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**These current Master SaaS Terms were published on 6<sup>th</sup> January 2023**

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**1 Definitions and interpretation**

- 1.1 The definitions and rules of interpretation set out in the schedule shall apply to our Agreement.
- 1.2 In our Agreement:
- 1.2.1 each Order Form entered into by the Customer shall form a separate agreement, incorporating these Master SaaS Terms together with the Addendums, the Subscribed Service Specific Terms for the respective Subscribed Services and the Policies (our **Agreement**);
- 1.2.2 in the event of any conflict in respect of the provisions of our Agreement and/or the documents referred to in it the following order of priority shall prevail (in descending order of priority):
- (a) the Order Form;
  - (b) these Master SaaS Terms;
  - (c) the Addendum which can be found at <https://optomany.com/gateway/data-protection-addendum> ;
  - (d) the Subscribed Service Specific Terms which can be found at <https://optomany.com/gateway/subscribed-service-specific-terms> ;
  - (e) the Policies; and
  - (f) the Documentation.
- 1.2.3 subject to the order of priority between documents in clause 1.2.2, later versions of documents shall prevail over earlier ones if there is any conflict or inconsistency between them.
- 1.3 Any obligation of the Supplier under our Agreement to comply or ensure compliance by any person or the Services with any law shall be limited to compliance only with laws within the Subscribed Territory as generally applicable to businesses and to providers of software as a service solutions. Such obligations shall not be construed to create any obligation on the Supplier (or anyone acting on its behalf) or any part of the Services to comply with any laws or regulations which apply solely to specific commercial or other activities (such as insurance, legal advice or banking or other professional services) or which apply solely to a specific commercial or non-commercial sector (or part thereof) (such as the public, legal, accountancy, actuarial, insurance, banking or financial service sectors).

**2 Rights of use**

- 2.1 Upon Order Acceptance and subject to the terms of our Agreement, the Supplier grants the Customer a non-exclusive, non-transferable, personal right to:
- 2.1.1 use each Subscribed Service during Service Hours; and
- 2.1.2 copy and use the Documentation as strictly necessary for its use by Authorised Users of the Subscribed Services, within the relevant Subscribed Territory during the Subscribed Service Period for the Permitted Purpose.
- 2.2 The Customer acknowledges that access to the Subscribed Services may take up to two Business Days from Order Acceptance to initially set up and that use of the Subscribed Services is at all times subject to the Customer's compliance with our Agreement and the requirements identified in our Agreement (including all minimum system requirements).
- 2.3 The Customer acknowledges that the Services do not include:
- 2.3.1 any services, systems or equipment required to access the internet, unless otherwise set out in the Order Form, (and that the Customer is solely responsible for procuring access to the internet and for all costs and expenses

in connection with internet access, communications, data transmission and wireless or mobile charges incurred by it in connection with use of the Services);

2.3.2 dedicated data back up or disaster recovery facilities (and the Customer should ensure it at all times maintains backups of all Customer Data).

### **3 Authorised Users**

3.1 The Customer shall ensure that only Authorised Users use the Subscribed Services and that such use is at all times in accordance with our Agreement. The Customer shall ensure that Authorised Users are, at all times while they have access to the Subscribed Services, the employees or contractors of the Customer or the Authorised Affiliates.

3.2 The Customer shall keep a list of all Authorised Users. The Supplier may require the Customer to notify the Supplier within **five** Business Days if any updates to any list of Authorised Users are made or required, including when Authorised Users cease to be employed or engaged by a relevant entity such that they are no longer entitled to be Authorised Users.

3.3 The Customer shall:

3.3.1 be liable for the acts and omissions of the Authorised Users and the Authorised Affiliates as if they were its own; and

3.3.2 procure that each Authorised User (and each Authorised Affiliate) is aware of, and complies with, the obligations and restrictions imposed on the Customer under our Agreement, including all obligations and restrictions relating to the Supplier's Confidential Information.

3.4 The Customer undertakes that it, and all Authorised Users and all others acting on its or their behalf (including systems administrators) shall, keep confidential and not share with any third party (or with other individuals except those with administration rights at the Customer and its Authorised Affiliate's organisation as necessary for use of the Service) their password or access details for any Subscribed Service.

3.5 The Customer shall (and shall ensure all Authorised Affiliates and Authorised Users shall) at all times comply with the Acceptable Use Policy and all other provisions of our Agreement.

3.6 If any password has been provided to an individual that is not an Authorised User, the Customer shall, without delay, disable any such passwords and notify the Supplier immediately.

3.7 The Customer shall comply (and shall ensure all Authorised Affiliates and Authorised Users comply) with all applicable laws, rules, and regulations governing export that apply to the Services, the Customer Data and the Documentation (or any part), and shall not export or re-export, directly or indirectly, separately or as a part of a system, the Services, Card Scheme rules (to the extent they apply to the Customer), the Customer Data or the Documentation (or any part) to, or access or use the Services, the Customer Data or the Documentation (or any part) in, any country or territory for which an export licence or other approval is required under the laws of the United Kingdom, without first obtaining such licence or other approval. Without prejudice to the Supplier's obligations under the Data Protection Addendum, the Customer shall be solely responsible for ensuring its access, importation and use of the Services, the Customer Data and Documentation in or into any part of the Subscribed Territory or elsewhere complies with all export and other laws.

3.8 Clauses 3.3 to 3.7 (inclusive) shall survive termination or expiry of our Agreement.

### **4 Indemnity**

4.1 The Customer shall indemnify, keep indemnified and hold harmless the Supplier (on the Supplier's own behalf on behalf of each of the Supplier's Affiliates) from and against any losses, claims, damages, liability, Data Protection Losses, costs (including legal and other professional fees) and expenses incurred by it (or any of its Affiliates) as a result of the Customer's breach of our Agreement.



4.2 This clause 4 shall survive termination or expiry of our Agreement.

## 5 Support

5.1 Support Services shall be available for each Subscribed Service to the Customer for the duration of the respective Subscribed Service Period.

5.2 The Supplier shall use reasonable endeavours to notify the Customer in advance of scheduled maintenance but the Customer acknowledges that it may receive no advance notification for downtime caused by Force Majeure or for other emergency maintenance.

## 6 Networks

6.1 The Supplier will provide a SIM Card to connect to the Networks.

6.2 The Supplier will always try to ensure that the Subscribed Services are available for the processing of Transactions, but sometimes they may be affected by things beyond Supplier's control, including (inter alia) the availability of the Network for use of a Payment Terminal.

6.3 The Merchant acknowledges and agrees that the performance of a Subscribed Services is dependent upon the PoS terminal being in range of base stations forming part of the Network and that the Supplier shall have no liability in the event that the PoS terminal is unable to connect properly or at all due to connection difficulties with the Network.

6.4 The Supplier cannot guarantee Network coverage. If at any time during the Term, Network coverage cannot be obtained by the Customer, the Supplier will assist in finding an alternative Network solution where possible, however the Customer will remain liable for the payment of all Fees and any additional costs relating to the alternative Network.

6.5 While providers of a Network make every effort to ensure the security of their Network, the Customer acknowledges and agrees that, for reasons beyond the control of the Supplier or such provider, there is a risk that the Customer's communications may be interrupted, intercepted or accessed by those other than the intended recipient.

