

**SECURETRADING PAYMENT GATEWAY
STANDARD MERCHANT AGREEMENT**

This Agreement is a legal document and describes the terms and conditions applicable to the Merchant's use of ST's Services. Only sign this Agreement if you wish to be legally bound by its terms.

This Agreement is made on [date] between:

(1) "ST" **SECURETRADING Ltd.** a company incorporated in England and Wales under registration number 4591066 the registered office of which is at The Mansion House, Plaistow Lane, Bromley, Kent BR1 3TP.

(2) "Merchant" [.....] [a company incorporated in [Country.....] under registration number [.....] the registered office of which is at [.....]

SIGNED by Name:Signature.....
duly authorised for and on behalf of

SECURETRADING Ltd.

SIGNED by Name :Signature.....

Duly authorised for and on behalf of
Merchant Name:

CONTENTS

Clause	Page
1. Definitions and Interpretation	1
2. Provision of Services	3
3. Installation and Evaluation of Services	3
4. Transaction Processing	4
5. Payment Terms	4
6. Payment of Settlement Consideration to the Merchant	4
7. Refunds	4
8. Chargebacks	4
9. Misuse of Services	5
10. Suspension/Termination of Services	5
11. Software Licence	5
12. Obligations of the Merchant	6
13. Warranty	6
14. Fault Resolution	6
15. Obligations of ST	7
16. Term and Termination	7
17. Effects of Termination	7
18. Limitation of Liability	8
19. Indemnity	8
20. Force Majeure	8
21. Intellectual Property	9
22. Confidentiality	9
23. Non Assignment	9
24. Notices	10
25. Supervening Illegality and Severance	10
26. Privacy Policy	10
27. Publicity	10
28. General	10
Schedule 1 – Fees	
Schedule 2 – Additional Services	
Schedule 3 – Service Level Agreement	
Schedule 4 – Privacy Policy	
Schedule 5 – Specimen Confirmation of Acceptance	

INTRODUCTION

- (A) The Merchant wishes to have online payment services provided to it.
- (B) ST agrees to provide such services on the terms of and subject to the conditions contained in this Agreement.

OPERATIVE PROVISIONS

1. Definitions and Interpretation

1.1 In this Agreement where the context so admits the following expressions shall bear the following meanings:

“Acquirer”	the bank, or the provider of bank processing services on behalf of the Acquirer, with which the Merchant has, or intends to have a Merchant Contract and Internet Merchant ID No
“Additional Services”	the additional services provided by ST to the Merchant, which will be charged at ST’s then current rates as set out Schedule 2
“Agreement”	this agreement together with the Schedules and Policy documents issued by ST from time to time
“Applicable Taxes”	means any relevant taxes chargeable to the Merchant including without limitation Value Added Tax
“Associated Company”	any company which is, in relation to another company, its parent undertaking or its subsidiary undertaking or a subsidiary undertaking of its parent undertaking or any other person controlled by or under the same control direct or indirect. “Parent undertaking” and “subsidiary undertaking” shall have the meanings attributed to them in sections 258 and 259 of the Companies Act
“Authorisation”	the authorisation of a Transaction for Settlement in accordance with this Agreement and subject to the Payment Card Scheme Rules
“Authorisation Request”	an electronic or paper request of an Authorisation for a Transaction generated at the point of sale evidencing the purchase/refund of goods or services by a Cardholder from the Merchant
“Banking Day”	the day on which banks are open for business and dealing in other currencies in London, excluding Saturdays, Sundays and public holidays
“Cardholder”	a person to whom a Payment Card is issued or is authorised to use such Payment Card
“Chargebacks”	the fee which a Payment Card Scheme provider may charge from time to time in respect of invalid Transactions
“Commencement Date”	the date this Agreement is signed
“Confidential Information”	shall have the meaning given to it in clause 22.
“Configuration Changes”	the changes which the Merchant is permitted to make to the Software for the purposes of configuring the Software to function correctly with the Merchant’s Website
“Confirmation of Acceptance”	the confirmation returned by electronic mail or facsimile by the Merchant to ST, which shall confirm the Merchant’s acceptance of the satisfactory completion of the Evaluation Period, a specimen of which is set out at Schedule 5
“Customer”	any customer of the Merchant using the Services
“Evaluation Period”	28 days commencing from the Commencement Date unless otherwise agreed between the parties
“Fees”	the fees and ST Transaction Charges as set out in Schedule 1 payable by the Merchant to ST in accordance with clause 5 for the provision of Services and any Additional Services
“Intellectual Property”	all and any intellectual property rights including without limitation patents, trade marks, service marks, trade names, rights in designs, copyrights, trade secrets and Know-how, whether or not registered, whether or not in existence on the date of this Agreement and including applications for any such right, matter or thing or registration thereof together with any related goodwill
“Interface”	the Software interface, which can be downloaded from ST’s Website, which may be amended or altered by ST from time to time. The purpose of such interface being the linking of ST’s service to the Merchants Website in order to facilitate the processing of Transactions
“Internet”	the publicly accessible non-proprietary global data network comprising interconnected networks using TCP/IP (transmission control protocol/internet protocol)
“Internet Merchant ID No”	the unique identification number for each Merchant allocated to the Merchant by its Acquirer for the purpose of accepting card payments over the Internet
“IP Data Packet”	the unit of data sent across a computer network
“Know-how”	such skills, knowledge, experience, technical information or techniques of whatsoever nature utilised by ST in the performance of this Agreement
“Merchant”	any company, partnership, individual or any other entity that contracts with ST for the provision of the Services
“Merchant Application Form”	the application form to be completed by the Merchant prior to any Services being provided
“Merchant Contract”	the contract between the Merchant and its Acquirer for the provision of the Merchant’s Internet Merchant bank account

