



Schedule 4 – axept® Master Terms and Conditions

This Schedule 4 was published on 3 April 2023.

This Schedule 4 applies ONLY if the Merchant uses axept® Services, in addition to all other terms of the Agreement. This Schedule 4 constitute a separate agreement between Optomany and the Merchant and incorporate terms and conditions of Schedule 1 and Schedule 2 to the extent they are not covered by this Schedule.

1 DEFINITIONS AND INTERPRETATION

- 1.1 The definitions set out in Appendix 1 to this Schedule 4 shall apply to this Schedule 4. Definitions set out in Schedule 1 – Glossary shall apply to the extent that such terms are not defined in this Schedule 4.
- 1.2 The rules of interpretation set out in Schedule 2 shall apply to this Schedule 4.
- 1.3 In this Schedule 4:
- 1.3.1 each Order entered into by the Merchant shall form a separate agreement, incorporating Merchant Conditions together with the Addendum, the Subscribed Service Specific Terms for the respective Subscribed Services and the Policies;
- 1.3.2 in the event of any conflict in respect of the provisions of our Agreement and/or the documents referred to in it the following order of priority shall prevail (in descending order of priority):
- (a) the Merchant Application Form;
 - (b) the Order;
 - (c) this Schedule 4 – axept® Master Terms and Conditions;
 - (d) the Subscribed Service Specific Terms as set out in Appendix 2 to this Schedule 4;
 - (e) Conditions;
 - (f) the Addendum;
 - (g) the Policies;
 - (h) the Documentation; and
- 1.3.3 subject to the order of priority between documents in clause 1.3.2, later versions of documents shall prevail over earlier ones if there is any conflict or inconsistency between them.
- 1.4 Any obligation of Optomany under the Agreement to comply or ensure compliance by any person or the Subscribed Services with any law shall be limited to compliance only with laws within the Subscribed Territory as generally applicable to businesses and to providers of software as a service solutions. Such obligations shall not be construed to create any obligation on Optomany (or anyone acting on its behalf) or any part of the axept® Services to comply with any laws or regulations which apply solely to specific commercial or other activities (such as insurance, legal advice or banking or other professional services) or which apply solely to a specific commercial or non-commercial sector (or part thereof) (such as the public, legal, accountancy, actuarial, insurance, banking or financial service sectors).

2 RIGHTS OF USE

- 2.1 Upon Order Acceptance and subject to the terms of the Agreement, Optomany grants the Merchant a non-exclusive, non-transferable, personal right to:
- 2.1.1 use each Subscribed Service during Service Hours; and
- 2.1.2 copy and use the Documentation as strictly necessary for its use by Authorised Users of the Subscribed Services, within the relevant Subscribed Territory during the Subscribed Service Period for the Permitted Purpose.
- 2.2 The Merchant acknowledges that access to the Subscribed Services may take up to **two Business Days** from the approval of the Merchant Application Form or Order Acceptance to initially set up and that use of the Subscribed Services is at all times subject to the Merchant's compliance with the Agreement and the requirements identified in the Agreement (including all minimum system requirements).
- 2.3 The Merchant acknowledges that the axept® Services do not include:

- 2.3.1 any services, systems or equipment required to access the internet, unless otherwise set out in the Merchant Application Form or the Order, (and that the Merchant is solely responsible for procuring access to the internet and for all costs and expenses in connection with internet access, communications, data transmission and wireless or mobile charges incurred by it in connection with use of axept® Services);
- 2.3.2 dedicated data back up or disaster recovery facilities (and the Merchant should ensure it at all times maintains backups of all Merchant Data).

2.4 **Third-Party Service Providers.** The Merchant acknowledges and agrees that all or any portion of axept® Services may be provided by a third-party service provider (each, a “**Third-Party Service Provider**”). The Merchant agrees that any Third-Party Service Provider shall be a third-party beneficiary of this Agreement. With respect to its provision of axept® Services, a Third-Party Service Provider (i) shall be entitled to the same rights, remedies, and protections as are afforded Optomany 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 Optomany is entitled to enforce its rights hereunder, and (iii) shall not be directly liable for claims made by the Merchant.

3 AUTHORISED USERS

- 3.1 The Merchant shall ensure that only Authorised Users use the Subscribed Services and that such use is at all times in accordance with our Agreement. The Merchant shall ensure that Authorised Users are, at all times while they have access to the Subscribed Services, the employees or contractors of the Merchant or the Authorised Affiliates.
- 3.2 The Merchant shall keep a list of all Authorised Users. Optomany may require the Merchant to notify Optomany within **five** Business Days if any updates to any list of Authorised Users are made or required, including when Authorised Users cease to be employed or engaged by a relevant entity such that they are no longer entitled to be Authorised Users.
- 3.3 The Merchant shall:
 - 3.3.1 be liable for the acts and omissions of the Authorised Users and the Authorised Affiliates as if they were its own; and
 - 3.3.2 procure that each Authorised User (and each Authorised Affiliate) is aware of, and complies with, the obligations and restrictions imposed on the Merchant under our Agreement, including all obligations and restrictions relating to the Optomany’s Confidential Information.
- 3.4 The Merchant undertakes that it, and all Authorised Users and all others acting on its or their behalf (including systems administrators) shall, keep confidential and not share with any third party (or with other individuals except those with administration rights at the Merchant and its Authorised Affiliate’s organisation as necessary for use of the Service) their password or access details for any Subscribed Service.
- 3.5 The Merchant shall (and shall ensure all Authorised Affiliates and Authorised Users shall) at all times comply with the Acceptable Use Policy and all other provisions of our Agreement.
- 3.6 If any password has been provided to an individual that is not an Authorised User, the Merchant shall, without delay, disable any such passwords and notify Optomany immediately.
- 3.7 The Merchant shall comply (and shall ensure all Authorised Affiliates and Authorised Users comply) with all applicable laws, rules, and regulations governing export that apply to axept® Services, the Merchant Data and the Documentation (or any part), and shall not export or re-export, directly or indirectly, separately or as a part of a system, axept® Services, Payment Scheme Rules (to the extent they apply to the Merchant), the Merchant Data or the Documentation (or any part) to, or access or use axept® Services, the Merchant Data or the Documentation (or any part) in, any country or territory for which an export licence or other approval is required under the laws of the United Kingdom, without first obtaining such licence or other approval. Without prejudice to the Optomany’s obligations under the Data Protection Addendum, the Merchant shall be solely responsible for ensuring its access, importation and use of axept® Services, the Merchant Data and Documentation in or into any part of the Subscribed Territory or elsewhere complies with all export and other laws.
- 3.8 Clauses 3.3 to 3.7 (inclusive) shall survive termination or expiry of the Agreement.

4 INDEMNITY

- 4.1 The Merchant shall indemnify, keep indemnified and hold harmless Optomany (on the Optomany’s own behalf on behalf of each of the Optomany’s Affiliates) from and against any losses, claims, damages, liability, Data Protection Losses, costs (including legal and other professional fees) and expenses incurred by it (or any of its Affiliates) as a result of the Merchant’s breach of the Agreement.
- 4.2 This clause 4 shall survive termination or expiry of our Agreement.