6.6 The Customer shall be responsible for connecting the PoS terminals to its WiFi / IP Network according to its own system requirements, but the Supplier will provide instructions on how to do this.

6.7 It is the Customer's sole responsibility to provide the necessary a WiFi / IP Network connectivity in order for the PayPoS terminal to connect to and that the Subscribed Services will not operate properly (or at all) without such connection.

6.8 All numbers allocated by the Supplier for use by the Customer, whether on the Network or otherwise, are not the property of the Customer and:

6.8.1 the Customer shall use such number only for the purposes for which it has been allocated by the Supplier;

6.8.2 the Customer shall not be entitled to use any such number after termination of our Agreement for any reason;

6.8.3 the Supplier reserves the right to reallocate or change any such number from time to time during the Term and shall have no liability to the Customer with regard to any such change.

6.9 The Supplier shall be entitled, at any time, without prior notice and without liability to the Customer, to withdraw the Subscribed Services (or any part thereof) if the provider of the Network or any SIM Card ceases, withdraws or suspends access to, or availability of, the Network.

6.10 The Customer will remain liable to pay all Fees due under our Agreement notwithstanding any unavailability, suspension or disconnection of the Network or any applicable Subscribed Services.

## 7 Changes to services and terms

7.1 The Supplier may at its absolute discretion make, and notify the Customer of, updated versions of the documents referred to in clause 1.2.2 or other documents referred to in any part of our Agreement (excluding in each case the Order Form) from time to time by notifying the Customer of such update by e-mail (together with a copy of the update or a link to a copy of the update) or by any other reasonable means which the Supplier elects (**Update Notification**). The Supplier shall comply with its related obligations in the Data Protection Addendum.



- 7.2 The document(s) subject to such Update Notification shall replace the preceding version of the same document(s) for the purposes of our Agreement from the date **30 Days'** after Update Notification of such revised document(s) (the **Update**) (or at such later date as the Supplier may specify).
- 7.3 In the event that the Customer reasonably believes that any Update materially impacts it negatively in any manner it may by notice elect to terminate our Agreement in respect of all impacted Subscribed Services provided it exercises such right prior to such Update taking effect pursuant to clause 7.2 on not less than **10** Days prior written notice and notifies the Supplier at the time of exercising such right of the negative impact which has caused it to exercise this right. In the event of such termination the Customer shall receive a refund of any pre-paid Fees in respect of such terminated Services.
- 7.4 The Customer acknowledges that the Supplier shall be entitled to modify the features and functionality of the Services. The Supplier shall use reasonable endeavours to ensure that any such modification does not materially adversely affect the use of the relevant Subscribed Service(s) by the Supplier's customers generally. The Supplier may, without limitation to the generality of this clause 7.4, establish new limits on the Services (or any part), including limiting the volume of data which may be used, stored or transmitted in connection with the Service, remove or restrict application programming interfaces or make alterations to data retention periods, provided such changes are introduced by Update to the relevant impacted contractual documents. The Supplier shall comply with its related obligations in the Data Protection Addendum.
- 7.5 The Supplier may release new versions, releases or patches in connection with the Software. The Supplier shall endeavour to notify the Customer about such new versions, releases and patches but in any event The Supplier shall be free to apply such new versions, releases or patches, whether remotely or otherwise, as they require from time to time. To the extent that The Supplier requires the assistance of the Customer in relation to the application of such version, release or patch the Customer will provide such assistance as may be required by The Supplier. If the version, release or patch cannot be applied as a result of any failure of the Customer to provide adequate access and/or assistance this may affect the performance of the Software and to the extent that such failure leads to any performance issues or breach of warranty of the Software, The Supplier shall not be responsible for any such performance issue or breach.

## 8 Fees

- 8.1 The Subscription Fee and any other charges (including expenses) expressly agreed between the parties in writing shall be paid by the Customer at the rates and in the manner described in the Pricing Terms.
- 8.2 The Supplier shall invoice the Customer:
- 8.2.1 monthly in advance for all Subscription Fees; and
- 8.2.2 monthly for all other Fees,
- due under our Agreement, and the invoices shall be paid within **15 calendar days** of the date on the invoice.
- 8.3 Unless stated otherwise, all Fees to be paid by the Customer are net of VAT and any other relevant taxes and in addition to paying such Fees the Customer shall also pay any such taxes.
- 8.4 **The Customer shall pay all Fees and any sums due under this Agreement in full on the due dates for payment, without demand and without any deduction, set-off or counterclaim for any reason whatsoever (other than any deduction or withholding of tax as required by law), such payment obligation is of the essence of this Agreement.** Fees payable to the Supplier under our Agreement shall be paid into the Supplier's bank account by way of direct debit unless otherwise notified by the Supplier to the Customer in writing in accordance with the Agreement.
- 8.5 The Customer shall not without the prior written agreement of the Supplier cancel any direct debit which has been established for payment of any amounts in connection with the Agreement.
- 8.6 The Supplier shall have the right to charge interest on overdue invoices at the rate of **8% per year** above the base rate of the Bank of England, calculated from the date when payment of the invoice becomes due for payment up to and including the date of actual payment whether before or after judgment.



- 8.7 The Supplier shall be entitled to increase the Fees for any and all Services at any time by notice to the Customer provided that the Supplier shall not be entitled to increase the Fees on less than 1-months prior notice or more than once every 12 months.
- 8.8 To the extent our Agreement terminates or expires (other than due to termination by the Customer under clauses 7.3 or 20.5) the Customer shall not be entitled to any refund or discount of Fees paid for any parts of any month during which the Services cease to be provided.

## 9 Warranties

- 9.1 Subject to the remainder of this clause 9, the Supplier warrants that:
- 9.1.1 each Subscribed Service shall operate materially in accordance with its Description when used in accordance with our Agreement under normal use and normal circumstances during the relevant Subscribed Service Period; and
  - 9.1.2 it shall provide each of the Services with reasonable care and skill.
- 9.2 The Customer acknowledges that clause 9.1 does not apply to Free or Trial Services or to Support Services provided in connection with the same. Without prejudice to the Supplier's obligations under our Agreement in respect of Protected Data, Free or Trial Services and Support Services provided in connection with the same are provided 'as is' and without warranty to the maximum extent permitted by law.
- 9.3 The Services may be subject to delays, interruptions, errors or other problems resulting from use of the internet or public electronic communications networks used by the parties or third parties (including providers of mobile connectivity). The Customer acknowledges that such risks are inherent in cloud services and that the Supplier shall have no liability for any such delays, interruptions, errors or other problems.
- 9.4 The Supplier does not warrant that the Software will be uninterrupted or bug or error free. The Customer agrees that the Software has not been provided to meet any specific requirements of the Customer.
- 9.5 If there is a breach of any warranty in clause 9.1 the Supplier shall at its option: use reasonable endeavours to repair or replace the impacted Services within a reasonable time or (whether or not it has first attempted to repair or replace the impacted Service) refund the Fees for the impacted Services which were otherwise payable for the period during which the Supplier was in breach of any such warranty (provided such period is at least **3 consecutive days**). To the maximum extent permitted by law, this clause 9.5 sets out the Customer's sole and exclusive remedy (however arising, whether in contract, negligence or otherwise) for any breach of any of the warranties in clause 9.1.
- 9.6 The warranties in clause 9.1 are subject to the limitations set out in clause 17 and shall not apply to the extent that any error in the Services arises as a result of:
- 9.6.1 incorrect operation or use of the Services by the Customer, any Authorised Affiliate or any Authorised User (including any failure to follow the Documentation or failure to meet minimum specifications);
  - 9.6.2 use of any of the Services other than for the purposes for which it is intended;
  - 9.6.3 use of any Services with other software or services or on equipment with which it is incompatible (unless the Supplier recommended or required the use of that other software or service or equipment);
  - 9.6.4 any act by any third party (including hacking or the introduction of any virus or malicious code);
  - 9.6.5 any modification of Services (other than that undertaken by the Supplier or at its direction); or
  - 9.6.6 any breach of our Agreement by the Customer (or by any Authorised Affiliate or Authorised User).



