



Schedule 2 – General Terms and Conditions

This Schedule 2 was published on 3 April 2023

1. DEFINITIONS AND INTERPRETATION

- 1.1. In the Agreement, the expressions set out in Schedule 1 – Glossary (whether used in plural or singular form) have the meanings so given to them, unless otherwise specified or the context otherwise requires.
- 1.2. References to the Agreement or to any other agreement or document referred to in the Merchant Conditions mean the Agreement or such other agreement or document as amended, varied, supplemented, modified or novated from time to time.
- 1.3. In the Merchant Conditions and the Agreement (unless the context otherwise requires):
 - 1.3.1. the words “including” and “include” and words of similar effect shall be deemed to have the words “without limitation” following them;
 - 1.3.2. the words “other” and “otherwise” are illustrative and shall not limit the sense of the words preceding them;
 - 1.3.3. the use of any gender shall include all genders;
 - 1.3.4. a reference to “writing” or “written” includes faxes but excludes emails;
 - 1.3.5. words importing the singular shall include the plural and vice versa;
 - 1.3.6. references to a “month” shall mean a calendar month;
 - 1.3.7. references to a numbered Schedule are to a schedule to the Agreement so numbered;
 - 1.3.8. references to a numbered clause are to a clause in the relevant Schedule so numbered (or to the Schedule in which such clause reference appears if no other Schedule is referred to);
 - 1.3.9. references to a “party” mean a party to the Agreement (which shall include the Relevant Acquirers if and to the extent applicable, having regard to clause 1.1 of Schedule 3) and references to the “parties” shall be construed accordingly;
 - 1.3.10. any obligation on a party to do something includes an obligation on that party to ensure that, if and to the extent applicable, its Personnel do that thing;
 - 1.3.11. any obligation on a party not to do something includes an obligation:
 - 1.3.11.1. not to agree or allow that thing to be done; and
 - 1.3.11.2. to procure that, if and to the extent applicable, its Personnel do not do that thing and do not agree or allow that thing to be done; and
 - 1.3.12. any reference to any legislative provision is a reference to it as it is in force from time to time (taking account of any amendment, extension, or re-enactment) and includes any subordinate legislation for the time being in force made under it.
- 1.4. The Schedules to the Merchant Application Form part of the Agreement and shall have full force and effect as if set out in the body of the Agreement and any reference to the Agreement shall include the Schedules.
- 1.5. **Priority.** In the event of any inconsistency between the provisions of this Schedule 2 and any other Schedules, then the former shall prevail, save in respect of:
 - 1.5.1. Schedule 9, which shall prevail over this Schedule 2 with regard to the parties' obligations relating to the Processing of Protected Data;
 - 1.5.2. Schedule 4 which shall prevail over this Schedule 2 with regard to provision of asept® Services;
 - 1.5.3. Schedule 10 which shall prevail over this Schedule 2 with regard to sale of Goods; and
 - 1.5.4. in the event of any inconsistency between the provisions of the Payment Scheme Rules and the provisions of the Merchant Conditions, then the provisions of the Payment Scheme Rules shall prevail.
- 1.6. Any rights granted to, or any obligations or liabilities imposed on, any Relevant Acquirer pursuant to the Agreement shall apply only if (and, where applicable, to the extent that) such Relevant Acquirer has provided or is to provide, Relevant Acquiring Services.
- 1.7. The headings in the Merchant Conditions are for ease of reference only and shall not affect their construction or interpretation.

2. MERCHANT SITES

- 2.1. Except for any Merchant Affiliates specified in the Merchant Application Form, if the Merchant wishes any Merchant Affiliate to be a Merchant



Site (and accordingly to receive any Services under the Agreement) then the Merchant shall give notice to DNAP (including full details of such Merchant Affiliate, the nature of its relationship to the Merchant and of the applicable Services required).

- 2.2. Following receipt of any notice from the Merchant pursuant to clause 2.1, DNAP shall determine, in its absolute discretion:
 - 2.2.1. whether or not include any such Merchant Affiliate as a Merchant Site; and
 - 2.2.2. (where applicable) which Services will be provided to such Merchant Site.
- 2.3. If DNAP agrees to provide or procure the delivery of any Services to a Merchant Site in respect of a Merchant Affiliates specified in any notice from the Merchant pursuant to clause 2.1, then DNAP shall notify the Merchant accordingly. For the avoidance of doubt, DNAP shall not be obliged to provide any Services to any Merchant Site except if and to the extent confirmed by DNAP in writing (or specified in the Merchant Application Form which has been accepted by DNAP).
- 2.4. The following provisions of this clause 2 shall apply only if (and to the extent that) DNAP has agreed to provide any Services to any Merchant Sites, whether as notified by DNAP pursuant to clause 2.3 and/or as specified in the Merchant Application Form which has been accepted by DNAP.
- 2.5. Without prejudice to any other provision of the Agreement (and subject to clauses 2.9 and 2.11), the Agreement is entered into by the Merchant as agent for and on behalf of each of the Merchant Sites.
- 2.6. The Merchant warrants, represents and undertakes to DNAP (Optomany and the Relevant Acquirer, where applicable) that:
 - 2.6.1. the Merchant has full capacity and authority to enter into the Agreement on behalf of each Merchant Site pursuant to clause 2.5; and
 - 2.6.2. the Merchant shall ensure full and due performance of the obligations in the Agreement by each Merchant Site as if each Merchant Site was entering into a direct agreement with DNAP (and the Relevant Acquirer, where applicable) upon and subject to the terms and conditions of the Agreement (but subject always to clause 2.11).
- 2.7. If and to the extent applicable, references in the Agreement:
 - 2.7.1. to the Merchant (other than in this clause 2) shall be deemed to include references to the Merchant Sites (or the applicable Merchant Site, as the context shall permit or require), subject always to clause 2.10; and
 - 2.7.2. to the Merchant's Personnel shall be deemed to include references to the Personnel of the relevant Merchant Sites.
- 2.8. Unless otherwise expressly agreed in writing by DNAP and the Merchant, the Fees shall be payable at the same rate as set out in the Merchant Application Form for all Services provided to any Merchant Site.
- 2.9. DNAP and the Relevant Acquirer shall be entitled to issue instructions to, and request information from, the Merchant in respect of all Merchant Sites and the Merchant shall ensure that such instructions and requests are promptly passed on to the Merchant Sites and are complied with by the Merchant Sites accordingly. Without prejudice to the foregoing, DNAP and the Relevant Acquirer shall also be entitled to liaise direly with each Merchant Site in respect of any instructions or requests for information in connection with the Agreement.
- 2.10. Where the Services to be provided to Merchant Sites include Acquiring Services:
 - 2.10.1. where agreed by the Merchant and DNAP (and notwithstanding any provisions to the contrary in Schedule 3), DNAP shall effect all Remittances to the Merchant which would otherwise be due to the Merchant Sites. The Merchant acknowledges and agrees (for itself and as agent for and on behalf of each of the Merchant Sites) that Remittance to the Merchant shall constitute full discharge of DNAP's responsibilities regarding Remittance to all Merchant Sites;
 - 2.10.2. without prejudice to any of the provisions of Schedule 3, Collateral may be provided by each Merchant Site or by the Merchant on behalf of all Merchant Sites (but in either case may be requested and used by DNAP in accordance with the relevant provisions of Schedule 3 in respect of the applicable Merchant Site); and
 - 2.10.3. for the avoidance of doubt, Settlement to the Merchant in respect of any Merchant Site shall be subject to deduction of any Refunds, Chargebacks, Transaction Fees or other permitted deductions applicable in respect of such Merchant Site in accordance with the terms of the Agreement.
- 2.11. Notwithstanding the inclusion of any Merchant Sites and the provision or contemplated provision of any Services to any Merchant Sites (and without prejudice to clause 23.1):
 - 2.11.1. no Merchant Site shall be entitled to enforce the Agreement directly (whether against DNAP, any Relevant Acquirer or any other Person); and
 - 2.11.2. only the Merchant may enforce the Agreement with regard to any Services provided or to be provided to any Merchant Sites.
- 2.12. Notwithstanding clause 2.11, DNAP and the Relevant Acquirer (and, where applicable, a DNAP Group Company, the Payment Schemes and the Card Issuers) shall be entitled to enforce any applicable provision of the Agreement directly against each Merchant Site. The Merchant and each Merchant Site shall have joint and several liability in respect of the obligations of Merchant Sites under the Agreement.
- 2.13. The rights of DNAP and a Relevant Acquirer under clause 2.12 are without prejudice to any other right or remedy each of them may have in respect of any Merchant Site in connection with the Agreement (including pursuant to any failure of the Merchant to comply with clause



2.6.2).

