**GATEWAY SERVICES AGREEMENT**

This Gateway Services Agreement (“**Agreement**”) is entered into today the DATE by and between the following parties:

**Maxpay Limited**

a company registered in Malta, bearing company registration number C66555 and having its registered address at Villa Ichang no. 16, Triq Mons Alfredo Mifsud, Ta’ Xbiex XBX 1063, Malta hereinafter referred to as "**Maxpay**";

And

**\_COMPANY NAME (with legal form)\_\_\_\_\_\_\_\_\_\_**

a company registered in COUNTRY OF REGISTRATION, bearing company registration number NUMBER, VAT number NUMBER and having its registered address at \_\_\_\_COMPANY ADDRESS\_\_\_\_\_\_ hereinafter referred to as the "**Merchant**”.

Hereinafter also collectively referred to as the Parties.

**Recitals**

**WHEREAS**, the Merchant wishes to engage Maxpay for the provision of the Services described in Section 2 of this Agreement;

**WHEREAS**, Maxpay has agreed to supply the said Services on the terms and conditions set out in this Agreement;

**WHEREAS**, it is the express objective and intention of the Parties to this Agreement to achieve as high as possible degree of efficiency in their professional relationship, to their mutual benefit;

**NOW, THEREFORE,** in consideration of the above recitals, which recitals are expressly made an integral part of this Agreement, and in further consideration of the promises, covenants, conditions and mutual obligations hereinafter contained, Maxpay and the Merchant agree and covenant as follows:

1. **Definitions and Interpretation**
	1. The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Agreement. Unless otherwise indicated, any reference in this Agreement to a section or a Schedule refers to the specified section of or Schedule to this Agreement.
	2. Any reference to a schedule, article or paragraph in this Agreement shall be reference to a schedule, article or paragraph of this Agreement unless the context otherwise requires.
	3. In this Agreement, the singular includes the plural and the masculine includes the feminine and vice versa and persons shall include individuals, corporations, partnerships, associations, trusts, unincorporated organizations, governmental bodies and other legal or business entities.
	4. The Preamble and the Schedules to this Agreement shall form an integral part thereof.
	5. **Definitions**

***“Acquirer” or “Acquiring Bank”*** – means a third party financial institution which has a contractual relationship with Maxpay in connection with which it enables Maxpay and the Merchant to (a) accept payments by Cardholders using Cards; and (b) receive value in relation to Card payments.

***“Agreement”*** - means this Gateway Services Agreement including any annexes or schedules attached hereto or made reference to herein.

***“Card(s)” –*** means a credit, debit, pre-paid, charge or purchase or other card issued by a Card issuer and any other cards which Maxpay is able and has agreed to provide gateway processing services (as notified by Maxpay to Merchant from time to time).

***“Cardholders”*** – means (i) the person to whom the Card is issued and whose name is embossed or imprinted on the face of the Card, and (ii) is the authorised user of a Card.

***“Card Issuers”*** – means Visa®, MasterCard®, American Express®, JCB®, Diners®, Discover® and/or such other organisation governing the issuance and use of Cards including but not limited to their respective members as may be approved and notified by Maxpay to Merchant in writing from time to time. Approval to process certain Cards is subject to Maxpay’s sole discretion.

***“Chargeback”*** - means any End User charge which the End User’s credit card issuer identifies as being invalid or non-collectible after initial acceptance, on account of fraud, lost, canceled, unissued, or invalid account identification, an unresolved End User complaint, or other cause.

***“Confidential Information”*** – means information or material: (a) concerning either party’s internal business, employees, policies and/or actual or potential customers; or (b) which derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and/or (c) identified in writing by disclosing party as confidential.

Provided, however, that, Confidential Information excludes any information or material: (a) which is or subsequently becomes to the general public other than through a breach by the receiving party; (b) which is already known to the receiving party before disclosure by the disclosing party; (c) which is independently developed by the receiving party without use or reference to the Confidential Information of the other; or (d) which the receiving party rightfully receives from third parties without restriction as to use or disclosure.