- 9.7 The Supplier may make Non-Supplier Materials available for the Customer's use in connection with the Services. The Customer agrees that:
- 9.7.1 the Supplier has no responsibility for the use or consequences of use of any Non-Supplier Materials;
  - 9.7.2 the Customer's use of any Non-Supplier Materials shall be governed by the applicable terms between the Customer and the owner or licensor of the relevant Non-Supplier Materials;
  - 9.7.3 the Customer is solely responsible for any Non-Supplier Materials used in connection with the Services and for compliance with all applicable third party terms which may govern the use of such Non-Supplier Materials; and
  - 9.7.4 the continued availability, compatibility with the Services and performance of the Non-Supplier Materials is outside the control of the Supplier and the Supplier has no responsibility for any unavailability of or degradation in the Services to the extent resulting from the availability, incompatibility or performance of any of the Non-Supplier Materials;
- 9.8 The Customer acknowledges that no liability or obligation is accepted by the Supplier (howsoever arising whether under contract, tort, in negligence or otherwise):
- 9.8.1 that the Subscribed Services shall meet the Customer's individual needs, whether or not such needs have been communicated to the Supplier;
  - 9.8.2 that the operation of the Subscribed Services shall not be subject to minor errors or defects; or
  - 9.8.3 that the Subscribed Services shall be compatible with any other software or service or with any hardware or equipment except to the extent expressly designated by the Supplier to as compatible.
- 9.9 Other than as set out in this clause 9, and subject to clause 17.7, all warranties, conditions, terms, undertakings or obligations whether express or implied by statute, common law or otherwise and including any implied terms relating to quality, fitness for any particular purpose or ability to achieve a particular result are excluded to the extent permitted by law.
- 10 Customer's responsibilities**
- 10.1 The Customer shall (and shall ensure all Authorised Affiliates and Authorised Users shall) at all times comply with all applicable laws relating to the use or receipt of the Services, including laws relating to privacy, data protection and use of systems and communications, rules imposed by the Card Schemes and the Customer's acquiring bank, all rules imposed by any other relevant bank or third party and all rules relating to the PCI Security Standards Council
- 10.2 The Customer shall:
- 10.2.1 co-operate with the Supplier in all matters relating to the Services;
  - 10.2.2 advise the Supplier immediately in writing of any material change (or proposed change) in the nature of the Customer or the Customer's business (including details of any changes in the goods and/or services sold by the Customer, any additional business commenced by the Customer, any change in its ownership, shareholders, directors or senior managers, any change in its trading name, trading hours or contact details);
  - 10.2.3 not resell, hire, lease, or otherwise make the Subscribed Services available to any third party;
  - 10.2.4 not use the Subscribed Services on behalf of any third party;
  - 10.2.5 not itself or using a third party maintain or adjust any part of the Subscribed Services and not make any modifications or in any way mark or deface any part of the Subscribed Services;



10.2.6 comply with all applicable laws, regulations, rules and obligations in connection with their use of the Subscribed Services and comply with all rules imposed by the Card Schemes and the Customer's acquiring bank, all rules imposed by any other relevant bank or third party and all rules relating to the PCI Security Standards Council;

10.2.7 have full authorisation from the relevant acquirer to process transactions using the Subscribed throughout the Subscribed Services Period; If no such agreement is in place between the Customer and a relevant acquirer, the Supplier shall not be liable for the Customer's inability to utilise the Subscribed Services.

10.3 The Subscribed Services enable PoS to accept transactions in the offline mode. To the extent that PoS is used in offline or flight mode the Customer shall be responsible for reconciling all transactions processed in offline or flight mode on a regular basis and the Supplier shall not be responsible for or liable in relation to the loss or corruption of any transactions or data which are processed by PoS when used in offline or flight mode.

## 11 Intellectual property

11.1 All Intellectual Property Rights in and to the Services (including in axept® Software, axept® Platform, axept® Control Centre, Documentation and all Supplier Provided Materials) belong to and shall remain vested in the Supplier or the relevant third party owner.

11.2 To the extent Non-Supplier Materials are made available to, or used by or on behalf of the Customer, any Authorised Affiliate or any Authorised User in connection with the use or provision of any Subscribed Service, such use of Non-Supplier Materials (including all licence terms) shall be exclusively governed by applicable third party terms notified or made available by the Supplier or the third party and not by our Agreement. The Supplier grants no Intellectual Property Rights or other rights in connection with any Non-Supplier Materials.

11.3 The Supplier may use any feedback and suggestions for improvement relating to the Services provided by the Customer, the Authorised Affiliates or any Authorised User without charge or limitation (**Feedback**). The Customer hereby assigns (or shall procure the assignment of) all Intellectual Property Rights in the Feedback with full title guarantee (including by way of present assignment of future Intellectual Property Rights) to the Supplier at the time such Feedback is first provided to the Supplier.

11.4 The Customer hereby waives (and shall ensure all relevant third parties have waived) all rights to be identified as the author of any work, to object to derogatory treatment of that work and all other moral rights in the Intellectual Property Rights assigned to the Supplier under our Agreement.

11.5 Except for the rights expressly granted in our Agreement, the Customer, any Authorised User, any Customer Affiliate and their direct and indirect sub-contractors, shall not acquire in any way any title, rights of ownership, or Intellectual Property Rights of whatever nature in the Services (or any part including the Applications or Documentation) and no Intellectual Property Rights of either party are transferred or licensed as a result of our Agreement.

11.6 The Customer shall indemnify and keep indemnified and hold harmless the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Supplier as a result of or in connection with any breach of this clause 11.

11.7 This clause 11 shall survive the termination or expiry of our Agreement.

## 12 Defence against infringement claims

12.1 Subject to clauses 12.2 and 12.5, the Supplier shall:

12.1.1 defend at its own expense any claim brought against the Customer by any third party alleging that the Customer's use of the Services infringes any copyright, database right or registered trade mark, registered design right or registered patent in the United Kingdom (an **IP Claim**); and

12.1.2 pay, subject to clause 12.3, all costs and damages awarded or agreed in settlement or final judgment of an IP Claim.



