchant's account/s with PAYVER with all or any amounts due by the Merchant in terms of this Agreement as mentioned above and/or to set off or combine any liability the Merchant may have to PAYVER or otherwise against any amount owing by PAYVER to the Merchant; and
  - **21.6.2** Interest on any overdue amounts shall be due at the maximum rate allowed by law from the due date for payment until payment is received.
- **21.7** Any written statement by PAYVER of the amounts owing under this Agreement shall, in the absence of manifest error, be conclusive and binding on the Merchant.
- **21.8** All and any payments to be made by the Merchant to PAYVER in terms of this Agreement shall be exclusive of VAT, unless otherwise agreed by written means.

## 22. POS Terminal

- **22.1** The Merchant shall ensure that the Terminal complies with all applicable requirements as may be outlined by local laws, rules and regulations and by the Card Schemes;
- **22.2** The Merchant is to ensure that the entry of a user's PIN on the Terminal/s is not recorded by CCTV.

## 23. Ongoing Monitoring

- **23.1** The Merchant shall be subject to periodic ongoing monitoring which shall include, but is not limited to, the periodic review of Merchant physical location, website and of customer due diligence documentation submitted to PAYVER.
- **23.2** Where the Merchant is obliged to provide additional or updated documentation or make any change to its website or other requirement in light of said ongoing monitoring procedure the Merchant shall be automatically placed into an Internal PAYVER Program. The Merchant shall provide said documentation or make any requisite change within seven (7) business days of any such request made by PAYVER.
- **23.3** The terms of the program shall be notified to the Merchant in a timely manner.
- **23.4** Should Merchant not comply with any such request made by PAYVER as outlined in this clause PAYVER shall have the right to terminate this Agreement.

## 24. Duration and Termination

- **24.1** This Agreement shall come into effect as on the date PAYVER accepts Merchant following its customer due diligence procedures and shall remain in force for a term of three (3) years, provided that either party may terminate this Agreement by giving the other party at least 30 days written notice of its intention to terminate, whether in relation to all or any one or more of the Card types accepted according to this Agreement.
- **24.2** Without prejudice to the foregoing, PAYVER reserves the right to exercise immediate termination of the Agreement, whether in relation to all or any one or more of the Cards:

- o **24.2.1** In the event of termination by the Provider of the Relationship Agreement with the Merchant; and/or
- o **24.2.2** In the event of material changes in the business line or practices of the Merchant; and/or
- o **24.2.3** In the event of unauthorised changes to banking details; and/or
- o **24.2.4** In the event of the Merchant account being inactive for a period of at least 2 months; and/or
- o **24.2.5** In the event that the loss to billings percentage exceeds, for any reason whatsoever, five per cent (5%), or such other percentage as PAYVER shall from time to time notify to the Merchant; and/or
- o **24.2.6** If the Merchant exceeds a monthly chargeback to Transaction rate of 1% per month; and/or
- o **24.2.7** If the Merchant is in any way or is found to be treating Cardholders unequally; and/or
- o **24.2.8** If the Merchant is in any way or is found to be offering poor quality goods or services; and/or
- o **24.2.9** If the Merchant violates the terms and conditions of the Agreement, including (without limitation), failure to pay to PAYVER any amount due under this Agreement and excessive chargebacks incurred by the Merchant; and/or
- o **24.2.10** If the Merchant in PAYVER's reasonably exercised judgment is or may be engaged in fraudulent or illegal activity; and/or
- o **24.2.11** If the Merchant is insolvent or bankrupt, or goes into or commences proceedings for liquidation or makes an agreement with its creditors generally; and/or
- o **24.2.12** If the Merchant is a partnership, and the partnership ends; and/or o
- o **24.2.13** If the Merchant is an individual and he/she dies; and/or
- o **24.2.14** If the Merchant is a legal entity and control of the Merchant or its business changes; and/or
- o **24.2.15** If any event or a series of events occur, which in PAYVER's opinion may affect the Merchant's ability or willingness to comply with any of his obligations under this Agreement or may damage PAYVER's reputation or that of any International Payment System; and/or
- o **24.2.16** If the Merchant prejudices in any way PAYVER's right in terms of this agreement to debit the Merchant's account with any sums/payments due by the Merchant; and/or
- o **24.2.17** If original or certified or apostilled documents are requested from Merchant and such documents are not received at the PAYVER registered address above within thirty (30) days from the date of contract. In such an eventuality PAYVER reserves the right to freeze funds and/or withhold any payments due to the Merchant as per Clause 17.2 of these Terms and conditions; and/or
- o **24.2.18** If the Merchant is entered into an Internal PAYVER program and the Merchant does not comply with the requirements of said program; and/or
- o **24.2.19** If the Merchant exceeds a monthly chargeback to Transaction rate of 1% per month; and/or
- o **24.2.20** For any reason valid at law.
- **24.3** Termination of this Agreement will not affect the liability of any of the parties towards the other party, existing at such date of termination, including but not limited to, any liability on the Merchant's part in respect of Chargebacks which are notified to PAYVER at any time after the Agreement has ended.