2.14. For the avoidance of doubt (but without prejudice to clause 2.11), the provisions of clause 16 (including the limitations and exclusions on the liability of DNAP and the Relevant Acquirers) shall apply to the Merchant and all Merchant Sites and the Services provided or to be provided to the Merchant and all Merchant Sites.

3. THE SERVICES

3.1. Notwithstanding the Merchant's acceptance and submission of the Merchant Application Form (and notwithstanding any other provision of the Agreement), DNAP and the Relevant Acquirers shall not be obliged to provide the Services and Optomany shall not be obliged to provide axept® Services unless and until DNAP notifies the Merchant in writing that the Merchant has been approved for the Services and, if applicable, the Collateral is collected.

3.2. For the avoidance of doubt:

3.2.1. notwithstanding clause 3.1, the Merchant's obligations (and the rights of DNAP and the Relevant Acquirers) under the Agreement shall take effect from (and including) the Commencement Date;

3.2.2. without prejudice to the generality of the foregoing, the Merchant shall be obliged to provide to DNAP all relevant information, assistance, and notifications pursuant to clause 6 and to make payment of any applicable Collateral pursuant to clause 10 of Schedule 3, notwithstanding that the provision of any Services may not have commenced or that DNAP has not approved the Merchant for the Services; and

3.2.3. DNAP and the Relevant Acquirers shall be under no obligation to approve the Merchant for the Services or to provide any Services to the Merchant, notwithstanding the Merchant's obligations under the Agreement or the provision by the Merchant of any information, assistance, notifications or Collateral as referred to in clause 3.2.2.

3.2.4. DNAP (to the extent permitted by law) may at its sole discretion and at Merchant's risk, let the Merchant create Transactions before DNAP approves the Merchant. Any Transactions the Merchant creates before such time are subject to the satisfactory completion of such process and subject to reversal in case the process is not complete within **thirty (30) Business Days**.

3.3. Starting from the Effective Date:

3.3.1. DNAP shall provide the Merchant with the DNAP Services;

3.3.2. the Relevant Acquirers shall provide the Merchant with the Relevant Acquiring Services, and

3.3.3. Optomany shall provide axept® Services, if the Merchant applied for them, in accordance with Schedule 4, in each case, upon and subject to the terms of the Agreement.

3.4. DNAP shall provide the DNAP Services and the Relevant Acquirers shall provide the Relevant Acquiring Services:

3.4.1. in accordance with the relevant provisions of the Agreement;

3.4.2. with reasonable care and skill; and

3.4.3. in accordance with Applicable Laws.

3.5. Where the Payment Method includes Zapp/pay by bank app (as described in Schedule 6) then the terms of Schedule 6 shall apply to such Payment Method in addition to the other provisions of the Conditions.

3.6. For the avoidance of doubt, unless otherwise expressly agreed in writing by DNAP, the Services shall not include the provision of any training of the Merchant or its personnel, whether relating to the utilisation of the Services or otherwise.

3.7. DNAP may amend the provision of the Services at any time without notice if and to the extent required by any Applicable Laws or to conform with good industry practice.

3.8. In addition to its rights under clause 3.7, DNAP may change the technical specification of the Services at any time without notice for operational or technical reasons provided that any such change does not materially adversely affect the performance of the relevant Services.

3.9. Notwithstanding any other provisions of the Agreement, DNAP may suspend the provision of all or any part of the Services and Optomany suspend the provision of all or any part of the axept® Services with immediate effect:

3.9.1. for operational reasons (including for repair, maintenance and improvement) provided that DNAP shall endeavour to give the Merchant as much notice as is reasonably possible before doing so and shall restore the Service as soon as reasonably practicable following any such suspension;

3.9.2. where DNAP or a Relevant Acquirer identifies or reasonably suspects any out-of-character traffic profile attributable or connected to the utilisation of the Services by the Merchant;

3.9.3. where DNAP reasonably believes that the continued provision of the Services represents a risk or potential risk to the operation, security, integrity, or functionality of all, or any part, of:



- 3.9.3.1. the computer server hardware, systems, equipment, software, and operations of DNAP, a DNAP Group Company, any Relevant Acquirer, the Merchant, or any third party;
 - 3.9.3.2. any services, software, or other supplies provided to a third party by DNAP, a DNAP Group Company, any Relevant Acquirer, or any of their respective suppliers; and/or
 - 3.9.4. where DNAP reasonably believes that the system or operations of any third party may pose a risk to the operation, security, integrity, or functionality of all, or any part of, the Services or DNAP's business (including its obligations under Applicable Laws).
- 3.10. For the axept® Services that the Merchant receives under this Agreement, the service provider shall be Optomany and Schedule 4 shall apply. The Merchant agrees that:
- 3.10.1. Optomany shall be a third-party beneficiary of this Agreement. With respect to its provision of axept® Services, Optomany shall be entitled to the same rights, remedies, and protections as are afforded DNAP under this Agreement, including any waivers, disclaimers, and other limitations, (ii) shall be entitled to enforce its rights directly against the Merchant to the same extent as DNAP is entitled to enforce its rights hereunder, and (iii) shall not be directly liable for claims made by the Merchant; and
 - 3.10.2. DNAP shall act as a representative and the agent of Optomany and shall be entitled to exercise all rights and enforce this Agreement on behalf of Optomany.

4. API AND SOFTWARE

- 4.1. DNAP may provide the API and the Software to enable the Merchant to use the Services.
- 4.2. Without prejudice to the generality of clause 3.7 or to clause 3.8, DNAP reserves the right (subject to clause 4.3), at any time, to:
- 4.2.1. change or amend the API and/or the Software (including changes to the functionalities and characteristics thereof);
 - 4.2.2. provide the Merchant with a new version of the API and/or the Software; and/or
 - 4.2.3. require the Merchant to install or update any and all Software to continue using the Services.
- 4.3. No changes referred to in clause 4.2 will be implemented by DNAP which materially reduce the functionality of the Services to be provided under the Agreement, except where this is made necessary by:
- 4.3.1. the need to follow generally accepted changes in the payment industry standards;
 - 4.3.2. changes in Applicable Laws, or for compliance with Applicable Laws;
 - 4.3.3. the need for increased security due to risks identified by DNAP; and/or
 - 4.3.4. other reasonable grounds which warrant the reduction of functionality.
- 4.4. If, pursuant to clause 4.3, DNAP implements any changes which materially reduce the functionality of the Services to be provided under the Agreement, the Merchant may terminate the Agreement by giving written notice to DNAP within **thirty (30) days** after DNAP informed the Merchant of the change.
- 4.5. DNAP shall inform the Merchant of any material changes referred to in clause 4.2. DNAP shall endeavour to inform the Merchant at least two (2) months in advance of the changes, where reasonably possible, but lesser (or no) advance notice may be given depending on the circumstances (including where changes are required in the circumstances referred to in clause 4.3).

