

*Merchant  
terms and  
conditions*

December 2022



# Terms and conditions to Faster Processing agreement between you and Faster Processing Limited

These Conditions are incorporated into the Agreement. They set out the terms of the Facility and define terms used in it.

## 1. CARD RECEIVABLES AND ADVANCES

- 1.1 FPL has purchased the Card Receivables and Related Rights in accordance with the terms of the Agreement and these Conditions.
- 1.2 FPL will monitor the Data maintained by the Partner in order to provide the Faster Processing Service.
- 1.3 FPL will provide any one of the Hourly Service, the Daily Service or the Transaction Service as set out in the Agreement. The Merchant may request and FPL may agree to change the service from that set out in the Agreement.
- 1.4 If FPL agrees to provide the Daily Service, and the Data confirms that one or more Eligible Card Receivables has been processed by the Merchant since the last Advance was made, FPL will submit a request to its bankers to make one Advance to your Payee Account on each Business Day at the agreed time (which must be a Working Hour).
- 1.5 If FPL agrees to provide the Transaction Service, it will submit a request to its bankers to make an Advance to your Payee Account each time that the Data confirms that an Eligible Card Receivable is processed during a Working Hour (or if the Eligible Card Receivable is processed by the Merchant outside of Working Hours, FPL will submit the request for the Advance to be made during the next Working Hour).

- 1.6 If FPL agrees to provide the Hourly Service, and the Data confirms that one or more Eligible Card Receivables has been processed by the Merchant since the last Advance was made, FPL will submit a request to its bankers to make an Advance to your Payee Account every Working Hour.
- 1.7 Unless FPL agrees otherwise, all Advances will be in Sterling and all transactions between you and FPL will be accounted for in Sterling.
- 1.8 FPL may decline to make an Advance for a Card Receivable (because it is not an Eligible Card Receivable). If FPL is not willing to make an Advance:
  - 1.8.1 if it is satisfied (acting reasonably) that the Card Receivable is not fraudulent or would otherwise be subject to a Chargeback, it will credit the Merchant within 2 Working Days of receipt of the Remittance into the Designated Account relating to that Card Receivable;
  - 1.8.2 if it is not willing to credit the Merchant for that Card Receivable under condition 1.8.1 above, it will credit the Merchant for that Card Receivable at such time as is able to satisfy itself (acting reasonably) that the Card Receivable is not fraudulent and is reasonably unlikely to be subject to a Chargeback.
- 1.9 You will sign any mandates and give such other instructions to the Account Bank to ensure that FPL has sole signing rights over the Designated Account and the Account Bank is instructed to remit all amounts paid to it by the Card Acquirer to FPL.

- 1.10 FPL is entitled to set off against an Advance any amounts which are owing to it as a result of the amount of any previous Remittance not being made or being less than the Advance to which it relates.

## 2. FPL'S FEES AND CHARGES

- 2.1 The Initial Fee is due and payable on the date of the Agreement. Your obligation to pay the Initial Fee will be discharged by this fee being collected from you by the Card Acquirer.
- 2.2 FPL will charge the Processing Fees on each Advance made by it. Your obligation to pay the Processing Fees will be discharged by ensuring there are sufficient cleared funds in your bank account to enable those fees to be collected from you by the Card Acquirer.
- 2.3 FPL will notify you of any changes to the Processing Fees by email or letter to the address last known to FPL. The revised Processing Fees shall apply to Advances made from the date falling 65 days from the date of the notification by FPL.
- 2.4 Where applicable, Value Added Tax will be added to all FPL's Fees.
- 2.5 If for any reason, a Remittance equal to the full amount of the corresponding Advance is not credited to the Designated Account (or otherwise repaid) within 5 Business Days of such Advance being made, you will be obliged to pay a late payment fee of 5% of the amount of the relevant Advance. FPL will deduct the late payment fee from the next Advance to be paid to you.