5 SUPPORT

- 5.1 Support Services shall be available for each Subscribed Service to the Merchant for the duration of the respective Subscribed Service Period.
- 5.2 Optomany shall use reasonable endeavours to notify the Merchant in advance of scheduled maintenance, but the Merchant acknowledges that it may receive no advance notification for downtime caused by Force Majeure or for other emergency maintenance.
- 5.3 Support Services shall be provided in accordance with Subscribed Service Specific Terms.

6 NETWORKS

- 6.1 Optomany will provide a SIM Card to connect to the Networks.
- 6.2 Optomany will always try to ensure that the Subscribed Services are available for the processing of Transactions, but sometimes they may be affected by things beyond Optomany's control, including (inter alia) the availability of the Network for use of a Payment Terminal.
- 6.3 The Merchant acknowledges and agrees that the performance of a Subscribed Services is dependent upon the Payment Terminal being in range of base stations forming part of the Network and that Optomany shall have no liability in the event that the Payment Terminal is unable to connect properly or at all due to connection difficulties with the Network.
- 6.4 Optomany cannot guarantee Network coverage. If at any time during the Term, Network coverage cannot be obtained by the Merchant, Optomany will assist in finding an alternative Network solution where possible, however the Merchant will remain liable for the payment of all Fees and any additional costs relating to the alternative Network.
- 6.5 While providers of a Network make every effort to ensure the security of their Network, the Merchant acknowledges and agrees that, for reasons beyond the control of Optomany or such provider, there is a risk that the Merchant's communications may be interrupted, intercepted or accessed by those other than the intended recipient.
- 6.6 The Merchant shall be responsible for connecting the Payment Terminal to its WiFi / IP Network according to its own system requirements, but Optomany will provide instructions on how to do this.
- 6.7 It is the Merchant's sole responsibility to provide the necessary a WiFi / IP Network connectivity in order for the Payment Terminal to connect to and that the Subscribed Services will not operate properly (or at all) without such connection.
- 6.8 All numbers allocated by Optomany for use by the Merchant, whether on the Network or otherwise, are not the property of the Merchant and:
 - 6.8.1 the Merchant shall use such number only for the purposes for which it has been allocated by Optomany;
 - 6.8.2 the Merchant shall not be entitled to use any such number after termination of the Agreement for any reason;
 - 6.8.3 Optomany reserves the right to reallocate or change any such number from time to time during the Term and shall have no liability to the Merchant with regard to any such change.
- 6.9 Optomany shall be entitled, at any time, without prior notice and without liability to the Merchant, to withdraw the Subscribed Services (or any part thereof) if the provider of the Network or any SIM Card ceases, withdraws or suspends access to, or availability of, the Network.
- 6.10 The Merchant will remain liable to pay all Fees due under the Agreement notwithstanding any unavailability, suspension or disconnection of the Network or any applicable Subscribed Services.

7 CHANGES TO axept® SERVICES

- 7.1 Optomany may at its absolute discretion make, and notify the Merchant of, updated versions of the documents referred to in clause 1.3.2 or other documents referred to in any part of this Schedule 4 (excluding in each case the Merchant Application Form and / or Order) from time to time by notifying the Merchant of such update by e-mail (together with a copy of the update or a link to a copy of the update) or by any other reasonable means which Optomany elects (Update Notification). Optomany shall comply with its related obligations in Schedule 9.
- 7.2 The document(s) subject to such Update Notification shall replace the preceding version of the same document(s) for the purposes of this Schedule 4 from the date 30 Days' after Update Notification of such revised document(s) (the Update) (or at such later date as the Supplier may specify).
- 7.3 In the event that the Merchant reasonably believes that any Update materially impacts it negatively in any manner it may by notice elect to terminate the Agreement with Optomany in respect of all impacted Subscribed Services provided it exercises such right

prior to such Update taking effect pursuant to clause 7.2 on not less than **10 Days prior written notice** and notifies Optomany at the time of exercising such right of the negative impact which has caused it to exercise this right. In the event of such termination the Merchant shall receive a refund of any pre-paid Fees in respect of such terminated Subscribed Services.

7.4 The Merchant acknowledges that Optomany shall be entitled to modify the features and functionality of the axept® Services. Optomany shall use reasonable endeavours to ensure that any such modification does not materially adversely affect the use of the relevant Subscribed Service(s) by the Optomany's customers generally. Optomany may, without limitation to the generality of this clause 7, establish new limits on the axept® Services (or any part), including limiting the volume of data which may be used, stored or transmitted in connection with the axept® Services, remove or restrict application programming interfaces or make alterations to data retention periods, provided such changes are introduced by Update to the relevant impacted contractual documents. Optomany shall comply with its related obligations in Schedule 9.

7.5 Optomany may release new versions, releases or patches in connection with axept® Services. Optomany shall endeavour to notify the Merchant about such new versions, releases and patches but in any event Optomany shall be free to apply such new versions, releases or patches, whether remotely or otherwise, as they require from time to time. To the extent that Optomany requires the assistance of the Merchant in relation to the application of such version, release or patch the Merchant will provide such assistance as may be required by Optomany. If the version, release or patch cannot be applied as a result of any failure of the Merchant to provide adequate access and/or assistance this may affect the performance of axept® Services and to the extent that such failure leads to any performance issues or breach of warranty of the axept® Services, Optomany shall not be responsible for any such performance issue or breach.

8 FEES

8.1 The Subscription Fee and any other charges (including expenses) expressly agreed between the parties in writing shall be paid by the Merchant at the rates and in the manner described in the Merchant Application Form and / or in the respective Order.

8.2 DNAP on behalf of Optomany shall invoice the Merchant:

8.2.1 monthly in advance for all Subscription Fees; and

8.2.2 monthly for all other Fees,

Unless specified otherwise in the Merchant Application Form and / or Order Form, the Subscription Fees shall be paid by direct debit and such payments will be collected on the 10th of each month (or the next business day if the 10th falls on a non-Business Day). Any other Fees shall be payable on receipt of an invoice by the Merchant and shall be payable on the date specified in the invoice.

8.3 If, for any reason, DNAP is unable to debit the whole amount of the Subscription Fee due at the relevant time, DNAP may, in at its option, deduct any or all of such outstanding Subscription Fees from any subsequent Settlements at any time.

8.4 **The Merchant shall pay all Fees any other sums due under this Schedule 4 in full and on the due dates for payment, without demand and without any deduction, set-off or counterclaim for any reason whatsoever (other than deduction or withholding of tax as required by law), such payment obligation is of the essence of this Schedule 4.**

8.5 The Merchant shall not without the prior written agreement of Optomany cancel any direct debit which has been established for payment of any amounts in connection with the Agreement.