5. MERCHANT INFORMATION

- 5.1. The information in the Agreement and obtained in accordance with clause 5.2 relating to the Merchant, together with other information obtained about the Merchant and its Personnel in connection with the Agreement, may be used and disclosed by DNAP or Optomany for various purposes as set out in the Agreement (including in accordance with clauses 5.3, 5.4 and 5.4.5) and, where the information comprises Personal Data, the Privacy Policy (in each case, including after termination of the Agreement for any reason).
- 5.2. The Merchant acknowledges and agrees that:
- 5.2.1. DNAP (acting on its own behalf and on behalf of Optomany) shall be entitled to obtain and use any and all information provided by or on behalf of the Merchant to the Acquirers or the Payment Schemes in connection with the Agreement as though such information was also provided directly to DNAP as part of the Agreement;
 - 5.2.2. some or all of the Payment Schemes or Acquirers may:
 - 5.2.2.1. operate databases containing information regarding the conduct of Transactions by the Merchant;
 - 5.2.2.2. record and monitor any breach by the Merchant of its duties in respect of Data;
 - 5.2.2.3. categorise undesirable acts and omissions of the Merchant under certain codes (each such code being a **Reason Code**);
 - 5.2.3. the Payment Schemes shall be entitled to notify DNAP of any of the information referred to in clause 5.2.2, including notification of Reason Codes and information associated with such Reason Codes;



- 5.2.4. any of the foregoing information may be used and disclosed by DNAP for any of the purposes set out in the Agreement (including in accordance with clauses 5.3, 5.4, and 5.4.5) and, where the information comprises Personal Data, the Privacy Policy (in each case, including after termination of the Agreement for any reason).
- 5.3. In addition to any provisions of the Privacy Policy pertaining to any Personal Data relating to the Merchant and its Personnel, DNAP and Optomany may use and share the Merchant's information (including regarding the Merchant, the Merchant's business, the Merchant's conduct relating to the Agreement or the operations and activities contemplated by it and details of Transactions) with any Acquirer, any DNAP Group Companies, the Card Issuers, the Payment Schemes, any Regulatory Bodies, professional advisors, legal professionals, selected business partners and credit reference agencies to help DNAP and/or them:
- 5.3.1. manage and assess information security;
- 5.3.2. manage and assess financial and insurance risks;
- 5.3.3. recover debt;
- 5.3.4. develop customer relationships, services, and systems;
- 5.3.5. prevent and detect fraud and other crime; and
- 5.3.6. prevent and detect a breach of any Applicable Laws.
- 5.4. The Merchant hereby authorises DNAP and Optomany to release Data and any other information relating to the Services, the Agreement, and the Merchant or its Personnel (including all relevant information and notifications obtained from the Merchant pursuant to clause 6) to DNAP's Personnel, any DNAP Group Companies, the Payment Schemes, the Card Issuers and the Relevant Acquirers or any other Person:
- 5.4.1. as required for the provision of the Services;
- 5.4.2. as required for the purpose of fulfilling DNAP's obligations (or exercising its rights) under the Agreement;
- 5.4.3. in connection with the purposes referred to in clause 5.2.2 and/or any termination of the Agreement pursuant to clause 19.5.6;
- 5.4.4. where DNAP is required or permitted to do so by any Applicable Laws (or in connection with its compliance with any Applicable Laws);
- 5.4.5. where DNAP assigns, sub-contracts or transfers its rights and/or obligations under the Agreement; or
- 5.4.6. where DNAP, or any third party, is investigating any suspected criminal activity.
- 5.5. The Merchant shall:
- 5.5.1. if instructed by DNAP, promptly provide (or procure the provision of) the Data or other information referred to in clause 5.4 directly to any third party for the purposes referred to in such clause; and
- 5.5.2. give DNAP reasonable assistance to facilitate the successful collection and delivery of all Data.
- 5.6. Notwithstanding the entry into force of the Agreement, DNAP may subsequently make all reasonable checks about the Merchant and any director, shareholder and/or other business owner of the Merchant including making periodic searches or checks on or with (and providing information about the Merchant to) credit reference agencies, fraud prevention agencies, Card Issuers, Payment Schemes, any Acquirers and DNAP Group Companies to manage and make decisions about their relationship or prospective relationship with the Merchant. Furthermore, DNAP has the right to add new risk and fraud features and/or checks relating to any aspect of the Services or the Agreement and to change any existing features or checks, in each case without prior notice to the Merchant.
- 5.7. The Merchant acknowledges and agrees that where DNAP has acted in good faith, DNAP shall have no liability to the Merchant for any inaccuracy in the information DNAP provides to any third parties pursuant to this clause 5.

6. MERCHANT ASSISTANCE

- 6.1. The Merchant shall promptly provide to DNAP (or procure for DNAP) on request:
- 6.1.1. such access to the Merchant's Personnel;
- 6.1.2. such access to the Retail Outlets and the Merchant's other premises and to the Merchant's data, information, and documentation (including Data); and
- 6.1.3. such co-operation and assistance from the Personnel (and any other applicable third parties),
- in each case, as may be reasonably required by DNAP in connection with the provision of the Services, the performance of its other obligations (or the exercise of its rights) under the Agreement or Applicable Laws.
- 6.2. Without prejudice to the generality of clause 5.1, the Merchant shall (and shall ensure that its Personnel shall), at all times throughout the term of the Agreement and for such period thereafter as DNAP may require:
- 6.2.1. promptly provide to DNAP such information as DNAP may request relating to the Merchant and its business, including its trading names, its legal status, its financial status, its activities, its Payment Methods and Payment System (including their associated



processes), its shareholders, its ultimate beneficial shareholders, a detailed description of goods and services sold by the Merchant (including any regulatory licences and registrations required to sell such goods or services), details of each of the Outlets, its ability to provide any Sale Items or any other goods or services, details of the current actual or expected delivery dates of Sale Items and estimates for the average time of delivery dates of Sale Items after the conclusion of Transactions;

- 6.2.2. promptly provide all documentation, information, materials, and assistance reasonably required by DNAP relating to the Agreement, including:
- 6.2.2.1. where required to satisfy DNAP's obligations under Applicable Laws, to any Payment Scheme, any Acquirer, any Regulatory Body or any other third party;
 - 6.2.2.2. relating to the prevention and detection of fraud; and
 - 6.2.2.3. relating to any aspect of the processing of Data by the Merchant or by any Person on its behalf;
- 6.2.3. promptly comply with all instructions (including any Procedure Guide) issued from time to time by or on behalf of DNAP or a Relevant Acquirer in relation to the provision or use of the Services, the processing of Transactions, or the performance of the Merchant's obligations under the Agreement;
- 6.2.4. fully cooperate with the Acquirers and promptly provide all information requested by DNAP in respect of any dispute relating to a Transaction (including a dispute between DNAP and the Merchant);
- 6.2.5. promptly provide each Acquirer on request with the Merchant's latest audited accounts and any other financial information which DNAP may require (including management accounts);
- 6.2.6. promptly provide assistance to each Acquirer and all documentation and information requested by each Acquirer in order to ensure compliance with Applicable Laws relating to:
- 6.2.6.1. anti-money laundering, financial crime compliance and identity screening; and
 - 6.2.6.2. the duties of DNAP and the Relevant Acquirers in respect of the provision of the Services;
- 6.2.7. promptly provide reasonable assistance to DNAP on request for the prevention and detection of fraud or other criminal activity in respect of Transactions; and
- 6.2.8. take all reasonable steps to assist DNAP in handling any claim or query raised by a Customer, Card Issuer, Payment Scheme, Acquirer, Regulatory Body, or any other third party in relation to the Services.

