

Terms and Conditions

Merchant Payment Gateway

PARTIES

This agreement ("Agreement") is made between:

- a) Quaife.net Limited, incorporated in England and Wales under company registration number 10318045 with registered address at 72 High Street, Haslemere, Surrey, GU27 2LA ("Quaife.net", "we" or "us"), and you, being the individual or other person registering for the use of the Services ("Merchant" or "you").

Ensure the appropriateness of all terms detailed herein before you indicate your acceptance of the Services. By entering into this Agreement you acknowledge that you consent to be bound by this Agreement as amended from time to time and act in compliance with it at all times. Please note, all updates to this Agreement will be made available on the Quaife.net Website and such updates will supersede all previous versions of these terms and conditions. Such information posted on the Quaife.net Website will also include any notifications of the temporary unavailability of the Service or any part of it, in particular regarding any Scheduled Maintenance Windows.

BACKGROUND

- a) Quaife.net is a technical service provider whose payment gateway platform can be integrated into a Merchant's website to enable the capture of payment card transaction data and process and pass such data onto the relevant merchant acquirer, in order to facilitate the collection of monies due to you from online transactions with your customers.
- b) Merchant is an online supplier of goods and services who requires a payment gateway services for transactions and either has, or is applying for, merchant acquiring services from a third party merchant acquirer.
- c) Once a card transaction is initiated by the cardholder, Quaife.net will route the transaction for processing.
- d) This Agreement sets out the terms and conditions upon which Quaife.net shall provide Merchant with the above mentioned services.

THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1 - DEFINITIONS

1.1 Definitions

In this Agreement, unless otherwise stated:

"Acquiring Bank"	shall mean the financial institution(s) with which you have Merchant Services Arrangements and to which your Customers' payment card transactions are routed for authorisation, clearing and payment;
"Dynamic Currency Conversion"	(also "DCC") shall mean the dynamic currency conversion feature of the Payment Gateway Platform that enables a Customer to undertake an Eligible Transaction in the Card Currency rather than the Local Currency;
"Business Day"	means a day (other than a Saturday or Sunday) on which the clearing banks are generally open for business in London, UK.
"Card Currency"	means the currency in which a Customer's Qualifying Card, and the account which underlies it, is denominated;
"Card Scheme"	means either mastercard Inc. or Visa Inc. card schemes, and such other card schemes of which Quaife.net may periodically notify you;
"Card Scheme Rules"	shall mean the relevant business rules that govern the issue and acceptance Qualifying Cards whether internationally or domestically. The Card Schemes operate the clearing and settlement of payment card transactions. In applicable jurisdictions including the UK, financial institutions must be members of the appropriate Card Scheme to issue cards and acquire card transactions;
"Certified Person"	shall mean an independent professional person including a doctor, teacher, solicitor, barrister or accountant who is duly entitled under the anti-money laundering laws of the UK to verify the original versions of the ID Documentation;

"Chargeable Transaction"	shall mean a Transaction authorised by your Acquiring Bank and then forwarded by Quaife.net in a settlement file to your Acquiring Bank to enable the process of transferring the applicable funds from one entity to another, including payments from your Customer to you, and also refunds from your Acquiring Bank to Customers;
"Chargeback"	shall mean a Chargeable Transaction that is invalid or disputed by your Customer and is charged back by the Acquiring Bank;
"Currency API"	shall mean Quaife.net's application programming interface which includes all necessary specifications for routines, data structures, object classes, and variables to enable your access and use of the Multicurrency Processing Service;
"Customer"	shall mean a person who makes a Transaction from the Merchant Website;
"Data Protection Legislation"	shall mean the Data Protection Directive (Directive 95/46/EC) and the E-Privacy Directive (Directive 2002/58/EC) as transposed into applicable law and all other applicable law relating to the processing of personal data and privacy (as amended or replaced from time to time).
"DCC Transaction"	shall mean an Eligible Transaction in respect of which the Customer opted for DCC to be effected;
"Dynamic Currency Conversion (DCC)"	shall mean the dynamic currency conversion feature of the Payment Gateway Platform that enables a Customer to opt to undertake a Transaction in the Card Currency, rather than the Local Currency or to receive a Refund in the Card Currency rather than the Local Currency;
"Eligible Transaction"	shall mean a Transaction to be made by a Customer with a Qualifying Card in a Qualifying Currency;
"Fees"	shall mean the fees payable by you to Quaife.net, as applicable, for the provision of the various Services as set out in the Rate Sheet which may be amended by us from time to time and notified to you;
"Fraud Detection System"	shall mean a series of checks carried out by Acquiring Banks and Fraud Detection Parties;
"Fraud Detection Parties"	shall mean third parties selected by us to review the level of potential for fraud associated with a Chargeable Transaction for example, verifying the results of AVS (address verification) and CV2 (the 3-digit security code on the reverse of credit and debit cards) information;
"ID Documentation"	shall mean a copy of a passport or photo driving licence or national identity card in respect of your beneficial owners and an office holder. We may also require a utility bill not more than three 3 months old. Mobile phone bills are not suitable for this purpose and will not be accepted. Both documents must be certified by a Certified Person. In addition, this may include independent or official documentation about your business and its legal structure;
"Local Currency"	shall mean the currency in which you ordinarily quote the price of the goods or services you offer for sale on the Merchant Website being the official or main currency of the jurisdiction in which you are located;
"Logo"	shall mean the Quaife.net logo which can be found at www.quaife.net/downloads or such other logos that we periodically indicate are available for use in compliance with Article 8;
"MCP Transaction"	shall mean an Eligible Transaction in respect of which the Merchant uses the Multicurrency Processing Service;
"Merchant Services Arrangement"	shall mean an agreement between you and an Acquiring Bank that enables you to accept payment cards as a means of payment in Qualifying Currencies;
"Merchant Registration Form"	shall mean the application form you must complete and sign indicating your acceptance of the terms and conditions of this Agreement before you can use the Service;
"Merchant Website"	shall mean your ecommerce website that you integrate to the Quaife.net Gateway;
"Multicurrency Processing Service"	shall mean the third party service which facilitates you offering your goods and services for sale in one or more Qualifying Currencies in addition to the Local Currency (provided that your Merchant Services Arrangements support this), which is accessed by you using the Currency API from Quaife.net;