“My-ST”	complimentary online administration and management service tool for ST Merchants
“Network Boundary Points”	the points at which an IP Data Packet passes from equipment wholly managed by ST (or on ST’s behalf) to, or from, equipment not managed by ST (or on ST’s behalf)
“Pay Bill”	an online method of paying fees directly to ST using My-ST
“Payment Card”	a credit or debit payment card, which ST may process from time to time
“Payment Card Schemes”	any card scheme as notified to the Merchant by ST from time to time
“Payment Card Schemes Rules”	the industry standard rules relating to the use of Payment Cards
“Payment Gateway Network”	the hardware, software and telecommunications tools necessary to perform protocol conversion between different networks or applications and all associated software required for a Merchant to submit authorisation and data capture transactions to a provider of Bank Processing Services and to transmit authorisation and settlement transactions between a Merchant and the Acquirer
“Privacy Policy”	the privacy policy as published by ST from time to time
“Refund”	reimbursement of any sum due from the Merchant to a Cardholder
“Response Levels”	the response levels for responding to any Service Interruption set out in the Service Acknowledgement
“ST”	SECURETRADING Ltd. together with any Associated Company, affiliates, sub-contractors and/or agents
“ST Fraud Control System”	the electronic system owned and operated by ST which runs parallel checks to investigate the likelihood of a Transaction being fraudulent
“ST Logo”	the ST logo and any other logos, which ST may use to indicate its goods and services from, time to time
“ST Server”	any server managed by ST
“ST Transaction Charge”	the transaction charge as set out in Schedule 1
“Server”	any computer server not owned or operated by ST
“Service Interruption”	an unscheduled interruption to part or all of the Services
“Services”	all work to be carried out and all services to be provided to the Merchant by ST in accordance with this Agreement including any Additional Services as set out at Schedule 2
“Settlement Consideration”	the amount due to the Merchant, expressed in the Settlement Currency resulting from an Authorisation Request less any sums due to ST pursuant to this Agreement
“Settlement Currency”	the currency which ST may use from time to time
“Severity Levels”	the severity levels set out in the Service Acknowledgement
“Software”	computer programs, protocols and the object codes, source codes and other forms of the same and or any portion of the same, together with any and all associated documentation, specification, reports, algorithms, logic, tools, formats, designs, methods and processes associated with such computer software provided by ST to the Merchant which enables the Merchant to use the Services
“Third Party”	the Merchant and any other party whether connected or unconnected with the Merchant and/or ST, which the Merchant and/or ST may deal with for the purposes of this Agreement
“Transaction”	a financial transaction conducted on the Internet using a Payment Card through
“Transaction Currency”	the currency in which the Transaction is completed
“Transaction Data”	the transmission of authorisation and settlement transaction messages between the Merchant and the Acquirer in a secure manner and in formats compatible with the ST system
“Validity Check”	the checks on Payment Cards carried out by the Acquirer from time to time to check whether a Payment Card is valid for Authorisation of a Transaction.
“Website”	either the ST website owned, operated and maintained by ST or the Merchant website owned, operated and maintained by the Merchant or by a third party on behalf of the Merchant

- 1.2 Headings in this Agreement are only for convenience and shall not affect its construction.
- 1.3 All obligations given or entered into by more than one person are given to or entered into jointly and severally unless otherwise specified.
- 1.4 Any reference in this Agreement to a paragraph or a schedule is a reference to a paragraph or schedule of this Agreement.
- 1.5 Any reference to a statute or statutory provision shall be construed as a reference to the same as from time to time amended, consolidated, modified, extended, re-enacted or replaced.
- 2. Provision of Services**
- 2.1 In consideration of the Fees payable by the Merchant and subject to the Merchant complying in full with its obligations in this Agreement ST agrees with effect from the Commencement Date to provide the Services upon the terms of and subject to the conditions contained in this Agreement.
- 2.2 The scope of and charges applicable to any Additional Services to be provided by ST to the Merchant will be as set out at Schedule 2.
- 2.3 ST through its Services and Software shall carry out checks on the Payment Card to determine the validity of the Payment Card number. For the avoidance of doubt ST through its Services and Software is unable to check:
- 2.3.1 if the person using the Payment Card has the permission of the Cardholder to use the Payment Card; or
- 2.3.2 whether there are sufficient financial resources available in the Payment Card account to complete a Transaction.
- 2.4 The Merchant agrees that ST in providing the Services does not act as principal but acts as facilitator on behalf of the Merchant to enable the Merchant to enter into Transactions with its customers. The Merchant further agrees to allow ST to act as facilitator on behalf of the Merchant for the purpose of processing Authorisation Requests. The Merchant waives any claims against ST, which the Merchant may have whether for the performance and/or non-performance of any Transaction entered into as a consequence of ST's acceptance of an Authorisation.
- 2.5 ST reserves its right to accept or reject any Merchant Application Form/s submitted by the Merchant.
- 2.6 The Services required for the Evaluation Period will be provided from the Commencement Date. The Services required to request Authorisations will be provided from the date the Confirmation of Acceptance is completed.
- 2.7 ST may from time to time without notice change all or alter the networks to which it connects for the processing of Transactions.
- 2.8 ST is entitled to amend at any time in its absolute discretion the Services, the terms of this Agreement and Policies by posting the same on its Website in amended form or in writing to the Merchant with a note of the date on which the relevant document was last amended and the date when such amendment shall take effect.
- 2.9 Any dates provided by ST for the provision of the Services will be approximate only and ST shall not be liable for any delay in completion of any Services howsoever caused.
- 2.10 Notwithstanding this clause 2 ST does not make any representations express or implied about the suitability of the Services for the Merchants business.
- 3. Installation and Evaluation of Services**
- 3.1 After the Commencement Date ST agrees that it will notify the Merchant when the Services required for the Evaluation Period have been fully installed. Upon such notification the Merchant will then test and evaluate the Services for the Evaluation Period. For the avoidance of doubt the provisions of this clause 3 shall apply equally to any Additional Services and/or all upgrades to Services.
- 3.2 By the end of the Evaluation Period the Merchant shall be deemed to have accepted the Services from the time of installation and shall evidence such acceptance by sending the Confirmation of Acceptance together with details of the Merchant's valid Internet Merchant ID No. by electronic mail or facsimile to ST.
- 3.3 After receipt of the Confirmation of Acceptance and valid Internet Merchant ID No. from the Merchant in accordance with clause 3.2 ST shall acknowledge receipt of the Confirmation of Acceptance and valid Internet Merchant ID No. to the Merchant by electronic mail or facsimile and shall allow the Merchant full access to use the Services.
- 3.4 For the avoidance of doubt the Merchant will not be allowed to request Authorisations in the absence of a completed Confirmation of Acceptance and valid Internet Merchant ID No. In the event where the Merchant has entered into this Agreement without a valid Internet Merchant ID No. and has paid to ST any Fees, such Fees shall not be returned to the Merchant for any reason whatsoever including without limitation the refusal by the Acquirer to

grant to the Merchant a valid Internet Merchant ID No.