- 12.2 The provisions of clause 12.1 shall not apply unless the Customer:
- 12.2.1 promptly notifies the Supplier upon becoming aware of any actual or threatened IP Claim and provides full written particulars;
  - 12.2.2 makes no comment or admission and takes no action that may adversely affect the Supplier's ability to defend or settle the IP Claim;
  - 12.2.3 provides all assistance reasonably required by the Supplier subject to the Supplier paying the Customer's reasonable costs; and
  - 12.2.4 gives the Supplier sole authority to defend or settle the IP Claim as the Supplier considers appropriate.
- 12.3 The provisions of clause 17 shall apply to any payment of costs and damages awarded or agreed in settlement or final judgment of an IP Claim under clause 12.1.
- 12.4 In the event of any IP Claim the Supplier may elect to terminate our Agreement immediately by written notice and promptly refund to the Customer on a pro-rata basis for any unused proportion of Fees paid in advance. This clause 12.4 is without prejudice to the Customer's rights and remedies under clauses 12.1.
- 12.5 The Supplier shall have no liability or obligation under this clause 12 in respect of (and shall not be obliged to defend) any IP Claim which arises in whole or in part from:
- 12.5.1 any modification of the Services (or any part) without the Supplier's express written approval;
  - 12.5.2 any Non-Supplier Materials;
  - 12.5.3 any Customer Data;
  - 12.5.4 any Free or Trial Services (or any Support Services provided in connection with them);
  - 12.5.5 any Open Source Software;
  - 12.5.6 any breach of our Agreement by the Customer;
  - 12.5.7 installation or use of the Services (or any part) otherwise than in accordance with our Agreement and the Documentation; or
  - 12.5.8 installation or use of the Services (or any part) in combination with any software, hardware or data that has not been supplied or expressly authorised by the Supplier.
- 12.6 Subject to clause 17.7, the provisions of this clause 12 set out the Customer's sole and exclusive remedy (howsoever arising, including in contract, tort, negligence or otherwise) for any IP Claim.

### **13 Customer Systems and Customer Data**

- 13.1 Customer Data shall at all times remain the property of the Customer or its licensors.
- 13.2 Except to the extent the Supplier has direct obligations under data protection laws, the Customer acknowledges that the Supplier has no control over any Customer Data hosted as part of the provision of the Services but may monitor or have access to the content of the Customer Data. The Customer shall ensure (and is exclusively responsible for) the accuracy, quality, integrity and legality of the Customer Data and that its use (including use in connection with the Service) complies with all applicable laws and Intellectual Property Rights.



- 13.3 If the Supplier becomes aware of any allegation that any Customer Data may not comply with the Acceptable Use Policy or any other part of our Agreement the Supplier shall have the right to permanently delete or otherwise remove or suspend access to any Customer Data which is suspected of being in breach of any of the foregoing from the Services and/or disclose Customer Data to law enforcement authorities (in each case without the need to consult the Customer). Where reasonably practicable and lawful the Supplier shall notify the Customer before taking such action.
- 13.4 Except as otherwise expressly agreed in our Agreement, the Supplier shall not be obliged to provide the Customer with any assistance extracting, transferring or recovering any data whether during or after the Service Period. The Customer acknowledges and agrees that it is responsible for maintaining safe backups and copies of any Customer Data, including as necessary to ensure the continuation of the Customer's and Authorised Affiliates' businesses. The Customer shall, without limitation, ensure that it backs up (or procures the back up of) all Customer Data regularly (in accordance with its, its Authorised Affiliates and its Authorised User's needs) and extracts it from each Subscribed Service prior to the termination or expiry of our Agreement or the cessation or suspension of any of the Services.
- 13.5 The Supplier routinely undertakes regular backups of the Subscribed Services (which may include Customer Data) for its own business continuity purposes. The Customer acknowledges that such steps do not in any way make the Supplier responsible for ensuring the Customer Data does not become inaccessible, damaged or corrupted. To the maximum extent permitted by applicable law, the Supplier shall not be responsible (under any legal theory, including in negligence) for any loss of availability of, or corruption or damage to, any Customer Data.
- 13.6 Unless otherwise set out in the Order Form, the Subscribed Service Specific Terms or subsequently agreed by the parties in writing, the Customer hereby instructs that the Supplier shall within 60 days of the earlier of the end of the provision of the Services (or any part) relating to the processing of the Customer Data securely dispose of such Customer Data processed in relation to the Services (or any part) which have ended (and all existing copies of it) except to the extent that any applicable laws of the United Kingdom (or a part of the United Kingdom) requires the Supplier to store such Customer Data. The Supplier shall have no liability (howsoever arising, including in negligence) for any deletion or destruction of any such Customer Data undertaken in accordance with our Agreement.

#### **14 Confidentiality and security of Customer Data**

- 14.1 The Supplier shall maintain the confidentiality of the Customer Data and shall not without the prior written consent of the Customer or in accordance with our Agreement, disclose or copy the Customer Data other than as necessary for the performance of the Services or its express rights and obligations under our Agreement.
- 14.2 The Supplier shall implement technical and organisational security measures in accordance with the Information Security Addendum.
- 14.3 The Supplier:
- 14.3.1 undertakes to disclose the Customer Data only to those of its officers, employees, agents, contractors and direct and indirect sub-contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under our Agreement or as otherwise reasonably necessary for the provision or receipt of the Services, and
  - 14.3.2 shall be responsible to the Customer for any acts or omissions of any of the persons referred to in clause 14.3.1 in respect of the confidentiality and security of the Customer Data as if they were the Supplier's own.
- 14.4 The provisions of this clause 14 shall not apply to information which:
- 14.4.1 is or comes into the public domain through no fault of the Supplier, its officers, employees, agents or contractors;
  - 14.4.2 is lawfully received by the Supplier from a third party free of any obligation of confidence at the time of its disclosure;
  - 14.4.3 is independently developed by the Supplier (or any of its Affiliates or any person acting on its or their behalf), without access to or use of such Confidential Information; or



14.4.4 is required by law, by court or governmental or regulatory order to be disclosed,  
provided that clauses 14.4.1 to 14.4.3 (inclusive) shall not apply to Protected Data.

14.5 This clause 14 shall survive the termination or expiry of our Agreement for a period of [ten] years.

14.6 To the extent any Customer Data is Protected Data, the Supplier shall ensure that such Customer Data may be disclosed or used only to the extent such disclosure or use does not conflict with any of the Supplier's obligations under the Data Protection Addendum. Clauses 14.1 to 14.5 (inclusive) are subject to this clause 14.6.

## 15 Supplier's Confidential Information

15.1 The Customer shall maintain the confidentiality of the Supplier's Confidential Information and shall not without the prior written consent of the Supplier, disclose, copy or modify the Supplier's Confidential Information (or permit others to do so) other than as necessary for the performance of its express rights and obligations under our Agreement.

15.2 The Customer undertakes to:

15.2.1 disclose the Supplier's Confidential Information only to those of its officers, employees, agents and contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under our Agreement;

15.2.2 procure that such persons are made aware of and agree in writing to observe the obligations in this clause 15; and

15.2.3 be responsible for the acts and omissions of those third parties referred to in this clause 15.2 as if they were the Customer's own acts or omissions.

15.3 The Customer shall give notice to the Supplier of any unauthorised use, disclosure, theft or loss of the Supplier's Confidential Information immediately upon becoming aware of the same.