"Nominated Bank Account"	shall mean the bank account nominated by the Merchant for the Reward Payment (where applicable) under this Agreement, which the Merchant may amend from time to time by the appropriately authorised personnel of the Merchant notifying us in writing;
"Payment Gateway Platform"	shall mean the electronic commerce application provided to you by Quaife.net by virtue of a non-exclusive licence granted to you by Quaife.net, which acts as an online point of sale terminal to capture and protect payment card Transaction data and facilitate the transfer of such data securely between the Customer and Merchant and also between Merchant and the Acquiring Bank, such service being more particularly described in Article 3. It shall also include the Fraud Detection System and if applicable, either or both of the Premium Fraud Screening Service and the Token Service;
"Premium Fraud Screening Services"	shall mean the enhanced fraud detection services offered by Quaife.net using selected Fraud Detection Parties as periodically described in our published documentation;
"PCI DSS"	means the PCI Data Security Standard published by PCI Security Standards Council, which provides an actionable framework for developing a robust payment card data security process including prevention, detection and appropriate reaction to security incidents;;
"Quaife.net API"	shall mean Quaife.net's application programming interface which includes all necessary specifications for routines, data structures, object classes, and variables to enable integration of the Quaife.net Gateway to the Merchant Website ;
"Quaife.net Gateway"	shall mean the payment gateway established once the Quaife.net API has been integrated to the Merchant Website;
"Quaife.net Website"	shall mean www.quaife.net ;
"Qualifying Card"	shall mean a Card Scheme payment card;
"Qualifying Currency"	shall mean the currencies in which you may accept payment as agreed by the Acquiring Bank;
"Rate Sheet"	shall mean the separate document provided to you by us, before you enter into this Agreement, but which forms a part of this Agreement, setting out the Fees payable in respect of the various Services provided under this Agreement;
"Refund"	shall mean where you agree to refund a Customer in respect of a DCC Transaction or (as applicable) a MCP Transaction;
"Reward Payment"	(if applicable, as agreed by Quaife.net with you separately and in writing) shall mean an inducement payment made to you by Quaife.net as a reward for using the Payment Gateway Platform, calculated as an agreed percentage of the value of each DCC Transaction and/or each MCP Transaction as applicable;
"Scheduled Maintenance Window"	shall mean the pre-notified period during which maintenance deemed necessary or desirable by Quaife.net is to be carried out in relation to the software, technology or other resources or equipment enabling the Payment Gateway Platform;
"Services"	shall mean any or all (as applicable) of: <ul style="list-style-type: none">• the provision by Quaife.net of a licence to use the Payment Gateway Platform;• the provision of a licence to use the Currency API by Quaife.net (where you use the Multicurrency Processing Service);• the Token Service provided by Quaife.net (if applicable);• the Fraud Detection System provided by Quaife.net; and• Premium Fraud Screening Services (if applicable)
"Token"	shall mean the unique identification information provided by Quaife.net to you in relation to payment card information that you have asked Quaife.net to retain as part of the Token Service;
"Token Service"	shall mean that part of the Payment Gateway Platform as described under paragraph 3.3, and any other information or documentation that Quaife.net provides or makes available to you;
"Transaction"	shall mean the purchase from you by your Customer of goods and/or services from the Merchant Website using a payment card;

"VAT" shall mean value added tax or any similar tax which may be due in relation to any or all of our Services to you.

1.2 Interpretation

Unless the context requires, words denoting the singular shall include the plural and vice-versa. References to any gender shall include all other genders and references to persons shall include corporates, unincorporated associations and partnerships in each case whether or not having a separate legal personality. References to the word "include" or "including" are to be construed without limitation. References to the word "party" means individually Quaife.net or you and "parties" shall mean Quaife.net and you collectively.