6.3. The Merchant shall advise DNAP immediately in writing of any:

- 6.3.1. other agreement that the Merchant enters into concerning the Merchant's acceptance of transactions which are the same as or similar to the Transactions;
- 6.3.2. act, omission, or error of the Merchant or its Personnel or of any other third party of which the Merchant is aware which does or may:
 - 6.3.2.1. cause loss or damage (including damage to reputation) to DNAP and/or any Relevant Acquirer; or
 - 6.3.2.2. adversely affect the Merchant's ability to perform the Merchant's obligations under the Agreement;
- 6.3.3. actual or suspected violation or compromising of the security or integrity of any Data, the Payment System (or associated processes) or any other information relating to the Services or the Payment Schemes, or any confidential information relating to DNAP, an Acquirer, or any Customer at any time obtained or held by the Merchant; and/or
- 6.3.4. material change (or proposed change) in the nature of the Merchant or the Merchant's business (including details of any changes in the goods and/or services sold by the Merchant, any additional business commenced by the Merchant, any change in its ownership, shareholders, directors or senior managers, any change in its trading name, trading hours or contact details, changes to the Outlets, and creation of additional Outlets or any cessation of its business at any Outlet or generally).

6.4. The Merchant warrants and represents that it is not a consumer or a charity. Without prejudice to clause 6.3.4, the Merchant shall inform DNAP immediately upon any change in its status resulting in it becoming a charity or a consumer at any time during the term of the Agreement.

7. MERCHANT'S COVENANTS

7.1. The Merchant represents and warrants to DNAP, Relevant Acquirers and Optomany that all the information which the Merchant has provided (or will provide) to DNAP, the Relevant Acquirers, Optomany or the Payment Schemes (in any form) in connection with the Agreement (including Data, other information provided pursuant to clause 6 and Personal Data relating to the Merchant and/or its Personnel) is complete, accurate and up to date.

7.2. The Merchant represents, warrants, and undertakes to DNAP and the Relevant Acquirers that it shall:

- 7.2.1. comply, at all times, with all Applicable Laws, any Procedure Guide and with the terms of the Agreement (including the Merchant's obligations set out in clause 5 and relating to Transactions);



- 7.2.2. comply with all Applicable Laws in the performance of all its activities in connection with the Agreement;
 - 7.2.3. obtain and maintain at all times all necessary licenses and consents in relation to its use of the Services and the performance of all its activities in connection with the Agreement;
 - 7.2.4. not facilitate payments to other merchants or other Persons in an aggregator model (such as payment facilitator model, digital wallet, or marketplace);
 - 7.2.5. use the Services in accordance with all Applicable Laws;
 - 7.2.6. not use the Services for or to access anything which is illegal, immoral or improper;
 - 7.2.7. without prejudice to the generality of clause 7.2.6, not knowingly process or submit any Transaction that is illegal or that the Merchant should have known was illegal;
 - 7.2.8. deal with all complaints made by Customers in respect of Sale Items in a like manner as if such Sale Items had been paid for in cash and provide any assistance to a Customer in the event of dispute; and
 - 7.2.9. change without undue delay the Merchant's website, policies, and procedures if requested by DNAP from time to time in order to comply with any Applicable Laws.
- 7.3. The Merchant shall not store Card details in any medium or format whatsoever whether in plain text or encrypted form. Where the Merchant, with DNAP's agreement, needs to store card details on the Merchant's systems (whether in plain text or encrypted form), the Merchant agrees to notify DNAP in order to be assessed the Merchant's adherence to PCI DSS. In such a case, the Merchant will be authorised by DNAP to maintain a store of Card numbers only if those aspects of the Merchant's systems have a current PCI DSS level 1 approval, in which case the annual certificate from the Merchant's PCI Qualified Security Assessor must be provided to DNAP promptly following production of such certificate.
- 7.4. If the Merchant receives a password from DNAP or Optomany to access any element of the Services, the Merchant shall (and, as applicable, shall ensure that its Personnel shall):
- 7.4.1. keep the password secure and confidential and not disclose it to any unauthorised person;
 - 7.4.2. change the password on a regular basis;
 - 7.4.3. use the password properly;
 - 7.4.4. not allow any other party to use the password or gain access to the applicable Services except as expressly agreed by DNAP;
 - 7.4.5. notify DNAP immediately if any of the Services have been compromised by use of the password.
- 7.5. Without prejudice to clause 7.4:
- 7.5.1. the Merchant shall be responsible for the security and proper use of all user identities and passwords provided to or used by the Merchant or its Personnel in connection with the Services and shall be liable for all acts or omissions of any Person using such user identities and passwords, whether or not such use is authorised; and
 - 7.5.2. if the Merchant receive passwords from a third party on DNAP's behalf or otherwise in connection with the Agreement, the Merchant must protect such passwords in the manner required by such third party.
- 8. PORTAL**
- 8.1. The Merchant shall use the Portal to access relevant information relating to the Agreement and the Services, including (for each relevant period):
- 8.1.1. details of applicable Transactions, including the number of approved Transactions, the status of a Transaction, a Transaction value/amount (and details of the applicable Currency); the date of the Transaction and the applicable Payment Method used for a Transaction);
 - 8.1.2. details of the applicable Fees payable to DNAP and any interest applied;
 - 8.1.3. details of applicable Remittances, including the date and amount of Remittance and (where applicable) the currency of Remittance and any exchange rate used;
 - 8.1.4. the number of Chargebacks and Refunds (and relevant details, as applicable); and
 - 8.1.5. the Merchant's account balance.
- 8.2. DNAP shall also make available on the Portal any applicable information to be given to the Merchant pursuant to the requirements of the PSR.
- 8.3. DNAP shall provide or otherwise make available to the Merchant on the Portal the information referred to in clause 8.1 periodically (and in any event no less frequently than once each month). Any applicable information referred to in clause 8.2 shall be provided by DNAP within any requisite timescales specified in the PSR.



- 8.4. DNAP shall use reasonable endeavours to provide access to the Portal at all material times. For the avoidance of doubt, no warranty is given by DNAP that the Portal shall be provided or accessible on a continuous basis and the Merchant acknowledges and agrees that interruptions may occur, whether by reason of breakdown or for any other reason.
- 8.5. DNAP may add or remove features to the functionality of the Portal at any time and without prior notice to the Merchant, provided always that the ability to obtain the information referred to in clauses 8.1 and 8.2 is not materially adversely affected.
- 8.6. The Merchant may be given access to the Portal to allow the Merchant to make certain changes to the Merchant's account or other applicable information pertaining to the Merchant. Where the Merchant has such access, the Merchant represents and warrants that only the Merchant (and no other Person) shall make requests via the Portal and that any information submitted or updated via the Portal shall be accurate and legally binding on the Merchant in accordance with the provisions of the Agreement. The Merchant is solely responsible for the accuracy and completeness of any information the Merchant submits via the Portal.