Merchant on the sum of the outstanding invoice or direct debit calculated at a compound rate of two per cent per month from the due date until the date of full payment; and

4. Transaction Processing

4.1 The Merchant acknowledges and accepts that ST will only be able to provide the Merchant with the Services and Software functionality if the Merchant;

4.1.1 properly collects and delivers to ST the Transaction Data in the form requested;

4.1.2 uses the Software to integrate the Merchant's Website into the ST Server; and

4.1.3 does not alter, modify, translate, adapt, decompile, disassemble or reverse engineer the Software or Interface so as to affect or in any way prejudice the functionality of the Software.

4.2 The Merchant acknowledges and accepts that the collation and accuracy of any Transaction Data submitted to ST is the Merchant's exclusive responsibility and that ST is solely acting on the Merchant's behalf in seeking the Authorisation of the Merchant's Acquirer of the relevant Payment Card Scheme. Accordingly ST shall have no liability whatsoever or howsoever to the Merchant in relation to Authorisation Requests sought on the Merchant's behalf from the Merchant's Acquirer.

5. Payment Terms

5.1 The Merchant agrees to pay the Fees (plus VAT where applicable) to ST monthly in arrears within 14 days of the date of invoice. Fees may be subject to amendment from time to time and ST will provide details of such amendment on its website or directly with a minimum of 14 days written notice.

5.2 Unless agreed in writing with ST, the Merchant agrees to sign a direct debit mandate to allow the Fees and any amount owed by the Merchant to ST to be debited directly from the Merchant's bank account in accordance with the relevant regulations. The Merchant agrees to keep such mandate in place until termination of this Agreement and all monies due to ST have been paid in full.

5.3 ST reserves the right to charge an additional nominal administration fee if the Merchant does not sign a direct debit mandate where requested by ST to do so as per paragraph 5.2.

5.4 When payment of any invoice or direct debit is overdue, ST may:

5.4.1 suspend performance of the Services and/or terminate this Agreement at its discretion and;

5.4.2 charge and recover interest from the Merchant

5.4.3 charge a reconnection fee of £50 plus VAT to resume the Services.

5.5 If ST is forced to take action against the Merchant to recover overdue payments, the Merchant shall be responsible for all costs and disbursements incurred by ST on a full indemnity basis.

5.6 Where the ST Transaction Charges are based upon a currency other than pounds sterling the currency rate for the purposes of calculating the ST Fees shall be based upon the rates published by ST at the date when such ST Fees are calculated by the billing system.

6. Payment of Settlement Consideration to the Merchant

6.1 The Acquirer shall be responsible for the payment of the Settlement Consideration to the Merchant in accordance with the terms of the Merchant Contract.

7. Refunds

7.1 All refunds shall be processed by the Merchant. In the event that the Merchant is unable to process its own refunds and wishes ST to process refunds on behalf of the Merchant, ST will levy a charge as set out in Schedule 2.

8. Chargebacks

8.1 ST shall not be responsible for any Chargebacks. The Merchant agrees and acknowledges that the Merchant will deal with any and all Chargebacks directly with the Acquirer.

8.2 The Merchant agrees and undertakes to provide ST with details of any and all Chargebacks so that ST can record such Chargebacks.

9. Misuse of Services

9.1 ST reserves the right to suspend or terminate the Merchant's rights of access to the Services if the Merchant is or appears to ST to be in breach of any of the provisions of this Agreement including without limitation, the provision of false information submitted on the Merchant Application Form or any other misuse of the Services.

10. Suspension of Services

10.1 From time to time the Services in whole or in part may be closed down for routine repair or maintenance work. Notwithstanding any Service Interruptions ST will give as much notice as is reasonable in the circumstances and shall as far as possible endeavour to carry out such work during the scheduled maintenance periods, which shall be notified to the Merchant from time to time.

11. Software Licence

11.1 ST hereby grants to the Merchant a non-exclusive non-transferable licence to use the Software for the duration of this Agreement upon the terms and conditions set out in this clause 11.

11.2 The licence granted hereunder shall be deemed to incorporate and include all Software, which is supplied from time to time to the Merchant by ST. This clause 11 is without prejudice to ST's right to charge the Merchant for the supply of any bespoke software.

11.3 The licence hereby granted and the Merchant's rights to use the Software are subject to the following restrictions:-

11.3.1 the Software shall be used only by the Merchant for the purposes of this Agreement and in relation to the Merchant's Website;

11.3.2 the Merchant shall not assign sub-licence charge or otherwise dispose of or grant rights over the licence hereby granted or the Software and shall not attempt to do any such thing, without the prior written consent of ST;

11.3.3 the Merchant shall not attempt to ascertain or list the source programs or source code relating to the Software;

11.3.4 the Merchant shall not decompile or translate the Software into any other computer language or attempt to do so;

11.3.5 the Merchant undertakes that it shall not without the prior written consent of ST use the Software for any business purpose not approved by or acceptable to ST.

Modifications

11.4 The Merchant shall not modify alter or in any way interfere with the Software or merge the Software with other data, programs or systems save that the Merchant shall be permitted to make the Configuration Changes.

11.5 ST reserves its right to make any improvements, substitutions or modifications in the specification of any element or part of the Software.

