

## **MERCHANT AGREEMENT**

### **Between:**

1. **SysPay Limited**, an EU Financial Institution registered by the MFS #C51532, hereinafter referred to as '**SYSPAY**' or '**The Company**'

### **And,**

2. **#MERCHANT NAME#**, with registered office in **#MERCHANT ADDRESS#**, hereinafter to be referred to as '**Merchant**', duly represented by M. **#NAME SURNAME#**, duly empowered

URL: **#WEBSITE URL** or **N/A#**

SysPay and the Merchant are hereafter collectively referred to as the "**Parties**" and individually as a "**Party**".

### **It is agreed as follows:**

#### **1. DEFINITIONS AND INTERPRETATION**

1.1 Capitalised words have the meaning given to them in Article 1.2 except where expressly defined elsewhere in this Agreement.

1.2 In this Agreement, the following words shall have the following meanings unless the context otherwise requires:

**Agreement** means this agreement including its Appendixes and any other document or webpage referred to within this agreement.

**Authorisation** means the process of referring a Transaction to the Authorisation Centre for approval for the Transaction to go ahead and to verify that, at the time of the Transaction, there is available credit on the relevant Card and that the Card has not been reported lost or stolen and "**Authorised**" and "**Authorising**" shall be construed accordingly.

**Authorisation Centre** means SysPay's Transactions centre.

**Banking Day** means any day other than Saturday and Sunday or a bank or public holiday unless otherwise agreed in writing between the parties.

**Batch** means a single submission of a group of Transactions for Settlement.

**Card** means all valid and current payment cards approved by SysPay.

**Cardholder** means an individual, company, firm or other body to whom a Card has been issued at any time and who is authorised to use that Card.

**Card Schemes** means Visa, MasterCard, Maestro and such other Card Schemes able to be processed by SysPay.

**Card Scheme Rules** means the rules, regulations and operating instructions issued by particular Card Schemes, as may be varied and updated from time to time.

**Change of Control** means, in respect of any corporate body, any change in the entity or entities having Control of that corporate body.

**Chargeback** means a demand by an Issuer, a bank or a Card Scheme to be repaid a sum of money by SysPay in respect of a Transaction which has been previously subject to Settlement and for which SysPay have been paid by the relevant Card Scheme.

**Contract Year** means a period of twelve (12) months commencing on the Effective Date of this Agreement and, thereafter, the period of twelve (12) months commencing on each anniversary of that date.

**Control** means the ability to control directly or indirectly the power to direct or cause the direction of the management and policies of the other person, whether through the ownership of voting shares, by contract or otherwise and **Controls** and **Controlled** will be interpreted accordingly.

**Customer** means the Merchant's clients.

**Effective Date** means the date of execution of this Agreement by all parties, as indicated in the first page of this Agreement.

**Equipment** means all equipment used in connection with this Agreement, including in particular any imprinter, electronic data capture device and including any replacements, substitutions or additions thereto.

**Fees & Charges Appendix** means the Appendix listing the fees and charges payable by the Merchant to SysPay for the Payment Processing Services as set out at **Appendix B** and as issued and varied by SysPay in SysPay's absolute discretion from time to time.

**Insolvency Event** means one or more of the following events:

- (i) a petition is filed, a notice is given, a resolution is passed, an order is made, for or in connection with the winding-up of a Party (other than a solvent winding up for the purpose of a bona fide scheme or reorganisation, amalgamation or reconstruction) or the dissolution of a Party;
- (ii) the making by a court of competent jurisdiction of any order for the appointment of an administrator, receiver, examiner, interim examiner, liquidator, provisional liquidator or similar officer in respect of the whole or any part of a Party's assets, or if notice of intention to appoint any such officer is given;
- (iii) a Party proposes to enter or enters into any composition or arrangement with its creditors generally or any class of creditors;
- (iv) a Party suspends, or threatens to suspend, payment of its debts or, being a company, is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts;
- (v) a person becomes entitled to appoint a receiver over the assets of a Party or a receiver is appointed over the assets of a Party;
- (vi) a Party, being an individual or an entity, is the subject of a bankruptcy petition or order;
- (vii) a creditor or encumbrancer of a Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of a Party's assets and such attachment or process is not discharged within 14 days;
- (viii) a Party suspends or ceases or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (ix) the occurrence of any event in any other jurisdiction analogous to any of the foregoing described above.

**Issuer** means an organization or financial institution such as but not limited to a bank, authorised by a Card Scheme to issue Cards and whose name appears on the Card as the issuer of such Card or who enters into a contractual relationship with the Cardholder for the use of the Card.

**Losses** means any and all claims, damages, demands, losses, costs, Chargebacks, fines, penalties, liabilities and expenses (including reasonable legal fees and expenses) of an entity.

**Nominated Bank Account** means the bank account which the Merchant has advised SysPay is to be debited and credited with funds due from and to the Merchant.

**Payment Card Industry Data Security Standards or PCI** means a set of comprehensive requirements to minimise the potential for Card and Cardholder data to be compromised and used fraudulently, released from time to time by the PCI Security Standards Council.

**Payment Processing Services** means the Settlement of funds relating to Transactions which will enable the Merchant to receive, net of Fees and Charges, the amount of payment made by Customers.

**Refund** means where the Merchant agrees to make a refund to the Customer of the whole or part of any Transaction.

**Representative** means an employee, officer, agent, contractor or sub-contractor who is appointed from time to time as a representative to act on behalf of a Party.