15.4 The provisions of this clause 15 shall not apply to information which:

15.4.1 is or comes into the public domain through no fault of the Customer, its officers, employees, agents or contractors;

15.4.2 is lawfully received by the Customer from a third party free of any obligation of confidence at the time of its disclosure;

15.4.3 is independently developed by the Customer, without access to or use of the Supplier's Confidential Information; or

15.4.4 is required by law, by court or governmental or regulatory order to be disclosed provided that the Customer, where possible, notifies the Supplier at the earliest opportunity before making any disclosure.

15.5 This clause 15 shall survive the termination or expiry of our Agreement for a period of [ten] years.

## 16 Relief

To the maximum extent permitted by law, the Supplier shall not be liable (under any legal theory, including negligence) for any breach, delay or default in the performance of our Agreement to the extent the same (or the circumstances giving rise to the same) arises or was contributed to by any Relief Event.



## 17 Limitation of liability

- 17.1 The extent of the Supplier's liability under or in connection with our Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation or under any indemnity) shall be as set out in this clause 17.
- 17.2 Subject to clauses 17.2, 17.4 and 17.7, the Supplier's aggregate liability in respect of each individual Subscribed Service (and all Support Services provided in connection with the same) (howsoever arising under or in connection with our Agreement) shall not exceed the greater of:
- 17.2.1 an amount equal to the Subscription Fees for the relevant Subscribed Service paid to the Supplier by the Customer in the 12-month period immediately preceding the first incident giving rise to any claim under our Agreement; or
  - 17.2.2 an amount equal to 12 times the Subscription Fees for the relevant Subscribed Service due or paid to the Supplier for the first month of the relevant Subscribed Service Period.
- 17.3 Subject to clauses 17.4 and 17.7, the Supplier's aggregate liability in respect of each individual Free or Trial Service (and all Support Services provided in connection with the same) (howsoever arising under or in connection with our Agreement) shall not exceed £100 (one hundred).
- 17.4 Subject to clause 17.7, the Supplier's total aggregate liability howsoever arising under or in connection with our Agreement shall not exceed the greater of:
- 17.4.1 an amount equal to the Fees for all Services paid to the Supplier in the 12-month period immediately preceding the first incident giving rise to any claim under our Agreement; or
  - 17.4.2 an amount equal to 12 times the Fees due or paid to the Supplier for the Services provided in the first month of the Service Period.
- 17.5 Subject to clause 17.7, the Supplier shall not be liable for consequential, indirect or special losses.
- 17.6 Subject to clause 17.7, the Supplier shall not be liable for any of the following (whether direct or indirect):
- 17.6.1 loss of profit;
  - 17.6.2 destruction, loss of use or corruption of data;
  - 17.6.3 loss or corruption of software or systems;
  - 17.6.4 loss or damage to equipment;
  - 17.6.5 loss of use;
  - 17.6.6 loss of production;
  - 17.6.7 loss of contract;
  - 17.6.8 loss of commercial opportunity;
  - 17.6.9 loss of savings, discount or rebate (whether actual or anticipated); and/or
  - 17.6.10 harm to reputation or loss of goodwill; and/or
  - 17.6.11 wasted expenditure.



- 17.7 Notwithstanding any other provision of this Agreement, the Supplier's liability shall not be limited in any way in respect of the following:
- 17.7.1 death or personal injury caused by negligence;
  - 17.7.2 fraud or fraudulent misrepresentation; or
  - 17.7.3 any other losses which cannot be excluded or limited by applicable law.

17.8 This clause 17 shall survive the termination or expiry of our Agreement.

## 18 Suspension

- 18.1 The Supplier may suspend access to the Services (or any part) to all or some of the Authorised Users if:
- 18.1.1 the Supplier suspects that there has been any misuse of the Services or breach of our Agreement;
  - 18.1.2 the Customer fails to pay any sums due to the Supplier by the due date for payment; or
  - 18.1.3 required by law, by court or governmental or regulatory order.
- 18.2 Where the reason for the suspension is suspected misuse of the Services or breach of our Agreement, without prejudice to its rights under clause 20, the Supplier will take steps to investigate the issue and may restore or continue to suspend access at its discretion.
- 18.3 In relation to suspensions under clause 18.1.2, access to the Services will be restored promptly after the Supplier receives payment in full and cleared funds.
- 18.4 Fees shall remain payable during any period of suspension notwithstanding that the Customer, Authorised Affiliates or some or all of the Authorised Users may not have access to the Services.

## 19 Renewals

- 19.1 Subject to clause 19.2, on expiry of the Subscribed Service Period indicated in the Order Form for each Subscribed Service the Subscribed Service Period shall continue and automatically renew for a further period of twelve months (**first Renewal Date**) and thereafter renew for a further period of twelve months on each anniversary of the first Renewal Date (each of the first Renewal Date and each such anniversary being a **Renewal Date**). This clause 19.1 shall not apply in respect of Free or Trial Services (which shall not renew unless otherwise expressly stated in the Order Form).
- 19.2 If either party wishes for the Subscribed Service Period to expire on the next Renewal Date, it may cause the Subscribed Service to expire on that Renewal Date by notice provided such notice is served at least **30 (thirty)** days prior to that Renewal Date. If notice is not served within the timeframes set out in this clause 19.2, the Subscribed Service shall renew at the next Renewal Date in accordance with clause 19.1.

## 20 Term and termination

- 20.1 Our Agreement shall come into force on Order Acceptance and, unless terminated earlier in accordance with its terms, shall continue for the duration of the Service Period after which it shall automatically renewed in accordance with clause 19.1.
- 20.2 **IF THE CUSTOMER WISHES TO TERMINATE THIS AGREEMENT PRIOR TO THE EXPIRY OF THE SUBSCRIBED SERVICE PERIOD, IT MUST GIVE THE SUPPLIER ONE (1) MONTH WRITTEN NOTICE AND IT SHALL, AS A CONDITION OF SUCH TERMINATION, PAY THE AMOUNT DESCRIBED IN CLAUSE 21.1.4.**