ARTICLE 2 - ACCEPTANCE OF AGREEMENT AND CONDITIONS PRECEDENT TO USE OF SERVICE

- 2.1 Your acceptance of the terms and conditions of this Agreement shall be indicated by ticking the appropriate box and signing our Merchant Registration Form.
- 2.2 If you do not accept this Agreement, you may not use any Service.
- 2.3 Provision of the Services to you may be subject to the approval and acceptance of your Acquiring Bank and therefore your use of the Service is conditional upon:-
 - a) you having appropriate Merchant Services Arrangements and retaining them throughout the duration of this Agreement; and
 - b) in respect of such Merchant Services Arrangements, the relevant Acquiring Banks having approved your use of our Services.
- 2.4 Quaife.net may refer you to a financial institution that becomes your Acquiring Bank for the purposes of this Agreement. Quaife.net will refer you to an Acquiring Bank with which it has a contractual arrangement regarding merchant referrals in respect of which Quaife.net has agreed to assist in on-boarding you as a merchant with the Acquiring Bank. You agree and acknowledge that Quaife.net has contractual responsibilities to such Acquiring Banks regarding your referral and that your failure to comply with your obligations under this Agreement may cause Quaife.net to default in its responsibilities to the relevant Acquiring Bank and agree to fully indemnify Quaife.net for any loss or damage attributable to such default.
- 2.5 If your Merchant Services Arrangement is terminated for any reason the licence for the Payment Gateway Platform shall terminate automatically and you must immediately pay all outstanding Fees due in relation to each relevant Service provided by us.
- 2.6 Quaife.net hereby notifies you, and you hereby acknowledge that, Quaife.net is able to provide the Payment Gateway Platform to you by virtue of having been granted a non-exclusive license, in addition to receiving related services, from a third party supplier. You consent and agree to our use of suppliers and sub-contractors in the provision of the Services to you.
- 2.7 If you are dissatisfied with the Service provided or have any other concerns, please email our customer support team on support@quaife.net.

ARTICLE 3 - PAYMENT GATEWAY PLATFORM

3.1 Payment Gateway

- a) Quaife.net shall provide you a non-exclusive licence to use the Payment Gateway Platform to this with the Quaife.net API for you to integrate into your Merchant Website together with code examples to facilitate the speed of integration. Quaife.net shall make a test account and card numbers available to you so that you may test the Quaife.net Gateway end to end before going live.
- b) A designated account manager will provide you with all reasonable assistance by telephone or email for your integration of the Quaife.net API.
- c) The Quaife.net Payment Gateway Platform has functionality which enables it to act as the on-line point of sale on the Merchant Website and to show a Customer the total price for a Transaction or Refund in the Local Currency, or in case of a DCC Transaction, in the Card Currency and captures payment card details which it then routes for processing accordingly once the Customer has indicated their wish to complete a Transaction or Refund. The Quaife.net API shall route data concerning Transactions/Refunds to your relevant Acquiring Bank and merchant account based on the Qualifying Currency the Transaction/Refund is to be completed in. In the case of a DCC Transaction, the Quaife.net API shall route DCC Transactions so that the Acquiring Bank will settle with the Merchant in the Card Currency.. DCC for Transactions will be offered to a Customer where your Merchant Services Arrangements include a merchant account denominated in the Card Currency of the Customer. If you do not have a merchant account in the relevant Card Currency, DCC will not be offered to the Customer and the Quaife.net Gateway shall route the Transaction to your default merchant account (i.e. the one denominated in your Local Currency). The Quaife.net Gateway can provide intelligent routing to reduce cross-border fees charged to you by your Acquiring Banks by routing Transactions to your Acquiring Bank and relevant merchant account which is based in the jurisdiction the Card Currency

is issued. Such intelligent routing is subject to Quaife.net specifically agreeing Quaife.net can provide this to you as part of the Payment Gateway Platform.

- d) Quaife.net complies with, and the Payment Gateway Platform and its related data transmission shall at all times be compliant with PCI DSS. Further details about our security policy and our compliance certificate can be found on our website www.quaife.net/policy or provided to you upon reasonable request.
- e) Quaife.net provides the Quaife.net API and other software to enable you to use the Payment Gateway Platform. Quaife.net reserves the right to require you to install or update any and all software to continue using the Payment Gateway Platform. Our Payment Gateway Platform also includes software to help you manage recurring and subscription billing charges for your products and services. In using the Payment Gateway Platform, it is your responsibility to obtain your Customers' consent to be billed on a recurring basis in compliance with applicable legal requirements and Card Scheme Rules.
- f) In order to ensure quality and security of the Payment Gateway Platform, the parties agree on maximum down-times in Scheduled Maintenance Windows of one hour per calendar month during which the Payment Gateway Platform may be temporarily powered down or unreachable. We will give you reasonable prior notice before a Scheduled Maintenance Window.

3.2 Fraud Detection

- a) You agree to take note of fraud scores and in particular, high risk Chargeable Transactions, reported to you as a result of Quaife.net's Fraud Detection System. Quaife.net's Fraud Detection System gives an indication of risk only and does not provide any guarantees against fraud. You should regularly review whether you wish to initiate any additional fraud screening checks via a third party.
- b) If Quaife.net has agreed to provide you with Premium Fraud Screening Services, it is important that you contribute information about suspected or actual fraudulent Transactions to the Fraud Detection Parties' database. If you do not contribute information, Quaife.net reserves the right to withdraw your access to the Premium Fraud Screening Services as it is essential that users of the Premium Fraud Screening Service make contributions to enable the Premium Fraud Screening Service to remain effective.
- c) Quaife.net can only provide Premium Fraud Screening Services to you if your Merchant Website has a fixed IP address and it is your responsibility to maintain such a fixed IP address.