**Reserve Account** means an account under SysPay's sole control where funds due to the Merchant are credited until SysPay agrees to release the funds to the Merchant, SysPay, Card Schemes or Issuers.

**Sale Form (or invoice)** means any document(s) stating (i) the Merchant's name, location and national identification number, (ii) the information embossed on the Card presented by the Customer (either electronically or manually), (iii) the Transaction's date, (iv) a brief description of the goods and/or services involved, (v) the Transaction's authorisation number if any, (vi) the

total amount of sale of goods/services including any applicable taxes, or the credit's amount.

**Settlement** means the payment of amounts to be paid by SysPay to the Merchant or by the Merchant to SysPay under this Agreement.

**Statement** means the regular advice provided to the Merchant advising of the Transactions performed by the Merchant and the charges due by the Merchant.

**Terminal** means an electronic device approved by SysPay and used to capture Card details, for obtaining Authorisations and submitting Transactions to a Transaction acquirer; the term also includes any PIN entry device (PED) if it is a separate device.

**Termination** means the termination of this Agreement by any of the Parties in accordance with [Article 12](#).

**Termination Events** means each of the events set out in [Articles 12](#)

**Third Party** means any person or entity which is not a party to this Agreement including as "Third Parties" any company related or unrelated to the Merchant being or not being members of its Group, contractors and sub-contractors.

**Transaction** means an act between the Customer and the Merchant that complies with the requirements set out at [Article 3](#) regarding the purchase or return of goods and/or services where the Customer accepts to use Payment Processing Services made available by SysPay to the Merchant.

**Transaction Data** means all data relating to Transactions, including Sales Forms and Transaction Records.

**Transaction Record** means the particulars of a Transaction required from the Merchant by SysPay in order to process a Transaction in the form as prescribed by SysPay.

- 1.3 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted with or without amendment.
- 1.4 references in this Agreement to **days** shall be references to calendar days, any references to **months** shall be references to calendar months unless expressly stated otherwise;
- 1.5 If there are any inconsistencies between this Agreement and the Applicable Laws, the Applicable Laws will prevail to the extent of such inconsistencies.

## **2. SERVICES**

- 2.1 **Merchant's activity.** The Merchant offers goods and/or services to Customers of a kind that is neither illegal towards Applicable Laws nor listed as a prohibited activity by [Appendix A](#). Customers may pay their consumption of services / acquisition of goods to Merchant through different payment methods, according to many channels and in various currencies.
- 2.2 **Payment Processing Services.** SysPay agrees to provide to the Merchant, to the maximum extent permitted by Applicable Law and the Card Scheme Rules, Payment Processing Services which will enable the Merchant to receive, net of Fees and Charges, the amount of payments made by their Customers through various payment means, in various currencies, via different payment channels such as, but not limited to, online payments, mobile payments, payments through POS Terminals. The Payment Processing Services may be varied or supplemented from time to time upon SysPay's own decision in accordance with the terms of this Agreement.
- 2.3 **Services changes.** Services proposed by SysPay may vary from time to time and the Merchant hereby represents that they can either accept such changes or terminate the Contract.

## **3. TRANSACTIONS**

- 3.1 **Processing of Transactions.** The Merchant acknowledges that Transactions processed by SysPay are not a guarantee of acceptance of effective payment of such Transactions. Such processing may not, under any circumstances validate fraudulent Transactions, or Transactions made in breach of Card Scheme Rules or Applicable Laws, or Transactions Customers / Cardholders / Issuers / user of payment means deny having participated in.
- 3.2 **Authorisation Refused.** If Authorisation is refused the Transaction must not be proceeded and the Merchant must not seek Authorisation (for a Transaction on behalf of the same Customer / Cardholder / Issuer) for any different amount.
- 3.3 **Merchant's Software dysfunction.** The Merchant acknowledges that SysPay denies any responsibilities for irregular Transactions caused by the Merchant's software dysfunctions, errors as well as by any other failure in the communication process between the Merchant software and SysPay's payment platform.

- 3.4 **Sale Form.** Any Transaction shall be supported by a Sale Form.
- 3.5 **Record Keeping.** The Merchant must retain all records and documents concerning the Transactions, including Transaction Datas for a minimum of seven (7) years after the date of the relevant Transaction. On SysPay's request, the Merchant will provide, at their own cost, SysPay with any records, documents and Sale Forms within seven (7) days upon request.
- 3.6 **Antifraud.** Any Transaction shall comply with SysPay's antifraud rules. SysPay may refuse any Transaction that may appear, at SysPay's absolute discretion, as suspicious or fraudulent.