8.6 Optomany shall have the right to charge interest on overdue invoices at the rate of **8% per year** above the base rate of the Bank of England, calculated from the date when payment of the invoice becomes due for payment up to and including the date of actual payment whether before or after judgment.

8.7 Optomany shall be entitled to increase the Fees for any and all axept® Services at any time by notice to the Merchant provided that Optomany shall not be entitled to increase the Fees on **less than 1-months** prior notice or more than once every 12 months.

8.8 To the extent this Agreement terminates or expires (other than due to termination by the Merchant under clause 9.5 of this Schedule 4) the Merchant shall not be entitled to any refund or discount of Fees paid for any parts of any month during which the Services cease to be provided.

9 WARRANTIES

9.1 THE SUBSCRIBED SERVICES ARE PROVIDED "AS IS" AND "WITH ALL FAULTS". OPTOMANY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. OPTOMANY DOES NOT WARRANT THAT THE SUBSCRIBED SERVICES, OR ANY PART THEREOF, WILL MEET THE REQUIREMENTS OF THE MERCHANT, OR THAT THE OPERATION OF THE SUBSCRIBED SERVICES, OR ANY PART THEREOF, WILL BE UNINTERRUPTED OR ENTIRELY ERROR FREE. OPTOMANY DOES NOT WARRANT THAT ANY SERVICE WILL OPERATE IN CONJUNCTION WITH MERCHANT'S SOFTWARE OR EQUIPMENT. THE MERCHANT ACKNOWLEDGES THAT UNDER NO CIRCUMSTANCE DOES OPTOMANY REPRESENT OR WARRANT THAT ALL ERRORS IN ANY SOFTWARE CAN BE REMEDIED.



- 9.2 Notwithstanding provisions set out in clause 9.1. and subject to the remainder of this clause 9, Optomany warrants that:
- 9.2.1 each Subscribed Service shall operate materially in accordance with its Description when used in accordance with the Agreement under normal use and normal circumstances during the relevant Subscribed Service Period; and
- 9.2.2 it shall provide each of asept® Services with reasonable care and skill.
- 9.3 The Merchant acknowledges that clause 9.2 does not apply to Free or Trial Services or to Support Services provided in connection with the same. Without prejudice to the Optomany's obligations under our Agreement in respect of Protected Data, Free or Trial Services and Support Services provided in connection with the same are provided 'as is' and without warranty to the maximum extent permitted by law.
- 9.4 asept® Services may be subject to delays, interruptions, errors or other problems resulting from use of the internet or public electronic communications networks used by the parties or third parties (including providers of mobile connectivity). The Merchant acknowledges that such risks are inherent in cloud services and that Optomany shall have no liability for any such delays, interruptions, errors or other problems.
- 9.5 If there is a breach of any warranty in clause 9.2 Optomany shall at its option: use reasonable endeavours to repair or replace the impacted Services within a reasonable time or (whether or not it has first attempted to repair or replace the impacted Service) refund the Subscription Fees for the impacted asept® Services which were otherwise payable for the period during which Optomany was in breach of any such warranty (provided such period is at least **3 consecutive days**). To the maximum extent permitted by law, this clause 9.5 sets out the Merchant's sole and exclusive remedy (however arising, whether in contract, negligence or otherwise) for any breach of any of the warranties in clause 9.2.
- 9.6 The warranties in clause 9.2 are subject to the limitations set out in clause 17 and shall not apply to the extent that any error in asept® Services arises as a result of:
- 9.6.1 incorrect operation or use of the Services by the Merchant, any Authorised Affiliate or any Authorised User (including any failure to follow the Documentation or failure to meet minimum specifications);
- 9.6.2 use of any of asept® Services other than for the purposes for which it is intended;
- 9.6.3 use of any asept® Services with other software or services or on equipment with which it is incompatible (unless Optomany recommended or required the use of that other software or service or equipment);
- 9.6.4 any act by any third party (including hacking or the introduction of any virus or malicious code);
- 9.6.5 any modification of asept® Services (other than that undertaken by Optomany or at its direction); or
- 9.6.6 any breach of the Agreement by the Merchant (or by any Authorised Affiliate or Authorised User).
- 9.7 Optomany may make Non-Optomany Materials available for the Merchant's use in connection with asept® Services. The Merchant agrees that:
- 9.7.1 Optomany has no responsibility for the use or consequences of use of any Non-Optomany Materials;
- 9.7.2 the Merchant's use of any Non-Optomany Materials shall be governed by the applicable terms between the Merchant and the owner or licensor of the relevant Non-Optomany Materials;
- 9.7.3 the Merchant is solely responsible for any Non-Optomany Materials used in connection with asept® Services and for compliance with all applicable third party terms which may govern the use of such Non-Optomany Materials; and
- 9.7.4 the continued availability, compatibility with the Services and performance of the Non-Optomany Materials is outside the control of Optomany and Optomany has no responsibility for any unavailability of or degradation in the Services to the extent resulting from the availability, incompatibility or performance of any of the Non-Optomany Materials.
- 9.8 The Merchant acknowledges that no liability or obligation is accepted by Optomany (howsoever arising whether under contract, tort, in negligence or otherwise):
- 9.8.1 that the Subscribed Services shall meet the Merchant's individual needs, whether or not such needs have been communicated to the Optomany;
- 9.8.2 that the operation of the Subscribed Services shall not be subject to minor errors or defects; or
- 9.8.3 that the Subscribed Services shall be compatible with any other software or service or with any hardware or equipment except to the extent expressly designated by Optomany to as compatible.

9.9 Other than as set out in this clause 9, and subject to clause 17.7, all warranties, conditions, terms, undertakings or obligations whether express or implied by statute, common law or otherwise and including any implied terms relating to quality, fitness for any particular purpose or ability to achieve a particular result are excluded to the extent permitted by law.

10 MERCHANT'S RESPONSIBILITIES

10.1 In addition to liabilities set out elsewhere in the Agreement, the Merchant shall (and shall ensure all Authorised Affiliates and Authorised Users shall) at all times comply with all applicable laws relating to the use or receipt of axept® Services, including laws relating to privacy, data protection and use of systems and communications, rules imposed by the Payment Schemes k, all rules imposed by any other relevant bank or third party and all rules relating to the PCI Security Standards Council

10.2 The Merchant shall:

10.2.1 co-operate with Optomany in all matters relating to axept® Services;

10.2.2 advise Optomany immediately in writing of any 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;

10.2.3 not resell, hire, lease, or otherwise make the Subscribed Services available to any third party;

10.2.4 not use the Subscribed Services on behalf of any third party;

10.2.5 not itself or using a third party maintain or adjust any part of the Subscribed Services and not make any modifications or in any way mark or deface any part of the Subscribed Services;

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

10.2.7 have full authorisation from the Acquirer to process Transactions using the Subscribed throughout the Subscribed Services Period; If no such agreement is in place between the Merchant and the Acquirer, Optomany shall not be liable for the Merchant's inability to utilise the Subscribed Services.