## 3. REPORTING AND DATA

- 3.1 You authorise each of the Card Acquirer and the Partner to disclose all information held by them in relation to you and your business and the Card Receivables to FPL.
- 3.2 In particular, you authorise the Partner to disclose the Data to FPL. You confirm that you will not do anything or omit to do anything which may distort the Data.

- 3.3 You will promptly provide FPL, the Partner, and any of their respective agents and representatives with such information in relation to your business and such access to your books and records as they may reasonably require from time to time.
- 3.4 You authorise FPL (or any of its Affiliates) to use, analyse, and assess the Data for all purposes connected to its relationship with you. In particular, but without limitation, FPL may use the Data when:
  - 3.4.1 considering whether a Card Receivable constitutes an Eligible Card Receivable;
  - 3.4.2 operating and administering the Faster Processing Service, including assessing the risk of continuing to provide the Faster Processing Service, compliance and regulatory reporting;
  - 3.4.3 taking steps to mitigate or prevent fraud and/or money laundering;
  - 3.4.4 making credit-related decisions;
  - 3.4.5 deciding whether to enter into the Agreement with you; or
  - 3.4.6 exercising FPL's rights and/or obligations under the Agreement and/or any other ancillary or related agreements, any also may be disclosed to and/or used by the Account Bank and any company in the Account Bank's group and/or any credit reference agencies and fraud prevention and/or prosecution agencies.
- 3.5 FPL may disclose the Data to:
  - 3.5.1 any of its officers, directors, employees, professional advisors, auditors, partners and any of their representatives;
  - 3.5.2 any person or entity to whom it is required to disclose the Data for the purposes of money laundering, fraud or other regulatory compliance or reporting;

- 3.5.3 any credit reference or fraud prevention agencies;
- 3.5.4 people who provide a service to us or are acting as our agents;
- 3.5.5 any person to whom we have a legal duty to disclose your Data;
- 3.5.6 any other person or entity with your prior consent.

#### 4. WARRANTIES

- 4.1 On the date of the Agreement, you warrant to FPL that:
  - 4.1.1 if you are a limited liability company or partnership, you are duly incorporated, registered and validly existing in England and Wales;
  - 4.1.2 if you are a body corporate, you are duly incorporated and validly existing under the law of England and Wales and you have power to carry on your business as it is being conducted;
  - 4.1.3 if you are a body corporate, you have the power to utilise the Facility and to enter into and perform the terms of the Facility and have taken all necessary corporate action to authorise the entry into and performance of the Facility;
  - 4.1.4 if you are a body corporate, no limitation on your powers will be exceeded as a result of utilising the Facility;
  - 4.1.5 the obligations expressed to be assumed by you under the Agreement are, subject to any general principles of law, legal, valid, binding and enforceable;
  - 4.1.6 no litigation or arbitration or administrative proceedings of or before any court or governmental authority are presently pending or, to your knowledge, threatened against you or any of your assets which if adversely determined could have a material adverse effect on your business, assets or financial condition;
- 4.1.7 except as approved by FPL, there are no Security Interests affecting any of your assets;
- 4.1.8 you have not sold your Card Receivables to any other person;
- 4.1.9 no Director has been Insolvent or disqualified from acting as a Director at any time;
- 4.1.10 no event or circumstance which constitutes or which with the giving of notice or lapse of time or both would constitute, a Termination Event has occurred and is continuing;
- 4.1.11 the information provided by you or your advisors or employees to FPL is true, complete and accurate in all respects; and
- 4.1.12 you are not and will not be (nor with the giving of notice or lapse of time or both would be) in breach of or in default under any other agreement relating to borrowing.
- 4.2 The warranties described in condition 4.1 above are deemed to be repeated on the last Business Day of each month.
- 4.3 In relation to each Card Receivable you warrant, on the date that it arises and on each Business Day until that Card Receivable is paid by the Card Acquirer, that:
  - 4.3.1 the payment giving rise to the Card Receivable:
    - (a) was validly authorised by the cardholder;
    - (b) is expected to be credited in full by the Card Acquirer; and
    - (c) was made in Sterling;
  - 4.3.2 each Card Receivable relates to an actual sale and you have delivered or committed to deliver the Goods or carried out (or committed to carry out) the work or services to which the Card Receivable relates;