9. FEES

- 9.1. In consideration of the provision of the of asept® Services the Merchant shall pay Subscription Fee. The Merchant agrees that DNAP shall act as a collection agent for and on behalf of Optomany and Merchant's payment of Subscription Fee to DNAP shall be made in accordance with Schedule 4 only. The remaining provisions of this clause 9 shall not apply to the payment of the Subscription Fees.
- 9.2. In consideration of the provision of the Services, the Merchant shall pay the Fees.
- 9.3. The Merchant acknowledges and agrees that (without prejudice to clause 10.2) payment of the **Transaction Fee** shall be effected by way of the Settlement and Remittance process (meaning, for the avoidance of doubt, that DNAP may deduct the amount of the Fees due at the relevant time from the funds received by DNAP from the Payment Schemes or from a Relevant Acquirer in respect of Transactions before effecting Remittance).
- 9.4. If, for any reason, DNAP is unable to deduct the whole amount of the Transaction Fee due at the relevant time from any Settlement or Remittance (including where the amount of available funds for Settlement is less than the total Fees due) DNAP may, in at its option:
- 9.4.1. deduct any or all of such outstanding Fees from any subsequent Settlements at any time;
 - 9.4.2. direct debit the Merchant Bank Account pursuant to clause 10.2 for any or all of such outstanding Fees; and/or
 - 9.4.3. issue an invoice for any or all of such outstanding Fees, which will be payable within 5 (five) days of its date.
- 9.5. The Merchant acknowledges and agrees that payment of the **Non-transaction Fee and Price for Goods** shall be effected by way of direct debit the Merchant Bank Account pursuant to clause 10.2.
- 9.6. If, for any reason, DNAP is unable to debit the whole amount of the Non-transaction Fee due at the relevant time, DNAP may, in at its option:
- 9.6.1. deduct any or all of such outstanding Fees from any subsequent Settlements at any time; and/or
 - 9.6.2. issue an invoice for any or all of such outstanding Fees, which will be payable within 5 (five) days of its date.
- 9.7. The Merchant's obligations to pay all applicable Fees shall not be affected by any unavailability or suspension of the Services for any reason.
- 9.8. All Fees due from the Merchant to a Relevant Acquirer in connection with the Agreement shall be paid to DNAP, acting on behalf of such Relevant Acquirer.
- 9.9. Unless stated otherwise, all Fees to be paid by the Merchant under the Agreement are net of VAT and any other relevant taxes and in addition to paying such Fees the Merchant shall also pay any such taxes.
- 9.10. Payment terms for the sale of Goods are set out in Schedule 10.

10. BANK ACCOUNT AND PAYMENTS

- 10.1. The Merchant shall, throughout the term of the Agreement and for such period as may be required thereafter, maintain the Merchant Bank Account (and, where applicable, all direct debit mandates and other such facilities arranged with DNAP relating to the payment of Fees).
- 10.2. Where it is possible for DNAP to debit the Merchant Bank Account, DNAP shall be entitled (in addition to its rights under clause 9.3 and without prejudice to any other rights or remedies DNAP may have) to debit all sums due to DNAP from the Merchant pursuant to the Agreement by direct debit from the Merchant Bank Account.
- 10.3. The Merchant shall not without the prior written agreement of DNAP:
- 10.3.1. close or change the Merchant Bank Account (including the location of the branch at which the Merchant Bank Account is held); or
 - 10.3.2. cancel any direct debit which has been established for payment of any amounts in connection with the Agreement.
- 10.4. Without prejudice to clause 10.3:
- 10.4.1. the Merchant shall give DNAP not less than **20 (twenty) Business Days'** advance notice of any proposed closure of or change to the Merchant Bank Account or any proposed cancellation of any direct debit referred to in such clause; and



- 10.4.2. if the Merchant cancels the Merchant's direct debit arrangements without immediately putting in place alternative direct debit arrangements then DNAP reserves the right to charge the Merchant (and the Merchant shall pay to DNAP upon demand) a fee of £1.00 (one pound) per day until the direct debit arrangement is reinstated or replaced.

11. SET-OFF AND WITHHOLDING

- 11.1. In addition to any lien or right to which DNAP and a Relevant Acquirer may be entitled by law or pursuant to the terms of the Agreement, the Merchant hereby irrevocably authorises DNAP and a Relevant Acquirer from time to time without notice (and both before and after demand) to set-off by whatever means the whole or any part of the Merchant Liabilities against the Collateral (including by way of debit or withdrawal of sums from the Reserve Account) and against any Settlement or Remittance (whether or not related to the Service or the Transaction that gave rise to the liability) and against any other sums held by DNAP or a Relevant Acquirer for or on behalf of the Merchant.
- 11.2. If, at any time (including after termination of the Agreement for any reason) an Acquirer becomes aware or has a reasonable suspicion that the Merchant is in breach of, or may be or is likely to be in breach of, any of the Merchant Conditions then such Acquirer may (without prior notice to the Merchant) withhold payment to the Merchant of any amounts (including any Settlement) which, but for this clause 11.2, would otherwise be due and payable to the Merchant. Each Acquirer shall be entitled to withhold such sums for such period as such Acquirer (in its absolute discretion) thinks fit.
- 11.3. Where:
- 11.3.1. DNAP receives a Chargeback notification from a Relevant Acquirer; or
- 11.3.2. an Acquirer receives a Chargeback notification from a Card Issuer or a Payment Scheme; or
- 11.3.3. an Acquirer learns, or has a reasonable suspicion that, a Transaction:
- 11.3.3.1. may be fraudulent or involve other Illegal activity;
- 11.3.3.2. was not in the ordinary course of the Merchant's business;
- 11.3.3.3. was not compliant with PCI DSS obligations,

the Acquirer shall be entitled to suspend the processing of that Transaction (and all associated Services) and/or withhold payment to the Merchant of Settlement in respect of that Transaction for such period as the Acquirer (in its absolute discretion) thinks fit.

- 11.4. The Acquirer may continue to withhold payment due to the Merchant until such Acquirer determines (in its reasonable opinion) that any of the matters referred to in clause 11.2 or 11.3 no longer apply and/or there are no further Card Transactions which may be liable to be the subject of a Chargeback.
- 11.5. Any exercise of DNAP's rights under this clause 11 shall be without prejudice to any other rights or remedies available to DNAP under the Agreement or otherwise.
- 11.6. All Fees due from the Merchant under the Agreement shall be paid in full to DNAP without any set-off, counterclaim, deduction, or withholding (other than any deduction or withholding of tax as required by law). The Merchant is not entitled to set-off any liabilities of DNAP, Optomany or any Relevant Acquirer under the Agreement or otherwise (whether such liabilities are present, future, actual, contingent or potential, liquidated or unliquidated) against any funds (including Fees) due to DNAP, Optomany or a Relevant Acquirer from the Merchant.

12. INTEREST

- 12.1. Subject to clause 12.2, if either party fails to pay any amount under the Agreement when due, then the Merchant or DNAP (as appropriate) shall be entitled to charge default interest at a rate equal to 4% percent per annum above the published Barclays Bank base rate from time to time on the unpaid amount until such time as it is paid in full.
- 12.2. The Merchant shall not be entitled to any interest or any other compensation whatsoever in respect of any sums held by DNAP or the Acquirers prior to being Settled, any Collateral (including interest on the funds credited in the Reserve Account) or any other sums which DNAP is entitled to withhold or defer pursuant to the Conditions.