#### **4. MERCHANT COMPLIANCE WITH AGREEMENT AND PCI DSS**

- 4.1 **General.** The Merchant shall comply with this Agreement and the Merchant accepts that all Transactions and Refunds will be submitted in accordance with this Agreement, the Card Scheme Rules; Issuer's standards and all Applicable Laws. The Merchant acknowledges that any Transaction(s) accepted by SysPay which are in breach of this Agreement, the Card Scheme Rules, or Applicable Laws or such other requirements as SysPay may notify to Merchant from time to time, and/or which is disputed by the relevant Customer and/or Cardholder and/or Issuer and/or provider of payment means, may be treated as Chargeback to the Merchant in accordance with Article 5 and the Merchant also acknowledges that the Card Schemes and Issuers and/or provider of payment means may impose fines, penalties and additional fees in connection with such disputed Transactions, which shall be borne exclusively by the Merchant.
- 4.2 **Third Parties.** The Merchant hereby declares that all Transactions able to be processed by virtue of the Agreement are done on their own behalf and for the purpose of their own business and never on the behalf of a Third Party for any other business, such business being either illegal or not and/or listed or not in Appendix A.
- 4.3 **Nominated Bank Account.** The Merchant must at all times during the term of this Agreement, maintain a Nominated Bank Account acceptable to SysPay for the purpose of enabling SysPay to credit payments due to the Merchant as a result of a Transaction(s), and to debit any sums payable by the Merchant to SysPay, either by direct debit or otherwise as required by SysPay. If the Merchant intends to change their Nominated Bank Account, the Merchant must require SysPay's approval with not less than thirty (30) days' prior notice in writing and initiate a new payment instruction in relation to the Merchant's new Nominated Bank Account on the terms contained in this Agreement.
- 4.4 **PCI DSS.**
- (a) PCI compliance validation is focused on, among other things, the Merchant Equipment where Transaction Data is retained, stored and/or transmitted. For the purposes of complying with the PCI, upon SysPay's written request, the Merchant shall provide SysPay with information regarding the extent to which he stores Transaction Data.
  - (b) The Merchant agrees to comply and maintain compliance with PCI, Visa "Account Information Security Program" and the MasterCard "Site Data Protection Program" and any other similar program as stipulated by the Card Schemes and Issuers and any changes to those programs and standards which may occur from time to time and the Merchant will notify SysPay immediately if any data breach may occur or is likely to occur.
  - (c) The Merchant acknowledges and agrees that:
    - (i) it is a requirement of the Card Schemes that the Merchant complies with PCI, complies with such obligations and maintains such compliance with PCI;
    - (ii) any failure of the Merchant to comply with PCI may lead to fines being raised by the Card Schemes, for which the Merchant shall be wholly liable;
    - (iii) any fines which SysPay may receive as a result of the Merchant non-compliance with this Article 4.4 and the Card Schemes requirements for PCI shall be passed to the Merchant and the Merchant shall be wholly liable to pay such fines;
    - (iv) the Merchant shall ensure that he complies with the requirements of this Article 4.4, SysPay may request details of the security systems applied by the Merchant, as the case may be, or may carry out an inspection or audit of the Merchant systems, including any relevant computer systems. In the event that SysPay wishes to carry out an inspection, SysPay will give advance notice to the Merchant specifying the date and nature of the inspection.
  - (d) To achieve and maintain compliance with PCI, the Merchant will and shall procure to provide SysPay with a nominated point of contact responsible for liaising with SysPay regarding progress in achieving and maintaining compliance with PCI.
  - (e) Details of PCI and compliance requirements can be accessed via the following website at <http://www.pcisecuritystandards.org>. SysPay will provide the Merchant with details of such data standards and the Card Schemes security programs, on receiving a written request from the Merchant.
  - (f) At any time, proof of PCI compliancy can be requested by SysPay from the Merchant who will provide up to date

documentation within 7 days.

- (g) At any time, the Merchant will have the responsibility to ensure that PCI compliancy is abode by its employees / operators / sub-contractors/ and IT suppliers.

**4.5 Other requirements.** The Merchant represents that they shall comply with all requirements imposed by SysPay, as indicated in this Agreement, as set forth below and as issued from time to time during the performance of the Agreement:

- (a) The Merchant may only accept transactions using the website/s and/or mobile application/s or taken at the premises, as applicable, that have been approved in advance by SysPay. New website/s and/or mobile application/s or new premises can only be added upon the prior written approval of SysPay;

- (b) The Merchant shall provide SysPay with the current and any changes to the address of each of its offices, all "doing business as" (DBA) names used by the Merchant and a complete description of goods sold and services provided. Such changes, that have to be compliant with the Card Scheme Rules, can only be made by the Merchant after SysPay gives its consent in writing;

- (c) The Merchant acknowledges and agrees:

- to comply with all applicable policies of SysPay and Card Scheme Rules as amended from time to time;
- not to contest the ownership of any intellectual property rights of Card Schemes for any reason;
- the Card Schemes may at any time, immediately and without advance notice, prohibit the Merchant from using any of their intellectual property rights for any reason;
- in case of any inconsistency between any provision of this Agreement and the Card Scheme Rules, the Scheme Rules will govern and take precedence;
- the Card Schemes have the right to enforce any provision of the Card Scheme Rules and to prohibit the Merchant and/or SysPay from engaging in any conduct the Card Schemes deems could injure or could create a risk of damage to the Card Schemes, including damage to reputation, or that could adversely affect the integrity of the interchange system, the Card Schemes confidential information as defined in the Card Schemes Rules or both;
- the Merchant shall not take any action that could interfere with or prevent the exercise of this right by the Card Schemes;
- 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
- unless otherwise required in terms of Applicable Laws, the Merchant shall not discriminate between persons paying for goods or services in cash or by utilizing a Card;
- Merchant's Terms and Conditions may not contain any terms that conflict with this Agreement or Card Schemes Rules. The Merchant will not submit for payment; any Transaction they know or ought to have known is illegal;
- SysPay will not accept from the Merchant, any Transaction considered at the discretion of SysPay of being illegal;
- The Merchant shall co-operate with SysPay and its acquiring banks in respect of any issues arising out of a breach or potential breach of security in relation to the holding of Transaction Data
- SysPay may require any changes to the Merchant's website/s and or information on the mobile application as applicable or otherwise that SysPay, deems necessary or appropriate to ensure that the Merchant remains in compliance with the Card Scheme Rules
- to ensure that the Merchant prominently and unequivocally informs a Cardholder of the identity of the Merchant at all points of interaction, so that the Cardholder can readily distinguish the Merchant from any other Third Party.