- 4.3.3 as far as you are aware, the details of your Card Receivables in the details transmitted to the Partner to constitute the Data are correct, complete and up-to-date; and
  - 4.3.4 you have complied with the Merchant Conditions and accordingly the Card Receivable will be paid in full by the Card Acquirer.
- (b) give FPL any information about Chargebacks and why these have been made by the Card Acquirer;
  - (c) send FPL evidence that you have delivered goods or performed your services for customers; and
  - (d) at your own expense, formally assign to FPL in the way FPL requires specific Card Receivables and their Related Rights.

#### 5. UNDERTAKINGS

- 5.1 You will:
  - 5.1.1 tell FPL immediately:
    - (a) about any dispute (whether justifiable or not) between you and a customer who has utilised the Card Processing Service and any claim or attempt by a customer to obtain a refund;
    - (b) if whoever controls or manages your company or business changes;
    - (c) if you breach any of your warranties to FPL;
    - (d) if you breach any term of the Merchant Conditions;
    - (e) if you anticipate that you will consistently exceed the Estimated Average Transaction Value and provide an explanation for this difference;
    - (f) if you anticipate that your actual card turnover will differ materially from your Forecast Card Turnover Per Annum and provide an explanation for this difference; or
    - (g) if there is any change to the nature of Your Business or the nature of goods or services being supplied by you;
  - 5.1.2 if FPL asks:
    - (a) give FPL any information about your customers and/
- 5.1.3 use the Card Acquirer exclusively for the processing and settlement of Card Processing Services (so as to ensure payment of the Card Receivables to FPL) and not terminate, or allow to lapse the agreement with the Card Acquirer (set out in the Merchant Conditions) or amend it in any way which would prevent the payment of the Card Receivables to FPL;
- 5.1.4 provide all information regarding your owners required to satisfy FPL's "know your customer" requirements;
- 5.1.5 try to resolve promptly any relevant disputes and claims of any customer who has used the Card Processing Service;
- 5.1.6 not terminate or rescind or do anything which would allow the Card Acquirer to terminate or rescind your agreement with it (on the terms set out in the Merchant Conditions); and
- 5.1.7 promptly perform any continuing obligations to any customers in order that you are not required to issue a refund or incur a Chargeback.

- 5.2 You will not, except where FPL has agreed in writing:
- 5.2.1 create any Security Interest over your Card Receivables or rights under the Agreement nor factor nor discount your Card Receivables other than to FPL;
- 5.2.2 issue any instructions to the Account Bank; or
- 5.2.3 make any material change to Your Business from that conducted on the date of the Agreement.

## 6. TERMINATION EVENTS

- 6.1 Each of the following is a Termination Event:
- 6.1.1 Remittances for any Card Receivables are not paid into the Designated Account;
- 6.1.2 you issue any instructions relating to the Designated Account to the Account Bank without FPL's prior written consent;
- 6.1.3 you breach the terms of the Merchant Conditions and such breach results in the Remittances not being paid or being reduced by the Card Acquirer;
- 6.1.4 you fail to pay the Card Acquirer for its and our services;
- 6.1.5 the Sales Organisation Agreement is terminated;
- 6.1.6 you process Card Receivables outside of Your Usual Working Hours and you fail to provide an explanation satisfactory to FPL (acting reasonably) of the reason for this;
- 6.1.7 we consider that the number of Chargebacks made by the Card Acquirer is excessive and you fail to provide detailed reasons for the number of individual Chargebacks or incidents;