- 20.3 **IF THE SUPPLIER TERMINATES THIS AGREEMENT IN ACCORDANCE WITH CLAUSES 20.4, 20.5 OR 20.7, THE CUSTOMER SHALL BE REQUIRED TO PAY, AS LIQUIDATED DAMAGES, THE AMOUNT DESCRIBED IN CLAUSE 21.1.4.**
- 20.4 The Supplier may suspend (in addition to the event set out in clause 18) or terminate this Agreement with immediate effect if:
- 20.4.1 the Customer fails to pay the Fees or any other amount due for payment under this Agreement on the due date for such payment;
  - 20.4.2 the Customer's relevant acquirer ceases for whatever reason to permit the processing of the Customer's transactions or otherwise requires a change to the Subscribed Services which is outside of the scope of this Agreement and the Customer is unable to find a suitable replacement relevant acquirer within the required time frame;
  - 20.4.3 the Supplier is required by law or by any body with applicable authority to so suspend or terminate the Agreement (or any part of it). If the Supplier is not permitted to notify the Customer of a suspension the Supplier may suspend the provision of the Subscribed Services under the Agreement with immediate effect and without notice to the Customer;
  - 20.4.4 if the Customer repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify, in the opinion of the Supplier, that taken together, such repeated breaches are either: (i) material, or (ii) are inconsistent with the Customer's intention to give effect to the terms of this Agreement;
  - 20.4.5 the Customer is an individual or partnership and the individual or any partner dies or any step is taken to enter into any voluntary arrangement with creditors, whether formal or informal by such individual or any partner, whether in the UK or in any other jurisdiction;
  - 20.4.6 any other event or series of events, whether related or not, occurs (including any material adverse change in the business assets or financial condition of the Customer) which in the opinion of the Supplier may affect the ability or willingness of the Customer to comply with all or any of the Customer's obligations under the Agreement;
  - 20.4.7 any act or omission occurs affecting the Customer which in the opinion of the Supplier damages or could result in damage to the reputation of the Supplier, a relevant acquirer or a Card Scheme or their respective logo, trade or service marks;
  - 20.4.8 there is, in Supplier's opinion, any material change in the nature or type of the business undertaken by the Customer.
- 20.5 Either Party may suspend or terminate this Agreement immediately on notice, if the other Party:
- 20.5.1 commits a material breach of this Agreement and, if the breach is capable of remedy, fails to remedy the breach within 30 days of a written notice to do so;
  - 20.5.2 has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent or bankrupt or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction) or is subject to any analogous event or proceeding to those set out in this clause 20.5.2 in any applicable jurisdiction.
- 20.6 The Supplier may terminate or suspend the provision of Free or Trial Services (and all related Support Services) at any time with or without notice.
- 20.7 Any breach by the Customer of the Acceptable Use Policy or of clauses 10 or 11 shall be deemed a material breach of our Agreement which is not remediable.



## 21 Consequences of termination

- 21.1 Immediately on termination or expiry of our Agreement (for any reason), the rights granted by the Supplier under our Agreement shall terminate and the Customer shall (and shall procure that each Authorised User and Authorised Affiliate shall):
- 21.1.1 stop using the Services; and
  - 21.1.2 destroy and delete or, if requested by the Supplier, return any copies of the Documentation in its possession or control (or in the possession or control of any person acting on behalf of any of them);
  - 21.1.3 comply with their obligations in connection with the removal of the Software from all PoS in accordance with any instructions as are made known by the Supplier, unless the Supplier removes the Software from all PoS;
  - 21.1.4 pay all amounts outstanding under the Agreement in relation to which invoices have been raised and where any invoices have not been submitted the Supplier shall submit such invoices in respect of all Fees and other amounts which would have been payable had the Subscribed Service Period completed, which shall be payable by the Customer within thirty (30) days of the date of such invoice.**
- 21.2 Termination or expiry of our Agreement shall not affect any accrued rights and liabilities of either party at any time up to the date of termination or expiry and shall not affect any provision of our Agreement that is expressly or by implication intended to continue beyond termination.

## 22 Notices

- 22.1 The Customer agrees to receive all communications, correspondences, and notices that the Supplier provides in connection with the Services, including, but not limited to, marketing and promotional messages related to the Supplier and/or its Affiliates or the Services, correspondence regarding our delivery of the Services, and providing the Customer information related to the subscription to the Services (**Communications**), via electronic means, including by e-mail, text, in-product notifications, push notifications, or by posting them on or making them otherwise available through the Supplier's website. To the fullest extent permitted under applicable laws, the Customer agrees that all Communications we provide to the Customer electronically satisfy any legal requirement that such Communications be in writing or be delivered in a particular manner and the Customer agrees to keep your contact information current.
- 22.2 This clause does not apply to notices given in legal proceedings or arbitration.

## 23 Third Party Rights

- 23.1 Nothing in the Agreement shall confer, or is intended to confer, on any third party any benefit or the right to enforce any term of the Agreement under the Contracts (Rights of Third Parties) Act 1999. This clause 23 does not affect any right or remedy of any Person which exists or is available otherwise than pursuant to that Act.

## 24 Entire Agreement

- 24.1 The Agreement constitutes the entire agreement and understanding between the parties in respect of the matters dealt with and supersedes, cancels and nullifies any previous agreement between the parties relating to such matters (but without prejudice to any accrued rights or obligations under any such prior agreement).
- 24.2 Subject to clause 24.3, the Agreement sets out the full extent of each party's obligations and liabilities arising out of or in connection with the Agreement and each party acknowledges and agrees that there are no conditions, warranties, representations or terms, express or implied, that are binding on either party, except as specifically provided in the Agreement (and it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding, whether negligently or innocently made, other than as expressly set out in the Agreement). Any condition, warranty, representation or term which might otherwise be implied into or incorporated in the Agreement or any collateral contract, whether by statute, common law, or otherwise, is hereby expressly excluded.,



24.3 Nothing in this clause 23 shall operate to exclude any liability of either party for fraud.

## 25 Assignment and subcontracting

25.1 The Supplier may at any time assign, sub-contract, sub-licence (including by multi-tier), transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights or obligations under our Agreement.

25.2 Except as expressly permitted by our Agreement, the Customer shall not assign, transfer, sub-contract, sub-licence, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights or obligations under our Agreement (including the licence rights granted), in whole or in part, without the Supplier's prior written consent.

## 26 Authority

Each party represents and warrants to the other that it has the right, power and authority to enter into our Agreement and grant to the other the rights (if any) contemplated in our Agreement and to perform its obligations under our Agreement.

## 27 Amendments To the Agreement

27.1 The Supplier shall, from time to time and in its absolute discretion, be entitled to amend (including by way of additional provisions) any of the terms of the Agreement, including all or any of the Fees, on giving the Customer not less than **two (2) months' prior notice**.

27.2 Where the Supplier serves notice of any changes pursuant to clause 27.1:

27.2.1 unless the Customer notifies the Supplier, prior to the expiry of the applicable 1 (one) month notice period, that it does not accept such changes, it shall be deemed to have accepted such changes, which shall take effect on the expiry of such notice period (and the Agreement shall be deemed to be amended accordingly);

27.2.2 the Customer shall be entitled to terminate the Agreement without charge at any time before the expiry of such notice period.

## 28 Miscellaneous

28.1 **Anti-Corruption, Anti-Bribery and Anti-Money Laundering.** The Customer shall ensure that the Customer's subsidiaries, owners, officers, directors, employees, partners, subcontractors, agents and representatives fully comply with all applicable anti-corruption, anti-bribery and anti-money laundering laws and regulations in connection with this Contract, as may be amended from time to time. Without limiting the generality of the foregoing obligation, the Customer specifically understands and agrees that the Customer shall not, and shall take reasonable measures to assure that Customer Affiliates shall not, make, authorize, offer or promise to make or give any money or any other thing of value, directly or indirectly, to any government official or employee, political party or candidate for political office, or any other person for the purpose of securing any improper or unfair advantage or obtaining or retaining business in connection with the activities contemplated hereunder. Any breach or violation of any provision contained in this clause 28.1 shall be grounds for immediate termination of this Contract by the Supplier.

28.2 Neither party shall make or permit to be made any publicity releases or announcements regarding the Agreement without the prior written consent of the other (such consent not to be unreasonably withheld or delayed).