***“Data Protection Laws”*** – means any applicable data protection, privacy or secrecy laws or regulations including all laws and regulations implementing the EU Directive 95/46/EC of the European Parliament and the Council of 24 October 1995.

***“End User”*** – means (i) a Cardholder, and (ii) a person that purchases goods or services from Merchant through Maxpay Services.

***“Intellectual Property”*** – means any patent, copyright, design, trade name, trademark, service mark or other intellectual property right (whether registered or not) including without limitation ideas, concepts, know-how, techniques, designs, specifications, drawings, blueprints, tracings, diagrams, models and other information relating to any such intellectual property.

***“PCI-DSS”*** – means Payment Card Industry Data Security Standards as released from time to time by the Security Standards Council.

***“Service”*** – means any of the services which are set forth in Section 2 of this Agreement or any additional Services as shall be mutually agreed by Merchant and Maxpay from time to time.

***“Transactions”*** – means any payment or refund made by the use of the Card or the Card number or otherwise to debit or credit the Cardholder’s account, and any process undertaken between Merchant and a bankcard holder, which Maxpay has transmitted in a batch to Merchant’s merchant bank for processing through the bankcard settlement system and receives authorization or perform any related action in relation of any of the aforementioned activities. There can be several types of Transactions in each payment, namely registration of the payment method, authorisation, settlement, credit and void.