13. RECORDS AND AUDIT

- 13.1. Subject to the requirements of the PCI DSS Standards, the Merchant shall:
- 13.1.1. retain the original Merchant copy of a Terminal Receipt and, if applicable, a Sales Draft or Credit Voucher for not less than twelve (12) months (in each case, from the date of its issuance);
- 13.1.2. retain legible copies of Data for a minimum period of 18 months from the date of each Transaction (unless otherwise required by any Applicable Laws); and
- 13.1.3. maintain full and accurate records of all things done in relation to the performance of its obligations under the Agreement.
- 13.2. Without prejudice to clause 13.3, the Merchant shall produce any of the documents referred to in clause 13.1 to DNAP within fourteen (14) calendar days of a request from DNAP.
- 13.3. The Merchant agrees to allow DNAP, its authorised Personnel and/or the representatives of any Regulatory Body, the right to access the



Retail Outlets and the Merchant's other premises, without charge, to audit compliance with the terms of the Agreement and to inspect any of the documents referred to in clause 13.1. The Merchant shall promptly provide DNAP, its authorised Personnel and the representatives of any Regulatory Body with all access, reasonable co-operation and assistance required in relation to any such audit including:

- 13.3.1. granting or procuring the grant of reasonable access to the Retail Outlets, the Merchant's other premises and its Personnel;
- 13.3.2. making any documents and records relevant to the Agreement available for inspection; and
- 13.3.3. providing a reasonable number of copies of any such documents or records.

14. TAX

- 14.1. It shall be solely the Merchant's responsibility to ascertain whether any taxes, including VAT, excise, sales and use taxes, are due in connection with any Transaction contemplated under the Agreement.
- 14.2. The Merchant agrees to charge to Customers, report and pay when due all such taxes to the appropriate tax authority and shall indemnify the Indemnified Parties and hold them harmless from and against any and all Losses arising out of or in any way connected with the failure or omission by the Merchant to charge to a Customer, report, or pay such taxes as required by law. In the event that any of the Indemnified Parties becomes involved in any judicial or administrative proceeding relating to the Merchant's failure to charge to a Customer, report or pay required taxes, such Indemnified Party shall be entitled to retain counsel of its own choosing and to settle, in its discretion, any such claims, all of which shall be included within the Merchant's indemnification under this clause 14.2.

15. MATERIALS AND INTELLECTUAL PROPERTY

- 15.1. DNAP may (but shall not be obliged) to supply to the Merchant, at such times and in such quantities as DNAP may determine, any of the following items (and DNAP reserves the right to charge the Merchant for such supply):
 - 15.1.1. Sales Drafts;
 - 15.1.2. decals;
 - 15.1.3. logo stickers;
 - 15.1.4. plastic logo stands; and
 - 15.1.5. any other promotional or advertising materials or stationery items required for the promotion of or for the proper handling and processing of Transactions by the Merchant.
- 15.2. The Merchant may also, at any time, request to purchase from DNAP any of the items referred to in clause 15.1, at such cost as shall be advised by DNAP in response to such request (or as published by DNAP at the relevant time).
- 15.3. Each party shall retain all right, title and interest in and to the IPR owned or licensed to them prior to the Commencement Date or which has been developed by that party wholly outside the scope of the Agreement and without reference or connection to IPR owned or licensed by the other party (the **Core IPR**).
- 15.4. Any IPR developed by a party during the term of the Agreement for the purposes of, or in connection with, the Agreement shall (unless otherwise expressly agreed in writing) vest in that party (the **Developed IPR**).
- 15.5. DNAP hereby grants to the Merchant a licence in the UK, for the term of the Agreement, on a non-exclusive, revocable, royalty-free basis, to use, reproduce and display such logos and trade marks as DNAP may specify to the Merchant from time to time, in accordance with and subject to such guidelines and terms of use as it may issue from time to time and all other terms of the Agreement.
- 15.6. DNAP hereby grants to the Merchant a licence in the UK, for the term of the Agreement, on a non-exclusive, revocable, royalty-free basis, to use, reproduce and display, in respect of the use of the Services (and for no other purposes), such logos and trade marks as DNAP may specify to the Merchant from time to time, in accordance with and subject to such guidelines and terms of use as it may issue from time to time and all other terms of the Agreement.
- 15.7. The Merchant hereby grants to DNAP, the Acquirers and the Card Issuers a worldwide licence, for the term of the Agreement, on a non-exclusive, royalty-free basis, to use, reproduce and display the name(s), address(es) and telephone number(s) of the Merchant and the Merchant's logos, trading names and trademarks and other IPR owned by the Merchant:
 - 15.7.1. in all correspondence, circulars, or publications of DNAP, the Acquirers and/or the Card Issuers;
 - 15.7.2. for the purposes of the provision of the Services, to perform its other obligations and to exercise its rights pursuant to the terms of the Agreement (including the right to provide such information to Customers and other third parties),together with a right to grant sub-licenses of all or any of the foregoing to such Persons (including the Acquirers and Card Issuers) as DNAP, in its discretion, considers appropriate for any such purposes.
- 15.8. Each party warrants on an ongoing basis that the use of its IPR (including its Core IPR and Developed IPR) by the other party and its Personnel as contemplated by the Agreement shall not infringe the IPR of any third party.
- 15.9. DNAP hereby grants to the Merchant, or shall procure the grant to the Merchant of, a licence in the UK, for the term of the Agreement, on a non-exclusive, revocable, royalty-free basis, to use the Payment Scheme Marks in advertising, acceptance decals, or signs, in respect of



the use of the Services only (and for no other purposes) in accordance with and subject to the Payment Scheme Rules. Notwithstanding the foregoing, the Merchant's licence to use or display of any Payment Scheme Marks may be terminated with immediate effect at any time upon notification by the Payment Schemes or DNAP.

- 15.10. The Merchant shall not copy or modify (or attempt to copy or modify) any Software or any other software or IPR relating to the Services without DNAP's specific prior written consent.

16. INDEMNITY AND LIMITATIONS OF LIABILITY

- 16.1. The Merchant shall indemnify the Indemnified Parties and hold them harmless from and against any and all Losses arising directly or indirectly from or in connection with:

- 16.1.1. any failure by the Merchant to comply with the provisions of the Agreement, Procedure Guides, or any instructions given by DNAP or a Relevant Acquirer;
- 16.1.2. the Merchant's fraud (including that of its personnel and contractors), negligence, failure to perform, or delay in the performance of any of the Merchant's obligations under the Agreement;
- 16.1.3. the Merchant's use of the Services or asept® Services; and/or
- 16.1.4. any Transaction including, without prejudice to the foregoing, any alleged misrepresentation or breach of contract or other breach of duty by the Merchant (or any of its Personnel) to any Customer.

- 16.2. Each Indemnified Party shall be entitled to have full conduct of all proceedings and negotiations relating to any claim referred to in clause 16.1 and may in its discretion accept, dispute, compromise or otherwise deal with the same and shall be under no liability in respect thereof to the Merchant and the Merchant shall provide any assistance in connection with any such claim that such Indemnified Party may require.

- 16.3. Subject to clause 16.5, DNAP and the Relevant Acquirers shall not be liable to the Merchant for any:

- 16.3.1. loss of profit;
- 16.3.2. loss of anticipated savings;
- 16.3.3. loss of business;
- 16.3.4. loss of opportunity;
- 16.3.5. loss of reputation;
- 16.3.6. loss of goodwill;
- 16.3.7. loss of contracts;
- 16.3.8. loss of or corruption to data (excluding Personal Data); or
- 16.3.9. indirect or consequential loss or damage of any kind,

in each case howsoever arising, whether such loss or damage was foreseeable or in the contemplation of the parties and whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise.

- 16.4. Subject to clause 16.5, the maximum aggregate liability of DNAP and the Relevant Acquirers to the Merchant arising under or in connection with the Agreement, or any collateral contract, whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity, or otherwise, shall not exceed the greater of (a) 125% of the Fees paid or payable within the preceding six months or, (b) £500 (five hundred pounds).