28.3 Each party shall be responsible for its own costs in connection with the preparation, negotiation and entry into of the Agreement and (save as otherwise expressly provided or as otherwise agreed in writing between the parties) any other documents contemplated by it.

28.4 Save as otherwise expressly provided in the Conditions, nothing in the Agreement is intended to, or shall be deemed to:



- 28.4.1 establish any partnership or joint venture between the parties, constitute any party (or its Personnel) the agent of the other (or the other's Personnel), or authorise either party (or its Personnel) to make or enter into any commitments for or on behalf of the other (or the other's Personnel); or
- 28.4.2 render either party, or any of their respective officers or employees, an officer or employee of the other.
- 28.5 The failure of either party to require the performance of any of the terms of the Agreement, or the waiver by either party of any default under the Agreement, shall not prevent a subsequent enforcement of such term, nor be deemed a waiver of any subsequent breach.
- 28.6 If any provision of the Agreement is held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the validity, legality, or enforceability of any other provision of the Agreement, provided that such invalidity does not materially prejudice a party's rights or obligations contained in the remaining provisions.
- 28.7 The Agreement shall be concluded in the English language. All correspondence and communications in connection with the Agreement (including in respect of information required to be given to the Customer pursuant to the PSR) shall be given in English. In the event of any conflict between the English version of the Agreement (or any part of the Agreement, or any document referred to in it) or any such correspondence and communications and any version thereof which has been translated into any language other than English, then the English version shall prevail.
- 28.8 The Agreement and any matter arising from or in connection with it (including its formation and all non-contractual or other obligations arising out of or in connection with it) shall be governed by and construed in accordance with the laws of England and Wales and the parties hereto submit to the exclusive jurisdiction of the courts of England and Wales.





THE SCHEDULE  
DEFINITIONS AND INTERPRETATION

1 In our Agreement:

- Addendum** means the addendum identifying certain respective rights and obligations of the parties' in respect of personal data and privacy under our Agreement (as Updated from time to time), which as at Order Acceptance is the latest version available at <https://optomany.com/gateway/data-protection-addendum> (the **Data Protection Addendum**);
- Affiliate** means, in respect of any entity, any entity that directly or indirectly controls, is controlled by or is under common control with that entity within the meaning set out in section 1124 of the Corporation Tax Act 2010;
- Authorised Affiliates** means, in respect of the relevant Subscribed Service, the Affiliates of the Customer (if any) identified in the Order Form as Authorised Affiliates in respect of that Subscribed Service;
- Authorised PoS Accounts** means, in respect of the relevant Subscribed Service, the number of PoS authorised by the Supplier to use that Subscribed Service in accordance with the terms of our Agreement;
- Authorised Users** means, in respect of the relevant Subscribed Service, the named users authorised by the Customer to use that Subscribed Service in accordance with the terms of our Agreement;
- axept® Control Centre** means the online support, management, and reporting tool as is made available by the Supplier), a public facing browser-based web application including a suite of tools allowing the reporting of transactions and the management of the payment environment for customers. In terms of reporting, OCC offers a number of pre-defined reports covering different reporting periods, as well as the capabilities for the Customer to create their own specific reports and have these run on a scheduled basis to be automatically generated and delivered to the Customer via email;
- axept® Platform** means a cloud-based technology which accepts and validates inbound transaction requests from the various environments in a number of supported formats. The axept® Platform manages the authorisation of the transaction to the appropriate certified acquirer or third party service provider in the appropriate format required by those parties. Finally, axept® Platform generates a response back to the originator advising of the transaction authorisation outcome;
- axept® Processing** means the technical services provided (or to be provided) by the Supplier in accordance with the Master SaaS Terms which support the provision of payments services in relation to the processing of payments. axept® Processing consists of axept® Platform, Optomany Control Centre and axept® Application;
- axept® Software** means Supplier's proprietary application (comprising the Cardholder and Customer Components) for PoS terminals, which manages the entire payment process, including transaction type selection, amount entry, the capture of sensitive payment data, the validation of the cardholder's PIN, the transmission of an authorisation request to the axept® Platform, the receipt of the authorisation response from the axept® Platform and the printing of a transaction receipt;
- Business Day** means a day other than a Saturday, Sunday or bank or public holiday in England;



<b>Card Schemes</b>	means Mastercard and Visa and such other schemes relating to the facilitation or administration of payments as specified in writing by the Supplier from time to time;
<b>Cardholder Data</b>	means Cardholder Data as defined by the PCI DSS (Payment Card Industry Data Security Standards);
<b>Controller</b>	has the meaning given to such term in the UK GDPR;
<b>Customer</b>	has the meaning given in the relevant Order Form;
<b>Customer Data</b>	means all data (in any form) that is provided to the Supplier or uploaded or hosted on any part of any Subscribed Service by the Customer or by any Authorised User;
<b>Customer Systems</b>	means all software and systems used by or on behalf of the Customer, the Customer's Affiliates, any of its or their direct or indirect sub-contractors, or any Authorised User in connection with the provision or receipt any of the Services or that the Services otherwise, link, inter-operate or interface with or utilise (in each case whether directly or indirectly);
<b>Data Protection Impact Assessment</b>	means a data protection impact assessment as referred to in Article 35 of the UK GDPR;
<b>Data Protection Law</b>	means any applicable laws relating to the protection of personal data and privacy in force from time to time, including (i) the GDPR; (ii) the UK GDPR, the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426);
<b>Data Protection Losses</b>	has the meaning given to that term in the Data Protection Addendum;
<b>Documentation</b>	means: <ul style="list-style-type: none"><li>(a) the description of the relevant Subscribed Service (as Updated from time to time), which as at Order Acceptance is the latest version available at <a href="https://optomany.com/gateway/subscribed-services-description">https://optomany.com/gateway/subscribed-services-description</a> (the <b>Description</b>);</li><li>(b) in respect of each Subscribed Service, the relevant instructions as to how to use that part of the Services made available by the Supplier at <a href="https://optomany.com/gateway/control-centre-user-guide">https://optomany.com/gateway/control-centre-user-guide</a> (as Updated from time to time) (the <b>User Manual</b>);</li></ul>
<b>Fees</b>	means the Subscription Fees together with any other amounts payable to the Supplier under our Agreement;
<b>Force Majeure</b>	means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under our Agreement (provided that an inability to pay is not Force Majeure), including any matters relating to transfer of data over public communications networks and any delays or problems associated with any such networks or with the internet;
<b>Free or Trial Service</b>	means any Subscribed Service identified as being provided on a trial basis or provided without charge (for the duration of the period during which it is provided on such basis);
<b>Intellectual Property Rights</b>	means any and all copyright, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database



rights and rights in data, semiconductor chip topography rights, utility models, domain names and all similar rights and, in each case:

- (a) whether registered or not;
- (b) including any applications to protect or register such rights;
- (c) including all renewals and extensions of such rights or applications;
- (d) whether vested, contingent or future; and
- (e) wherever existing;

**Master SaaS Terms** means the terms set out in the clauses and other provisions of this document (including the schedule), as Updated from time to time;

**Materials** means all services, data, information, content, Intellectual Property Rights, websites, software and other materials provided by or on behalf of the Supplier in connection with the Services, but excluding all Customer Data;