3.3 Token Service

- a) If Quaife.net has agreed to provide you with the Token Service then, subject to you paying to Quaife.net the applicable Fees, and subject to the Customer providing their consent, Quaife.net will retain your Customer's payment card information on your behalf for the specific purpose of enabling you to re-use that information in subsequent Transactions with that specific Customer so long as you remain subscribed for the Token Service.
- b) Quaife.net will not retain sensitive authentication data and, subject to paragraph 3.3 (c) (i), Quaife.net will not provide access to the payment card information but only the Token information.
- c) If you or Quaife.net discontinue the Token Service for any reason, Quaife.net will:
 - (i) in compliance with your reasonable request and subject to: (1) you paying to Quaife.net any outstanding Fees and any specific Fees Quaife.net charges for a transfer; and (2) the Customer having given any required consent; transfer any payment card data to you or your new payment services provider that Quaife.net has held on your behalf as part of the Token Service and provided that you or your new payment services provider hold the applicable PCI DSS compliance validation from a PCI Security Standards Council certified Qualified Security Assessor. By making such a request you confirm to Quaife.net that you or your new payment services provider holds the applicable PCI DSS compliance validation and you agree to provide Quaife.net with a copy of that compliance validation certificate. You agree to fully indemnify Quaife.net for any loss or damage that Quaife.net may incur as a result of Quaife.net transferring the payment card information to you under this paragraph.
 - (ii) In the absence of any request by you under paragraph 3.3 (c) (i), within 21 days of your discontinuance of the Token Service Quaife.net will have no further obligation to you in respect of the same.
- d) If Quaife.net agrees to transfer data to you in accordance with paragraph 3.3 (c) (i), Quaife.net will do so in a secure manner and in such format as Quaife.net reasonably determine. You also agree to sign any additional documentation that Quaife.net might require to confirm that Quaife.net has transferred the payment card information to you and that confirms that from the point of transfer you are solely responsible for that payment card information.

ARTICLE 4 -REWARD PAYMENT

- 4.1 As an inducement/reward for using the Quaife.net Gateway, Quaife.net may agree to pay you a Reward Payment calculated by reference to:
- the value of each DCC Transaction that is not subject to a Chargeback, and of each Refund where the Customer opts for DCC in respect of such Refund; and/or
 - the value of each MCP Transaction that is not subject to a Chargeback.
- For the avoidance of doubt, this paragraph 4.1 shall only apply if, to the extent that and at a percentage rate that, Quaife.net specifically agrees to in writing separately. Quaife.net reserves the right in its absolute and sole discretion, at any time to amend the percentage at which the Reward Payment is calculated or to cease to pay such Reward Payment.
- 4.2 If applicable, at the end of each calendar month, Quaife.net shall calculate the total amount of Reward Payment due to the Merchant by reference to DCC Transactions and/or MCP Transactions (as applicable) which have occurred in that calendar month and shall provide the Merchant with a detailed supporting schedule setting out the amount of Reward Payment due to the Merchant. Quaife.net's determination of the amount payable to the Merchant with respect to any calendar month shall be conclusive and binding on the parties hereto provided that the Merchant does not object thereto in writing, with details of its objections, within thirty (30) days after its receipt of such supporting schedule. Quaife.net shall provide the Merchant with any reasonably requested additional information with respect to its calculations and the supporting schedule, provided such request is made no later than fifteen (15) days after initial receipt of the supporting schedule by the Merchant. If, on the basis of the above Quaife.net reasonably agrees that there has been an error in the amount payable to the Merchant such error shall be reconciled.
- 4.3 The Merchant shall issue an invoice to Quaife.net for an amount corresponding to the amount set out in the supporting schedule and Quaife.net will pay such amount to the Nominated Bank Account no later than fifteen 15 days after the end of the calendar month which follows the calendar month in respect of which the Reward Payment is due. If the Merchant is registered for VAT this invoice will be a proper VAT invoice and the amounts of the Reward Payment will be exclusive of UK VAT so that any UK VAT that is properly chargeable by the Merchant is paid by Quaife.net in addition.
- 4.4 The Merchant is responsible for paying when due all local taxes and any and all other taxes required by the law of any applicable jurisdiction including estimated taxes, incurred as a result of the Reward Payment paid by Quaife.net to the Merchant for services under this Agreement..
- 4.5 If we suspend the provision of the Services in accordance with Article 11, we may also withhold or suspend payments due to you under Article 4 until the reasons behind the suspension of Services cease.

ARTICLE 5 – CURRENCY API

- 5.1 In the event you use the Multicurrency Processing Service, the provisions of this Article 5 will apply .
- 5.2 Quaife.net shall provide you with a non-exclusive licence to use the Currency API and pursuant to this allow you to use the Currency API for you to integrate into your Merchant Website together with code examples to facilitate the speed of integration. The Currency API shall route the MCP Transaction so that the Acquiring Bank settles with the Merchant in the Card Currency in respect of such MCP Transaction.
- 5.3 A designated account manager will provide you with all reasonable assistance by telephone or email with your integration of the Currency API.
- 5.4 Quaife.net provides the Currency API and related software to enable you to access and use the Multicurrency Processing Service. Quaife.net reserves the right to require you to install or update any and all software to continue using the Multicurrency Processing Service.

ARTICLE 6 - WHAT ARE OUR OBLIGATIONS TO YOU UNDER THIS AGREEMENT?