- 6.1.8 you fail to provide adequate explanations for variances in transactions being processed by you in accordance with conditions 5.1.1(e) and (f);
- 6.1.9 if the nature, value, timing or any other aspect of transactions processed by you is not consistent with Your Business in FPL's reasonable opinion;
- 6.1.10 if there is any change to the nature of Your Business or the nature of goods, services being supplied by you which has not been approved by FPL in writing prior to such change being effected;
- 6.1.11 you fail to use the Card Acquirer exclusively for the processing and settlement of Card Processing Services (so as to ensure payment of the Card Receivables to FPL) and/ terminate, or allow to lapse the agreement with the Card Acquirer (set out in the Merchant Conditions) or amend it in any way which would prevent the payment of the Card Receivables to FPL;
- 6.1.12 you breach any warranty, undertaking or other obligation given or undertaken by you in these Conditions;
- 6.1.13 any person, who has waived or released its rights to your Card Receivables or their Related Rights, withdraws or attempts to withdraw, such waiver or release or otherwise asserts any interest in your Card Receivables or Related Rights;

- 6.1.14 the Agreement or any guarantee, indemnity or Security Interest granted as security for your obligations to FPL ceases to be legally valid, binding or enforceable or it is or becomes unlawful for you or any other person to perform your or their obligations under the Agreement or such guarantee, indemnity or security;
- 6.1.15 FPL has grounds to suspect that you are engaged in money laundering;
- 6.1.16 the disqualification of any of your directors to act as a director;
- 6.1.17 you sell or dispose of the whole or a substantial part of your undertaking, property or assets or cease to carry on the business conducted by you on the date of the Agreement;
- 6.1.18 a petition is presented to wind you up other than on grounds of your inability to pay your debts or notice is given by any person for your solvent winding up; and/or
- 6.1.19 you become Insolvent or any step is taken which could result in you becoming Insolvent.
- 6.2 Upon or at any time after a Termination Event has occurred and is continuing or following the expiry of any notice to terminate the Agreement, FPL may by written notice to you do all or any of the following (either at the same time or at separate times):
- 6.2.1 demand immediate payment of:
- (a) all outstanding Advances; and
- (b) any Fees or other monies or liabilities which you owe to FPL;
- 6.2.2 cease to make any Advances;

- 6.2.3 at your cost appoint accountants or any other professional to investigate your business, assets or affairs, to ascertain your financial position or review your payment procedures; and
- 6.2.4 notify the Card Acquirer of the circumstances giving rise to the Termination Event.
- 6.3 In the absence of a Termination Event:
- 6.3.1 FPL may terminate the Agreement by serving not less than 30 days' notice on you; or
- 6.3.2 you may terminate the Agreement by serving not less than 60 days' notice on FPL.
- 6.4 The exercise by FPL of any of its rights under condition 6.2 will not affect any of your or FPL's respective rights and obligations under the Agreement. Such rights and obligations will continue until all monies due from you to FPL have been paid in full.

## 7. YOUR APPOINTMENT AS FPL'S AGENT

- 7.1 FPL appoints you as its agent, at your expense, to enforce payment of the Card Receivables and all Related Rights. You accept this appointment and agree to collect the Card Receivables and to follow any relevant instructions which FPL may give you in relation to collecting the Card Receivables. You will not instruct a solicitor or other agent to collect any Card Receivables without FPL's prior written approval and, then, only on terms approved by FPL.
- 7.2 FPL (or any person nominated by it) may contact the Card Acquirer at any time to verify the amount of Card Receivables currently due from them, the due date for payment and the date when payment can be expected. You will assist FPL (or its nominee) in any way it requires.