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

11 INTELLECTUAL PROPERTY

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

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

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

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

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



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

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

12 DEFENCE AGAINST INFRINGEMENT CLAIMS

12.1 Subject to clauses 12.2 and 12.5, Optomany shall:

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

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

12.2 The provisions of clause 12.1 shall not apply unless the Merchant:

12.2.1 promptly notifies Optomany upon becoming aware of any actual or threatened IPR Claim and provides full written particulars;

12.2.2 makes no comment or admission and takes no action that may adversely affect the Optomany's ability to defend or settle the IPR Claim;

12.2.3 provides all assistance reasonably required by Optomany subject to Optomany paying the Merchant's reasonable costs; and

12.2.4 gives Optomany sole authority to defend or settle the IPR Claim as Optomany considers appropriate.

12.3 The provisions of clause 12.2. shall apply to any payment of costs and damages awarded or agreed in settlement or final judgment of an IPR Claim under clause 12.1.

12.4 In the event of any IPR Claim Optomany may elect to terminate our Agreement immediately by written notice and promptly refund to the Merchant on a pro-rata basis for any unused proportion of Fees paid in advance. This clause 12.4 is without prejudice to the Merchant's rights and remedies under clauses 12.1.

12.5 Optomany shall have no liability or obligation under this clause 12 in respect of (and shall not be obliged to defend) any IPR Claim which arises in whole or in part from:

12.5.1 any modification of the Services (or any part) without the Optomany's express written approval;

12.5.2 any Non-Optomany Materials;

12.5.3 any Merchant Data;

12.5.4 any Free or Trial Services (or any Support Services provided in connection with them);

12.5.5 any Open Source Software;

12.5.6 any breach of our Agreement by the Merchant;

12.5.7 installation or use of the Services (or any part) otherwise than in accordance with our Agreement and the Documentation; or

12.5.8 installation or use of the Services (or any part) in combination with any software, hardware or data that has not been supplied or expressly authorised by the Optomany.

12.6 Subject to clause 17.7, the provisions of this clause 12 set out the Merchant's sole and exclusive remedy (howsoever arising, including in contract, tort, negligence or otherwise) for any IPR Claim.

13 MERCHANT SYSTEMS AND MERCHANT DATA

13.1 Merchant Data shall at all times remain the property of the Merchant or its licensors.

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

- 13.3 If Optomany becomes aware of any allegation that any Merchant Data may not comply with the Acceptable Use Policy or any other part of our Agreement Optomany shall have the right to permanently delete or otherwise remove or suspend access to any Merchant Data which is suspected of being in breach of any of the foregoing from the Services and/or disclose Merchant Data to law enforcement authorities (in each case without the need to consult the Merchant). Where reasonably practicable and lawful Optomany shall notify the Merchant before taking such action.
- 13.4 Except as otherwise expressly agreed in our Agreement, Optomany shall not be obliged to provide the Merchant with any assistance extracting, transferring or recovering any data whether during or after the Service Period. The Merchant acknowledges and agrees that it is responsible for maintaining safe backups and copies of any Merchant Data, including as necessary to ensure the continuation of the Merchant's and Authorised Affiliates' businesses. The Merchant shall, without limitation, ensure that it backs up (or procures the back up of) all Merchant Data regularly (in accordance with its, its Authorised Affiliates and its Authorised User's needs) and extracts it from each Subscribed Service prior to the termination or expiry of our Agreement or the cessation or suspension of any of the Services.
- 13.5 Optomany routinely undertakes regular backups of the Subscribed Services (which may include Merchant Data) for its own business continuity purposes. The Merchant acknowledges that such steps do not in any way make Optomany responsible for ensuring the Merchant Data does not become inaccessible, damaged or corrupted. To the maximum extent permitted by applicable law, Optomany shall not be responsible (under any legal theory, including in negligence) for any loss of availability of, or corruption or damage to, any Merchant Data.
- 13.6 Unless otherwise set out in the Merchant Application Form, the Subscribed Service Specific Terms or subsequently agreed by the parties in writing, the Merchant hereby instructs that Optomany shall within 60 days of the earlier of the end of the provision of the Services (or any part) relating to the processing of the Merchant Data securely dispose of such Merchant Data processed in relation to the Services (or any part) which have ended (and all existing copies of it) except to the extent that any applicable laws of the United Kingdom (or a part of the United Kingdom) requires Optomany to store such Merchant Data. Optomany shall have no liability (howsoever arising, including in negligence) for any deletion or destruction of any such Merchant Data undertaken in accordance with our Agreement.
- 14 CONFIDENTIALITY AND SECURITY OF MERCHANT DATA**
- 14.1 Optomany shall maintain the confidentiality of the Merchant Data and shall not without the prior written consent of the Merchant or in accordance with the Agreement, disclose or copy the Merchant Data other than as necessary for the performance of asept® Services or its express rights and obligations under our Agreement.
- 14.2 Optomany shall implement technical and organisational security measures in accordance with the Information Security Addendum.
- 14.3 Optomany:
- 14.3.1 undertakes to disclose the Merchant Data only to those of its officers, employees, agents, contractors and direct and indirect sub-contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under the Agreement or as otherwise reasonably necessary for the provision or receipt of asept® Services, Acquiring Services and Relevant Services, and
- 14.3.2 shall be responsible to the Merchant for any acts or omissions of any of the persons referred to in clause 14.3.1 in respect of the confidentiality and security of the Merchant Data as if they were the Optomany's own.
- 14.4 The provisions of this clause 14 shall not apply to information which:
- 14.4.1 is or comes into the public domain through no fault of the Optomany, its officers, employees, agents or contractors;
- 14.4.2 is lawfully received by Optomany from a third party free of any obligation of confidence at the time of its disclosure;
- 14.4.3 is independently developed by Optomany (or any of its Affiliates or any person acting on its or their behalf), without access to or use of such Confidential Information; or
- 14.4.4 is required by law, by court or governmental or regulatory order to be disclosed,
- provided that clauses 14.4.1 to 14.4.3 (inclusive) shall not apply to Protected Data.
- 14.5 This clause 14 shall survive the termination or expiry of our Agreement for a period of five years.
- 14.6 To the extent any Merchant Data is Protected Data, Optomany shall ensure that such Merchant Data may be disclosed or used only to the extent such disclosure or use does not conflict with any of the Optomany's obligations under the Data Protection Addendum. Clauses 14.1 to 14.5 (inclusive) are subject to this clause 14.6.