- 6.1 We shall provide the Services to you using all due skill, care and diligence.
- 6.2 Except as expressly provided herein, the Services are provided during the term of this Agreement "as is". We give no other representations, terms, conditions or warranties of any kind, either express or implied, statutory or otherwise, regarding the Services, and we specifically disclaim any implied warranties and/or terms of satisfactory quality or fitness for a particular purpose. We do not warrant that the Services will meet your entire data processing requirements.
- 6.3 The Payment Gateway Platform supports most issued cards with a Card Scheme logo including credit, debit, pre-paid, or gift cards. Quaife.net will only route payment card Transactions for processing that have been authorised by the applicable Card Scheme or card issuer. You are solely responsible for verifying the identity of users and the eligibility of each presented payment card used to purchase your products and services, Quaife.net does not guarantee or assume any liability for Transactions authorised and completed which may later be reversed or charged back (see paragraph 7.3 below). Quaife.net may add or remove one or more types of cards as a supported payment card.

- 6.4 Quaife.net will provide you with customer service to help resolve any issues relating to your use of the Services, Quaife.net's routing of your card payment Transactions for processing and use of Quaife.net software and the Quaife.net API and the Currency API.

ARTICLE 7 - WHAT ARE YOUR OBLIGATIONS TO US UNDER THIS AGREEMENT?

- 7.1 You will be solely responsible for ensuring that the details you supply to Quaife.net in your Merchant Registration Form (and in connection with it) are true, complete and accurate and you will not withhold or omit any information that may cause those details to be false, inaccurate or misleading.
- 7.2 You will provide ID Documentation from one of your directors and Quaife.net may request additional information and documentation from you where necessary for us to comply with any relevant legislation including without limitation, the Money Laundering Regulations 2007, the Proceeds of Crime Act 2002 and the EU Wire Transfer Regulation 1781/2006, as amended from time to time.
- 7.3 Any Chargebacks or other charges made to you by third parties, such as your Acquiring Bank, as a result of or in connection with your Transactions and merchant status are your responsibility. You are solely responsible for all reversal or Chargeback Transactions, regardless of the reason for, or timing of, the reversal or Chargeback. You acknowledge that in the event that the level of Chargebacks in terms of the volume and value of Transactions presented should exceed the tolerated monthly Chargeback levels of your Acquiring Bank or of any Card Schemes, your Acquiring Bank may suspend the processing of new Transactions until you have taken appropriate corrective measures. Quaife.net may be able to assist implementing appropriate corrective measures in the Payment Gateway Platform in respect of Transactions presented by you and you and Quaife.net agree to work together in good faith in this respect, although Quaife.net offers no guarantee that its assistance will cause your Acquiring Bank to lift any processing suspension.
- 7.4 If we receive any expression of dissatisfaction either verbally or in writing, that may reasonably be classified as a complaint from one of your Customers, we will direct the Customer to you. If a Customer continues to contact us regarding your service, we will make reasonable attempts to discuss this with you but we reserve the right to:
- suspend provision of the Services to you until such time as we reasonably consider that the complaint is being addressed; or
 - terminate provision of all or part of the Services to you.
- 7.5 You and you alone, are responsible for providing service to your Customers for any and all issues related to your products and services.
- 7.6 It is your responsibility to determine what, if any, taxes apply to the sale of your goods and services and/or the payments you receive in connection with your use of the Services ("**Taxes**"). It is solely your responsibility to assess, collect, report, or remit the correct Tax to the proper tax authority. We are not obliged to, nor will we determine whether Taxes apply, or calculate, collect, report, or remit any Taxes to any tax authority arising from any Transaction.
- 7.7 You shall comply with the provisions of the Card Scheme Rules that are applicable to merchants (including in respect of provision of DCC, if applicable).
- 7.8 You warrant that all Transactions processed via the Payment Gateway Platform faithfully reflect the details of the Transaction made by the Customer and comply with applicable law and Card Scheme Rules and that payments to you facilitated by the Payment Gateway Platform and the Transactions they are based on comply with all applicable laws. The Merchant indemnifies us for all damages or other loss suffered by Quaife.net caused by a breach of this paragraph 7.8 by Merchant.
- 7.9 You agree not to, nor to permit any third party to work around any of the technical limitations of the Services, use any tool to enable features or functionalities that are otherwise disabled in the Services, the Quaife.net Gateway and the Quaife.net API and the Currency API or decompile, disassemble or otherwise reverse engineer any element of the Services, including the Quaife.net Gateway or the Quaife.net API or the Currency API, except to the extent that such restriction is expressly permitted by any applicable law; nor to perform or attempt to perform any actions that would interfere with the proper working of the Services.
- 7.10 Any discrepancy between the information transmitted via the Quaife.net Gateway and/or stored by us and the information held on your computer system, including without limiting the generality of the foregoing, any disputes regarding any Transactions shall be resolved, except in case of manifest error, by reference to the information held on our computer systems or that of the Acquiring Bank.
- 7.11 Quaife.net may, of our own accord, as directed by your Acquiring Bank or in agreement with your Acquiring Bank set the minimum and maximum thresholds per authorisation and/or Transaction or maximum daily, weekly or monthly limits for volumes of authorisation requests and/or Transactions processed. These limits may apply on value or number of authorisation requests and/or Transaction.
- 7.12 If a request for authorisation of a Transaction is not authorised by the relevant card issuer, you will receive an electronic message of non-acceptance. Neither you nor Quaife.net can amend or in any way alter the response code issued by a card issuer.
- 7.13 All Transactions must be presented by you by online transmission and in real-time to obtain authorisation irrespective of the amount.