**Network** means the Public Switched Telephone Network (PSTN,) Broadband, or mobile telephone network upon which axept@ Services will operate;

**Non-Supplier Materials** means Materials provided, controlled or owned by or on behalf of a third party the use of which is subject to a separate agreement or licence between the Customer and the relevant third party (including such Non-Supplier Materials which may be linked to, interact with or used by the Services) and all other Materials expressly identified as Non-Supplier Materials in our Agreement;

**Open Source Software** means any software subject to a version of the General Public Licence, together with any other 'open source' software falling within the Open Source Definition issued by the Open Source Initiative ([www.opensource.org/docs/osd](http://www.opensource.org/docs/osd)) at the date of our Agreement and any 'free software' as defined by the Free Software Foundation ([www.gnu.org/philosophy/free-sw.html](http://www.gnu.org/philosophy/free-sw.html)) at the date of our Agreement;

**Order Acceptance** means the effective date of the relevant Order Form;

**Order Form** means the electric or physical form (including its schedules, annexes and appendices (if any)) ordering the Subscribed Services entered into by or on behalf of the Customer and Supplier, incorporating these Master SaaS Terms and our Agreement (and as varied by the parties by agreement in writing from time to time);

**PCI Provisions** means such provisions as apply to Optomany and the Merchant in relation to the requirements of the Payment Card Industry Security Standards Council ("PCI SSC");

**Permitted Downtime** means:

- (a) scheduled maintenance which the Supplier shall use reasonable endeavours to undertake from 2am to 6am (UK time);
- (b) emergency maintenance; or
- (c) downtime caused in whole or part by Force Majeure.

**Permitted Purpose** means use solely for the Customer's business operations and, in respect of each Subscribed Services, also for the business of operations of the Authorised Affiliates identified in respect of that Subscribed Service on the Order Form, in each case in

accordance with the applicable Documentation and our Agreement. Permitted Purpose expressly excludes any of the following to the maximum extent permitted by law:

- (a) copying, reproducing, publishing, distributing, redistributing, broadcasting, transmitting, modifying, adapting, editing, abstracting, storing, archiving, displaying publicly or to third parties, selling, licensing, leasing, renting, assigning, transferring, disclosing (in each case whether or not for charge) or in any way commercially exploiting any part of any Subscribed Service or Documentation;
- (b) permitting any use of any Subscribed Service or Documentation in any manner by any third party (including permitting use in connection with any timesharing or service bureau, outsourced or similar service to third parties or making any Subscribed Service or Documentation (or any part) available to any third party or allowing or permitting a third party to do any of the foregoing (other than to the Authorised Affiliates for the Permitted Purpose));
- (c) combining, merging or otherwise permitting any Subscribed Service (or any part of it or any Application) to become incorporated in any other program or service, or arranging or creating derivative works based on it (in whole or in part); or
- (d) attempting to reverse engineer, observe, study or test the functioning of or decompile the Applications or the Services (or any part),

except as expressly permitted under our Agreement.

**Policies**

means each of the following:

- (a) the Supplier's policy on acceptable use of the Services (as Updated from time to time), which as at Order Acceptance is the latest version available at <https://optomany.com/gateway/acceptable-use-policy> (the **Acceptable Use Policy**); and
- (b) the Supplier's privacy policy in relation to the Services (as Updated from time to time), which as at Order Acceptance is the latest version available at <https://www.optomany.com/page/privacy-policy> (the **Privacy Policy**);

**PoS terminal**

means the point of sale (POS) system, whether a terminal or any other pin entry device;

**Pricing Terms**

means the details of pricing and fees in respect of each part of the Services, as initially provided under the Order Form and updated from time to time in accordance with clause 8.7 or, in respect of any part of the Services for which prices are not expressly agreed, on the Supplier's Standard Pricing Terms;

**Protected Data**

has the meaning given in the Data Protection Addendum;

**Relief Event**

means:

- (a) any breach of our Agreement by the Customer; or
- (b) any Force Majeure;

**Renewal Date**

has the meaning given in clause 19.1;



<b>Service Hours</b>	means such time during which Subscribed Services are available to the Customer, estimated to be 24 hours a day, seven days a week excluding Permitted Downtime;
<b>Service Period</b>	means the period beginning on Order Acceptance and ending with the last of the Subscribed Service Periods;
<b>Services</b>	means the Subscribed Services and the Support Services;
<b>Subscribed Service Period</b>	means (subject to clauses 19 and 20) in respect of each Subscribed Service, the duration during which such services are to be provided as initially set out in the Order Form and as varied in accordance with our Agreement;
<b>Subscribed Service Specific Terms</b>	means the Supplier's standard terms for provision of Support Services, as amended by the Supplier from time to time;
<b>Subscribed Services</b>	means each cloud service to which the Customer has subscribed as set out in the Order Form (and <b>Subscribed Service</b> shall refer to each respective service separately);
<b>Subscribed Territory</b>	means, in respect of the relevant Subscribed Service, the territories identified in the Order Form except to the extent it is illegal (including as a result of any embargo) under the laws of the United Kingdom (as binding on any person) for the Subscribed Service to be provided to or received within such territories from time to time;
<b>Subscription Fee</b>	means, in respect of each Subscribed Service, the fees payable by the Customer in consideration of that Subscribed Service as set out in the Pricing Terms;
<b>Supplier</b>	has the meaning given in the relevant Order Form;
<b>Supplier Provided Materials</b>	means all of the Materials provided or made available by or on behalf of the Supplier, but excluding all Customer Data and all Non-Supplier Materials;
<b>Supplier's Confidential Information</b>	means all information (whether in oral, written or electronic form) relating to the Supplier's business [which may reasonably be considered to be confidential in nature] including information relating to the Supplier's technology, know-how, Intellectual Property Rights, assets, finances, strategy, products and customers. All information relating to the Pricing Terms, [the User Manual], the Description and any other technical or operational specifications or data relating to each Subscribed Service shall be part of the Supplier's Confidential Information;
<b>Supplier's Standard Pricing Terms</b>	means the Supplier's standard pricing terms for each part of the Services, as amended by the Supplier from time to time;
<b>Support Services</b>	means, in respect of the relevant Subscribed Service, the support services provided by the Supplier to the Customer as described in the Subscribed Service Specific Terms;
<b>UK GDPR</b>	means the General Data Protection Regulation, Regulation (EU) 2016/679, as it forms part of domestic law in the UK by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom or of a part of the United Kingdom from time to time);
<b>Update</b>	has the meaning given in clause 7.2, and <b>Updated</b> shall be construed accordingly;
<b>Update Notification</b>	has the meaning given in clause 7.1; and
<b>VAT</b>	means United Kingdom value added tax, any other tax imposed in substitution for it.

2 In our Agreement, unless otherwise stated:



- 2.1 the table of contents, background section and the clause, paragraph, schedule or other headings in our Agreement are included for convenience only and shall have no effect on interpretation;
- 2.2 the Supplier and the Customer are together the **parties** and each a **party**, and a reference to a party includes that party's successors and permitted assigns;
- 2.3 words in the singular include the plural and vice versa;
- 2.4 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 2.5 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form (including email);
- 2.6 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time and a reference to legislation includes all subordinate legislation made from time to time under that legislation; and
- 2.7 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.