Unauthorised Use

11.6 If any unauthorised use is made of the Software or any part of it and such use is due to the act or default of the Merchant then without prejudice to ST's rights and remedies:

11.6.1 the Merchant will immediately be liable to pay ST an amount equal to the charges

which ST would have levied had ST authorised the grant of a licence to or for such unauthorised use at the beginning of the period of such unauthorised use together with interest at the rate provided for in clause 5 on the date of such unauthorised use to the date of payment;

11.6.2 ST shall be entitled to terminate this Agreement with immediate effect.

Software Warranties

11.7 ST warrants that:

11.7.1 it has the full power and authority to grant the licence set out in this clause 11; and

11.7.2 it has the full right and interest in the Software that it owns and the right to grant sub-licences in relation to those parts of the Software that it does not own.

12. Obligations of the Merchant

12.1 In addition to the Merchant's obligations contained elsewhere in this Agreement the Merchant agrees and undertakes to;

12.1.1 display the ST Logo and any associated text on its Website in which the Services are used and further agrees and undertakes to incorporate a hypertext link to the appropriate ST Website page (ST will provide the Merchant details of the relevant Website page). Any link on the Merchant's Website to ST's Website will be in the form agreed between the parties. The Merchant further agrees and undertakes to amend the ST Logo, any associated text, and hypertext link within 28 days of a written request from ST;

12.1.2 provide ST with accurate information regarding the Merchant's designated bank account/s;

12.1.3 pay any and all Fees in accordance with clause 5;

12.1.4 not to use the Services in any manner whatsoever which constitute a violation of any law or regulation or which may cause ST to be subject to any investigation, prosecution or legal action or for any type of business which in the opinion of ST is unacceptable;

12.1.5 describe accurately on the Merchant's Website the procedure for entering into a Transaction by making clear what is being sold on the Merchant's Website, the price

and the action, which must be taken in order to enter into a legally binding contract;

12.1.6 the Merchant shall not store Payment Card details on any server maintained by either the Merchant or any Third Party without first undergoing a security audit which should be carried out by a ST approved Third Party security auditor. Any and all costs shall be borne entirely by the Merchant; and

12.1.7 the Merchant will immediately notify ST in accordance with clause 24 any technical alterations made to the Merchant's Website or any other Third party services and software that is/are required by the Merchant for the effective delivery of its business operation over the Internet. Under any of these circumstances ST may reassess the Merchant and subject to such reassessment may charge an additional fee or terminate this Agreement with immediate effect.

12.2 For the avoidance of doubt, in the event of termination howsoever caused the Merchant agrees and undertakes to remove any such hypertext link and/or ST Logo from its Website immediately.

13. Warranty

13.1 ST will use its reasonable skill and care in providing the Services but will have no liability whatsoever for any and all direct, indirect or consequential loss arising from any delay or failure to provide all or any loss of data which may be sought from delays, failure to deliver or service interruptions outside the control of ST including (without limitation) those arising from errors or omissions on the part of the Merchant or from levels of use which are unusually large and which have the effect of causing disruption or delays in the Services.

13.2 ST does not warrant that the Services and/or software (including without limitation the Software) are error free or operate without interruption or are compatible with all equipment and software configurations. ST gives no warranty whatsoever as to the quality of information received through the Services and/or Software.

13.3 Subject to clause 18.5, where ST provides any specification, design, plan or scheme the Merchant agrees to check the accuracy and suitability of such specification, design, plan or scheme and agrees that ST shall not be liable for any omissions, errors or inaccuracies therein. Any documentation drawn up by ST is and will remain the property of ST and may not be reproduced in whole or in part without ST's prior written consent.

13.4 The warranties in this clause 13 shall be subject to the Merchant complying with its obligations under this Agreement and all other relevant agreements and to the Merchant having used the Service strictly in accordance with the instructions of ST and in accordance with this Agreement.

14. Fault Resolution

14.1 In the event that a defect, fault or impairment in the Services causes a Service Interruption and the Merchant gives notification of the relevant Service Interruption to ST within 48 hours of such Service Interruption then ST shall use its reasonable endeavours to resolve the cause of such Service Interruption.

14.2 If ST determines in its reasonable opinion that such Service Interruption resulted directly or indirectly from:

14.2.1 the negligence, act, omission or default of the Merchant;

14.2.2 the Merchant's breach of this Agreement;

14.2.3 the operation failure or malfunction of any none ST software, hardware or network equipment under lease or controlled by the Merchant;

14.2.4 any Third Party action in response to an act or omission of the Merchant or any person given access to the Services by the Merchant;

14.2.5 failure to provide services by any Third Party; and/or

14.2.6 any failure due to communication protocols then ST may recover in advance from the Merchant all reasonable costs incurred by it or on its behalf in connection with the remedy of such Service Interruption.

15. Obligations of ST

15.1 ST agrees to:

15.1.1 provide the Services to the Merchant in an efficient and effective manner and to the best of its abilities in accordance with the Service Acknowledgement;

15.1.2 process all Merchant personal data in accordance with the Data Protection Act 1998 and the Privacy Policy;

15.1.3 carry out regular virus checks on the Software; and

15.1.4 upon settlement of a Transaction charge the Merchant with all charges due pursuant to this Agreement.

16 Term and Termination

16.1 This Agreement shall commence on the date it is signed by the parties and shall continue for an initial period of 12 months and shall continue thereafter on a 12 monthly basis unless and until terminated by either party by giving 30 days prior written notice to that effect to the other party to expire at the first initial period of 12 months or at any time thereafter subject always to the provisions for earlier termination contained in this Agreement.

16.2 Without prejudice to any other provisions of this Agreement, this Agreement may be terminated by either party:-

16.2.1 on giving written notice to the other party if the other party is in breach of this Agreement and shall have failed either to remedy the breach or in the case of an irremediable breach, to pay reasonable compensation to the other party in either case within 30 days of the receipt of a written request from the other party to remedy the breach or pay reasonable compensation (the time for performance of any obligation being extended accordingly for the purpose of this clause 16.2.1) such request indicating that failure to remedy the breach or pay reasonable compensation may result in the termination of this Agreement; or

16.2.1 on giving written notice to the other party if the other party (being a company) shall have a receiver, manager, administrator, administrative receiver or liquidator appointed or shall pass a resolution for winding up (otherwise than for the purpose of solvent amalgamation or reconstruction) or a court shall make an order to that effect or if the other party shall enter into any composition or arrangement with its creditors *or* if the Merchant (being an individual) shall have a petition for bankruptcy presented to him or a bankruptcy order is made against him.