- 16.5. Nothing in this clause 16 or otherwise in the Agreement shall exclude or in any way limit the liability of each of DNAP, the Relevant Acquirers, or the Merchant for:

- 16.5.1. fraud or death or personal injury caused by its negligence;
- 16.5.2. any indemnity provided within Schedule 9;
- 16.5.3. breach of terms regarding title implied by s.12 Sale of Goods Act 1979 and/or s.2 Supply of Goods and Services Act 1982; or
- 16.5.4. any liability to the extent the same may not be excluded or limited under any Applicable Laws.

17. CONFIDENTIALITY

- 17.1. Subject to clause 17.2 the Merchant shall treat as confidential the existence (and the provisions) of the Agreement and all information, forms, documents or materials furnished by DNAP or an Acquirer or entrusted by Customers to the Merchant under, or in connection with, the Agreement and shall not, without the prior written consent of DNAP or the relevant Customer (as applicable), disclose any of the foregoing to any third party or use it for any purpose except strictly as necessary for the purposes of the Agreement.

- 17.2. The restrictions in clause 17.1 do not apply to information which:

- 17.2.1. is publicly available or becomes publicly available without breach of clause 17.1; or



17.2.2. is required to be disclosed to any governmental or other authority, Regulatory Body, or by the listing rules of a recognised stock exchange or as required by law.

17.3. The obligations of the Merchant contained in this clause 17 shall survive the termination of the Agreement.

18. DATA PROTECTION

18.1. This clause 18 relates to the parties' obligations when Processing Personal Data only and shall be without prejudice to either party's obligations when handling Data generally under the Agreement and in particular as set out in Schedule 9, whether pursuant to any provision of the Agreement or in accordance with any Applicable Laws.

18.2. Each party shall comply with the provisions and obligations imposed on them by Data Protection Legislation when Processing Personal Data in connection with the Agreement.

18.3. Where DNAP Processes Personal Data under the Agreement as a Controller (including in respect of any relevant Personal Data which is obtained by DNAP pursuant to clause 5), the Merchant acknowledges and agrees that (where applicable) Personal Data of the Merchant (and Personal Data of the Merchant's Personnel which is provided by the Merchant to DNAP) may be processed by DNAP for various purposes, including as set out in the Merchant Application Form, Schedule 9 and the Privacy Policy;

18.4. Where the Merchant provides Personal Data about its Personnel in connection with the administration or performance of the Agreement, the Merchant warrants and represents that it has the consent of all such Personnel:

18.4.1. to pass their Personal Data to DNAP;

18.4.2. for DNAP to use and disclose their Personal Data for any of the purposes set out in the Privacy Policy; and

18.4.3. (where applicable) for DNAP to make any financial and other checks as referred to in clause 5.6.

18.5. Where DNAP is Processing Personal Data on behalf of the Merchant as a Processor (or sub-Processor) in the performance of its obligations under the Agreement, the provisions of Schedule 9 shall apply.

18.6. Without prejudice to the generality of clause 18.2, each party shall maintain appropriate technical and organisational measures against unauthorised or unlawful Processing of such Personal Data and against accidental loss or destruction of or damage to such Personal Data and it has adequate security programmes and procedures in place to ensure that unauthorised persons do not have access to Personal Data or to any equipment or systems used to Process Personal Data.

19. TERM, SUSPENSION OF SERVICES AND TERMINATION

19.1. The Agreement shall come into effect on the Commencement Date and shall, unless terminated earlier in accordance with its provisions, continue thereafter unless and until terminated pursuant to clause 19.2 or 19.3.

19.2. DNAP shall be entitled to terminate the Agreement:

19.2.1. on behalf of Optomany, in respect of the axept® Services, on or after the expiry of the Minimum Term on giving not less than 1 (one) month's written notice to the Merchant;

19.2.2. in respect of any other Services, at any time on giving not less than 2 (two) months' written notice to the Merchant.

19.3. The Merchant shall be entitled to terminate the Agreement:

19.3.1. in respect of the axept® Services, on or after the expiry of the Minimum Term on giving not less than 1 (one) month's written notice to DNAP;

19.3.2. in respect of any other Services, at any time on giving not less than 1 (one) month's written notice to DNAP.

19.4. If the Agreement is terminated by the Merchant pursuant to clause 19.3.2 before the expiry of six months from the Commencement Date (except for termination pursuant to clause 25.2.2), DNAP shall (in addition to its right to charge fees relating to termination of axept® Services pursuant to clause [20.3] of Schedule 4 on behalf of Optomany) be entitled to charge a termination fee, which shall be calculated as the average monthly Fees payable by the Merchant during all months preceding the date of the Merchant's notice of termination multiplied by 6 (six).

19.5. In addition to its other rights of termination or suspension set out in the Conditions, DNAP may terminate the Agreement and any Schedule to it (including Schedule 4 on behalf of Optomany) or suspend the provision of all or any part of the Services to the Merchant with immediate effect if:

19.5.1. the Merchant fails to (or DNAP or a Relevant Acquirer suspect that the Merchant may fail to) comply with any of the terms of the Agreement, including payment of the Fees on time;

19.5.2. without prejudice to the generality of clause 19.5.1 or to the rights of DNAP under clauses 9 and 11, the Merchant fails to pay any Fees as required under the Agreement;

19.5.3. without prejudice to the generality of clause 19.5.1, the Merchant fails to provide any documentation, information or assistance requested by DNAP or the Relevant Acquirer in accordance with clause 6, or fails to comply with any Procedure Guide or any instructions given by DNAP or a Relevant Acquirer in connection with the Agreement;



- 19.5.4. the Merchant informs DNAP in accordance with clause 6.4, or it otherwise become clear to DNAP, that the Merchant is a consumer or a charity;
- 19.5.5. requested or instructed to do so by a Relevant Acquirer, Card Issuer or Regulatory Body;
- 19.5.6. DNAP or a Relevant Acquirer considers (or is informed) that any act or omission of the Merchant's falls within a Reason Code;
- 19.5.7. DNAP or a Relevant Acquirer considers, at their absolute discretion, that the total value of Refunds, Credits, and/or Chargebacks is high;
- 19.5.8. the Merchant does not process any Transactions under this Agreement for a period longer than two (2) months.
- 19.5.9. if the Merchant repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify, in the opinion of DNAP, that taken together, such repeated breaches are either: (i) material, or (ii) are inconsistent with the Merchant's intention to give effect to the terms of this Agreement;
- 19.5.10. the cessation of the whole or a substantial part of the Merchant's business takes place or an act occurs whether of the Merchant or another Person which by itself either constitutes or in DNAP's opinion could directly result in a formal step being taken for the receivership, administration, winding up, dissolution or analogous proceedings in the UK or in any other jurisdiction or in respect of the Merchant or any of the Merchant's assets;
- 19.5.11. the Merchant 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;
- 19.5.12. 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 Merchant) which in the opinion of DNAP may affect the ability or willingness of the Merchant to comply with all or any of the Merchant's obligations under the Agreement or to meet the Merchant Liabilities;
- 19.5.13. any act or omission occurs affecting the Merchant which in the opinion of DNAP damages or could result in damage to the reputation of DNAP, a Relevant Acquirer or a Payment Scheme or their respective logo, trade or service marks;
- 19.5.14. there is, in DNAP's opinion, any material change in the nature or type of the business undertaken by the Merchant;
- 19.5.15. DNAP knows or suspects that the Merchant, or any of its Personnel:
- 19.5.15.1. Pursues, is engaged (directly or indirectly) into or promotes unlawful activities by any means (including but not limited to: threats of force, violence, intimidation, fraud or spreading false rumours); or
- 19.5.15.2. is a member of, or otherwise involved in or supports, any Person, group or organisation which does any such thing;
- 19.5.16. any Fines or any other claims are levied or brought against DNAP by a Relevant Acquirer, Card Issuer, Payment Scheme or any other third party arising from any aspect of DNAP's relationship with the Merchant (including in connection with any security breach, compromise or theft of Data held by the Merchant or on the Merchant's behalf, irrespective of whether such security breach, compromise or theft of Data was within or outside the Merchant's control);
- 19.5.17. the relevant Acquiring Services (or relevant part thereof) are suspended or otherwise cease to be provided by the applicable Relevant Acquirer or Payment Scheme (as the case may be);
- 19.5.18. a Payment Scheme or a Relevant Acquirer introduces additional terms and conditions or amends the terms and conditions relating to, or otherwise impacting, the Acquiring Services;
- 19.5.19. the Merchant has been listed on the UK HM Treasury's financial sanction lists, the OFAC list or a Payment Scheme's fraud and risk databases (including MATCH, VMSS or equivalent); or
- 19.5.20. the Merchant materially changes the type of the goods and/or services sold by the Merchant or substantially changes the Average Transaction Value informed in the Merchant Application Form without obtaining the prior written consent of DNAP or a Relevant Acquirer to use the Services for the changed goods or services; or
- 19.5.21. the Merchant's ownership (legal and/or beneficial) structure underwent the change.
- 19.6. Any termination of the Agreement by DNAP shall become effective upon notice being given to the Merchant by DNAP (or on such later date as DNAP may specify in such notice).
- 19.7. DNAP shall not be obliged to give notice to the Merchant of any suspension of the Services pursuant to the Conditions. Any such suspension shall be to such extent (including in respect of the nature of the Services or the Outlets which may be affected by the suspension) and for such period as DNAP may (in its absolute discretion) think fit.
- 19.8. DNAP reserves the right to charge the Merchant (and the Merchant shall pay to DNAP upon demand) a fee of £20.00 (twenty pounds) to reactivate the Services if any part of the Services have been suspended by DNAP pursuant to the Conditions.
- 19.9. Any termination of the Agreement shall not affect any liabilities incurred prior to termination nor any provision expressed to survive or to be effective on termination.



