**ALERTS SERVICES AGREEMENT**

This Alerts Services Agreement (the “**Agreement**”) by and between

**Maxpay Limited**, a company organized under the laws of Malta, with its registered address at Villa Ichang no.16, Triq Mons Alfredo Mifsud, Ta’ Xbiex XBX 1063, Malta (the “**Company**”) and

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, a company organized under the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with its registered address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Customer**”) is to come into effect on the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Effective Date**”).

Each of the aforementioned parties is sometimes referred to individually as a “**Party**” and collectively they will be referred to as the “**Parties**”.

WHEREAS the Company is engaged in relationships with Data Processor in the business of helping merchants reduce losses and costs associated with fraud, chargebacks and other unwanted transactional activities and provides the benefits of such services in connection with this business (the “**Services**”);

WHEREAS the Customer wishes to obtain such Services by means of Company’s intermediary.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the Company and Customer do hereby agree as follows:

1. **Nature and Term of Engagement.**
   1. Services. The Services are defined in greater detail in Appendix A. The Company hereby agrees to provide access to the benefit of the Services to Customer.

Customer acknowledges that Company's provision of the Services and any other services are expressly conditioned upon Customer's prompt performance of its obligations and responsibilities hereunder. Company reserves the right to refuse to provide any Service to Customer, in Company's sole discretion. Customer acknowledges and agrees that Company may engage third party vendors to assist in the provision of Services, and that Company shall have the right to provide its third party vendors with all information, data (including, but not limited to, Customer data, Cardholder Data and Transaction data) and other information that Customer provides, or causes to be provided, to Company in connection with this Agreement.

* 1. Term and Termination.

1. The term of this Agreement shall be one (1) year from the Effective Date (the “**Initial Term**”); provided, however, that this Agreement shall be automatically renewed for additional one (1) year terms (“**Renewal Terms**”). Either Party may terminate the Agreement, at any time, for no reason, by providing written notice to the other Party fifteen (15) days prior to the desired date of termination.
2. Company may suspend the provision of Services and/or terminate this Agreement immediately upon written notice to Customer in case of (i) material breach of this Agreement by the Customer; (ii) in the event Customer fails to timely pay any fees or charges when due; (iii) suspension in the provision of services by Data Processor and/or termination of the agreement between the Company and Data Processor.
3. Notwithstanding anything in this Agreement to the contrary, payment obligations under Section 2 of this Agreement shall survive termination of this Agreement.
4. Upon termination or expiration of the Agreement for any reason: (i) The Customer will pay Company all amounts then due and owing as of the termination date within fifteen (15) calendar days; (ii) any and all licenses and rights granted to either party in connection with the Agreement shall immediately cease and terminate; and (iii) any and all Confidential Information or proprietary information of either party that is in the other party's possession or control must be immediately returned or destroyed with written confirmation that such destruction was successful.
5. **Fees and Payments.**
   1. Fees will be charged in accordance with Appendix B. Company will provide an invoice to the Customer for each payment on a biweekly basis, or as otherwise agreed by the Parties. Customer shall remit payment to Company within fifteen (15) days of receiving an invoice. Customer will advise Company of any disputed charges within five (5) days of receiving an invoice. All payment obligations are non-cancellable, non-refundable and non-contingent.
   2. Company reserves the right to change its fees at any time upon thirty (30) days prior written notice to Customer.
   3. Expenses. Each Party is solely and exclusively responsible for the payment of all expenses, taxes, fees incurred in fulfilling such party’s obligations under this Agreement.
6. **Customer Obligations**
   1. Except as expressly set forth herein, Customer shall be solely responsible for providing all resources, equipment, hardware and software at its facilities which are necessary for it to remotely access, use and/or receive the Services. To the extent Company's provision of the Services requires data, documents, information or materials of any nature to be furnished, in whole or in part, by Customer or its employees, agents, contractors, representatives or End Users, Customer shall cause such employees, agents, contractors, representatives and End Users to furnish such data, documents and information in a manner which permits Company to perform the Services as contemplated herein.
   2. As between the Parties, Customer shall be responsible for the accuracy and completeness of all Customer data, Cardholder Data and other data transmitted or received by Customer in connection with the Services. Company does not warrant the correctness, completeness, merchantability or fitness for a particular purpose of any Customer data, Cardholder Data or other content, and Customer shall hold Company harmless from any and all third party claims arising out of Customer's use or dissemination of any such data or content.
   3. In connection with the exercise of Customer's rights and obligations under this Agreement (including, without limitation, any related to individual privacy), Customer shall comply, at Customer's own expense, with all laws, policies, guidelines, regulations, ordinances, rules applicable to Customer, this Agreement, Cardholder Data or the Transactions and/or orders of any governmental authority or regulatory body having jurisdiction over the subject matter hereof, including, without limitation, the rules promulgated by any Card Association, PCI DSS, and the Federal Trade Commission.
   4. Customer shall not utilize, or knowingly or unknowingly allow to be utilized, any services provided by Company to transact e-mails in violation of the Can-Spam Act of 2003, as amended (i.e., "spam"), offer or sell any goods or services that infringe or misappropriate any Intellectual Property Rights of Company or of any third party, violate any criminal laws, or engage in activities which constitute false advertising, unfair competition, defamation, an invasion of privacy, violate a right of publicity, or violate any other law or regulation.