ARTICLE 8 - COPYRIGHT AND RELATED RIGHTS

- 8.1 We reserve all copyright and all intellectual property rights throughout the world to any information, idea, design, computer program, database, textual, graphical or other material comprised in the Payment Gateway Platform or the Currency API or otherwise developed by us, our licensors, or on our behalf and to the Logo. This material may not be reproduced or copied by any means without our prior written permission.
- 8.2 Quaife.net grants you a personal, limited, non-exclusive, revocable, non-transferable license, without the right to sublicense, to electronically access and use the Payment Gateway Platform and the Currency API solely in connection with the acceptance of card payments. These include our website, any software, programs, documentation, tools, internet-based services, components, and any updates (including software maintenance, service information, help content, bug fixes or maintenance releases) thereto provided to you by Quaife.net. You will be entitled to download updates to these, subject to any additional terms made known to you at that time, when Quaife.net makes these updates available.
- 8.3 We hereby grant to you a non-exclusive right to display the Logo on your website for the duration of this Agreement for the purpose of informing your Customers that you process your electronic payments via Quaife.net but retain the right to end this license earlier at any time for any reason.
- 8.4 You must use the Logo in accordance with our periodically published guidelines. You must not alter the Logo or do, or fail to do, anything that could adversely affect our rights in the Logo or its value and you agree to immediately enter into any document necessary for the recording, registration or safeguarding our rights in the Logo. You also agree to tell us as soon as possible if you become aware of any infringement of our rights in the Logo. You agree to fully reimburse us for any loss or damage that we suffer as a result of any use by you of the Logo which is not in accordance with this Agreement.

ARTICLE 9 - WHAT ARE THE TERMS OF PAYMENT?

- 9.1 All amounts payable under this Agreement are exclusive of VAT. If VAT is properly chargeable on any supply by us to you, you will pay that amount to us against issue of a VAT invoice. Please note that if you are not based in the UK, you may have obligations to account for VAT or similar taxes in your local jurisdiction. You agree to pay the Fees, plus all applicable VAT, to us monthly in arrears and within fourteen (14) days of the date of the invoice. Fees may be periodically subject to amendment and we will provide details of such amendment to you on Quaife.net Website or directly with a minimum of thirty (30) days' written notice.
- 9.2 Your obligation to pay Fees commences on the date that your merchant account number has been confirmed by your Acquiring Bank and is set up for use with the Quaife.net Gateway or in respect of certain Services from the date we advise prior to those Services commencing. Where this date falls midway through a calendar month, you acknowledge that you must pay the whole monthly Fee for that calendar month. Where this Agreement terminates midway through any calendar month you acknowledge that you must pay the whole monthly Fee for that calendar month.
- 9.3 You agree that if you fail to exceed the Transaction threshold for the pricing plan previously agreed to as set out in the Rate Sheet, your account will automatically be upgraded to the next higher pricing plan and you must pay the Fees associated with that upgraded pricing plan as detailed on the Quaife.net Website.
- 9.4 Unless agreed in writing with us, you agree to sign a direct debit mandate to allow the Fees and any amount owed by you to us to be debited directly from your Nominated Bank Account in accordance with the provisions imposed under the BACS Direct Debit scheme. You agree to keep such mandate in place until termination of this Agreement and all monies due to us have been paid in full.
- 9.5 We reserve the right to charge an additional nominal administration fee to you if you do not sign a direct debit mandate where requested by us to do so under paragraph 9.4 – see the Rate Sheet for Fee details.
- 9.6 When payment of any invoice or direct debit is overdue, we may:
- Suspend performance of the Services;
 - Except where the invoice or direct debit is incorrect, charge and recover interest from you on the sum of the outstanding invoice or direct debit calculated at a rate of two (2) per cent per month from the due date until the date of full payment, such interest shall compound monthly so that the outstanding interest is added to the amount due and the interest shall also accrue on the compounded interest; and
 - Charge a reconnection fee of £50 plus VAT to resume the Services.
- 9.7 If we are forced to take legal action against you to recover overdue payments, you shall be responsible for all costs and disbursements incurred by us on a full indemnity basis including, without limitation, legal fees.

ARTICLE 10 - OUR RESPONSIBILITY IN THE EVENT OF FAILURE

10.1 Subject to paragraphs 10.2 and 10.3 below, the aggregate liability (including any liability for the acts and omissions of our employees, agents, suppliers and subcontractors) to you payable in connection with this Agreement including any breach of our contractual obligations arising under this Agreement or any representation statement or tortious act or omission including negligence arising under or in connection with this Agreement shall be limited to an amount equal to the total amount of Fees paid to us by you in the twelve (12) months period immediately preceding the date of the event which is the subject of the claim plus a further sum equal to 10% of such amount.

10.2 Subject to 10.3, we shall not be liable for:

- a) any special, incidental, indirect or consequential loss, damage, costs or expenses; or
- b) loss, damage, costs or expenses resulting from any of the following:
 - (i) loss of actual or anticipated profits;
 - (ii) loss of contracts;
 - (iii) loss of use of money;
 - (iv) loss of anticipated savings;
 - (v) loss of revenue; loss of goodwill,
 - (vi) loss of business;
 - (vii) loss of reputation;
 - (viii) ex gratia payments;
 - (ix) loss of opportunity;
 - (x) loss of, damage to or corruption of, data (except to the extent that we specifically have a responsibility to prevent loss of, damage to or corruption of, data under this Agreement); or
 - (xi) loss or damage suffered by the Merchant as a result of an action brought by a third party,

even if such loss was reasonably foreseeable or we had been advised of the possibility of the Merchant incurring the same. For the avoidance of doubt, we shall not be liable for any of the losses referred to in paragraph 10.2(b) irrespective of whether such losses are direct, indirect, consequential or otherwise.