16.3 Without prejudice to any other provisions of this Agreement, ST may terminate this Agreement by giving to the Merchant not less than 30 days written notice of termination. In the event of ST giving notice pursuant to this clause 16.3 the parties will discuss arrangements for the orderly completion of any work in hand. For the avoidance of doubt, the parties obligations (including the obligation of the Merchant to pay fees to ST hereunder in accordance with clause 5 for all Services provided up to the date of termination) shall continue during such 30 day notice period.

16.4 Any notice given under clause 16.2.1 or 16.2.2 shall state the date when such termination shall take effect, such date not to be greater than 7 days after

the date of such notice. For the avoidance of doubt, any such notice may be stated to take effect forthwith.

16.5 ST may terminate the Agreement with immediate effect in the event that:

16.5.1 any Acquirer declines to offer or continue to provide the Merchant with services for any reason whatsoever including without limitation if the Merchants Internet Merchant ID No. is withdrawn for any reason whatsoever.

16.5.2 where the Merchant wishes to use the Services to support a business which is contrary to any applicable laws or prohibited under the Payment Scheme Rules

17. Effects of Termination

17.1 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

17.2 In respect of the period if any between the date that notice of termination is given and the effective date of termination ("the Termination Date") the following provisions shall have effect:-

17.2.1 ST shall continue to provide the Services until the Termination Date;

17.2.2 on the Termination Date ST shall cease to provide the Services; and

17.2.3 the Merchant shall pay all Fees due in accordance with clause 5 up to and including the Termination Date.

17.3 Following termination of this Agreement the Merchant shall destroy the Software from its computer systems.

18. Limitation of Liability

18.1 ST will not be liable for any of the following losses which may arise by reason of any breach of the express terms of this Agreement or to the extent that they have not been excluded by clause 13.1; any implied warranty, condition or other term, any representation or any duty of any kind imposed on ST by operation of law; indirect; incidental; consequential; income; data; use; information; increased costs or expenses; profits; business; contracts or revenues from savings, with the exception of death or personal injury caused by ST's negligence.

18.2 Unless otherwise provided in this Agreement the liability of ST in contract, tort (including negligence or breach of statutory duty) statute or otherwise shall be limited to the reasonable cost reprocessing any transactions which have been processed by ST.

- 18.3 The obligations set out in this clause 18 as to the limitations of liability shall remain in full force and effect notwithstanding expiration or termination howsoever caused of this Agreement for any reason whatsoever.
- 18.4 Other than as expressly set out elsewhere in this Agreement all representations, warranties, conditions and terms express or implied whether Statutory or otherwise are expressly excluded by ST to the fullest extent permitted by law.
- 18.5 The Merchant acknowledges and accepts that it shall not rely upon information in any brochures, service descriptions or similar documentation provided by ST prior to the execution of this Agreement.
- 18.6 The Merchant acknowledges and agrees that ST has no control over or responsibility for quality of the Service obtainable through any networks or services beyond the Network Boundary Points and accordingly any liability in respect of the same whatsoever is hereby excluded.
- 18.7 ST is not responsible whatsoever for any use by the Merchant of Third Party services or for any charges that the Merchant may incur with any Third Party including without limitation any software running in conjunction with the Services and/or Software.
- 19. Indemnity**
- 19.1 ST will indemnify and keep indemnified the Merchant from and against all losses, actions, costs, claims, demands and proceedings and all expenses including reasonable legal expenses, incurred by the Merchant arising from claims of a third party which arise in whole or in part from the infringement of any Intellectual Property rights arising from the Services, or the negligence or wilful misconduct of ST.
- 19.2 ST's obligations under this Agreement are subject to the following:-
- 19.2.1 any messages that originate from a Third Party Server will be deemed to be authorised by the Merchant and ST shall not be liable for any processing of such messages;
- 19.2.2 Subject to clause 12.1.7 ST is not responsible for the security of data residing on a Third Party Server; and
- 19.2.3 ST shall have no liability for any failure or delay in performing its obligations under this Agreement if such failure or delay is caused by the Merchants acts, omissions or results from actions taken by ST in good faith to avoid violating a law, rule or regulation of any government authority or is
- is caused by circumstances beyond ST's reasonable control.
- 19.3 The Merchant agrees and undertakes to fully indemnify and keep indemnified ST from and against all losses, actions, costs, claims, demands and proceedings and all expenses including reasonable legal expenses incurred by ST arising directly or indirectly from or relating to any:
- 19.3.1 transaction between the Merchant and its Customer; and/or
- 19.3.2 the Merchant's breach and non-observance of this Agreement arising out of any action which may be brought as a result of any failure to perform any obligations; and/or
- 19.3.3 breach of any procedures and instructions resulting in additional work for ST; and/or
- 19.3.4 take reasonable steps to assist ST in handling a claim or alleged claim by a Customer against ST. ST shall have complete discretion whether or not to defend any such claim or alleged claim or to negotiate any settlement with the Customer which settlement shall be binding on the Merchant to fully indemnify and keep indemnified ST in respect of any claim being made or defence raised against ST by a Customer where such a claim would arise as a direct or indirect result of any act or omission on the part of the Merchant which includes, but is not limited to the act of supply.
- 19.4 For the purposes of clauses 19.2 and 19.3 (and without prejudice to the indemnity contained therein) the Merchant agrees that ST shall be entitled in its entire discretion to accept, dispute, compromise or otherwise deal with any claim, alleged claim, loss or liability, which is made against it.
- 20. Force Majeure**
- Neither party shall be liable for any delay in or failure to perform its obligations if that delay or failure is caused by circumstances beyond its reasonable control, including without limitation fires, strikes, insurrection, riots, embargos, inability to obtain supplies, refusal or revocation of licence or regulations of any civil or military authority, fire, act of god, flood or any network breach, breakdown in any Third Party equipment including Third Party computer hardware or Third Party software. If any such circumstances continue for a period of three months either party may by notice to the other party terminate this Agreement whereupon the Merchant shall forthwith cease to use the Services.
- 21. Intellectual Property**

The Merchant acknowledges and agrees that all Intellectual Property rights in and relating to the ST logo, ST trademarks and Software are owned by ST or its affiliates. The Merchant may only use such Intellectual Property rights in accordance with ST's written instructions from time to time..