## 8. EXPENSES, SET OFF AND INDEMNITY

- 8.1 You will indemnify FPL (and any Account Bank) for all losses, costs, liabilities and expenses (including legal fees) incurred by FPL (or any Account Bank) (and any additional administrative time incurred by FPL charged at such rate as FPL shall reasonably determine) directly or indirectly as a result of:
- 8.1.1 FPL preserving or enforcing its rights under the Agreement;
- 8.1.2 FPL obtaining or enforcing a release of Card Receivables and Related Rights or waiver of rights, from any person with a Security Interest;
- 8.1.3 the occurrence of a Termination Event;
- 8.1.4 any Chargebacks withdrawn from the Designated Account;
- 8.1.5 FPL accepting and/or acting upon information or instructions purporting to come from you even if that information or those instructions subsequently prove to have been incorrect or unauthorised by you (except to the extent that our officers have been negligent or fraudulent);
- 8.1.6 any claim by the Card Acquirer against FPL; or
- 8.1.7 you breaching the Agreement or the Merchant Conditions.
- 8.2 FPL may (but is not obliged) at any time without notice to you to:
- 8.2.1 set off against its liability to you any liability you owe to FPL; and/or
- 8.2.2 combine or consolidate all or any of your accounts with FPL.
- 8.3 If you or the Partner are required by law to make any deduction or withholding from any payment to FPL, you will pay such additional amount as is required to ensure that FPL receives the total amount it would otherwise have received but for such withholding or deduction.

## 9. LIMITATION OF LIABILITY

- 9.1 Nothing in this Agreement shall limit or exclude either party's liability for:
- 9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 9.1.2 fraud or fraudulent misrepresentation; or
- 9.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 9.2 Subject to condition 9.1, FPL will not be in breach of its obligations under the Agreement or be liable to you or any other person as a result of any act, omission, failure, fraud, delay, negligence, insolvency or default of any bank, financial institution, clearing or payments system, or regulatory, governmental or supra-national body or authority. If it is or becomes unlawful for us to give any instruction or make any payment anticipated by the Agreement, then we will not be liable for refusing to give any such instruction or make any payment while this illegality endures.
- 9.3 Subject to condition 9.1, FPL will provide the Faster Processing Service in reliance on the Data and accordingly will not be liable to you or any other person as a result of:
- 9.3.1 the Data not being made available to FPL, including as a result of any act or omission on your part; or
- 9.3.2 the Data being corrupted, incomplete or otherwise inaccurate.

- 9.4 Subject to condition 9.1, FPL will not have any liability to you, whether in contract, tort (including negligence), breach of statutory duty or otherwise for any of the following losses arising under or in connection with this Agreement or the Faster Processing Service:
- 9.4.1 loss of profits;
- 9.4.2 loss of sales or business;
- 9.4.3 loss of agreements or contracts;
- 9.4.4 loss of anticipated savings;
- 9.4.5 indirect or consequential losses; and
- 9.4.6 loss of or damage to goodwill.
- 9.5 Subject to conditions 9.1 to 9.4, FPL's total liability to you arising under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall :
- 9.5.1 in respect of any failure to deliver the Faster Processing Service to you, be limited to an amount equal to the Processing Fees paid by you to FPL, for those transactions in respect of which the Faster Processing Service failed to be provided; and
- 9.5.2 in respect of any and all other liability occurring within any Contract Year, be limited to an amount equal to the total Processing Fees paid by you to FPL in that Contract Year.

## 10. COMMUNICATIONS WITH FPL

- 10.1 All information provided by or to FPL by e-mail (unless corrupted as a result of technical failure) has the same status as if it had been in writing or other printed form and signed by the provider and neither you nor FPL will challenge the validity of such information solely because it was prepared, sent or received only in electronic form. Where these Conditions require a consent, waiver or notice by FPL to be in writing such condition shall be satisfied if it is transmitted by email. FPL may require you to provide hard copies of any information provided by you electronically.
- 10.2 In any proceedings or claim, you will accept and be bound by a certificate signed by FPL as to the balance on any accounts and the amounts due and owing to FPL, unless FPL has made an obvious error.
- 10.3 FPL may accept and rely upon any signature, communication or information ostensibly sent by you even though you may not actually have given or sent it or the sender or provider had no authority to send or provide it. This applies whether the communication is written or oral.

## 11. VARIATIONS

- 11.1 The Agreement incorporates these Conditions in force from time to time. FPL may vary these Conditions by uploading the revised Conditions to [www.fasterprocessing.com](http://www.fasterprocessing.com). Any variation will take effect immediately.
- 11.2 If you do not wish to utilise the Facility with any varied Conditions, you should immediately serve notice to terminate the Facility in accordance with condition 6.3.2. You confirm your acceptance of any varied Conditions if you do not serve notice to terminate the Facility.