10.3 Nothing in this Agreement will operate to limit our liability for:

- a) fraud; or
- b) death or personal injury arising out of our negligence.

10.4 Nothing in this Article 10 shall confer any right or remedy upon the Merchant to which it would not otherwise be legally entitled.

10.5 Each party acknowledges that the allocation of risk and responsibility in this Agreement is reasonable because it reflects:

- a) that it is not within our control how and for what purposes, you use the Services;
- b) that we have not developed the Services specifically for you;
- c) that while we follow good industry practice, it is not economically possible for us to exhaustively test the software that supports the Services; and
- d) the amount of the Fees paid by you for the Services and the amount of Reward Payment paid to you by us.

10.6 We recommend that you consider obtaining insurance cover if you believe that you could experience issues where we will not be held liable or our liability is limited.

ARTICLE 11 - TERM, SUSPENSION AND TERMINATION

11.3 The Merchant agrees to a minimum period for the provision of the Services by us of twelve (12) months (the "**Minimum Period**"). This Agreement or any part of the Services can be terminated by us as set out elsewhere in this Agreement or by either Party providing to the other a at least three (3) calendar months' written notice ending after the expiry of the Minimum Period unless you have agreed with us to take certain Services for a longer period, in which case either Party may only terminate those particular Services by providing a three (3) calendar months' written notice of termination ending after the expiry of such relevant period.

11.4 We reserve the right to stop providing the Services with immediate effect if any bank or payment card acquirer or other third party with which you have a merchant agreement or Merchant Services Arrangement (including, without limitation, the Acquiring Bank) declines to offer or continue to provide merchant services for any reason whatsoever or if you are investigated by the Acquiring Bank or any other bank, payment card issuer or other third party under Card Scheme Rules or if you have failed to comply with applicable Card Scheme Rules. Where we have stopped providing the Services in accordance with this clause, we may at our sole discretion agree to recommence the Services at any time.

11.5 We may terminate this Agreement with immediate effect following written notice to you:

- a) If you fail to pay any Fees on the due date for payment and they remain unpaid at least seven (7) days after notification by us to you to make such payment;
- b) If the provision of the Services becomes unlawful or otherwise cost prohibitive as a result of any change to legislation.

11.6 Upon termination:

- a) all outstanding Fees will become immediately due and payable; and
- b) all usage of Quaife.net proprietary information including the Logo must cease and you may no longer refer to yourself as a Quaife.net merchant and shall return to us all information, sales, marketing and other materials and documents we have previously provided to you. In addition, all licenses granted under this Agreement shall terminate.

11.7 This Agreement will automatically and immediately end without notice or refund if you become bankrupt or you are not able to pay your debts when due, stop trading or become insolvent. In those circumstances we shall have no further obligation to you under this Agreement and any monies due from you shall become immediately due and payable.

ARTICLE 12- FORCE MAJEURE AND ADVERSE ECONOMIC EVENT IN THE CURRENCY MARKETS

12.1 While we will use reasonable endeavours to make the Services available at all times, we do not guarantee that the Payment Gateway Platform or any related functionality will operate continuously or without interruptions. Whilst we aim to provide an uninterrupted service (subject to Scheduled Maintenance Windows), this cannot be guaranteed. For example, interruptions may be caused by factors beyond our reasonable control. If circumstances happen that are beyond our reasonable control, we will not be liable for any failure to perform our obligations under this Agreement because of those circumstances, and we will be excused from that failure for so long as those circumstances continue. Interruptions caused by factors outside our control may include, but are not limited to failure of our or your internet service provider, a distributed denial of service attack where hackers overload networks with data in an effort to disable them, an issue with your Acquiring Bank, non-performance by our suppliers or subcontractors (other than by companies in the same group as Quaife.net), or other force majeure event.

ARTICLE 13 – DATA PROTECTION AND SECURITY

13.1 Quaife.net is registered with the Information Commissioner’s Office (<http://www.ico.org.uk/>) under registration number ZA216669.

13.2 We will use any information you provide to us under this Agreement to:

- a) Manage and administer your use of the Services;
- b) Fulfil our contractual obligations under this Agreement;
- c) Liaise with law enforcement agencies and Fraud Detection Parties;
- d) Contact you (but not your Customers) for customer research purposes; and
- e) Contact you (but not your Customers) about other products and services which we think you will be interested in.

13.3 We may disclose information to other companies in our group of companies, our contractors, and other organisations for example, we may disclose information to:

- a) Any third party provider whom you nominate as the provider which enables you to receive and/or use the Services;
- b) Organisations which we use to help us send communications;
- c) Upon reasonable requests from law enforcement agencies and Fraud Detection Parties;
- d) Your Acquiring Bank; and
- e) Your Customer’s issuing bank.

13.4 If you provide us with personal data (as defined in the Data Protection Legislation which in summary are data relevant to data subjects – see www.ico.gov.uk for more details), we will process that data in accordance with the Data Protection Legislation and you agree and authorise us to use it as described in this Article 13.