1. **Services**
	1. Credit card gateway processing (delivery of payment Transaction authorization and settlement data to and from Merchant and transaction processors, routing of Transaction messages on behalf of Merchant to and from the relevant Card Issuers and/or Acquirers and related services provided by Maxpay);
	2. Execution of gateway processing of payment transactions where the consent of the End User to a payment transaction is transmitted by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting solely as an intermediary on behalf of the payment service user and the supplier of the goods and services;
	3. Use of standard Fraud Control Tooling in Customer Area;
	4. Back office access via Customer Area and use of all available reporting options;
	5. Services shall be provided by Maxpay in its sole discretion with respect to each transaction processor, Acquiring Bank with which and for as long as Maxpay has an agreement and the parties hereto have signed the respective agreements. The form of Service, contractual structure, method of settlement and remittance, as well as, the respective terms and conditions may vary between merchants and between Acquiring Banks. Accordingly, in certain instances the aggregation of funds and/or remittance to Merchant may be provided by the indicated Acquiring Banks and not by Maxpay;
	6. In consideration of the fees and subject to the Merchant’s conformity and compliance with the provisions of this Agreement, Maxpay shall provide Merchant with the following Services:
2. Gateway processing one-time and recurring Transactions online for Merchant’s Web Site(s) through the Merchant Account, using secure lines and a web page interface served from Maxpay’s server;
3. risk Management & Fraud Screening Services for Transactions processed through Maxpay’s software; and,
4. shall further provide Merchant with the standard level of support set out in the Service Level Standards.
5. any other additional Services as agreed between the Parties and specified in Schedule B to this Agreement.
	1. Maxpay shall have the right, upon a three day notice, to change the terms, conditions or specifications of any of the Services due to (i) changes in the Services which are made at Merchant’s request; (ii) changes in the Services which are made at the Card Issuer(s) and/or Acquiring Banks’ request; or (iii) changes imposed upon Maxpay for any reason whatsoever. Change in applicable laws may affect Maxpay’s ability to provide services or Merchant’s ability to use or receive services.
	2. Without derogating from any other right available to Maxpay under this Agreement, applicable laws or otherwise, it is hereby agreed that Maxpay has the right, in its sole discretion, to suspend gateway processing in any jurisdiction at any time and for any period of time on the basis of risk management considerations or where required in compliance with any applicable laws or for any other reason.
	3. Scheduled Down Time. In providing these services, Maxpay is authorized to shut down gateway payment processing as necessary to conduct maintenance, upgrade, repair and/or provide other necessary attention to Maxpay’s server or equipment. Maxpay will have reasonable discretion to determine when to shut down gateway payment processing for Merchant’s Web Site, in such case, Maxpay shall give Merchant advance e-mail written notice when gateway processing for Merchant’s Web Site(s) will be shut down and will cooperate with Merchant in scheduling any shut down.
	4. Where any of the aforementioned services are provided by third parties such services are also subject to such third party’s terms and conditions, Maxpay accepts no liability for the provision of services by any third party whether or not undertaken at the request of Merchant.
6. **Merchant Obligations**
	1. Comply with the terms and conditions of this Agreement including without limitation with the provisions of the attached Schedules herein.
	2. Observe, maintain and comply with all applicable laws and rules including without limitations, PCI-DSS, as well as, with any and all policies, guidelines and reasonable instructions Maxpay may issue or make available from time to time, including, without limitation, with respect to privacy, security, compliance, risk, chargebacks and refunds and URL monitoring.
	3. Merchant acknowledges that certain countries have distant selling laws and regulations with which it is Merchant’s sole responsibility to become familiar and fully compliant.
	4. Protect the data relating to its End Users, which is collected and stored by Merchant against unauthorised access and shall use said data solely as permitted. Merchant shall immediately notify Maxpay if Merchant reasonably believes that there has been any security breach including but not limited to instances of unauthorised access or attempt to access Transaction data or sensitive End-User data, where there is a suspected or confirmed damage, loss or theft of Transaction data or sensitive End-User data. Merchant shall co-operate with and assist Maxpay, at Merchant’s expense, in identifying and resolving compliance issues with regard to all applicable laws and rules.
	5. Upon Maxpay’s request disclose such information and/or allow access and fully cooperate, at Merchant’s own expense, with any financial, security and/or procedural inspection, investigation and/or audit that may be conducted by or for Maxpay, Acquiring Banks, Card Issuers, regulatory authorities/agencies and/or other relevant payment providers.
	6. Merchant acknowledges that Card Issuers may impose certain rules where the Merchant shall exceed the chargeback ratios/limits as such ratios/limits are set by these organisations and as updated from time to time (jointly ‘Chargeback Ratios’).
	7. Merchant shall maintain a Chargeback Ratio which does not exceed the allowable Chargeback Ratios of the Card Issuers. In the event that Merchant exceeds the allowable Chargeback Ratio, Maxpay has the right, in its sole discretion, to suspend Services.
	8. Merchant agrees:
7. Not to engage in misleading or deceptive conduct nor to use any services itself or permit others to use the services for any improper, immoral or unlawful purposes;
8. Not to act recklessly or negligently permit or allow others to act in a way that the operation of the Maxpay Service will be jeopardised or impaired;
9. Not to use, disclose, sell or disseminate any cardholder information obtained in connection with a Transaction (including the names, addresses and card account numbers of Cardholders) except for purposes of authorising, completing and settling Transactions and resolving any charge backs, retrieval requests or similar issues involving card transactions, other than pursuant to a court or governmental agency request or order;
10. **Collection and Use of Documentation and Information**