## 12. NOTICES

- 12.1 All notices, consents and other communications must be in writing.
- 12.2 FPL may deliver a communication in person or by post, email or fax to you at your contact details last known to FPL or your registered office. Any communications by FPL will be treated as served:
- 12.2.1 if delivered in person: at the time of delivery;
- 12.2.2 if posted: 48 hours after posting or upon receipt (whichever is earlier);
- 12.2.3 if sent or given by telephone, facsimile or e-mail: at the time of the conversation or transmission (unless FPL knows or ought reasonably to have been aware of a transmission failure).
- 12.3 You must serve notice in writing to FPL's address in the Agreement (or such address as may be subsequently notified to you).

## 13. FORCE MAJEURE

- 13.1 If a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 13.2 The Affected Party shall after the start of the Force Majeure event, notify the other party of the Force Majeure Event and its effect on the Affected Party's ability to perform its obligations under this Agreement. The Affected Party shall resume its obligations once the Force Majeure Event has come to an end.
- 13.3 If the Force Majeure Event prevents or delays the Affected Party's performance of its obligations for a continuous period of more than 1 week, the party not

affected by the Force Majeure Event may terminate this Agreement by giving 2 weeks' written notice to the Affected Party.

## 14. GENERAL

- 14.1 FPL may novate, transfer or assign any of its obligations, rights and remedies under the Agreement or sub-contract or delegate any of its obligations or duties. You will not assign any of your rights nor delegate any of your duties under the Agreement.
- 14.2 No delay or omission by FPL in exercising any of its rights or remedies will impair or operate as a waiver of them. No waiver by FPL of any breach of your obligations to FPL shall constitute a waiver of any other breach. No single, partial or defective exercise by FPL of any right shall preclude the further exercise of its rights. FPL's rights are cumulative and not exclusive of any rights provided at law or in equity.
- 14.3 The terms of the Agreement are agreed by FPL and by you to be reasonable. However, if any provision is valid only if some other provision or a part of it is deleted then such other part or provision shall be treated as deleted.
- 14.4 Except where specifically provided, the Agreement may only be enforced by the parties to it and the parties may rescind or vary it without the consent of any other person.
- 14.5 The Agreement may be entered into in any number of counterparts, each of which may be treated as an original.

## 15. GOVERNING LAW AND JURISDICTION

The Agreement is governed by and will be construed in accordance with English Law. You accept the jurisdiction of the English Courts to hear and determine any proceedings arising out of the Agreement. However, you agree that FPL may bring proceedings in the Courts of any other jurisdiction.

## 16. DEFINITIONS

### Advance

each payment by FPL to you under the Facility for an Eligible Card Receivable;

### Affiliate

any person which is, in relation to a company:

- (a) a Group Company; or
- (b) a director or shareholder of that company.

### Agency Agreement

an agency agreement between (1) the Partner and (2) FPL pursuant to which FPL appoints the Partner as its agent to execute the Agreement and collect the Processing Fees on its behalf as amended, varied or supplemented from time to time;

### Agreement

the agreement between (1) you and (2) FPL pursuant to which FPL agrees to provide the Faster Processing Service which incorporates these Conditions;

### Business Day

a day when banks in London are open for normal business;

### Card Acquirer

Barclays Bank plc (registered number 1026127) trading as Barclaycard;

### Card Processing Service

the processing of debit and credit card transactions by a Merchant through the Card Acquirer;

### Card Receivables

amounts payable by the Card Acquirer to the Merchant in accordance with the Merchant Conditions, being amounts due to the Merchant for goods or services the Merchant has provided which its customer has authorised to be charged to his or her account;

### Chargeback

has the meaning given to that term in the Merchant Conditions;

### Conditions

the terms and conditions on which FPL will provide the Facility to you incorporated in the Agreement as amended, varied, supplemented

or replaced from time to time by FPL uploading the revised Conditions to [www.fasterprocessing.com](http://www.fasterprocessing.com);