**4. Confidentiality, Non-Solicit, and Use of Services Obligations.**

4.1 Definition. “**Confidential Information**” means: (a) any non-public technical or business information of a party, including without limitation: i) the terms of this agreement and ii) any information supplied to one party to the other by virtue of providing the Services, any information relating to a party’s techniques, algorithms, know-how, current and future products and services, research, engineering, designs, financial information, procurement requirements, manufacturing, customer lists, business forecasts, marketing plans and information; (b) any other information of a party that is disclosed in writing and is conspicuously designated as “Confidential” at the time of disclosure or that is disclosed orally, is identified as “Confidential” at the time of disclosure, and is summarized in a writing sent by the disclosing party to the receiving party within thirty (30) days of any such disclosure; and (c) the specific terms and conditions of this Agreement.

4.2 Exclusions. “Confidential Information” will not include any information that (a) is or becomes generally known to the public through no fault or breach of this Agreement by the receiving party; (b) the receiving party can demonstrate by written evidence was rightfully in the receiving party’s possession the time of disclosure, without an obligation of confidentiality; (c) is independently developed by the receiving party without use of or access to the disclosing party's Confidential Information; or (d) the receiving party rightfully obtains from a third party not under a duty of confidentiality and without restriction on use or disclosure.

4.3 Obligations. Each party will at all times, both during the term of this Agreement and following its termination, maintain in confidence all Confidential Information of the other party and will not use such Confidential Information except as expressly permitted herein. Each party will take all reasonable measures to maintain the confidentiality of such Confidential Information, but not less than the measures it uses for its confidential information of similar importance. Each Party will limit the disclosure of such Confidential Information to those of its employees and contractors with a bona fide need to access such Confidential Information for the exercise of its rights and obligations under this Agreement; provided that all such employees and contractors are subject to binding use and disclosure restrictions at least as protective as those set forth herein.

4.4 Customer agrees not to intentionally circumvent, canvass, solicit, interfere with Company’s relationship with Data Processor, third party vendors or other customers, or otherwise obtain, directly or indirectly, services similar to those performed by Company hereunder, from any Data Processor and third party vendor that is expressly known by Customer to have such a relationship with Company, during the term of the Agreement and for six (6) months following termination or expiration of the Agreement.

4.5 Use of Data and Services. Customer shall not utilize any data provided to it in connection with the Services for i) any reverse-engineering of technology or algorithms, ii) analyzing or compiling any data or identifying patterns therefrom, and iii) creating any service or offering that could be construed as competitive to the Service or otherwise could create confusion in the market.

**5. Representations and Warranties:**

5.1 Customer Representations and Warranties. Customer represents and warrants to Company that: (i) it has all necessary right, power and authority to enter into this Agreement and to perform its obligations hereunder; (ii) the execution and delivery of this Agreement, and the performance of its obligations hereunder, do not conflict with and will not result in a breach of any other agreement to which Customer is a party or by which its assets are bound; and (iii) this Agreement constitutes the legally valid and binding obligation of Customer enforceable against it in accordance with its terms, except as such enforcement may be limited by applicable law or equitable principle.

5.2 Customer Acknowledgment. Customer acknowledges and agrees that it has made its own evaluation in deciding to subscribe for the Services. The warranties provided in this Agreement extend solely to Customer and to no other person or entity whatsoever. Without limiting the foregoing, Company is not responsible for the results that may be obtained from use of the Services.