22. Confidentiality

22.1 Both parties will keep confidential and will ensure that its employees and sub-contractors keep confidential and will not (except as expressly authorised by either party or required by the duties imposed on either party hereunder) use or disclose or attempt to use or disclose to any person any Confidential Information which comes to the knowledge of the parties during this Agreement.

22.2 The term "Confidential Information" extends to all knowledge and information relating to the trade, business activities, operations, organisation, finances, processes, dealings, specifications, methods, designs, formulae, computer software and technology of and specifically concerning any of the parties customers or suppliers.

22.3 The restriction contained in clause 22.1 shall apply both during and after the termination of this Agreement but shall cease to apply to information or knowledge which:-

22.3.1 has in its entirety become public knowledge otherwise than through any unauthorised disclosure or other breach of such restriction;

22.3.2 has already come into the possession of either party or independent third party without breach of any obligation of confidentiality;

22.3.3 either party has consented in writing to it being disclosed; and

22.3.4 is or has been independently developed by either party without reference to or use of the Confidential Information.

22.4 All Confidential Information (howsoever stored) concerning either party supplied by either party or prepared by or on behalf of either party for the purposes of this Agreement and all copies and extracts of it made or acquired by or on behalf of either party shall be used only for the purposes of this Agreement and shall be the property of the party to whom such Confidential Information relates to and shall be returned to the party upon termination of this Agreement.

22.5 Nothing contained herein shall restrict disclosure:-

22.5.1 to third parties to the extent necessary by legal, accounting or regulatory requirements; and

22.5.2 to the professional advisers of either party in connection with the interpretation and operation of this Agreement and any dispute arising therefrom.

22.6 Both parties shall ensure compliance with the requirements of any and all legislation relating to the processing of personal data and use and misuse of computers (and any statutory modifications or re-enactment thereof from time to time in force) in respect of any information exchanged or supplied between the parties.

22.7 Both parties shall ensure that those of its employees or contractors engaged in the provision of the Services are aware of the confidential nature of the Confidential Information.

22.8 Either party shall promptly notify the other party if it becomes aware of any breach of confidence by any person to whom the parties divulges any part of such information and shall give the other party all reasonable assistance in connection with any proceedings which either party may institute against such persons for breach of confidence.

22.9 Save as otherwise set out in this Agreement, no announcement, circular, advertisement or other publicity in connection with this Agreement, its subject matter or any ancillary matter shall be made or issued for and on behalf of ST without the prior written consent of ST, such consent shall not be unreasonable withheld or delayed.

23. Non Assignment

23.1 This Agreement is personal to the Merchant and the Merchant may not without the prior written consent of ST assign or dispose of it, part with any interest in it or grant any sub-licence or delegate any of the rights conferred by it. ST shall be entitled to assign and/or sub-licence this Agreement in whole or in part.

23.2 ST further reserves the right to fulfil any of its duties and powers under this Agreement by using agents and sub-contractors.

24. Notices

Any notice or other communication required to be given hereunder shall be given by email post or facsimile addressed to the parties at its address contained in this Agreement or such other addresses as shall have been notified to the other for the purposes of this Agreement. Any notice sent by email shall be deemed to be received one hour after being sent, or if this falls after 5pm, at 9am the next day - providing that an undeliverable receipt has not been returned to the sender by this time. Any notice so given by post shall unless contrary is proved, be deemed served at the expiry of three days after it is posted and in proving such posting it shall be sufficient to prove that the envelope containing the

notice was properly addressed and posted as a first class pre-paid letter. Any notice given by facsimile shall, unless the contrary is shown, be deemed to have been served when in the ordinary course of transmission it would first be received by the addressee in normal business hours.

25. Supervening Illegality and Severance

If any term or provision of this Agreement shall be held to be illegal or unenforceable in whole or in part, under any enactment or rule of law, such term or provision or part shall to the extent be deemed not to form part of this Agreement but the validity and enforceability of the remainder of this Agreement shall not be affected.

26. Privacy Policy

The Privacy Policy forms part of this Agreement, and by agreeing to the terms of this Agreement the Merchant also gives consent to the way ST may handle personal data in accordance with the Data Protection Act 1998. ST shall not use this data for any other purpose or disclose it to any other person unless required by law or the Merchant has given consent to ST either in the Merchant Application Form or at some other time. ST may also disclose this data if ST is either compelled to do so by law, or in response to a valid legally compliant request by a law enforcement or governmental authority.

27. Publicity

The Merchant acknowledges that ST may from time to time send communications to the Merchant via electronic mail advising the Merchant of further goods and services offered by or through ST.

28. General

28.1 This Agreement together with the Service Acknowledgement, Schedules and Privacy Policy represents the entire agreement and understanding between the parties relating to the subject matter of this Agreement and (in relation to that subject matter) supersedes any and all prior agreements, arrangements, statements and understandings, except for any fraud or fraudulent representation by either party. In the event of conflict or inconsistency the following priority shall apply (1) this Agreement; (2) the Schedules (3) the Service Acknowledgement.

28.2 No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach.

28.3 Nothing in this Agreement shall create or be deemed to create the relationship of principal or employer and employee or a joint venture or partnership between the parties.