### Contract Year

a 12 month period commencing with the date of the Agreement or any anniversary of it;

### Daily Service

the Faster Processing Service under which FPL will make Advances to the Merchant every Business Day (if the Data indicates that Eligible Card Receivables have been processed since the last Advance was made) at such time to be agreed between the Merchant and FPL;

### Data

information regarding sales by the Merchant paid for using the Card Processing Service which is maintained by the Partner;

### Designated Account

an account in the United Kingdom with the Account Bank in the name of the Merchant into which Remittances for Card Receivables are paid and in respect of which FPL has sole signing rights;

### Eligible Card Receivable

means a Card Receivable which:

- (a) is evidenced by the Data; and
- (b) is approved by FPL in its absolute discretion,

and "**Eligible Card Receivables**" shall mean a number of such Card Receivables;

### Facility

the sterling finance facility made available by FPL to you under the Agreement;

### Faster Processing Service

making an Advance to the Merchant for Eligible Card Receivables due to the Merchant in accordance with condition 1 to these Conditions;

### Fees

the fees to which FPL is entitled for providing the Facility, being the Initial Fee and the Processing Fees (and any VAT thereon (where applicable));

### Force Majeure Event

means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, earthquake or other natural disaster;
- (b) epidemic or pandemic;

- (c) terrorist attack, conflict, war or imposition of sanctions;
- (d) collapse of builds, fire, or accident;
- (e) any labour or trade dispute, industrial action or lockouts;
- (f) non-performance by suppliers or sub-contractors; or
- (g) interruption or failure of any plant or utility service;

#### Group Company

in relation to any person, a Subsidiary of that person, or a Holding Company of that person or any other Subsidiary of that Holding Company;

#### Hourly Service

the Faster Processing Service under which FPL will make Advances to the Merchant every Working Hour (if the Data indicates that Eligible Card Receivables have been processed since the last Advance was made);

#### Insolvency or Insolvent

- (a) in relation to a company, partnership or limited liability partnership:
  - (i) the presentation of a petition to wind it up;
  - (ii) the passing of a resolution to wind it up or the giving of notice by any person convening a meeting of creditors for the purpose of considering the same;
  - (iii) the appointment of or the making of an application to court to appoint, an administrator to it;
  - (iv) the taking of any steps towards or the coming into force of a moratorium under the Insolvency Act 2000;
  - (v) its members, directors or creditors resolving to effect any of the above;
  - (vi) the giving of notice by any person to us of an intention to appoint an administrator or liquidator to it;
- (b) in relation to an individual:
  - (i) the issue of a petition (whether by the individual or his creditors) to

appoint a trustee in bankruptcy in respect of that individual (and where that individual is in partnership with others the partnership will be treated as Insolvent on the issue of such a petition);

- (ii) granting a trust deed for the benefit of his creditors;
- (iii) in relation to a company, limited liability partnership, partnership or individual:
- (iv) the holder of any Security Interest exercising or enforcing his rights, whether by taking possession of or appointing an administrative or other receiver, to any of its or his undertaking, assets or property or otherwise; or
- (v) suffering distress, sequestration for rent, diligence, attachment, seizure, execution, sequestration or other legal process upon any assets;
- (vi) being subject to an injunction or interdict preventing or restricting dealings with its income or assets;
- (vii) giving notice of the intended suspension of payment of debts
- (viii) the directors, members or any individual(as appropriate) taking any steps towards filing with the Court any documents or statements or making an application for a moratorium in connection with a voluntary arrangement under the Insolvency Act 1986;
- (ix) the taking of any steps towards implementing a proposal for a voluntary arrangement under the Insolvency Act 1986;
- (x) commencing negotiations with one or more creditors for the general readjustment or rescheduling of all or part of its indebtedness;

- (xi) making a general assignment or assignation for the benefit of, or composition with, its creditors;
- (xii) ceasing or threatening to cease to carry on business;
- (xiii) allowing any judgment, order or award of any court or tribunal for payment of money to remain unsatisfied for 7 days or more;
- (xiv) being insolvent within the terms of section 123 Insolvency Act 1986 or, in FPL's reasonable opinion, being capable of being deemed unable to pay its debts as they fall due; or
- (xv) receipt by it of a statutory demand;
 

or, in any case, the occurrence of any event which has an analogous effect to any of the in any other jurisdiction.