15 OPTOMANY'S CONFIDENTIAL INFORMATION

- 15.1 The Merchant shall maintain the confidentiality of the Optomany's Confidential Information and shall not without the prior written consent of Optomany, disclose, copy or modify the Optomany's Confidential Information (or permit others to do so) other than as necessary for the performance of its express rights and obligations under the Agreement.
- 15.2 The Merchant undertakes to:
- 15.2.1 disclose the Optomany's Confidential Information only to those of its officers, employees, agents and contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under this Agreement;
 - 15.2.2 procure that such persons are made aware of and agree in writing to observe the obligations in this clause 15; and
 - 15.2.3 be responsible for the acts and omissions of those third parties referred to in this clause 15.2 as if they were the Merchant's own acts or omissions.
- 15.3 The Merchant shall give notice to Optomany of any unauthorised use, disclosure, theft or loss of the Optomany's Confidential Information immediately upon becoming aware of the same.
- 15.4 The provisions of this clause 15 shall not apply to information which:
- 15.4.1 is or comes into the public domain through no fault of the Merchant, its officers, employees, agents or contractors;
 - 15.4.2 is lawfully received by the Merchant from a third party free of any obligation of confidence at the time of its disclosure;
 - 15.4.3 is independently developed by the Merchant, without access to or use of the Optomany's Confidential Information; or
 - 15.4.4 is required by law, by court or governmental or regulatory order to be disclosed provided that the Merchant, where possible, notifies Optomany at the earliest opportunity before making any disclosure.
- 15.5 This clause 15 shall survive the termination or expiry of this Agreement for a period of *ten* years.

16 RELIEF

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

17 LIMITATION OF LIABILITY

- 17.1 The extent of the Optomany's liability under or in connection with the Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation or under any indemnity) shall be as set out in this clause 17.
- 17.2 Subject to clauses 17.2, 17.4 and 17.7, the Optomany's aggregate liability in respect of each individual Subscribed Service (and all Support Services provided in connection with the same) (howsoever arising under or in connection with our Agreement) shall not exceed the greater of:
- 17.2.1 an amount equal to the Subscription Fees for the relevant Subscribed Service paid to Optomany by the Merchant in the 12-month period immediately preceding the first incident giving rise to any claim under our Agreement; or
 - 17.2.2 an amount equal to 12 times the Subscription Fees for the relevant Subscribed Service due or paid to Optomany for the first month of the relevant Subscribed Service Period.
- 17.3 Subject to clauses 17.4 and 17.7, the Optomany's aggregate liability in respect of each individual Free or Trial Service (and all Support Services provided in connection with the same) (howsoever arising under or in connection with our Agreement) shall not exceed £100 (one hundred).
- 17.4 Subject to clause 17.7, the Optomany's total aggregate liability howsoever arising under or in connection with our Agreement shall not exceed the greater of:



- 17.4.1 an amount equal to the Fees for all Services paid to Optomany in the 12-month period immediately preceding the first incident giving rise to any claim under our Agreement; or
- 17.4.2 an amount equal to 12 times the Fees due or paid to Optomany for the Services provided in the first month of the Service Period.
- 17.5 Subject to clause 17.7, Optomany shall not be liable for consequential, indirect or special losses.
- 17.6 Subject to clause 17.7, Optomany shall not be liable for any of the following (whether direct or indirect):
 - 17.6.1 loss of profit;
 - 17.6.2 destruction, loss of use or corruption of data;
 - 17.6.3 loss or corruption of software or systems;
 - 17.6.4 loss or damage to equipment;
 - 17.6.5 loss of use;
 - 17.6.6 loss of production;
 - 17.6.7 loss of contract;
 - 17.6.8 loss of commercial opportunity;
 - 17.6.9 loss of savings, discount or rebate (whether actual or anticipated); and/or
 - 17.6.10 harm to reputation or loss of goodwill; and/or
 - 17.6.11 wasted expenditure.
- 17.7 Notwithstanding any other provision of this Agreement, the Optomany's liability shall not be limited in any way in respect of the following:
 - 17.7.1 death or personal injury caused by negligence;
 - 17.7.2 fraud or fraudulent misrepresentation; or
 - 17.7.3 any other losses which cannot be excluded or limited by applicable law.
- 17.8 This clause 17 shall survive the termination or expiry of our Agreement.

18 SUSPENSION AND TERMINATION

- 18.1 Optomany may suspend access to axept® Services (or any part) to all or some of the Authorised Users or terminate the Agreement if:
 - 18.1.1 Optomany suspects that there has been any misuse of the Services or breach of the Agreement;
 - 18.1.2 the Merchant fails to pay any sums due to Optomany by the due date for payment; or
 - 18.1.3 the Merchant's Relevant Acquirer ceases for whatever reason to permit the processing of the Merchant's transactions or otherwise requires a change to the Subscribed Services which is outside of the scope of this Agreement and the Merchant is unable to find a suitable replacement relevant acquirer within the required time frame;
 - 18.1.4 Optomany is required by law or by any body with applicable authority to so suspend or terminate the Agreement (or any part of it). If Optomany is not permitted to notify the Merchant of a suspension Optomany may suspend the provision of the Subscribed Services under the Agreement with immediate effect and without notice to the Merchant;
 - 18.1.5 if the Merchant repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify, in the opinion of the Optomany, 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;
 - 18.1.6 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;



- 18.1.7 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 Optomany may affect the ability or willingness of the Merchant to comply with all or any of the Merchant's obligations under the Agreement;
- 18.1.8 any act or omission occurs affecting the Merchant which in the opinion of Optomany damages or could result in damage to the reputation of the Optomany, a relevant acquirer or a Card Scheme or their respective logo, trade or service marks;
- 18.1.9 if Optomany or DNAP are entitled to terminate the Agreement In accordance with clause 19 of Schedule 2;
- 18.1.10 there is, in Optomany's opinion, any material change in the nature or type of the business undertaken by the Merchant.

18.2 Optomany may terminate or suspend the provision of Free or Trial Services (and all related Support Services) at any time with or without notice.

18.3 Where the reason for the suspension is suspected misuse of axept® Services or breach of our Agreement, Optomany will take steps to investigate the issue and may restore or continue to suspend access at its discretion.

18.4 In relation to suspensions under clause 18.1.2, access to axept® Services will be restored promptly after Optomany receives payment in full and cleared funds.

18.5 Fees shall remain payable during any period of suspension notwithstanding that the Merchant, Authorised Affiliates or some or all of the Authorised Users may not have access to the Services.

19 RENEWALS

19.1 Subject to clause 19.2, on expiry of the Subscribed Service Period indicated in the Merchant Application Form and / or Order for each Subscribed Service the Subscribed Service Period shall continue and automatically renew for a further period of twelve months (**first Renewal Date**) and thereafter renew for a further period of twelve months on each anniversary of the first Renewal Date (each of the first Renewal Date and each such anniversary being a **Renewal Date**). This clause 19.1 shall not apply in respect of Free or Trial Services (which shall not renew unless otherwise expressly stated in the Order).

19.2 If either party wishes for the Subscribed Service Period to expire on the next Renewal Date, it may cause the Subscribed Service to expire on that Renewal Date by notice provided such notice is served at least **30 (thirty)** days prior to that Renewal Date. If notice is not served within the timeframes set out in this clause 19.2, the Subscribed Service shall renew at the next Renewal Date in accordance with clause 19.1.