**6. Intellectual Property**

* 1. All Intellectual Property belonging to a Party prior to the Agreement Effective Date shall remain vested in that Party. Company (or its licensors) retains title to the Services and all modifications, alterations, derivative works, and enhancements thereto, and all copies thereof and Intellectual Property Rights therein. Except as specified herein, Customer does not acquire any rights, express or implied, in the Services, and has no right to commercialize or transfer the Services in whole or in part. No license, right or Intellectual Property Right in any Company trademark, trade name or service mark is granted pursuant to this Agreement.
  2. License to Customer and Cardholder Data. Customer hereby grants to Company the non-exclusive right and license to (i) receive, retrieve, process, sublicense, use and transmit any Customer data or Cardholder Data necessary or reasonably desirable to perform the Services; and (ii) use, copy, manipulate and store any Customer data or Cardholder Data that will be archived, stored or otherwise transmitted in connection with the Services.
  3. Residuals. This Agreement shall not be construed to limit Company's right to independently develop or acquire ideas, inventions, technology and other creations without use of Customer's Confidential Information or Trade Secrets. Company shall be free to use for any purpose the general knowledge, skills and experience in non-tangible form, which may be retained in the unassisted memories of persons involved in the performance of this Agreement (the “**Residual Information**”) of its personnel resulting from performance of services hereunder. Company shall have no obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of Residual Information.

7. **Indemnity and Limitation of Liability.**

7.1 CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE COMPANY AND THE COMPANY’S THIRD PARTY PROVIDERS, CONTRACTORS, AGENTS, OFFICERS, DIRECTORS, EMPLOYEES AND AFFILIATES, FROM AND AGAINST ANY AND ALL CLAIMS, COSTS, DAMAGES, LIABILITIES, LOSSES, OR EXPENSES, INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEYS’ FEES (COLLECTIVELY, “CLAIMS”), THAT ARISE OUT OF OR RESULT FROM THE CUSTOMER'S i) BREACH OF THIS AGREEMENT, ii) NEGLIGENCE OR WILLFUL MISCONDUCT.

7.2 THE INDEMNIFIED PARTY MAY, IN ITS OWN DISCRETION, PARTICIPATE IN THE DEFENSE OF ANY CLAIM INCLUDING USING COUNSEL OF ITS OWN CHOOSING. SUCH PARTICIPATION SHALL NOT RELIEVE CUSTOMER OF ANY OF ITS OBLIGATIONS UNDER THIS SECTION OR THIS AGREEMENT. THE INDEMNIFYING PARTY SHALL NOT, WITHOUT THE PRIOR WRITTEN CONSENT OF THE INDEMNIFIED PARTY, SETTLE ANY CLAIM. THE INDEMNIFIED HAS SOLE AND EXCLUSIVE AUTHORITY TO ENTER INTO ANY SETTLEMENT THAT WOULD IMPOSE AN INJUNCTION OR ANY OTHER EQUITABLE RELIEF UPON COMPANY.

7.3 Consequential Damages Waiver. IN NO EVENT SHALL COMPANY OR ANY OF ITS AFFILIATES OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES BE LIABLE TO CUSTOMER OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF GOODWILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, OR COMPUTER FAILURE, DELAY OR MALFUNCTION), EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES.

7.4 Disclaimers. COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), WITH RESPECT TO THE SERVICES PROVIDED PURSUANT TO THIS AGREEMENT. COMPANY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL WARRANTIES ARISING FROM CONDUCT, COURSE OF DEALING OR CUSTOM OF TRADE, AND ALL WARRANTIES OF TITLE AND NON-INFRINGEMENT. COMPANY DOES NOT WARRANT THAT THE SERVICES ARE OR WILL BE ERROR-FREE OR THAT THE USE OR OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR THAT ALL ERRORS OR ISSUES WITH THE SERVICES CAN OR WILL BE CORRECTED.