28.4 The Merchant acknowledges and accepts that in entering into this Agreement on the terms set out

herein the Merchant is not relying upon any representation, warranty, promise or assurance made or given by or on behalf of ST or any other person, whether or not in writing, at any time prior to the signature of this Agreement which is not expressly set out in this Agreement.

28.5 For the purposes of this Agreement and the Services to be performed hereunder ST is acting as an independent contractor. The Merchant shall have no right, power or authority whatsoever to create any obligation, express or implied, on behalf of ST unless ST has specifically authorised the same in writing.

28.6 The Agreement shall operate for the benefit of and be binding on the respective successors in title and permitted assignees or transferees of each party.

28.7 The Merchant will authorise the Merchant's bank or Payment Card issuer to pay on representation all requests for payment of a direct debit due to ST in respect of amounts due to the ST under this Agreement.

28.8 The Merchant will take all reasonable steps to assist ST in handling a claim by a Customer of the Merchant. The Merchant will provide ST with reasonable assistance requested from time to time for the prevention and detection of fraudulent Transactions and will inform ST of any material change in the nature of or size of its business.

28.9 Notwithstanding any other provision to the contrary contained in the Agreement terms, which by their nature survive termination, and expiration of this Agreement shall bind the parties following any expiration or termination of this Agreement.

28.10 The Merchant hereby grants to ST a non exclusive royalty free licence to use, display and reproduce the trade marks, service mark and logos of the Merchant solely in connection with ST's marketing of its services. ST shall use the Merchant's Intellectual Property rights in accordance with policies as approved by the Merchant from time to time.

28.11 The formation, construction, performance, validity and all aspects whatsoever of this Agreement shall be governed by the laws of England and Wales.

28.12 Any dispute, which arises between the parties concerning this Agreement, shall be determined as follows:-

28.12.1 if the dispute shall be of a technical nature concerning matters of computing, such dispute shall be referred for final settlement to an expert nominated jointly by the parties or in default of such agreement within 14 days of a request by one party to the other therefore nominated at the request

of either party by the President for the time being of the British Computer Society. Such expert shall be deemed to act as an expert and not as an arbitrator. His decision shall (in the absence of clerical or manifest error) be final and binding on the parties and his fees for so acting shall be borne by the parties in equal shares unless

he determines that the conduct of a party hereto is such that such party should bear a greater proportion of such fees

28.12.2 in any other case, the parties hereby submit themselves to the exclusive jurisdiction of the English Courts.

Schedule 1

Fees

First year only : £200.00 + VAT

Annual Renewal Fee : To be charged at the prevailing annual fee rate

Monthly Fee: Monthly fee of £15.00 + VAT

Transaction Charge per Transaction: 1.5%

Transaction Charge Currency £sterling

Settlement Currency: £sterling

Evaluation Period if otherwise agreed between the parties. If no other date is agreed then the Evaluation Period will be 28 days from the Commencement Date.

Schedule 2

Additional Services

Refund Processing:

*Automated Processing by the Merchant using My-ST functionality: **Free of Charge** (included within the scope of ST Services as covered by the Fees in Schedule 1)*

*Manual processing by ST on behalf of the Merchant: **£25 per refund***

Schedule 3
Service Level Agreement

1. Customer Support Services

ST will provide the following Customer Support Services:

- Customer Service Help Desk: 06:30 to 23:30, Monday to Friday (excluding bank holidays) – any support or integration queries. Outside these hours and bank holidays, emergency system support only.
- Access to the Online Transaction Manager
- Timely availability of any ad hoc service and / or software upgrades

ST will use reasonable endeavours to maintain system availability for the provision Services, with a target availability of 99.75%.

2. Help Desk

ST will provide Help Desk services to respond to customer service and technical questions and enquiries. The staff will be knowledgeable personnel with appropriate technical and communication skills. They will aim to assist in resolving Product or Service issues and to impart necessary relevant technical knowledge or understanding related to any ST Service.

Such personnel shall be contactable via the appropriate Telephone and fax numbers and via mail and e-mail.

The Help Desk services will be available 06:30 to 23:30 Monday to Friday, excluding bank holidays.

The appropriate contact details for all Help Desk communication are as follows:

Telephone:	+44 1248 672050
Fax:	+44 1248 672099
e-mail:	support@securetrading.com
Mail:	Customer Support, Securetrading, Parc Menai, Bangor, Gwynedd, LL57 4BF, United Kingdom

The following information will be required when reporting an incident to the Help Desk:

- a) ST site reference no.
- b) Authorised person's contact name
- c) Short Description of the nature of the problem.
- d) Email address (if incident not reported via email) and customer contact telephone number

ST will provide the merchant with a unique case reference number and a classification and estimated resolution time based on the Incident Severity Level Table detailed below. This will be communicated via our on-line reporting facility.

The following information will be needed when a status update is required on any previously reported incident: ST site reference no., and the relevant case reference number.

Upon the successful resolution of the incident, ST will notify the merchant via e-mail, and the case will be closed.

3. Faults, Priorities and Responses

For the purpose of prioritising and escalating ST faults, faults will be categorised as either Critical, Serious , Degraded or Minimal.

Incident Severity Level Table

Classification	Criteria
Level 1 (Critical)	The Services are at a standstill. The ST Payments System or all Payment Gateways utilized for a particular acquirer or Customer are unavailable.
Level 2 (Serious)	The Services are significantly impaired and key business processes, such as transaction authorizations cannot be conducted without significant delay, but payment systems are available.
Level 3 (Degraded)	Live Payment services such as settlement processing, cannot be carried out without significant delay, but all systems are operational.
Level 4 (Minimal)	Integration and test system issues, minor incidents and enquiries.

The target time for ST to respond to all faults is outlined below, the target time being from fault notification. ST will update the Customer at the target interval indicated until a solution is found.