- (d) The Merchant shall not:

- undertake Transactions for anything other than the genuine purchase of the goods and/or services that the Merchant supplies;
- impose any minimum or maximum Transaction values;
- discriminate against the use of Cards in any way;
- split a Transaction into two or more Transactions;
- accept Transactions relating to goods and/or services which fall outside the description of the Merchant's business without SysPay prior written approval;

- accept a Transaction or present Transaction Data for processing which was not undertaken directly between the Merchant and the Cardholder;
- accept or process Transactions in order to give Cardholders cash;
- submit Transaction Data which the Merchant know or ought to have known is illegal;
- refund transactions to a Card which was not originally used to make such Transaction and the Merchant must not, under any circumstances, accept money from a Cardholder in connection with processing a Refund to the Cardholder's account.

4.6 **Confidentiality.** Since the documents constituting this Agreement contain certain information designed to help reduce the risk of fraud arising on Transactions, the Merchant must treat such documentation as confidential and keep it secure and not disclose it other than in accordance with [Article 13.4](#).

## **5. CHARGEBACKS / RESERVE ACCOUNT**

5.1 **Chargebacks.** If SysPay receives a Chargeback notice the latter will, without notice, debit the Merchant's Settlement balance or Merchant's Nominated Bank Account or Reserve Account for the amount of the Chargeback together with a penalty fee as set forth in [Appendix B](#).

5.2 **Reserve Account.** Based upon the individual circumstances with respect to the credit-worthiness of the Merchant and in order to reserve to, amongst others, cover Fees and Charges and / or to indemnify SysPay from Chargebacks and claims lodged against the Merchant due to claims for non-delivery of goods, against warranties, due to the Merchant going out of business or being deemed insolvent, SysPay shall have the right to retain or withhold a maximum percentage of 10% of the Transaction as a Reserve Account during a period that shall not exceed 180 days. SysPay shall retain the corresponding funds for such a period at the end of which they will be released to the Merchant except for the amount subject to Chargeback and for any amount due by the Merchant to SysPay according to the Agreement. Such percentage and duration may be amended from time to time by SysPay with notice to the Merchant. The initial rolling reserve's amount is indicated in the [Appendix B](#).

5.3 **Insufficient Reserve Account.** If the funds in the Reserve Account are insufficient to satisfy any Chargebacks or claims, SysPay will so notify the Merchant and will then be entitled to debit the Nominated Bank Account of sufficient amounts as determined by SysPay.

5.4 **Termination of Agreement.** The provision of [Articles 5.2 and 5.3](#) shall continue to apply on a rolling over basis until termination of this Agreement at which time SysPay shall continue to hold these reserved funds as security for a period as determined by SysPay in its sole discretion and if necessary, in excess of 180 days starting from the Transaction date, for the purpose hereof.

5.5 **Excessive Chargebacks.** If the Merchant Chargeback ratio exceeds 0,70% of their Transactions for a given period of time, the Merchant will be held liable for additional chargeback fees as detailed in [Appendix B](#) and / or SysPay shall have the right to immediately terminate the contract without notice and without giving rise to any damages for the Merchant.

## **6. WARRANTIES AND UNDERTAKINGS RELATING TO TRANSACTION DATA**

In presenting Transaction Data to SysPay (whether directly or through a software) the Merchant represents and warrants that:

- (a) all statements contained in the Transaction Data are true, accurate and complete;
- (b) the Merchant has supplied or has agreed to supply the goods and/or services to which the Transaction Data relates and to the value stated therein;
- (c) the Transaction has been entered into by the Merchant in good faith and the Merchant is not aware of any dispute relating to or any matter which may affect the validity of the Transaction;
- (d) Syspay is entitled to process Transaction in Customers' local currency different from Merchant's local currency, subject to Customers' decision. In such a case, Syspay is entitled to use *ad-hoc* currency exchange rates towards Customers whereas Merchant will benefit from fees' reduction as set forth in [Appendix B](#) ;
- (e) the Merchant agrees to comply with the Contract and notably with the obligations under [Article 4.4](#) and to pay the Fees and Charges as set forth in [Appendix B](#).

## **7. DATA SECURITY**

7.1 **Retention/Storage of Transaction Data.** The Merchant agrees to retain all Transaction Data in the strictest confidence and in a secure environment where it can only be accessed by authorised members of staff, and to ensure that any such details stored electronically are fully protected, correct, complete, not lost or damaged and can be reconstituted, in a complete and easily readable form. The Merchant will take all reasonable precautions to ensure that Customers' /

Cardholders' / Issuers' information is not disclosed to any person other than SysPay or misused by any person, unless otherwise required by any Applicable Laws.

- 7.2 **Loss or corruption of Transaction Data.** SysPay will never, in any circumstances, be liable in respect of the face value of any Transaction Data, or (other than if due to SysPay's negligence or fraud) the costs of reconstituting such data, or for any other Loss or damage arising on any loss or corruption of Transaction Data.

## **8. INFORMATION AND AUDIT RIGHTS**

- 8.1 **Notification of Changes in Merchant's business.** The Merchant must advise SysPay immediately of any change in the circumstances affecting Merchant's business including: (i) any Insolvency Event, (ii) any actual or impending change of control in the Merchant or Merchant's parent company; (iii) any actual or impending change in the Merchant trading terms, directors, other officers, members or partners, business or trading name, legal status, business or trading address or in any of the Merchant's other details provided to SysPay; and (iv) any actual or impending sale or other disposal of all or any material part of the Merchant's assets which may result in a material adverse change to the Merchant's Business.