13.5 We maintain appropriate administrative, technical, organisational and physical procedures to protect all the personal data regarding you and your Customers that is stored in our servers from unauthorised or unlawful processing and accidental loss, destruction or damage in accordance with the Data Protection Legislation.

13.6 If at any time you do not want us to use any personal data in the manner described in this Article 13 please email us at support@quaife.net. For further information on how we use personal data, please see our privacy policy on our Quaife.net Website.

13.7 In relation to your relationship with us, we will liaise only with your named contact or an alternative contact provided by your named contact. It is your responsibility to let us know of any changes to your named contact and you agree that we may contact your named contact by email and telephone.

- 13.8 You are fully responsible for the security of data on the Merchant Website or otherwise in your possession. As applicable, you agree that at all times you shall be compliant with PCI DSS. The steps you will need to take to comply with PCI DSS when using the Quaife.net Gateway will vary based on your implementation. If we believe it is necessary based on your implementation and request it of you, you will promptly provide us with documentation evidencing your compliance with PCI DSS. You also agree that you will use only PCI DSS compliant service providers in connection with the storage, or transmission of payment card data, including, without limitation, a cardholder's account number, expiration date, and CVV2. You must not store CVV2 data at any time. Information on the PCI DSS can be found on the PCI Security Standards Council's website.
- 13.9 You represent to us that you have obtained all necessary rights and consents under the Data Protection Legislation to disclose to us, or allow us to collect, use, retain and disclose any cardholder data that you provide to us or authorise us to collect, including information that we may collect directly from your Customers via cookies or other means, and that we will not be in breach of any such laws by collecting, receiving, using and disclosing such information in connection with the Service. As between you and us, you are solely responsible for disclosing to your Customers that we are obtaining data from such Customers.
- 13.10 The parties agree that for the purposes of the Data Protection Legislation in respect of Transaction, Refund, Chargeback and other data being processed through the Payment Gateway Platform which is personal data of Customers ("**Cardholder Data**"), as between the parties we are Data Processors (as defined in the Data Protection Legislation) in respect of Cardholder Data and process Cardholder Data solely on behalf of and in accordance with the instructions of Merchant which is the Data Controller (as defined in the Data Protection Legislation) and owner of such Cardholder Data. Such instructions are to process such data as envisaged by this Agreement and in accordance with the terms and conditions of this Agreement save that these may be amended by the Merchant in writing to the extent necessary for the Merchant to comply with its obligations to its Customers under the Data Protection Legislation.
- 13.11 Each party warrants to the other that it shall:
- comply and shall procure the compliance of its personnel with the Data Protection Legislation;
 - use appropriate technical and organisational security measures against unauthorised or unlawful processing of Cardholder Data and against accidental loss or destruction of, or damage to, such Cardholder Data; and
 - not make any changes to its information security measures that would materially increase the risk of unauthorised access to any Cardholder Data unless required by the Data Protection Legislation.
- 13.12 We warrant to Merchant that we shall:
- act only on instructions from the Merchant and, specifically, shall only process personal data (which shall include the use and disclosure of personal data to third parties) for the purposes described in this Agreement or as otherwise notified by Merchant to us in accordance with paragraph 13.10 above;
 - prior to processing the personal data, implement appropriate technical and organisational measures to enable us to process personal data in compliance with obligations imposed by the Data Protection Legislation;
 - not transfer personal data outside the European Economic Area unless we have first ensured adequate security in accordance with the Data Protection Legislation.
- 13.13 We hereby disclose that we will sub-contract certain processing under this Agreement, but that we shall do so in a way which enables compliance with paragraphs 13.10, 13.11 and 13.12 above.
- 14.1 This Agreement together with all documents referred to in it constitutes the entire agreement of the parties with respect to its subject matter and supersedes all non-fraudulent prior representations, warranties, arrangements and agreements between them relating to it. Neither party shall be entitled to rely on any non-fraudulent representation, warranty, arrangement or agreement which is not expressly contained in this Agreement.
- 14.2 The Merchant cannot assign this Agreement, in whole or part, without obtaining the prior written consent from Quaife.net.
- 14.3 Nothing in this Agreement shall create a partnership or joint venture between the parties.
- 14.4 Any notice which a party is required or authorised to serve on the other shall be sufficiently served if it is in writing and delivered by hand or sent by registered or recorded post or by email:
- (in case of notices to the Merchant) to the relevant address or email or the main contact as set out in the Merchant Registration Form; or
 - (in case of notices to Quaife.net) to the Quaife.net's registered address as set out at the head of this Agreement or email at onboarding@quaife.net; or
 - such other address or email address as notified in writing as the appropriate address for the services of notices by the relevant party.
- Notices given or served by personal delivery shall be deemed to be given or served on the date of delivery. Notices sent by email shall be deemed to be received on the day of transmission if sent before 4.00 p.m. on a Business Day but otherwise at 10.00 a.m. on the next Business Day. Notices sent by registered or recorded post shall be deemed to be received within three Business Days following the date of posting.
- 14.5 No purported variation of this Agreement by the Merchant shall be effective unless it is in writing and signed by or on behalf of each of the parties.
- 14.6 If any provision of this Agreement is held to be illegal, invalid or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision shall be deemed deleted. Any modification to or deletion of a provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

- 14.7 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.8 No third party shall be entitled to enforce the rights set out in this Agreement and the Contracts (Rights of Third Parties) Act 1999 shall not apply.
- 14.9 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.
- 14.10 Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).