	1. Merchant shall be entitled to use the Services once Maxpay has satisfied certain verification and due diligence requirements (which may vary between services and between Acquiring Banks), as such, requirements may be changed by Maxpay’s sole discretion, from time to time.
	2. Merchant undertakes to assist Maxpay in the verification and due diligence process as shall be required, by providing any required documentation and other information, executing any required agreements, instruments and other certifications. Merchant undertakes to provide complete, accurate, truthful and timely documentation and information as required from time to time by Maxpay.
	3. Merchant undertakes to notify Maxpay promptly of any changes which may occur from time to time regarding any documents and information it provided as well as with respect to the Merchant’s financial standing and ability to meet its obligations herein.
	4. Maxpay may from time to time request additional or updated documentation and information from Merchant regarding Merchant’s business and operations in order to enable Maxpay to satisfy that it should continue to accept Merchant as a user to the Services and for the purposes of satisfying Maxpay’s on-going legal and contractual obligations. Failure to supply requested information in a timely manner entitles Maxpay to suspend Merchant’s access to part or all of the Services with an immediate effect.
	5. Maxpay binds itself not to disclose or make any reference to the Data to third parties except for the purposes of:
11. in order to perform the Maxpay Services described in this Agreement;
12. for internal use, record keeping, internal reporting, and support purposes, such Data is to be retained as long as necessary or as required by law;
13. to provide the Data as required by law or court order or to defend the Merchant’s rights in a legal dispute.
	1. The Merchant binds itself to:
14. abide by all applicable legislation including Data Protection Laws;
15. obtain prior consent from all its End Users which initiate a Transaction through their respective sites for the collection, retention, use and processing of data by the Merchant or Maxpay;
16. **Fees**
	1. Merchant is responsible for payment of the fees detailed in Schedule A and fees for additional Services according to the provisions set forth in Schedule B.
	2. In consideration of the provision of the Services under this Agreement, the fees owed by the Merchant to Maxpay will be deducted from Merchant’s funds by Acquiring Bank and/or invoiced by Maxpay. When Maxpay renders an invoice to Merchant, the Merchant shall make payment to Maxpay of the amount due according to the invoice within ten (10) calendar days of receiving the invoice. All bank transfer and charges of settlements described in this section shall be borne by Merchant. In case invoice is over thirty (30) days past due, there will be a 10% late-payment fee in favor of Maxpay. Maxpay also will be entitled at any time to apply to transaction processor and/or Acquiring Banks with instructions to debit Merchant’s bank account for repayment of any sums that are due and owing by Merchant to Maxpay and Merchant irrevocably authorizes its financial institution to accept such instructions.
	3. All fees payable to Acquiring Banks and/or Maxpay under this Agreement are exclusive of Value Added Tax and any additional or other taxes, charges or duties which may be imposed in connection with any and all payments made or due hereunder and shall, if applicable, be borne by Merchant. In case Value Added Tax or any other sales tax is or becomes chargeable (retroactively or going forward) in accordance with applicable laws, Maxpay shall add such amount to the fees accordingly.
	4. Merchant shall remain at all times fully and solely responsible for all taxes, fees and other costs incidental to and arising from any sale of goods or services by the Merchant.
	5. Failure to pay the fees on or by the due dates shall entitle Maxpay to exercise remedies under this Agreement, including without limitation, the right to assess interest at the maximum rate applicable under law.
	6. Maxpay shall have the right, upon three (3) days written notice, to increase the fees due to (i) any change by the Card Issuers, Acquiring Banks, or any third party service providers; (ii) changes in the Services which are made at Merchant’s request; or (iii) delays due to Merchant’s failure to fulfill its obligations. Maxpay shall also have the right, in its sole discretion, to increase the Fees for any other reason at any time upon thirty (30) days written notice.
	7. Any fees or amounts paid by Merchant, whether directly or by way of a set-off, deduction or otherwise, to Acquiring Banks or other third parties, shall not affect nor derogate from Merchant’s obligation to pay all fees due to Maxpay hereunder.
17. **Warranties and Representations**
	1. The Merchant acknowledges and agrees that Maxpay operates solely as a payment intermediary and that Maxpay:(a) under no circumstances functions as a seller, buyer, dealer, middleman, retailer, auctioneer, supplier, distributor, manufacturer, broker, agent or merchant of Merchant product/service; and (b) makes no representations or warranties and does not ensure the quality, safety or legality of any Merchant product/service. The Merchant agrees that any dispute regarding any product or service purchased or sold by the Merchant through Maxpay Services is between the Merchant and the third party that purchased or sold the goods or services, and agrees that Maxpay shall not be a party to any such dispute. The Gateway Services are provided on an “as is,” “as available” basis without any representations or warranties. Maxpay does not represent or warrant the Gateway Services will be available, accessible, uninterrupted, timely, secure, accurate, complete or entirely error-free. Merchant may not rely on any representation or warranty regarding the Gateway Services by any third party in contravention of the foregoing statements. Maxpay specifically disclaims all representations, warranties and conditions whether express or implied, arising by statute, operation of law, usage of trade, course of dealing, or otherwise, including but not limited to, warranties or conditions of merchantability, fitness for a particular purpose, non-infringement, or title with respect to the Gateway Services. Merchant understands and agrees that Maxpay shall bear no risk with respect to Merchant’s sale of products or services including, without limitation, any risk associated with credit card fraud or chargebacks.