- 8.2 **Audit.** For the purpose of auditing the performance of the Merchant's obligations under this Agreement, the Merchant acknowledges, at their own costs, to:

- (a) provide documentary evidence to SysPay, in the form and in the manner requested by SysPay, of Merchant's compliance with all of the requirements and obligations set out in this Agreement;
- (b) provide all such information required to carry out necessary investigations for the purpose of such audit.

## **9. PAYMENT OF SETTLEMENT FUNDS**

- 9.1 **Payment of Settlement Funds.** SysPay will initiate a transfer of the applicable Settlement funds to Merchant' Nominated Bank Account and subject to the terms and conditions of this Agreement, SysPay will use reasonable endeavours to settle Transactions and transfer the Merchant Settlement funds within four (4) Banking Days after the remittance period according to **Appendix B**.

- 9.2 **Transaction Settlement.** SysPay will pay the Merchant an amount equal to all sums due and recorded as Transaction Data that have been presented in accordance with this Agreement less:

- (a) the amount of any sums payable by the Merchant to SysPay according to **Article 10** as specified in the applicable Fees and Charges, and
- (b) the amount captured in the Reserve Account as set forth in **Article 5**, and
- (c) the value of any Chargebacks, Refunds, fines (including those imposed by the Card Schemes / Issuers), rejected Transactions and suspended Transactions and other *ad hoc* charges.

- 9.3 **Account where Settlement Funds are to be paid.** Any Settlement Funds shall be paid by SysPay to the Merchant's Nominated Bank Account(s).

- 9.4 **General Right to Withhold Settlement Funds.** In addition to any other rights or remedies SysPay may have against the Merchant, SysPay reserves the right to retain or withhold Settlement of any sums due to the Merchant if:

- (a) the Merchant fails to comply with the terms and conditions of this Agreement;
- (b) in the circumstances listed in **Article 9.5**; or
- (c) a Termination Event has occurred.

- 9.5 **Suspension.** SysPay may, with or without notice, change processing or payment terms and/or suspend credits or other payments of any and all funds, money and amounts now due or which subsequently become due to the Merchant pursuant to this Agreement if in good faith SysPay suspects that: (i) any Transaction is fraudulent or involves any criminal activity; (ii) any Transaction was not in the ordinary course of Merchant's business; (iii) the number and/or size of the Transaction(s) is significantly greater than expected; (iv) any of the Termination Events has occurred; or (v) SysPay suspects that any such Termination Event has occurred, or is likely to occur. All payments so suspended may be retained by SysPay until SysPay has obtained satisfactory evidence that such Transaction(s) is/are legitimate and no longer liable to be the subject of a Chargeback. No interest shall accrue in respect of any such amount that is so withheld.

- 9.6 **Payment Delays.** SysPay will not be liable for any delays in receipt of funds or errors in debit and credit entries caused by third parties, including, but not limited to, any Card Scheme, Merchant's software or the Merchant's bank.

## **10. FEES AND CHARGES**

- 10.1 **General.** The Merchant agrees to pay to SysPay the Fees and Charges as set out in the **Fees and Charges Appendix B** or otherwise in this Agreement, and all relevant taxes, penalties, fees and costs.
- 10.2 **Other Amounts Due.** The Merchant shall also pay to SysPay all amounts which become due and payable to SysPay, as specified in this Agreement, including:
- (a) the amount of any Refunds issued (if not already deducted from sums paid by SysPay to the Merchant);
  - (b) the full amount of any overpayments made by SysPay in respect of Transaction Data, however caused;
  - (c) the full amount of any payments made by SysPay in respect of invalid Transaction Data;
  - (d) the full amount of all Chargebacks;
  - (e) the amount of any fees, fines, penalties and/or other charges payable by SysPay to a Card Scheme, an Issuer or any other person, as a result of any failure by the Merchant to comply with this Agreement; and
  - (f) any other sums due and payable by the Merchant, or by SysPay on Merchant's behalf under this Agreement.
- 10.3 **Debit of Fees and Charges.** Fees and Charges and other sums payable by the Merchant, or by SysPay on Merchant's behalf, may be directly debited from the Nominated Bank Account, deducted from any Settlement Funds, or otherwise invoiced to the Merchant, in the manner provided in this Agreement.
- 10.4 **Variation of Fees and Charges.** Fees and Charges set out in **Fees and Charges Appendix B** on the date hereof are a subject to change by SysPay from time to time upon at least thirty (30) days' notice. Fees and charges from Card Schemes or other Financial Institutions due by the Merchant may also vary from time to time. The Merchant hereby agrees that they can either accept such changes or terminate the Contract.
- 10.5 **Tax.** Unless otherwise stated, all charges, fees and other payments to be made by the Merchant under this Agreement are exclusive of VAT and any other relevant taxes or withholding taxes (if any) and in addition to paying such sums the Merchant will be responsible for paying any such VAT and other relevant taxes or withholding taxes.
- 10.6 **Payment Statements.**
- (a) SysPay will provide the Merchant with a periodic Statement which shall constitute, as set in the Fees and Charges, a proper demand for payment and conclusive evidence of the amount stated on such Statement as being due from the Merchant to SysPay, and which will be conclusive, unless deemed inaccurate. Such Statement may be provided to the Merchant in paper form, as a pdf copy or online, or in another format as may be determined by SysPay from time to time.
  - (b) The Merchant must promptly and carefully review every such Statement (whether in paper form, pdf or online) and notify SysPay within one (1) month of any errors, charges and/or Transactions that the Merchant believes to be unauthorised or incorrect. If the Merchant notifies SysPay subsequent to the one (1) month period, SysPay may, in their discretion assist the Merchant, at Merchant's expense, in investigating whether any adjustments are appropriate and whether any amounts are due to or from other parties, but SysPay shall not have any obligation to investigate or effect any such adjustments. Any voluntary efforts by SysPay to assist the Merchant in investigating such matters shall not create any obligation to continue such investigation or any future investigation(s).