20 CONSEQUENCES OF TERMINATION

20.1 Immediately on termination or expiry of this Schedule 4 or the Agreement (for any reason), the rights granted by Optomany under our Agreement shall terminate and the Merchant shall (and shall procure that each Authorised User and Authorised Affiliate shall):

- 20.1.1 stop using axept® Services; and
- 20.1.2 destroy and delete or, if requested by the Optomany, return any copies of the Documentation in its possession or control (or in the possession or control of any person acting on behalf of any of them);
- 20.1.3 comply with their obligations in connection with the removal of the axept® Software from all Payment Terminals in accordance with any instructions as are made known by the Optomany, unless Optomany removes the axept® Software from all Payment Terminals;
- 20.1.4 pay the amount referred to In clause 20.3..

20.2 Termination or expiry of this Schedule shall not affect any accrued rights and liabilities of either party at any time up to the date of termination or expiry and shall not affect any provision of our Agreement that is expressly or by implication intended to continue beyond termination.

20.3 **IF THE AGREEMENT IS TERMINATED FOR ANY REASON BEFORE EXPIRY OF THE MINIMUM TERM, IN ADDITION TO PAYMENT OF ALL OTHER RELEVANT FEES, THE MERCHANT SHALL PAY OPTOMANY IMMEDIATELY:**

- 20.3.1 **ALL AMOUNTS OUTSTANDING UNDER THE AGREEMENT WHICH HAVE FALLEN DUE FOR PAYMENT BUT WHICH HAVE NOT BEEN PAID;**
- 20.3.2 **ALL SUBSCRIPTION FEES WHICH WOULD HAVE BEEN PAYABLE FOR THE REMAINDER OF THE MINIMUM TERM BUT FOR SUCH TERMINATION; AND**
- 20.3.3 **ANY BUY-OUT CONTRIBUTION WHICH IS REPAYABLE UNDER CLAUSE 21.**

21 BUY-OUT PROVISIONS



- 21.1 This clause 21 applies if the Merchant has terminated the Merchant's agreement (whatever named) (the **Relevant Agreement**) with a third party for the sole purpose of the Merchant entering into the Agreement for the provision of axept® Services by Optomany as a replacement to similar supplies or services provided under such agreement with the third party (the **Relevant Termination**). Notwithstanding the foregoing, the Relevant Termination and the buy-out contribution referred to in clause 20 shall not apply if the Merchant has terminated the Relevant Agreement with the third party in breach of its terms, or if such third party terminated the Relevant Agreement as a result of the breach (or suspected breach) by the Merchant of the Relevant Agreement.
- 21.2 Optomany will, at its discretion, contribute to the Merchant an amount equal to the fees payable by the Merchant directly relating to the Relevant Termination pursuant to the terms of the Relevant Agreement, provided always that:
- 21.2.1 the Merchant provides to DNAP, within 3 (three) calendar months of the date of the Agreement, an invoice issued by the third party for such fees;
- 21.2.2 Optomany's contribution shall be limited only to such fees which relate directly to the cost of the Relevant Termination (and not for any other services or other costs or liabilities of the Merchant under or in connection with the Relevant Agreement); and
- 21.2.3 Optomany shall contribute a maximum of £500 (five hundred pounds), including any applicable VAT.
- 21.3 Any buy-out contribution in relation to a Relevant Termination paid by Optomany shall be reimbursed to Optomany upon demand if the Agreement is terminated before the expiry of the Minimum Term.
- 21.4 The amount of the reimbursement pursuant to clause 20.3 shall be calculated by dividing the amount of the buy-out contribution paid by Optomany by the number of months of the Minimum Term and then multiplying the result by the number of full or part months of the Minimum Term not yet expired as at the date of termination of the Agreement.

22 Notices

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

23 Third Party Rights

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

24 Entire Agreement

- 24.1 This Schedule 4, Schedule 1 and Schedule 2 together with the Merchant Application Form constitute the entire and separate agreement and understanding between the parties in respect of axept® Services 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, this Schedule 4 sets out the full extent of each party's obligations and liabilities arising out of or in connection with axept® Services 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 Schedule 4 (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 this Schedule 4). Any condition, warranty, representation or term which might otherwise be implied into or incorporated in the Agreement or any collateral contract, whether by statute, common law, or otherwise, is hereby expressly excluded.
- 24.3 Nothing in this clause 23 shall operate to exclude any liability of either party for fraud.



25 Assignment and subcontracting

- 25.1 Optomany may at any time assign, sub-contract, sub-licence (including by multi-tier), transfer, mortgage, charge, declare a trust or deal in any other manner with any or all of its rights or obligations under this Schedule 4.
- 25.2 Except as expressly permitted by the Agreement, the Merchant shall not assign, transfer, sub-contract, sub-licence, mortgage, charge, declare a trust or deal in any other manner with any or all of its rights or obligations under our Agreement (including the licence rights granted), in whole or in part, without the Optomany's prior written consent.

26 Amendments To the Agreement

- 26.1 Optomany 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 this Schedule 4, including all or any of the Fees, on giving the Merchant not less than **two (2) months' prior notice**.
- 26.2 Where the Merchant serves notice of any changes pursuant to clause 26.1:
- 26.2.1 unless the Merchant notifies the Merchant, prior to the expiry of the applicable 1 (one) month notice period, that it does not accept such changes, it shall be deemed to have accepted such changes, which shall take effect on the expiry of such notice period (and the Agreement shall be deemed to be amended accordingly);
- 26.2.2 the Merchant shall be entitled to terminate the Agreement without charge at any time before the expiry of such notice period.

27 Miscellaneous

- 27.1 **Anti-Corruption, Anti-Bribery and Anti-Money Laundering.** The Merchant shall ensure that the Merchant's subsidiaries, owners, officers, directors, employees, partners, subcontractors, agents and representatives fully comply with all applicable anti-corruption, anti-bribery and anti-money laundering laws and regulations in connection with this Contract, as may be amended from time to time. Without limiting the generality of the foregoing obligation, the Merchant specifically understands and agrees that the Merchant shall not, and shall take reasonable measures to assure that Merchant Affiliates shall not, make, authorize, offer or promise to make or give any money or any other thing of value, directly or indirectly, to any government official or employee, political party or candidate for political office, or any other person for the purpose of securing any improper or unfair advantage or obtaining or retaining business in connection with the activities contemplated hereunder. Any breach or violation of any provision contained in this clause 27.1 shall be grounds for immediate termination of this Agreement by the Merchant.
- 27.2 Neither party shall make or permit to be made any publicity releases or announcements regarding the Agreement without the prior written consent of the other (such consent not to be unreasonably withheld or delayed).
- 27.3 Each party shall be responsible for its own costs in connection with the preparation, negotiation and entry into of the Agreement and (save as otherwise expressly provided or as otherwise agreed in writing between the parties) any other documents contemplated by it.
- 27.4 Save as otherwise expressly provided in the Conditions, nothing in the Agreement is intended to, or shall be deemed to:
- 27.4.1 establish any partnership or joint venture between the parties, constitute any party (or its Personnel) the agent of the other (or the other's Personnel), or authorise either party (or its Personnel) to make or enter into any commitments for or on behalf of the other (or the other's Personnel); or
- 27.4.2 render either party, or any of their respective officers or employees, an officer or employee of the other.
- 27.5 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.