	2. Each Party warrants to each other Party that at the date of this Agreement it has full power and lawful authority to execute and deliver this Agreement and to perform its obligations under this Agreement. Except as expressly stated in this Agreement, no representation, inducement or warranty was, prior to the execution of this Agreement, given or made by one of the Parties hereto with the intent of inducing the other Party to enter into this Agreement, and any representations, inducements or warranties that may have been so given are hereby denied and negated. The respective Party is duly organized and validly existing under the laws of its domicile, and has the legal capacity and corporate authority to own its property and carry on its business as now conducted and is not in breach of its by-laws.
	3. The respective Party is in all material respects in compliance with and has at all times been, to such extent, in compliant with, and is not in material default or violation in any respect of any applicable law (including any regulation, permit or ordinance affecting its business operation).
	4. Maxpay is the sole and exclusive owner of all trade names and trademarks used in connection with the services provided and free and clear of all liens, claims and other encumbrances.
	5. Each Merchant website and product complies with all applicable laws and regulations;
	6. The Merchant shall process all data according to all applicable data protection regulations and legislation.
	7. The Merchant shall at all times comply with all applicable laws, statutes and regulations and shall not receive or transfer funds, nor otherwise use the Maxpay Service in connection with any illegal, fraudulent or deceptive activity, including without limitation, for money laundering or terrorist financing.
	8. All of the information about the Merchant and its business provided to Maxpay by the Merchant, including as set out in the application form submitted by Merchant, is true, accurate and complete.
	9. The Merchant has the necessary rights, power, authority and capabilities to enter into this Agreement and perform its obligations hereunder, and performance of its obligations shall not violate any applicable laws.
	10. There is no action, suit or proceeding at law or in equity now pending or, to the best of its knowledge, threatened by or against or affecting Merchant which would impair its right to carry on its business as now conducted or affect its financial conditions or operations or its ability to perform the obligations required under this Agreement.
	11. It has full knowledge of the PCI-DSS and Merchant hereby undertakes to faithfully comply therewith and to prove compliance therewith in an appropriate manner to Maxpay upon request. Furthermore, Merchant shall meet all costs associated with achieving compliance. Without derogating from the generality of the above, Merchant assumes full responsibility in the event of total or partial non-compliance with the PCI-DSS program.
	12. Any and all information and documentation provided by Merchant is true, accurate, complete and updated and no information, document or statement provided, made available or made are untrue, false, incorrect, incomplete or misleading.
	13. It shall at all times comply with all Data Protection Laws applicable to the conduct of its business and the performance of its obligations under this Agreement and shall not do or omit to do, or cause or permit anything to be done or omitted to be done, which may cause or otherwise result in a breach of the Data Protection Laws by Merchant, Maxpay, Acquiring Banks, Card Issuers or others.
	14. It shall not knowingly do anything or allow anything to be done which is likely to harm Maxpay’s reputation or the reputation of the Card Issuers and/or Acquiring Banks.
18. **Term and Termination**
	1. The term of this Agreement shall commence on the date of both Parties signing this Agreement and shall continue until terminated by either Party upon thirty (30) days’ notice in writing to the other Party.
	2. Without derogating from the aforesaid, Maxpay shall terminate this Agreement immediately:
19. If the other Party fails to perform any obligation required of such other Party under this Agreement and does not remedy any breach within sixty (60) days from a written request to such effect made by the other Party;
20. If Maxpay reasonably suspects or believes that Merchant is using the Services in connection with any unauthorised, dishonest or criminal activities or upon notice from Card Issuers that the Merchant is suspended or violated any of their rules;
21. Maxpay is required to do so by any Card Issuer or regulatory authority or agency;
22. In the event of expiry or termination for any reason of the agreement between Maxpay and the respective Acquiring Banks and/or Card Issuers relating to the provision of the Service;
23. If the other Party becomes insolvent, fails to pay its debts due to Maxpay, makes a general assignment for the benefit of creditors, commences procedures for voluntary winding up, suffers or permits the appointment of a receiver for its business assets, or is wound up or liquidated, voluntary or otherwise.
	1. Each Party shall be released from all obligations and liabilities to the other occurring or arising after the date of such termination, except that any termination of this Agreement shall not relieve Maxpay or Merchant from any liability arising prior to the termination of this Agreement.
24. **Confidentiality**
	1. Each Party agrees to maintain all Confidential Information of the other Party in confidence to the same extent that it protects its own similar Confidential Information and to use such Confidential Information only as permitted under this Agreement. Each Party agrees to take all reasonable precautions to prevent any unauthorised disclosure or use of the Confidential Information of the other Party including, without limitation, disclosing such Confidential Information only to its employees or contractors with a need to know and who are parties to appropriate agreements sufficient to comply with this section.
	2. The confidentiality obligations shall not apply to information that (i) is or becomes public knowledge through no action or fault of the other; (ii) is known to either Party without restriction, prior to receipt from the other Party under this Agreement, from its own independent sources as evidenced by such Party’s written records, and which was not acquired, directly or indirectly, from the other Party; (iii) either Party receives from any third Party reasonably known by such receiving Party to have a legal right to transmit such information, and not under any obligation to keep such information confidential; or (iv) information independently developed by either Party’s employees or agents provided that either Party can show that those same employees or agents had no access to the Confidential Information received hereunder.
	3. Maxpay is responsible for the security of card details provided by the Merchant and been stored, processed or passed by Maxpay on behalf of the Merchant to bank-acquirer or other Parties involved into the process.
25. **Intellectual Property**