Classification	Step 1 (Identify source)	Step 2 (Temporary Fix)	Step 3 (Fix)
Level 1 (Critical)	30 minutes	Immediate and continuing best efforts but in no event more than 2 hours (on a 24X7 basis)	Within 1 calendar day
Level 2 (Serious)	60 minutes	4 hours (on a 24X7 basis)	Within 2 calendar days
Level 3 (Degraded)	5 hours	1 calendar day (on a 24X7 basis)	Within 3 calendar days
Level 4 (Minimal)	1 business day	On a time available basis	As appropriate

The following shall define the actions to be taken per the problem's assigned level:

- Step 1 represents the acknowledgment of the problem and the beginning of the information gathering process. ST will notify the merchant on identification of the problem if a case has not already been reported and classified.
- Step 2 represents the target time frame during which the problem is being actively addressed and a temporary patch, correction, or workaround is provided. The goal will be to provide a fix or a work-around for a problem as soon as possible. Critical problems will be worked on continually until a satisfactory problem resolution can be reached.
- Step 3 represents the target time within which a permanent solution will be available which meets ST’s quality standards.

In addition it is emphasised that any security related fault that is brought to the attention of ST will be prioritised as critical.

4. Escalation

Incident Escalation

Incidents reported to ST Help Desk will be escalated in line with the details below. ST management will be made aware of issues according to the below timeframes. Elapsed time represents the number of clock hours that have passed since the issue was first classified by ST. Resolution is deemed to have been achieved if a temporary fix is created.

ST Support Manager – if incident is not resolved within target time.

General Manager – if Level 1 or 2 are not resolved within 1hr of target resolution time, Level 3 within 6hrs of target resolution time

Chief Technical Officer – If Level 1 or 2 and not resolved within 2hrs of target time, Level 3 within 12hrs of transaction time.

5. Service Credits

The ST target system availability is 99.7%.

If the ST network availability is less than 99.7% per acquirer for the Customer in any one calendar month a service credit will be given for each full hour of downtime above the SLA target.

This is equivalent to 2.16 hours a month per merchant site reference, based on a calendar month of 30 days.

The Service Credit shall be 1.5% of the total fee for transactions processed during that calendar month. The maximum limit for service credits shall be 15% of the total fee for transactions processed during that calendar month.

Scheduled outage for system maintenance previously communicated to the Customer is not to be included in the above determination of system availability for the calculation of service credits.

6. General Disclaimer

ST does not control the availability of Acquirer, Merchant ISP's or customers networks. System will not be deemed unavailable if the source of the problem lies with in the Acquirer, Merchant ISP or customer networks.

The burden of proof as to where the problem occurred lies with ST. ST will take all commercially reasonable efforts to work with such Third Parties to ensure the speedy resolution of any problems. ST will communicate such Third Party problems to the merchant on identification of the problem.

Schedule 4

Privacy Policy

At ST we believe strongly in protecting Merchants privacy. We will not wilfully disclose information about Merchants to any third party without first receiving that Merchant's permission.

This Privacy Policy sets out the privacy practices for the Services:

1. Information gathered and tracked and what we do with this information

At ST we strive to provide the Merchant with a compelling reason to visit our Website again. Therefore, in order to help us provide an optimal service we gather the following information in aggregate form: *browser type (e.g. Navigator, Internet Explorer), operating system (e.g. Macintosh, Windows), IP address, and Internet domain (e.g. Demon, AOL).*

2. Information gathered during the application process

ST's application process requires Merchants to provide contact and billing information (like their name, address and e-mail address) in order to use the Services. Billing information that is collected is used to check the Merchant's qualifications for registration and to bill the Merchant for the use of the Services. ST's checking process may include carrying out credit searches.

Merchant's contact information is used for accounting purposes and to contact the Merchant when necessary (for Merchant service issues, for example).

3. Sharing of the information

ST will not sell, rent, share, trade or give away any Merchant's personal information held on our database. We reserve the right to share our postal mailing list with companies who are offering products through our Services. Merchants may choose to have their name not included in the list of companies by following the procedure outlined in section 5 below.

Correspondence sent to ST by merchants is held in their files and may occasionally be used for testimonial purposes. Access to this data may be provided to the merchant if requested.

The Website contains links to other sites and ST is not responsible for the privacy practices or the content of such websites.

4. Security

ST is committed to the security of Merchant information and we have security procedures in place to protect the loss, misuse or alteration of information under ST's control.

Additionally, we have security measures in place to protect our Merchant database and access to this database is restricted internally.

All ST employees and data processors, who have access to, and are associated with the processing of personal data, are obliged to observe the confidentiality of our clients' personal data.

5. Opt-Out Policy

ST provides Merchants the opportunity to opt-out of receiving communications from us and other selected third parties companies by emailing dataprotection@securetrading.com or by telephoning 01248 672 000 and asking for the Data Protection Officer.

6. Change/Modify/De-activate

ST provides the following options for changing, modifying and de-activating particulars previously provided:

6.1. You can send an e-mail to *dataprotection@securetrading.com*

6.2. You can send mail to the following postal address:

SECURETRADING, Parc Menai Business Park, Bangor, North Wales, LL57 4BF

6.3. You can call the following telephone number: 01248 672000 or fax us at 01248 672099

Removal requests will be made within 28 days of the request.

7. Contacting ST

If you have any questions about this Privacy Policy, the practices of the Services, or your dealings with ST you can contact ST at *support@securetrading.com*

Schedule 5

**SECURETRADING Ltd.
CONFIRMATION OF ACCEPTANCE**

MERCHANT DETAILS: MERCHANT ID NO:
--

STANDARD MERCHANT AGREEMENT NO: COMMENCEMENT DATE: EVALUATION PERIOD IF OTHERWISE AGREED:

We hereby certify and accept that the Services have performed during the Evaluation Period to our entire satisfaction. We agree and acknowledge that by signing this Confirmation of Acceptance the Evaluation Period will come to an end and upon receipt of this Confirmation of Acceptance, signed by us, ST will grant to us full rights of access to the Services.

SIGNED by

duly authorised for and on behalf of **SECURETRADING Ltd.**

SIGNED by [Name]

Duly authorised for and on behalf of

Merchant Name

NOTE: For the avoidance of doubt the terms; Services and Evaluation Period shall bear the meanings given to them in the above Standard Merchant Agreement.