## **11. INDEMNITY, COMPROMISE AND LIABILITY**

- 11.1 **Indemnities.** The Merchant agrees to indemnify SysPay, on a full and continuing basis, and to hold SysPay harmless from and against all Losses which SysPay may incur or claims which may be brought or established against SysPay by any person from or in connection with the negligence, fraud, wilful default or breach of this Agreement as a result of the actions or inactions of (i) the Merchant, (ii) any agent, employee or sub-contractor of the Merchant; or (iii) any Third Party.
- 11.2 **Exclusion of Liability.** SysPay shall not have any liability to the Merchant or any other Third Party whether in contract or tort (including negligence or breach of statutory duty), under an indemnity or otherwise and whatever the cause for: (i) any increased costs or expenses; (ii) loss of profit; (iii) loss of business; (iv) loss of goodwill; (v) loss or corruption of data; (vi) loss of revenue or anticipated savings; or (vii) special, indirect or consequential loss or damage of any nature whatsoever suffered by Merchant, whether or not we are aware or have been made aware of the likelihood of any such loss or damage.
- 11.3 **SysPay's Liability Cap.** Subject to **Article 11.2** the maximum aggregate liability of SysPay for all claims or Losses, whether arising in contract or tort (including negligence and breach of statutory duty) or otherwise, shall not in any Contract Year exceeds an amount represented by the Fees and Charges invoiced by SysPay to Merchant during the



previous three (3) full months preceding the event which has originated the concerned claim or Loss.

- 11.4 **Disputes with the Card Schemes, Payment service providers and Clients.** The Merchant shall, at Merchant's own cost, provide SysPay with all reasonable assistance to resolve any dispute arising under the Card Scheme Rules and/or the Payment service provider rules. SysPay shall, as against the Merchant, have complete discretion to decide whether or not to resist or defend any claim made by any Card Scheme or Customer / Cardholder / Issuer / a Payment service provider, or whether to compromise any such claim, and SysPay's decision shall be binding upon the Merchant. Without prejudice to the indemnities set out in [Article 11.1](#), the Merchant also agrees that SysPay shall have discretion to accept, dispute, compromise or otherwise deal with any claim made against the Merchant and/or SysPay arising out of a Transaction accepted by the Merchant for Loss or liability in respect thereof on Merchant's behalf.
- 11.5 **Insolvency.** The Merchant acknowledges that in the event of Insolvency on the part of the Merchant, unless restricted or prohibited by Applicable Laws, the Merchant must maintain the Reserve Account, and SysPay shall have the right to call on the funds held in respect of, and/or offset against, any and all amounts owed by the Merchant to SysPay, without regard to whether any such amounts relate to Transactions initiated or created before or after the initiation of the insolvency event.
- 11.6 **Processing Limits.** SysPay may, at their own discretion, impose a limit on the total value of Transactions SysPay processes for the Merchant over a given period of time.

## **12. TERM AND TERMINATION OF THIS AGREEMENT**

- 12.1 **Term.** This Agreement shall commence on the Effective Date and subject to the provisions of this [Article 12](#) shall continue in full force and effect for a period of one (1) years commencing on the date of this Agreement ("**Minimum Term**") and thereafter shall continue for successive periods of twelve (12) months ("**Extended Term**"), unless terminated by either Party on sixty (60) days' notice, such notice to be provided prior to the expiry of the Minimum Term or Extended Term, as relevant.
- 12.2 **Mutual Grounds for Termination.** Any Party to this Agreement will be entitled to end this Agreement at any time with immediate effect by notice to the other Party if: (i) another Party materially breaches this Agreement and, if such breach is capable of being cured, such breach is not cured within ten (10) days of written notice of such breach being received; or (ii) the other Party is concerned by an Insolvency Event.
- 12.3 **SysPay Additional Right to Terminate.** Notwithstanding [Article 12.2](#), SysPay will be entitled to end this Agreement at any time with immediate effect by notice to the Merchant if:
- (a) the Merchant fails to pay any amount due to SysPay under this Agreement, on the due payment date;
  - (b) for three (3) consecutive months the Merchant has not sent any Transaction(s) to SysPay;
  - (c) the Merchant changes their Nominated Bank Account to other than as permitted by this Agreement;
  - (d) there is any significant change, or SysPay suspects a significant change is impending (as determined by SysPay), in the nature, level, scope or control of the Merchant's business activities or the Merchant's financial situation;
  - (e) there is fraud or suspicion of fraud or other criminal activity in relation to the Merchant;
  - (f) the Merchant's activities contravene any Applicable Laws or any codes of practice that SysPay may adopt from time to time, or which otherwise relate directly or indirectly to matters that SysPay may view, from time to time, as being unlawful or otherwise objectionable in kind and nature;
  - (g) SysPay considers the percentage, number or amount of fraudulent Transactions submitted by the Merchant under this Agreement, or the number of aggregate Chargebacks in relation to the Merchant's business to be excessive.
  - (h) A significant change occurs in the Applicable Laws and / or the Merchant refuses to provide SysPay with documentation or information requested by SysPay even if not such documentation or information are not listed in the Agreement

### **12.4 Effects of Term or Termination.**

- (a) If this Agreement ends, the Merchant must promptly:
  - (i) return to SysPay, all materials and Equipments supplied by SysPay; and
  - (i) pay SysPay all amounts owed by the Merchant under this Agreement. In addition, after the date of termination or term of this Agreement, the Merchant may not use the name of SysPay or any promotional materials SysPay have provided or which refer to SysPay or the provision of Payment Processing Services by

SysPay to Merchant.