Maxpay or its licensors own all right, title and interest, including without limitation all copyright, trademark and other intellectual property rights, in and to Maxpay Services and all components used in the provision thereof, including without limitation, all software, business methods, business processes, website designs, graphics, text, content, trade names, trade secrets and know-how, and all documentation in relation to the foregoing, used in the provision of Maxpay Services (“Proprietary Information”). Except as expressly stated herein, this Agreement does not transfer any right, title or interest in Maxpay Services or the Proprietary Information to the Merchant. Maxpay grants to the Merchant a non-exclusive, non-transferable license to display certain logos and trademarks of Maxpay as Maxpay may from time to time designate, on the Merchant’s Website(s) for the sole purpose of advising the Merchant’s customers on its Website(s) of the availability of Maxpay Services. The Merchant acknowledges that it is prohibited from any use, reproduction, decompilation, reverse engineering, modification or distribution of any Proprietary Information that is not expressly authorised in this Agreement. The Merchant may not sell, resell, assign or otherwise transfer rights to Maxpay Services or any Proprietary Information.

1. **Limitation of liability, Indemnification**
	1. Neither Maxpay, nor its affiliates, subsidiaries, agents or subcontractors shall be liable for any delay or failure to perform its obligations under this Agreement to the extent that the delay or failure is caused by any of the following:
2. failure, interruption, infiltration or corruption of any hardware, software or other telecommunications or data transmission system;
3. Maxpay’s belief that the transaction is unauthorised or fraudulent or poses a security risk;
4. interception or seizure compelled by law or regulation; or