- **24.4** If this Agreement is terminated by PAYVER for cause, the Merchant may be listed on the Visa Merchant Alert Service. The Visa Merchant Alert Services is a Terminated Merchant Database (the “Database”) established pursuant to the Guidelines for Terminated Merchant Databases. The Merchant has the right to request access to, and rectification of, the personal data concerning the Merchant, which is held on the Database.
- **24.5** Queries or complaints regarding the inclusion of the Merchant’s data in the Database should be discussed with PAYVER’s personnel. If the Merchant is not satisfied with the reply or no agreement has been reached with PAYVER, the Merchant may lodge a complaint with the Data Protection Commissioner.
- **24.6** If this Agreement ends, the Merchant must promptly return to PAYVER all equipment and materials supplied by PAYVER and must pay PAYVER immediately all and any amounts due under this Agreement.

## 25. Other Matters

- **25.1** In addition to the clause above relating to personal data, the information contained herein and related to the activities of the Merchant can be exchanged by PAYVER with any member of the PAYVER Group (PAYVER and its subsidiaries), the Group’s associates and agents and with any other member or controlling body of the relative International Payment System.
- **25.2** Subject to the foregoing clause, PAYVER and the Merchant agree to keep confidential and not disclose to any third party any information received from the other that is not publicly available and the terms of this Agreement including, without limitation, the commission and/or Transaction fee indicated in the merchant application form of this Agreement. The Merchant shall take all steps necessary to prevent the transfer or disclosure of Cardholder information to any third party and will not use or disclose the names, addresses, account numbers and Transactions of the Cardholders, except as otherwise provided in this Agreement. For the avoidance of doubt, the obligations in this clause shall survive the termination or expiry of this Agreement.
- **25.3** The Merchant shall not compile or use any lists of Cardholders or Card numbers or other information related to the Cardholders other than for the proper performance of its obligations or exercise of its rights under the Agreement.
- **25.4** The Merchant hereby expressly agrees that it shall be solely responsible for:
  - **25.4.1** Establishing, hosting and maintenance of its Web site(s) and its connection to the Internet (the “Merchant Web Site(s)”), fulfilling all orders for products and services sold by Merchant to its users on the Merchant Web Site(s) or otherwise, including without limitation transmitting the Merchant’s Transaction information and data to PAYVER servers via PAYVER web site and ensuring that the data transmitted in conjunction with the Services is accurate, complete and in the form as requested by PAYVER , and is not corrupted due to Merchant’s systems. The Merchant is also responsible for reviewing the Transactions in its account on a regular basis and notifying PAYVER promptly of suspected unauthorised activity through its account;
  - **25.4.2** Maintaining commercially reasonable business practices in conjunction with use of the Services, ensuring the security and privacy of its customer data and complying with all applicable laws and regulations with respect to its use of the Services;
  - **25.4.3** Updating to the most current Software and complying with PAYVER’s requests for reasonable action on the Merchant’s part, to the extent necessary, to maintain security and integrity of the Services.