19.10. Upon the termination of the Agreement, for whatsoever reason, the Merchant shall cease to use or refer in any manner to the DNAP logos or trademarks or any Payment Scheme Marks, and shall return to DNAP all information, publications, promotional materials or other items bearing such logos or trademarks at the Merchant's own expense.

19.11. On termination of the Agreement, the Merchant shall immediately pay to DNAP all amounts owed by the Merchant under the Agreement and, for the avoidance of doubt, DNAP shall remain entitled to withhold or set-off sums pursuant to clause 11, deduct sums from any Collateral and recover any Chargebacks or other Merchant Liabilities.

20. ASSIGNMENT AND SUB-CONTRACTING

20.1. The Merchant shall not assign, novate, sub-contract or transfer all or any part of its rights or obligations under the Agreement. Any purported assignment, novation, sub-contracting or transfer by the Merchant of all or any part of the Agreement or any interest in it shall be null and void and of no effect.

20.2. DNAP shall be entitled to assign, novate, sub-contract or transfer all or any part of its rights or obligations under the Agreement, at any time and to any Person.

21. FORCE MAJEURE

21.1. DNAP shall not be in breach of the Agreement, nor liable for any failure to perform (or for any delay in the performance of) any of its obligations under the Agreement, if and to the extent that such failure or delay arises from or is attributable to Force-Majeure.

21.2. Without prejudice to the generality of clause 21.1 and notwithstanding any other provisions of the Conditions, DNAP shall not be in breach of the Agreement, nor liable for any failure to perform (or for any delay in the performance of) any of its obligations under the Agreement, if and to the extent that such failure or delay arises from or is attributable to:

21.2.1. abnormal and unusual circumstances beyond DNAP's control (including where this results, or would result, in any contravention of any requirement imposed on DNAP by or under any Applicable Laws); or

21.2.2. compliance by DNAP with its obligations under any Applicable Laws.

22. NOTICES

22.1. All notices, including notices relate to the changes to the Agreement and consents to be given by DNAP to the Merchant in connection with the Agreement (including information required to be given to the Merchant pursuant to the PSR), shall be given in writing and may be:

22.1.1. delivered personally or sent by post or email using the last known contact details of the Merchant (whether set out on the Agreement, in the Portal or otherwise notified to or obtained by DNAP during the term of the Agreement); or

22.1.2. posted on the Portal.

22.2. All notices and consents to be given by the Merchant to DNAP in connection with the Agreement (including where applicable pursuant to the requirements of the PSR) shall be given in writing and may be delivered personally or sent by post to DNAP's registered office address (or other applicable address) as shown on DNAP's website from time to time (or to such other address as may be notified by DNAP from time to time).

22.3. Correctly served notices and consents in accordance with the foregoing provisions of this clause 22 shall be deemed to have been delivered as follows:

22.3.1. if sent by post, two days after posting;

22.3.2. if delivered personally or sent by email, at the time of delivery or sending; and

22.3.3. if posted on the Portal, on the date of posting.

23. THIRD PARTY RIGHTS

23.1. Save as provided in clause 23.2, nothing in the Agreement shall confer, or is intended to confer, on any third party any 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.

23.2. Subject to the remaining provisions of this clause 23, any DNAP Group Company (including, but not limited to, Optomany), the Acquirers, Payment Schemes and the Card Issuers may enforce against the Merchant (and accordingly shall have the benefit of) any of the provisions in the Agreement including referred to (or implied) any right of any DNAP Group Company (including, but not limited to Optomany), the Acquirers, Payment Schemes or the Card Issuers.

23.3. Notwithstanding clause 23.2, the Agreement may be terminated or varied without reference to any DNAP Group Company, the Acquirers, the Card Issuers or any other Person and sections 2(1)(a) to (c) of the Contracts (Rights of Third Parties) Act 1999 shall not apply.

24. ENTIRE AGREEMENT

24.1. Save as expressly provided for otherwise in writing between the parties, 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 24 shall operate to exclude any liability of either party for fraud.
- 25. AMENDMENTS TO THE AGREEMENT**
- 25.1. DNAP 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, Merchant Conditions, Addenda, including all or any of the Fees, on giving the Merchant not less than two (2) months' prior notice.
- 25.2. Where DNAP serves notice of any changes pursuant to clause 25.1:
- 25.2.1. unless the Merchant notifies DNAP, prior to the expiry of the applicable 2 (two) 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);
- 25.2.2. the Merchant shall be entitled to terminate the Agreement without charge at any time before the expiry of such notice period.
- 25.3. Notwithstanding clause 25.1, DNAP shall be entitled to amend any interest or exchange rates, Interchange Fee, Scheme Fee, other third-party fees applicable to the Fees with immediate effect and without notice to the Merchant where such changes are based on (1) reference interest or exchange rates information which has been provided to the Merchant by DNAP (2) or information provided by the Payment Schemes. No such change shall entitle the Merchant to terminate the Agreement.
- 26. MISCELLANEOUS**
- 26.1. 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).
- 26.2. 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.
- 26.3. Save as otherwise expressly provided in the Conditions, nothing in the Agreement is intended to, or shall be deemed to:
- 26.3.1. 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
- 26.3.2. render either party, or any of their respective officers or employees, an officer or employee of the other,
- and each party shall not (and shall procure that its Personnel shall not) act, or purport to act, in a manner which is inconsistent with the foregoing provisions of this clause 26.3.
- 26.4. Save for any permitted amendments in accordance with clause 24, no amendment or variation of the Agreement shall be effective unless in writing and signed by a duly authorised representative of DNAP.
- 26.5. 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.
- 26.6. 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.
- 26.7. 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 Merchant 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.
- 26.8. 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.