(d) circumstances beyond Maxpay’s reasonable control.

10.2. Merchant understands and acknowledges that during the term of this Agreement and after its termination for any reason whatsoever, the Merchant shall continue to bear total responsibility for the Chargebacks, reversed payments, penalties, fees, credits and adjustments resulting in any way from Transactions and all other amounts then due or which thereafter may become due under this Agreement.

10.3. Maxpay makes no warranties to the Merchant with respect to the Maxpay Service nor any other services to be performed by Maxpay under this Agreement except as expressly set out herein, and all implied and statutory warranties, including without limitation, any warranty of fitness for a particular purpose, are hereby expressly disclaimed except where implied or statutory warranties cannot be disclaimed by applicable law.

10.4. In no event shall Maxpay, its affiliates, subsidiaries, agents or subcontractors be liable to the Merchant or any third party for any indirect, special, consequential, punitive or incidental damages, whether based on negligence, willful misconduct, tort, contract (including without limitation fundamental breach or breach of a fundamental term) or any other theory of law.

10.5. The Merchant shall indemnify Maxpay, its affiliates, subsidiaries, agents and subcontractors from and against any and all claims, damages, causes of action, suits, losses, liabilities, obligations, expenses, penalties and costs (including reasonable legal fees) each of them may suffer or incur arising out of or in connection with any breach or non-compliance by the Merchant of any term, condition, representation or warranty under this Agreement.

10.6. Neither Party is liable for damages caused by a decision or action by a third party such as a court, authority, bank, the other Party or any other event that is outside of the control of the erring party.

10.7. Merchant shall at its expense indemnify, defend and hold harmless Maxpay and its affiliates and their respective assignees, agents, franchises, licensees, employees, officers and directors from any claims by third parties, including but not limited to End Users and/or Acquiring Banks, resulting from or in connection with the Merchant, including but not limited to the Merchant’s website, trademarks, products or services and where applicable, Maxpay’s use of the above and including without limitation in relation to actual or alleged infringement, misappropriation, or violation of any third-party intellectual property rights, as well as, any security breach without limitation in relation to End Users information and compliance with PCI-DSS.

10.8. The maximum aggregate liability of Maxpay for any liability and any cause of action arising under or in connection with this Agreement, howsoever arising (including by way of negligence or any other reason), shall be limited to the fees paid by the Merchant to Maxpay during the three calendar months immediately preceding the date on which the relevant cause of action arose.

10.9. Merchant acknowledges the electronic nature of the Services to be supplied hereunder and the inherent risk that communications by electronic means may not reach their intended destination or may do so later than intended for reasons outside Maxpay’s control.

10.10. Any claim for compensation for faults or damages must be presented in writing by the Merchant to Maxpay within ninety (90) days after the occurring of the alleged fault or damage.

10.11. Nothing in this Agreement excludes or restricts a Party’s liability for death or personal injury resulting from negligence or intent of that Party.

**11. General**

* 1. If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, illegal or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect. If any provision of this Agreement is so found to be invalid or unenforceable but would cease to be invalid or unenforceable if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid and enforceable.
	2. Notices herein shall be delivered and effective as follows: every notice required or contemplated by this Agreement to be given to the respective Party shall be in writing and in English and may be given by hand delivery, by overnight commercial courier delivery service or express mail, by fax, by certified mail return receipt requested or by electronic mail (e-mail). The said notice shall be deemed delivered on the date of hand delivery; the next business day after delivery to an overnight commercial courier service or to national postal service for express mail for delivery on the next business day; the date of transmission of the fax, if an electronic transmission report is obtained and retained, showing that all pages have been successfully transmitted; or seven (7) days after mailing by certified mail return receipt requested; addressed to the Party for whom it is intended, at the address hereunder and on the date the e-mail is sent at the addresses hereunder.