- 27.6 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.
- 27.7 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.
- 27.8 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.



APPENDIX 1 TO SCHEDULE 4
DEFINITIONS

In this Schedule 4:

Addendum	means the addendum identifying certain respective rights and obligations of the parties' in respect of personal data and privacy under this Schedule 4 (as updated from time to time), which as at Order Acceptance is the latest version available at https://optomany.com/gateway/data-protection-addendum (the Data Protection Addendum);
Authorised Affiliates	means, in respect of the relevant Subscribed Service, the Affiliates of the Merchant (if any) identified in the Merchant Application Form and/or Order as Authorised Affiliates in respect of that Subscribed Service;
Authorised PoS Accounts	means, in respect of the relevant Subscribed Service, the number of PoS authorised by Optomany to use that Subscribed Service in accordance with the terms of our Agreement;
Authorised Users	means, in respect of the relevant Subscribed Service, the named users authorised by the Merchant to use that Subscribed Service in accordance with the terms of our Agreement;
axept® Control Centre	means the online support, management, and reporting tool as is made available by the Optomany), a public facing browser-based web application including a suite of tools allowing the reporting of transactions and the management of the payment environment for Merchants. In terms of reporting, OCC offers a number of pre-defined reports covering different reporting periods, as well as the capabilities for the Merchant to create their own specific reports and have these run on a scheduled basis to be automatically generated and delivered to the Merchant via email;
axept® Platform	means a cloud-based technology which accepts and validates inbound transaction requests from the various environments in a number of supported formats. The axept® Platform manages the authorisation of the transaction to the appropriate certified acquirer or third-party service provider in the appropriate format required by those parties. Finally, axept® Platform generates a response back to the originator advising of the transaction authorisation outcome;
axept® Processing	means the technical services provided (or to be provided) by Optomany in accordance with the Master SaaS Terms which support the provision of payments services in relation to the processing of payments. axept® Processing consists of axept® Platform, Optomany Control Centre and axept® Application;
axept® Services	means the Subscribed Services and the Support Services;
axept® Software	means Optomany's proprietary application (comprising the Cardholder and Merchant Components) for PoS terminals, which manages the entire payment process, including transaction type selection, amount entry, the capture of sensitive payment data, the validation of the cardholder's PIN, the transmission of an authorisation request to the axept® Platform, the receipt of the authorisation response from the axept® Platform and the printing of a transaction receipt;
Documentation	means: <ul style="list-style-type: none">(a) the description of the relevant Subscribed Service (as Updated from time to time), which as at Order Acceptance is the latest version available at https://optomany.com/gateway/subscribed-services-description (the Description);(b) in respect of each Subscribed Service, the relevant instructions as to how to use that part of the Services made available by Optomany at



<https://optomany.com/gateway/control-centre-user-guide> (as Updated from time to time) (the **User Manual**);

Error Correction	means either a modification or an addition that, when made or added to the axept® Software, causes the axept® Software to function substantially in accordance with its previously published specifications, or a procedure or routine that, when observed in the regular operation of the axept® Software, eliminates the practical adverse effect on Merchant of the failure of the axept® Software to function substantially in accordance with such specifications;
Feedback	has the meaning given in clause 11.3;
Free or Trial Service	means any Subscribed Service identified as being provided on a trial basis or provided without charge (for the duration of the period during which it is provided on such basis);
Intellectual Property Rights	<p>means any and all copyright, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, utility models, domain names and all similar rights and, in each case:</p> <ul style="list-style-type: none">(a) whether registered or not;(b) including any applications to protect or register such rights;(c) including all renewals and extensions of such rights or applications;(d) whether vested, contingent or future; and(e) wherever existing;
Materials	means all services, data, information, content, Intellectual Property Rights, websites, software and other materials provided by or on behalf of Optomany in connection with the Services, but excluding all Merchant Data;
Merchant Data	means all data (in any form) that is provided to Optomany or uploaded or hosted on any part of any Subscribed Service by the Merchant or by any Authorised User;
Merchant Systems	means all software and systems used by or on behalf of the Merchant, the Merchant's Affiliates, any of its or their direct or indirect sub-contractors, or any Authorised User in connection with the provision or receipt any of the Services or that the Services otherwise, link, inter-operate or interface with or utilise (in each case whether directly or indirectly);
Non-Optomany Materials	means Materials provided, controlled or owned by or on behalf of a third party the use of which is subject to a separate agreement or licence between the Merchant and the relevant third party (including such Non-Optomany Materials which may be linked to, interact with or used by the Services) and all other Materials expressly identified as Non-Optomany Materials in our Agreement;
Open Source Software	means any software subject to a version of the General Public Licence, together with any other 'open source' software falling within the Open Source Definition issued by the Open Source Initiative (www.opensource.org/docs/osd) at the date of our Agreement and any 'free software' as defined by the Free Software Foundation (www.gnu.org/philosophy/free-sw.html) at the date of our Agreement;
Optomany's Confidential Information	means all information (whether in oral, written or electronic form) relating to the Optomany's business which may reasonably be considered to be confidential in nature including information relating to the Merchant's technology, know-how, Intellectual Property Rights, assets, finances, strategy, products and Merchants. All information relating to the Pricing Terms, the Description and any other technical or operational specifications or data



relating to each Subscribed Service shall be part of the Optomany's Confidential Information;

Optomany Provided Materials means all of the Materials provided or made available by or on behalf of the Optomany, but excluding all Merchant Data and all Non-Optomany Materials;

Order Acceptance means the effective date of the relevant Order;

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

Permitted Downtime means:

- (a) scheduled maintenance which Optomany shall use reasonable endeavours to undertake from 2am to 6am (UK time);
- (b) emergency maintenance; or
- (c) downtime caused in whole or part by Force Majeure;
- (d) downtime that results from the use of services, hardware, or software not authorised by Optomany, including issues resulting from failure of communications or Internet service, domain name service issues, other connectivity issues, or failures resulting from a Third-Party Service Provider;
- (e) downtime that results from the Merchant's failure to adhere to any required configurations, use supported platforms, or follow any policies for acceptable use, in a manner inconsistent with the features and functionality of the Subscribed Services (for example, attempts to perform operations that are not supported) or inconsistent with the Documentation provided by the Optomany; or
- (f) downtime that results due to Merchant's acts or omissions (or acts or omissions of others engaged or authorized by the Merchant, including anyone gaining access to Merchant's network by means of passwords or equipment or otherwise resulting from Merchant's failure to follow appropriate security practices), including without limitation, any negligence, wilful misconduct;

Permitted Purpose means use solely for the Merchant's business operations and, in respect of each Subscribed Services, also for the business of operations of the Authorised Affiliates identified in respect of that Subscribed Service, in each case in accordance with the applicable Documentation and our Agreement. Permitted Purpose expressly excludes any of the following to the maximum extent permitted by law:

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



except as expressly permitted under our Agreement.