- **25.5** Merchant represents and warrants that it shall comply with all applicable privacy, consumer, data protection and other laws and regulations with respect to its:
  - **25.5.1** provision, use and disclosure of the data;
  - **25.5.2** dealings with the users providing the data; and
  - **25.5.3** use of the Services
- **25.6** The Merchant may not for any reason, reverse engineer, extrude or retrieve any internal data and system structure while using PAYVER's services and/or any system utilized by PAYVER to process payments. If any of the said system structure or data became available or visible to the Merchant inadvertently, the Merchant shall immediately contact the PAYVER in order to eliminate such possibility in a future and immediately delete such information from its system. Any usage of such information for the Merchant's financial, promotional and marketing or any benefit by the Merchant is prohibited.
- **25.7** The Merchant agrees to:
  - **25.7.1** Provide PAYVER with details of all Transactions as set out in this Agreement or as otherwise notified by PAYVER. The Merchant must not present or allow anyone else to present to PAYVER more than one set of Transaction data for each Transaction.
  - **25.7.2** Retain in a secure place legible copies of all Transaction vouchers, terminal tally rolls, invoices, receipts and other documentation evidencing Cardholder's authority to debit Cardholder's account with the Transaction amount. All documents are to be kept for at least 18 months from the date of the relevant Transaction and the Merchant is to provide PAYVER with copies on request.
  - **25.7.3** If requested, provide PAYVER with the latest audited and/or management accounts and any other information which PAYVER may require in order to assess the Merchant's financial position.
  - **25.7.4** Notify PAYVER in writing of any change in circumstances which may affect the Merchant's position or status or ability to perform its obligations under the Agreement including, but not limited to, any change of address, bank account, nature of business, and any projection or forecast previously provided to PAYVER.
  - **25.7.5** Provide such reasonable assistance as PAYVER may require for prevention and detection of money laundering or any other fraudulent or criminal activity and for general compliance with the Agreement and with any applicable laws, rules and regulations. PAYVER shall be entitled to suspend the processing of, or withhold payment of, or in the event PAYVER has already credited the Merchant, debit the Merchant with, an amount equivalent to the value of any Transaction pending completion of PAYVER's investigation where PAYVER has reasonable suspicion of a breach of this Agreement or money laundering or any other fraudulent or criminal activity. PAYVER may retain such amount until it has concluded its investigations or until PAYVER is reasonably satisfied that the Transaction/s in question is/are no longer subject to Chargeback rights or as may be required by law, whichever is longer.
  - **25.7.6** Assist PAYVER with any financial or reconciliation query by providing such Transaction details and/or other documentation or evidence as PAYVER may require.
  - **25.7.7** Co-operate with PAYVER when PAYVER is carrying out an inspection at the Merchant's premises for the purpose of ascertaining compliance with this Agreement.
  - **25.7.8** Notify PAYVER if the Merchant changes the manner in which it undertakes Transactions including (without limit) acceptance of point of sale, authorisation method and method of submission to PAYVER.

## 26. Limitation of Liability

- **26.1** PAYVER will endeavour to give a complete service at all times, however it shall not be liable to any person if it is unable to perform its obligations under this Agreement due to the failure of any machine, computer, telephone line or software, whether belonging to or licensed to PAYVER or not, any industrial dispute or anything which is outside the control of PAYVER.
- **26.2** Without prejudice to clauses 17, 18, 19, 21, and 25 above, neither PAYVER nor the Merchant will be liable to the other for any incidental, indirect, consequential, pure economic loss or special damages of any kind, however arising.
- **26.3** The Merchant shall hold PAYVER harmless and fully indemnified against any claim, loss or liability incurred by the Merchant as a result of the inclusion of its data in the Database, unless due to fraud, wilful default or gross negligence by PAYVER.