To Maxpay: compliance@maxpay.com

To the Merchant: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* 1. This Agreement shall inure to the benefit of and shall be binding on and enforceable by the Parties and, where the context so permits, their respective successors and permitted assigns.
	2. Maxpay reserves the right to use third party service providers in rendering any of the Services to Merchant. Without derogating from the limitation of Maxpay’ liability under any other provision in this Agreement, should Maxpay elect to supply all or any of the Services by a service provider, Maxpay shall not be liable for the quality of such services nor for any delay in a failure to supply the Services.
	3. No amendment or waiver of any provision of this Agreement shall be effective or binding on any Party unless reduced to writing by and signed by duly authorised representatives of each Party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall any waiver constitute a continuing waiver unless otherwise expressly provided.
	4. The Parties acknowledge that the unauthorised use or release of the Proprietary Information of each or any part thereof, except as provided herein, would result in damages to the other Party which could not be adequately compensated for in damages by monetary award. Accordingly, in the event of any such breach, in addition to all other remedies available at law or in equity, the damaged Party shall be entitled, as a matter of right, to apply to a court of competent equitable jurisdiction for relief by way of restraining order, injunction, decree or otherwise, as may be appropriate to ensure compliance with this Agreement.
	5. The Parties to this Agreement are independent contractors and neither Party is the agent, joint venture, partner or employee of the other. No relationships of principal to an agent, master to a servant, employer to employee, franchiser to franchisee, partners or joint ventures is established hereby between the Parties. Neither Party has the authority to bind the other nor incur any obligation on its behalf.
	6. It is the Merchant’s responsibility to determine which, if any, taxes apply to the payments received, and to report and remit the correct tax to the appropriate tax authority. Maxpay shall not be obligated to determine whether taxes apply, and is not responsible to collect, report, or remit any taxes arising from any Transaction.
	7. Each Party, when acting as data processor, shall process personal data in accordance with Regulatory Requirements. Where one Party acts as the data processor (“**Data Processor**”) of personal data processed by the other Party as data controller (“**Data Controller**”), the Data Processor shall at all times follow the Data Controller’s reasonable instructions with regards to the personal data processed.
	8. The Parties covenant and agree to make all applications, execute all other deeds, documents, instruments and assurances, and do such further and other acts as may be necessary or desirable to carry out the true intent and meaning of this Agreement, and to give full effect to the transactions contemplated or intended hereby.
	9. Neither Party shall be liable for any economic loss, delay or failure in performance of any part of this agreement to the extent that such loss, delay or failure is caused by fire, flood, explosion, accident, war, strike, embargo, governmental requirements, civil and military authority, Act of God, civil unrest, data trespass, inability to secure materials or labour, action of the other Party or any other cause beyond such Party’s reasonable control. The Parties undertake to use all reasonable endeavours to avoid or mitigate the impact of any event of Force Majeure and to recommence performance of their obligations under this Agreement as soon as reasonably possible. In the event that the cause of the Force Majeure lasts longer than 3 months, either Party is entitled to terminate this Agreement with a written notice of immediate effect.
	10. This Agreement and any legal relationship between the parties arising out of or in connection with it shall be governed by and construed in accordance with the laws of Malta regardless of the venue or jurisdiction in which a dispute is being determined.
	11. The Merchant may not assign, sub-contract or deal in any way with all or any part of the benefit of, or its rights or obligations under this Agreement without the prior written consent of Maxpay.
	12. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, into which all prior negotiation, commitments, representations and undertakings of the parties are merged and, except as herein specifically provided, there are no oral or written understandings or agreements between the parties hereto relating to the subject matter hereof.

**No amendment or other modification of this Agreement will be valid or binding on either Party hereto, unless in writing and executed by the parties hereto.**

**IN WITNESS WHEREOF,** the Parties have caused this Agreement to be signed by their duly authorised representatives on the date(s) appearing under the signature of each Party’s representative, below:

|  |  |
| --- | --- |
| **For and on behalf of****Maxpay Limited**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**Artem Tymoshenko**Director  | **For and on behalf of****COMPANY NAME (with legal form)**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**NAME of legal representative**Director  |