#### Merchant Conditions

the merchant terms and conditions for merchant acquiring services issued by the Card Acquirer to the Merchant from time to time;

#### Partner

the organisation which facilitates the Card Processing Service and the Faster Processing Service, in this case being **UTP Group Limited** (company number 08488580);

#### Payee Account

your bank account in the United Kingdom, the details of are included in the Agreement or are otherwise notified to FPL in writing at least 2 Business Days before the next Advance is proposed to be made to that account;

#### Processing Fees

the Fixed Processing Fee and the Variable Processing Fee as described as such in the Agreement;

#### Related Rights

- (a) all your rights under the Merchant Conditions (including any right to damages);

- (b) all documents, ledgers, databases and computer files (including operating systems) recording or evidencing performance of the Merchant Conditions or a Card Receivable;
- (c) all your rights to the Data;
- (d) any verification or sales vouchers together with any cardholder signatures;
- (e) any records relating to any telephone orders, mail orders, online orders or other card-not-present transaction);
- (f) any card imprints together with cardholder signatures taken where the transaction was not authorised by PIN or contactless payment; and
- (g) any other till or other records or notes whatsoever relating to card payments created or retained by the Merchant;

#### Remittances

any form of electronic payment made by the Card Acquirer in or towards settlement of Card Receivables;

#### Sales Organisation Agreement

means the independent sales organisation agreement between (1) Barclays Bank plc and (2) the Partner dated 1 January 2014 as amended, varied, modified, supplemented, restated or replaced from time to time;

#### Sterling

the lawful currency of the United Kingdom;

#### Termination Event

any of the events set out in condition 6.1;

#### Transaction Service

the Faster Processing Service under which FPL will make Advances to the Merchant on each occasion that an Eligible Transaction is processed by the Merchant;

#### United Kingdom or UK

the United Kingdom of Great Britain and Northern Ireland, the Isle of Man and the Channel Islands; and

#### Working Hours

the hours between 8am and 6pm on each Business Day and a **Working Hour** means any one of those hours.

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## 17. INTERPRETATION

- 17.1 In the Agreement:
- 17.1.1 unless the context otherwise provides, the singular includes the plural and vice versa;
  - 17.1.2 a reference to any gender includes any other gender;
  - 17.1.3 the headings are for convenience only and shall be ignored in its interpretation;
  - 17.1.4 references to a "clause" or "condition" are to a clause of the Agreement or a condition of these Conditions;
  - 17.1.5 references to the "Agreement" are to the agreement entered into by you and FPL (and these Conditions) as varied, replaced or supplemented or novated from time to time;
  - 17.1.6 the meaning of general words introduced by the word "other" (or followed by the word "including") is not to be limited by reference to any preceding (or following) word indicating a particular class of acts, matters or things;
  - 17.1.7 any reference to an Act of Parliament or any subordinate or other legislation shall be construed as a reference to that legislation as subsequently amended or re-enacted and shall include all subordinate legislation deriving authority from any Act; any provision of the Agreement which refers to an Act or such legislation which is amended may itself be amended in such manner as FPL may determine to preserve the intended effect of the Agreement;
  - 17.1.8 any term or phrase defined in the Companies Act 2006 (whether capitalised or not) bears the same meaning in the Agreement;
  - 17.1.9 any reference to "FPL" includes its transferees and assignees.





*The future of card  
processing is here*

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***faster processing ltd***

Sapphire Plaza  
Watlington Street  
Reading  
RG1 4RE  
United Kingdom

t. +44 (0) 118 953 0953  
e. [info@fasterprocessing.com](mailto:info@fasterprocessing.com)



***fasterprocessing.com***