## 27. Information from PAYVER and Merchant Communication

- **27.1** Merchant statements will be made available to the Merchant electronically.
- **27.2** The Merchant is responsible for checking this information (whether on paper or electronically) and to contact PAYVER immediately if the information is considered to be incorrect in any respect.
- **27.3** Unless otherwise provided, any notice period required to be given under this Agreement shall be reasonable and any statement, notice, communication, changes to this Agreement or other document which is required to be given or served by PAYVER under this Agreement shall be notified to the Merchant either in writing, including electronic means such as email, where permitted, by publication in the press or on the corporate web-site [www.PAYVER.eu](http://www.PAYVER.eu). When mailed, any such document shall, (at PAYVER's sole discretion) be sent either to the Merchant's address stated in this Agreement, or at any other address notified in writing by the Merchant to PAYVER. If the Merchant is a partnership or a company, a document served on any one of the partners or the directors or at the last notified address of the partnership or company will be deemed to have been validly mailed.

## 28. Assignment

- **28.1** This Agreement is personal to the Merchant and the Merchant is not entitled, without PAYVER's prior written consent to assign or transfer or permit the exercise by any person of any of its rights under the Agreement, or transfer or subcontract any of its obligations under the Agreement.
- **28.2** PAYVER may assign, subcontract or transfer this Agreement in whole or in part to any of its holding, parent, subsidiary or affiliate companies or to any International Payment System or the designee of such International Payment System, upon prior written notice to the Merchant, provided that such assignee is fully capable of performing PAYVER's financial and business obligations hereunder.

## 29. General

- **29.1** Without prejudice to the other provisions of this Agreement, PAYVER may, at any time, require the Merchant to provide guarantees or other securities for the Merchant's obligations

under this Agreement and/or to take up an insurance policy acceptable to PAYVER to cover all or any of the Merchant's obligations and liability under this Agreement and/or to apply special terms or conditions in relation to the Merchant's acceptance of Transactions. PAYVER may rely on any guarantees or other security provided to PAYVER now or in the future.

- **29.2** Any failure or delay by PAYVER in enforcing any right, power or remedy under this Agreement or applicable law shall not be deemed to be a waiver thereof unless in writing signed by PAYVER.
- **29.3** If any provision of the Agreement is or becomes illegal or invalid, that provision will be deemed deleted from the Agreement and the remaining provisions shall continue in force.
- **29.4** Any notice to be given by either of the parties under the Agreement shall be given in writing. It must be delivered in person or, by post, by fax or by email at the address or numbers set out in the Merchant Registration Form or at such other addresses or numbers as are notified by one party to the other in writing from time to time.
- **29.5** This Agreement together with the documents referred to in this Agreement form the entire agreement between the parties in relation to the subject matter hereof. Neither of the parties has relied on any verbal or other written information provided by the other unless it is set out or expressly referred to in those documents, except that PAYVER has relied and will continue to rely on all verbal and written information provided by the Merchant in relation to its business or status.
- **29.6** The Merchant may obtain information on the Card interchange fees as well as the relative rules and regulations from their relative websites (e.g. Visa - [www.visaeurope.com](http://www.visaeurope.com) /MasterCard - [www.mastercard.com](http://www.mastercard.com)).
- **29.7** During the duration of this Agreement, the Merchant may at any time request a copy of this Agreement or as may be amended from time to time. Unless otherwise agreed, the English language will be used for the purpose of interpreting the Agreement and for all communications in connection with the Agreement.
- **29.8** Queries or complaints regarding this Agreement should be discussed with PAYVER's Customer service personnel. The Merchant may lodge a complaint either by phoning PAYVER's customer relations centre on +442074896480 or by writing to VP in charge of Merchant Acquiring, PAYVER, 80 Coleman Street, London, United Kingdom, EC2R 5BJ.