**8. General Provisions.**

1. Relationship Between Parties. Each Party to this Agreement is an independent contractor and nothing in this Agreement shall be interpreted to make either Party a partner, employee or agent of the other Party. Neither Party shall make any representation that suggests otherwise and no Party shall have any authority to bind the other.
2. Integration and Amendment. This Agreement, along with any exhibits, attachments or other documents affixed hereto or referred to herein, constitutes the entire agreement between the Parties related to the subject matter hereof and may be amended or revoked only by an instrument in writing signed by both Parties. The Parties hereby agree that no prior agreement, understanding or representation pertaining to any matter covered or mentioned in this Agreement shall be effective for any purpose.
3. Assignment. Customer shall not assign or delegate this Agreement nor assign or delegate any right or duty under this Agreement without the prior written consent of Company, which consent may be granted or withheld by Company in its sole discretion. A change of control of Customer shall be deemed to constitute an attempted assignment hereunder. Any attempted assignment by Customer not expressly permitted by this Section shall be null and void. "Control" means ownership or control, direct or indirect, of more than fifty percent (50%) of the stock or other equity interest entitled to vote for the election of directors or equivalent governing body. Company may assign this Agreement, including, without limitation, in connection with a sale of all or substantially all of its assets, without any consent being required, provided, however, Company shall provide Customer written notification within ten (10) business days of such assignment.
4. Severability. If any term or provision of this Agreement shall be held invalid or unenforceable to any extent under any applicable law by a court of competent jurisdiction, the remainder of this Agreement will not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. To the extent that the provisions of such applicable law may be waived, they are hereby waived such that this Agreement is deemed to be a valid and binding agreement enforceable in accordance with its terms.
5. Force Majeure. Neither Party shall be deemed in default or otherwise liable for any delay in or failure of its performance under this Agreement by reason of any act of God, fire, natural disaster, accident, riot, terrorism, act of government, strike or labor dispute, shortage of materials or supplies, or any other cause beyond the reasonable control of such Party.
6. Governing Law. This Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws rules or principles. Customer hereby consents to exclusive jurisdiction in California and exclusive venue in Santa Clara County, California for legal proceedings arising out of this Agreement. Customer accepts the personal jurisdiction of such courts.
7. Waiver. No waiver by either Party of the breach of any covenant, condition or term of this Agreement shall be construed as a waiver of any preceding or succeeding breach nor shall the acceptance of any fee or other payment during any period in which either Party is in default be deemed to be a waiver of such default. All waivers must be in writing and signed by the waiving Party.
8. Notices. Except as explicitly stated otherwise, legal and other notices shall be delivered certified mail, postage prepaid and return receipt requested or to the email address provided below or through a subsequent notice of an address change:

to Company: at Villa Ichang no. 16, Triq Mons Alfredo Mifsud, Ta’ Xbiex XBX 1063, Malta

E-mail: sales@maxpay.com

to Customer: at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

E-mail: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notice shall be deemed given twenty-four (24) hours after email is sent or three (3) days after the date of mailing by post.

The undersigned parties herby agree to all of the terms and conditions set forth in the Agreement.

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| --- | --- |
| Signed for and on behalf of  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, the “**Customer**”, by its authorized representative:  Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name (print): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Signed for and on behalf of  **Maxpay Limited**, the “**Company**” by its authorized representative:  Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name (print): **Artem Tymoshenko**  Title: Director  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**APPENDIX A**

**ALERTS SCOPE OF SERVICES**

DEFINITIONS:

For the purposes of this Appendix the following definitions apply:

Alerts: means information on Confirmed Disputed Transactions that data processor creates, evaluates or otherwise distributes.

Data: shall have the meaning ascribed to it in the recital to this Agreement and shall include, but is not limited to, the following information on Confirmed Disputed Transactions:

i. Card number

ii. Transaction amount

iii. Transaction currency

iv. Date and time of transaction

Confirmed Disputed Transaction: means a transaction for which it is known that the transaction will be disputed by the cardholder.

Merchant: means Customer of Company for which Company is acting on the Alerts.

Participating Issuer: means a card issuer that has agreed to provide data processor with Confirmed Disputed Transactions and for which Company has agreed to and implemented any terms required by the Participating Issuer.

Outcome Information: means the result of the Alert provided to Merchant which include: i) the results, as modified from time-to-time, of: Account Suspended, Shipment Stopped, Transaction Refunded, Order Previously Cancelled, Too Late, or Other; ii) the date and time the response; iii) additional optional relevant information about a transaction; and iv) any other commentary as it specifically relates to the outcome of the transaction in the optional free-form field for the provision of such commentary.

COMPANY RIGHTS AND OBLIGATIONS:

1. For Confirmed Disputed Transactions that Company has been provided Data on by Data Processor for acting on behalf of Merchants, Company will use its best efforts to use the Alerts and provide timely, full and accurate Outcome Information back to data processor.
2. Company uses commercially reasonable efforts to enable access to the Services. Company also uses commercially reasonable efforts to ensure that downtime relating to Services will not materially impact normal business operations.

3. Company will provide customer support in relation to the Services for the Merchant.

4. Company will provide its own interfaces or interaction mechanism for Merchants to benefit from Services.

5. Company has the reasonable right to audit the merchant segment allocations of the Customer related to the merchant risk profile.

Company\_\_\_\_\_\_\_\_ Customer\_\_\_\_\_\_\_\_\_

**APPENDIX B**

**ALERTS FEES**

The fees for the excess Alerts shall be as follows:

$30.00/ Alert for Alerts relating to Merchant’s business(es).

Company\_\_\_\_\_\_\_\_ Customer\_\_\_\_\_\_\_\_\_