- 12.5 **Survival.** The termination of this Agreement will not affect any actual or contingent liabilities or claims of any Party hereto which accrue before this Agreement ends.
- 12.6 **Liability for trailing Chargebacks.** The Merchant will continue, once the Contract terminated or arrived to its term, to bear total responsibility for all Chargebacks, fees, credits and adjustments resulting from Transactions processed pursuant to this Agreement, all other amounts then due or which may thereafter become due under this Agreement, and breaches of Card Scheme Rules and fines and penalties imposed by the Card Schemes and payment means providers in connection with any such Transactions, which are notified to SysPay at any time after this Agreement has ended.

### **13. GENERAL**

- 13.1 If SysPay chooses not to, or if SysPay cannot enforce any term which forms part of this Agreement, this will not affect SysPay's right to subsequently enforce that term or to enforce any of the remaining terms.
- 13.2 **Assignment by SysPay.** SysPay may assign or novate this Agreement, and/or transfer or sub-licence any or all of SysPay's rights and obligations under it, at any time and the Merchant hereby expressly consents to any such assignment, novation, transfer or sub-licence. Any such transfer will not reduce the Merchant's rights under this Agreement unless the Merchant agrees otherwise. The Merchant authorises disclosure of details relating to the Merchant to any prospective persons or entity(ies) to which SysPay are novating, assigning and/or sublicensing this Agreement.
- 13.3 **Assignment by Merchant.** Merchant is not permitted to assign, novate and/or sublicense this Agreement or rights or obligations under this Agreement without SysPay's prior written consent, which may be withheld at SysPay's absolute discretion.
- 13.4 **Duty of Confidentiality.** The Merchant shall not, except for the purposes of this Agreement, compile or make use of any information relating to SysPay, any Card Scheme, any Cardholder or any Issuer or the terms of this Agreement or any documents provided with it, except where necessary for the performance of this Agreement.
- 13.5 **Disclosure of Information.** Merchant acknowledges that SysPay may disclose information about Merchant's business to Card Schemes, Payment service providers, Regulators, or any other investigating body(ies) for use in the prevention or detection of fraud or other criminal activity, or to any credit reference agency, which SysPay also uses as a source of information.
- 13.6 **Force Majeure.** None of the Parties (or any of their agents or subcontractors) shall be liable for any failure to perform any of their obligations under this Agreement or any associated agreement where such failure arises directly or indirectly through any circumstances of force majeure as defined by Applicable Laws.
- 13.7 **Right of Set Off.** SysPay may at any time (without notice to Merchant) set off and apply any or all sums due and payable by SysPay to the Merchant under this Agreement, and/or any or all sums of money belonging to the Merchant held in accounts with SysPay, against:
- (a) any or all sums due and payable by the Merchant to SysPay under this Agreement; and/or
  - (b) the amount of any liability incurred by the Merchant to SysPay under this Agreement.
- 13.8 **No Waiver.** No waiver by any Party of any breach of this Agreement or any delay or omission by any Party in enforcing the terms of this Agreement shall prejudice their rights, or operate as a waiver of any subsequent or continuing breach.
- 13.9 **Severability.** If any provision of this Agreement is or becomes illegal or invalid, that provision will be deemed deleted from this Agreement and the remaining provisions shall continue in force.
- 13.10 **Notices.** Any notice required to be given under this Agreement must be in writing and shall be served to the other Party, in the manner detailed below, by personal delivery, by registered post in an envelope properly addressed and marked to the attention of the concerned Party, or by fax transmission addressed as aforesaid. Notice can be served by SysPay to the Merchant by e-mail. Notice given by post and fax shall be deemed to have been received seventy-two (72) hours after the time of its posting, transmission or advice of availability. Notice given by e-mail shall be deemed to have been received twenty-four (24) hours after the time of transmission.
- 13.11 **Amendments.** The Merchant agrees that SysPay may from time to time, vary or supplement this Agreement, its terms (including, for example, any or all of the individual documents which form part of this Agreement, such as the Fees and Charges, and/or any or all of the fees and charges themselves) and/or any accompanying documentation. Any such change(s) shall become effective upon SysPay notifying the Merchant in the manner provided in this Agreement, and subject to such notice periods as SysPay may operate from time to time. If the Merchant does not wish to accept the changes SysPay makes to this Agreement, the Merchant may terminate this Agreement immediately by giving SysPay notice in writing within thirty (30) days of such change coming into effect.