If the Merchant is still not satisfied with PAYVER's reply or no agreement has been reached with PAYVER, the complaint may be directed to:

**Financial Services Ombudsman**

<http://www.financial-ombudsman.org.uk/consumer/complaints.htm> by:

- Phone: +44 300 123 9 123 or +44 800 023 4567 from 8am to 8pm Monday to Friday, and from 9am to 1pm on Saturdays.
- E-mail: [complaint.info@financial-ombudsman.org.uk](mailto:complaint.info@financial-ombudsman.org.uk)
- Online: <https://help.financial-ombudsman.org.uk/help>

## 30. Principal and Authority To Sign

- **30.1** The Merchant has contracted with PAYVER as principal and not as agent for any person.
- **30.2** The Merchant represents that the individual/s signing the Application Forms and the Agreement has/have authority to do so and to bind the Merchant to the provisions of this Agreement.

## 31. Jurisdiction

- **31.1** This Agreement shall be construed in accordance with the Laws of England and Wales and any disputes shall be subject to the non-exclusive jurisdiction of the Courts of England and Wales.

The Parties agree that the Courts of England and Wales have jurisdiction to settle any disputes in connection herewith and accordingly submit to the jurisdiction of such Courts. The Merchant waives any objection to the England and Wales Courts on grounds of inconvenient forum or otherwise as regards proceedings in connection herewith and agree that a judgment or order of such a Court shall be conclusive and binding on them and may be enforced against them in the Courts of any other jurisdiction.

## 32. Counter-Parts

- **32.1** This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement
- [Annex 1](#) to the Terms and Conditions

## 33. Interpretation

- **33.1** Capitalised terms defined in the Terms and Conditions (as hereunder defined) and used herein shall have the same meanings as in the Terms and Conditions, unless otherwise defined in Clause 33.2.
- **33.2** The following capitalised terms shall bear the meaning ascribed thereto:
  - **33.2.1** “Account” means the clients’ accounts of the together with all moneys or balances thereof, deposited therein, all accrued or accruing interest and all related rights bearing account number;
  - **33.2.2** “Agreement” means the merchant agreement entered into by and between the Pledgor in its capacity as merchant and the Pledgee in its capacity as acquiring/authorisation processor, including the annexes and schedules thereto;
  - **33.2.3** “General Conditions” shall mean the terms and conditions of the Agreement outlined above;
  - **33.2.4** “Pledged Monies” means all and any monies of the Pledgor deposited in or transferred to Account;
  - **33.2.5** “Secured Indebtedness” means any sums due by the Pledgor to the Pledgee under the Agreement (which for the avoidance of doubt includes the Merchant Registration Form, the Fees, the Services, and the General Conditions), as the same may be amended and novated from time to time whether by way of principal, interest (before or after judgment) or otherwise as well as all sums owing to the Pledgee by the Pledgor, whether alone or with others, and/or any existing or future indebtedness of the Pledgor to the Pledgee, all and any fees and/or any expenses which the Pledgee may hereafter incur in the protection or enforcement of its security hereunder, and in order to secure any present or future direct or guarantee liabilities of the Pledgor towards the Pledgee;



- **33.3** For the purposes of this Agreement, references to an Account shall, if applicable, be deemed to refer to Pledgee client Accounts. References to a bank shall, if applicable, be deemed to refer to such Banks, which at which Pledgee holds clients Accounts.