Policies

means each of the following:

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

Program Error

means a reproducible defect or combination of defects in the axept® Software that results in a failure of the axept® Software to function substantially in accordance with its previously published specifications;

Purchased Authorised User Accounts

means, in respect of each Subscribed Service, the number of Authorised Users who may use that Subscribed Service as set out in the Merchant Application Form and/or Order;

Relief Event

means:

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

Renewal Date

has the meaning given in clause 19.1;

Service Hours

means such time during which Subscribed Services are available to the Merchant, estimated to be 24 hours a day, seven days a week excluding Permitted Downtime;

Service Period

means the period beginning on Order Acceptance and ending with the last of the Subscribed Service Periods;

Subscribed Service Period

subject to clause 18, shall have the meaning given to the term "Minimum Term" in Schedule 1 (the Glossary);

Subscribed Services

means each cloud service to which the Merchant has subscribed as set out in Merchant Application Form and/or Order (and **Subscribed Service** shall refer to each respective service separately);

Subscribed Service Specific Terms

means the Optomany's standard terms for provision of Support Services, as amended by Optomany from time to time;

Subscription Fee

means, in respect of each Subscribed Service, the fees payable by the Merchant in consideration of that Subscribed Service as set out in the Pricing Terms;

Support Services

means, in respect of the relevant Subscribed Service, the support services provided by Optomany to the Merchant as described in the Subscribed Service Specific Terms;

Update

means a revision to Subscribed Services or improvement to the functionality of the Subscribed Services, and may contain new features or enhancement.

APPENDIX 2 TO SCHEDULE 4

Subscribed Service Specific Terms

SUPPORT SERVICES

Optomany shall provide the Support Services as set out in this Subscribed Service Specific Terms.

1. SOFTWARE UPDATES

Optomany shall provide the Merchant with updated versions of the asept® Software if, when, and as such Updates are made generally available by Optomany (collectively, “**Software Updates**”). Updates may include some or all of the following: (i) Error Corrections (as defined below), (ii) security updates, (iii) legal or compliance updates, and (iv) other enhancements or modifications made in Optomany’s discretion.

Optomany shall provide Updates and Technical Support only for the current and the immediately preceding major versions of the asept® Software (“**Supported Versions**”). If Merchant wishes to continue receiving Updates or Technical Support, it must migrate to a Supported Version.

2. TECHNICAL SUPPORT

Optomany Helpdesk will be available between 8.00 am and 11.00pm UK time on Monday to Saturday and between 9.30 am and 5.30pm UK time on Sundays and on National and Bank holidays (“**Support Hours**”). It shall not be available on Christmas Day.

The helpdesk may be contacted using such contact details as may be notified by Optomany from time to time. Contact details may be found on <https://optomany.com/>

All support requests shall be logged by Optomany. Optomany shall give each support request a support reference number. Optomany will endeavour to ensure that all e-mail requests for support will be acknowledged within 30 minutes (during a Support Hour).

Severity	Definition	Initial Response Time	Method of Resolution
Critical (Severity 1)	Severe impact on use of the affected service in a production environment; No procedural workaround is available. Examples include: <ul style="list-style-type: none"> Complete inability to use the service, resulting in a halting of business operations. Inability to process debit or credit payments for more than 3 (three) hours between 9 am and 11 pm. Irrecoverable system crash or loss of data. Identified security vulnerability. 	4 Hrs. (24/7 via Help Desk)	Hotfix/Patch/ Configuration Fix
High (Severity 2)	Product or service is functioning but use in a production environment is severely reduced; No procedural workaround is available.	36 Hrs. (M-F)	Non-scheduled Software Update
Medium (Severity 3)	Partial, non-critical loss of product or service function in production or development environment. <ul style="list-style-type: none"> For production environments, has a medium to low impact on business operations but the business continues to function, including by use of a procedural workaround. For development environments, causes the development project to no longer continue or migrate into production. 	72 Hrs. (M-F)	Configuration change Scheduled Software Update
Low (Severity 4)	General functionality or usage questions not involving an error with the service, requests for information, reporting of documentation error, requests for troubleshooting assistance with an operation, or recommendation.	96 Hrs. (M-F)	Configuration change



	<ul style="list-style-type: none"> For production environments, there is low to no impact on business operations or the performance of the product or service, including by use of a procedural workaround. For development environments, causes delays in the progression of the development project. 		<p>Future roadmap item / potential Software Update</p> <p>Documentation update</p>
Observation (Severity 5)	User inconvenience, minor user annoyance, or inconsistent behavior or explanation.	10 days. (M-F)	Roadmap review

3. ERROR CORRECTIONS

In the event that Optomany determines that a reported Program Error requires development support in order to provide an Error Correction, Optomany shall promptly initiate work in a diligent manner toward development of the Error Correction in accordance with its relative Severity. Optomany shall not be responsible for correcting Program Errors in any version of the axept® Software other than a Supported Version.

- (1) With respect to any Severity 1 (Critical) Program Error in a Supported Version of the axept® Software that Merchant has released into production, Optomany shall (i) provide the Error Correction through a “temporary fix” to the applicable Supported Version of the axept® Software and (ii) include such Error Correction in subsequent Software Updates.
- (2) With respect to other Program Errors, Optomany shall include the Error Correction in a subsequent Software Update, and the Merchant will be required to upgrade the such version to receive the applicable Error Correction.

4. ON-SITE SUPPORT

All technical support shall be provided remotely, unless otherwise agreed by the parties. If Optomany agreed to provide on-site support at the Merchant’s request, such on-site support shall be at a charged at the following standard daily rates:

Merchant agrees to pay Optomany all amounts associated with the provision of on-site support, including charges for (i) Optomany personnel based on standard rates; (ii) reasonable charges for travel, lodging and miscellaneous expenses; and (iii) applicable taxes.

5. EXCLUSIONS

Optomany will not be responsible for correcting any Program Errors not reproducible by Optomany or caused by the manufacturer’s fault, including in the Payment Terminal software. Optomany shall have no obligation to provide support that is the result of:

- (1) Merchant’s negligence, abuse or misapplication,
- (2) causes beyond the control of Optomany;
- (3) any device communication software installed on any hardware that is not supported by Optomany;
- (4) any SIM cards not supported by Optomany;
- (5) use of the axept® Software in a manner for which it was not designed;
- (6) any alterations of or additions to the axept® Software, or any component thereof, made by parties other than Optomany;
- (7) changes to the operating system or environment which may adversely affect the axept® Software, or any component thereof;
- (8) combination of the axept® Software, or any component thereof, with other hardware or software products not authorized or designated by Optomany;
- (9) use of the axept® Software, or any component thereof, on an unsupported platform or by unauthorized licensees,
- (10) data which does not conform to Optomany’s specified data format, or
- (11) any other cause which, in Optomany’s reasonable determination, is not inherent in the axept® Software.