- 13.12 **Compliance.** Each Party shall comply with all Applicable Laws, Card Scheme Rules and codes of practice, which they are each obliged to follow for the purposes of this Agreement.
- 13.13 **No Third Party beneficiaries.** Any person that is not a Party to this Agreement shall not have any rights under or in connection with it except where such rights are expressly granted under this Agreement.
- 13.14 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to its subject matter, and supersedes any previous agreements and understandings. The Parties have not entered into this Agreement in reliance on any agreement, representation or warranty which is not made or repeated in this Agreement.
- 13.15 **Remedies are Cumulative.** Except where expressly agreed otherwise in this Agreement, the rights and remedies of the Parties under this Agreement are cumulative, may be exercised as often as the Parties consider appropriate and are in addition to their rights and remedies under general law.
- 13.16 **Intellectual property rights.** SysPay hereby grants the Merchant a royalty-free, non-transferable and non-exclusive right for the term of this Agreement to use SysPay's trademark and logo(s) on his website(s) and in any off-line promotional materials solely in order to indicate that they make use of the Payment Processing Services. The Merchant does not have a right of sub-license. SysPay may apply limitations to the right granted to the Merchant under this paragraph at any time and at its sole discretion. The Merchant hereby grants SysPay an irrevocable royalty-free and exclusive right for the term of this Agreement to use its trademark and logo(s) on their website and in off-line publications for promotional purposes. Upon termination of this Agreement or after its term each Party will immediately withdraw any reference to the other's Party trademark and logo(s) either online or offline.

**14. GOVERNING LAW AND JURISDICTION**

14.1 This Agreement and any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the jurisdiction that will be chosen accordingly and exclusively by SysPay.

**IN WITNESS OF WHEREOF**, the Parties to this Agreement have caused it to be executed by their duly authorised officers the day and year first written below.

**For SYSPAY:**

Name: Jeffrey Borg

Date:

Signature:

**For the MERCHANT:**

Name:

Date:

Signature:

**Appendixes:**

- A. Prohibited activities
- B. Fees and Charges

**APPENDIX A – Prohibited activities**

- Adoption Agencies – for profit
- Adult Entertainment/ Pornography
- Alcohol (except wine)
- Auction houses
- Bail and Bond Payments
- Bankruptcy Attorney
- Buying/Shopping Clubs, Services
- Charitable Organizations, Charitable and Social Service
- Chat Line/ Chat Rooms
- Chemicals and Allied Products—not elsewhere classified
- Child Pornography
- Cigarette/Tobacco Sales
- Consumer Credit Reporting Agencies
- Counselling Centres (non-licensed)
- Counterfeit goods
- Dating Services
- Detective Agencies, Protective Agencies, Security
- Digital content
- Direct marketing – questionable products
- Direct marketing – Travel related arrangement services
- Direct Marketing—Inbound Telemarketing
- Electronic cigarettes and nicotine fillers
- Escort Services
- Non-prescription drugs
- Drug Paraphernalia
- Education services
- File hosting/ sharing services
- Embassy, Foreign Consulate or other Foreign Government
- Financial Services (except for regulated Financial Institutions)
- Financial advisors
- FOREX and Binary Options
- Fireworks
- Fortune tellers
- Gambling Transactions
- Guns, firearms, munitions sale & distribution
- Hosting services
- Multi-Level Marketing Companies
- Newsgroups and/or file sharing services
- Not for Profit Organisations
- Outbound Telemarketing Companies
- Pharmaceuticals
- Protection Services
- Radar and/or cellular jammers or boosters
- Sexual Encounter Firms
- Timeshares
- Services including Armoured Cars, Guard Dogs
- Phone unlocking/"jailbreaking"
- Political Organizations NB does not include nationally recognised political parties
- Prepaid phone cards or services
- Religious Organizations NB excludes nationally recognized religious organizations/faiths
- Crowd funding

**For SYSPAY:****For the MERCHANT:**

## APPENDIX B - Fees and Charges

Service	Description	Price
Processing	<u>Access to SysPay Solution</u> <ul style="list-style-type: none"> <li>Processing capabilities: Visa / MasterCard, BCMC, Sofort, iDEAL</li> <li>Automated transaction for each booking</li> <li>High risk bookings identification and alert</li> <li>Secured email and phone payments</li> <li>Financial reconciliation tools</li> </ul> <u>Card payments specificities</u> <ul style="list-style-type: none"> <li>Enhanced card information</li> <li>Card schemes filtering</li> <li>3DSecure protection to prevent chargebacks</li> <li>One click transactions: pre-auth, debit, refund...</li> </ul>	
	<u>Transaction fees</u> <ul style="list-style-type: none"> <li>Card - Payment (first transaction including mandate creation for future debits)</li> <li>Card - Extra transaction (debit, pre-auth, void, capture)</li> <li>BCMC (Bank Contact Mister Cash - BE)</li> <li>Sofort (DE, ...)</li> <li>iDEAL (NL)</li> </ul>	0,50 € 0,29 € 0,29 € 0,29 € 0,90 €
	<u>Acquiring fees</u> <ul style="list-style-type: none"> <li>Card - VISA &amp; MASTERCARD issued in EU (SEPA)</li> <li>Card - VISA &amp; MASTERCARD issued outside of EU (non SEPA)</li> <li>BCMC (Bank Contact Mister Cash - BE)</li> <li>Sofort (DE, ...)</li> <li>iDEAL (NL)</li> </ul> <p>Acquiring fees are waived if guest pays online in his local currency (when different from merchant currency).</p>	1,90 % 2,90 % 1,90 % 1,90 % N/A
	Refund fee - Card Only	1,50 €
	Chargeback fee - Card Only	Covered by ACSI
	Rolling reserve	Covered by ACSI
	Weekly settlements with 7 days delay (minimum 200€)	2,00 € / settlement

Fees applicable as of 3rd of July 2017.

**For SYSPAY:**

**For the MERCHANT:**