## 34. Pledge

- **34.1** For the purpose of securing the Secured Indebtedness, the Pledgor herewith pledges to the Pledgee the Pledged Monies. The Pledged Monies are blocked for the benefit of the Pledgee.
- **34.2** The parties understand that the Account is a clients' account maintained by the Pledgee and into which, subject to applicable legislation, the Pledgee holds moneys belonging to a number of merchants in relation to which the Pledgee provides merchant acquisition services. The pledge created by virtue of this agreement shall be construed to relate limited to the Pledged Monies and not to any other monies which may from time to time be held by the Pledgee for the benefit of other merchants in the Account.
- **34.3** The liability of the Pledgor hereunder and the pledge is and shall be continuous and shall subsist for all the time the Pledgor shall have an indebtedness towards the Pledgee and until this pledge is cancelled by the Pledgee.
- **34.4** The Pledged Monies shall remain pledged and blocked and the legal validity and scope of this Pledge and block shall in no manner be affected by any waiver of the Pledgee or any release by the Pledgee of any part of the Pledged Monies from the pledge created hereunder.
- **34.5** The Pledgor shall not, except with the Pledgee's consent, make any disposition with regard to the Pledged Monies or the Account. The Pledgor shall inform the Pledgee of any and all attachment or similar action which may be taken by a third party against the Pledged Monies associated therewith.
- **34.6** The Pledgee shall, at all times, have the right to inspect the Pledgor's books and records or have them inspected by a third party which is professionally bound by confidentiality (including tax and legal consultants).
- **34.7** If any provision of this Pledge is found to be invalid, this shall not affect the validity of the remaining provisions. In such event the Parties shall agree to a substitute provision that fulfils fully or as closely as possible the economic purpose of the invalid clause.
- **34.8** The Pledgor herewith confirms that pledging and blocking of the Pledged Monies is not restricted by any restraints on disposal or third party rights whatsoever.
- **34.9** Any and all charges, fees or other costs whatsoever which may become due through or in connection with this pledge and blocking shall be borne by the Pledgor and shall be promptly reimbursed to the Pledgee.

## 35. Default

- **35.1** In the event that the Pledgee demands payment of any sums due to the Pledgee by the Pledgor under the Agreement, the Pledgee shall be entitled (but not obliged) to use the Pledged Monies and shall be entitled to cover any of the Pledgor's unsettled debts under the Agreement. For this purpose, the Pledgor herewith authorises and provides a mandate to the Pledgee to utilise the Pledged Monies in the Account in order to settle any liability of the Pledgor to the Pledgee. In order to exercise this right, it shall not be necessary for the Pledgee to remind the Pledgor of the overdue debt or for the Pledgee to inform the Pledgor prior to exercising its rights to satisfy unsettled debts.

- **35.2** To the extent applicable, this pledge is also regulated by The Financial Collateral Arrangements (No. 2) Regulations 2003 (Amendment) Regulations 2009.
- **35.3** In addition to the rights conferred by law, the Pledgee shall be entitled, in terms of the provisions of the Set-Off and Netting on Insolvency Act, 2000 (as amended), to set-off against monies due to it under this Pledge all or any monies from time to time standing to the credit of the Pledgor (whether sole or joint with any other person(s)) with the Pledgee (or any subsidiary of the Pledgee).
- **35.4** For the purposes of Clause 35.3:
  - **35.4.1** the Pledgee shall be entitled (as well before as after demand) to combine or consolidate all monies now or hereafter standing to the credit of the Pledgor on any account with the Pledgee and in any currency;
  - **35.4.2** if the obligations are in different currencies, the Pledgee may convert either obligation at a market rate of exchange in its usual course of business for the purposes of the set-off; and
  - **35.4.3** if either obligation is unliquidated or unascertained, the Pledgee may set-off in an amount estimated by it in good faith to be the amount of that obligation.
- **35.5** However, it is expressly agreed that the liability of the Pledgor under this Pledge shall in no way be extinguished, discharged or reduced or in any way affected by any right of set-off or counter-claim or any right whatsoever against the Pledgee and the Pledgor is hereby expressly waiving all rights (including any and all rights of action) the Pledgor may have against the Pledgee until after payment in full of the Secured Indebtedness to the satisfaction of the Pledgee.

## 36. Miscellaneous

- **36.1** This Agreement shall be governed by and construed in accordance with the laws of England and Wales.

The Parties agree that the Courts of England and Wales have jurisdiction to settle any disputes in connection herewith and accordingly submit to the jurisdiction of such Courts. The Pledgor waives any objection to the England and Wales Courts on grounds of inconvenient forum or otherwise as regards proceedings in connection herewith and agree that a judgment or order of such a Court shall be conclusive and binding on them and may be enforced against them in the Courts of any other jurisdiction.