



# CARD PROCESSING AGREEMENT

## Schedule 1 – Terms and Conditions

## SCHEDULE 1 – TERMS AND CONDITIONS

### 1. Definitions and interpretation

- 1.1. In this Agreement the following definitions and rules of interpretation apply:
- 1.1.1. **ACCOUNT MANAGER** means the person notified from time to time by either Party to the other Party as being the principal point of contact for dealings with the other in connection with this Agreement.
- 1.1.2. **ACTUAL GO LIVE DATE** means the date on which the first Transaction (which may occur during pavement testing) is processed pursuant to this Agreement.
- 1.1.3. **ADDITIONAL SERVICES** means the provision of the products set out in Schedule 2 Part B and, in respect of the Client, such Additional Services as GPS has agreed to provide to the Client in the Order Form from time to time.
- 1.1.4. **AGREEMENT** means the Order Form and each of the Schedules and Appendices thereto, including but not limited to these Terms and Conditions.
- 1.1.5. **AFFILIATE** means a member of the Group of the applicable Party, or any other person which Controls, is Controlled by or is under common Control with the applicable Party.
- 1.1.6. **AUTHORISED AGENT** means an agent, auditor, accountant or professional as agreed and approved in writing between the Parties before being engaged.
- 1.1.7. **AUTHORISED USER** means any Representative that is authorised by the Client to access the Services for the purpose of fulfilling the Client's requirements, operational responsibilities and obligations under the terms of this Agreement.
- 1.1.8. **BIN** means a bank identification number issued by the Scheme.
- 1.1.9. **BUSINESS DAY** means a day other than a Saturday or Sunday that is not a public holiday in England.
- 1.1.10. **CARD** means any stored value, prepaid, payment or account access device the issue of which is sponsored by the Issuer pursuant to this Agreement as a member of the Scheme.
- 1.1.11. **CARD ACCOUNT** means the account to which a Card is associated.
- 1.1.12. **CARD ACCOUNT DATA** means any and all data relating to Cardholders and their Cards processed using the Services.
- 1.1.13. **CARD PROGRAMME** means any scheme or programme, whether for promotional, marketing, incentive or other purposes involving the use of Cards.
- 1.1.14. **CARDHOLDER** means a person to whom or for whose benefit a Card is issued.
- 1.1.15. **CARD FUNDS** means funds in the Client Account, which are available to use for settlement with the Scheme.
- 1.1.16. **CARD FEES** means any one time, periodical or regular fees that may be levied by the Client to Cardholders and deducted from Card Funds.
- 1.1.17. **CLIENT ACCOUNT** means an account maintained by the Issuer to hold Card Funds.
- 1.1.18. **CO-BRANDER** means any third party organisation that may act as a distributor and/or promoter of Card Programmes or may take other operational responsibilities and whose brand or other intellectual property may be featured in Card designs and, in respect of the Client, the entity identified in the Order Form.
- 1.1.19. **COMMENCEMENT DATE** has the meaning given to it in the Order Form.
- 1.1.20. **CONDITION** means each and every one of the terms of the Terms and Conditions.
- 1.1.21. **CONFIDENTIAL INFORMATION** means all information of a confidential nature (including trade secrets and information of commercial value including but not limited to all information of a commercially confidential nature relating to the operations, contracts or commercial or financial arrangements) which may become known to one Party from the other Party but does not include information which is public knowledge or already known to the Party receiving the information at the time of disclosure or which subsequently becomes public knowledge other than by a breach of this Agreement or subsequently comes lawfully into the possession of that Party from a third party; any information relating to a Party's operations, processes, plans, intentions, designs, market opportunities, marketing, sales, strategies, trade secrets, technical, developmental, product operating, performance, cost, know-how, business and process information, computer programming techniques, file formats, interface protocols, interface formats, computer programs and software (including, but not limited to, source code, object code, software output, screen displays/file hierarchies, graphics and user interfaces), and all record bearing media containing or disclosing such information and techniques; samples, models or prototypes, or parts thereof; formulas; and third party confidential information; the provisions of this Agreement and the negotiations relating to it and the operation of this Agreement, and any other information which ought reasonably to be considered confidential.
- 1.1.22. **CONTROL** means the ownership of more than 50% of voting shares or the ability to otherwise exercise control, whether by ownership, contract or otherwise.
- 1.1.23. **CONTROLLER** has the meaning given to it under GDPR.

- 1.1.24. **CREDENTIALS** means the user names and passwords provided to Authorised Users to allow them access to the Services via the Interface.
- 1.1.25. **DATA PROTECTION LAW** means (as amended, superseded or replaced from time to time and to the extent applicable to a Party, its business or services or obligations under this Agreement) the General Data Protection Regulation (EU) 2016/679 ("**GDPR**", which expression includes, except where the context otherwise provides, the UK GDPR), the UK Data Protection Act 2018 and, when applicable, the UK Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 (together, the UK GDPR), the Isle of Man Data Protection Act 2018, The Isle of Man Data Protection (Application Of GDPR) Order 2018, the Privacy and Electronic Communications Directive 2002/58/EC, (ePRIVACY DIRECTIVE), the UK Privacy and Electronic Communications (EC Directive) Regulations 2003, the Isle of Man Unsolicited Communications Regulations 2005 and the Isle of Man Unsolicited Communications Order 2005, together with any other legislation or regulations in force from time to time which implement any of the above or and any other applicable laws and regulations relating to the processing or protection of personal data and privacy, including where applicable any legally binding guidance and codes of practice or conduct issued or approved by the Article 29 Working Party or the European Data Protection Board, the UK or Isle of Man Information Commissioner and/or any other relevant supervisory authorities with jurisdiction over the data processing and privacy arrangements contemplated in this Agreement.
- 1.1.26. **DOCUMENTATION** means the paper and/or electronic documents provided by GPS relating to use and operation of the Services.
- 1.1.27. **FEES** means the Setup Fee and the Transaction Fees.
- 1.1.28. **GROUP** means in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. Each company in a Group is a member of the Group.
- 1.1.29. **IMPLEMENTATION SERVICES** means the services provided to the Client relating to the setup and implementation of the Card Programme.
- 1.1.30. **IN THE AGREED FORM** means in such form manner or procedures as shall be agreed between and initialled by or on behalf of the parties.
- 1.1.31. **INITIAL TERM** has the meaning given to it in the Order Form.
- 1.1.32. **INTELLECTUAL PROPERTY RIGHTS** means inventions, patents, utility models, moral rights, registered designs, trademarks, service marks, domain names, trade and business names (including internet and email addresses), rights in computer software, applications for any of the foregoing, copyrights, unregistered designs, confidential information, know-how, trade secrets, database rights and all other intellectual property rights, in each case whether registered or unregistered, including all extensions and renewals and the goodwill attaching to any of them and applications for any of them and any right or form of protection of a similar nature and having equivalent or similar effect to any of them which subsist or will subsist now or in the future anywhere in the world.
- 1.1.33. **INTERFACE** means the user interface that is provided by GPS to allow Authorised Users to access the Services.
- 1.1.34. **ISSUER** means the organisation who as a member of MasterCard or Visa or any other electronic payment network has ownership of the BINs used for Card Programmes under the terms of this Agreement and, in respect of the Client, the entity identified in the Order Form.
- 1.1.35. **MONTH** means a calendar month.
- 1.1.36. **ORDER FORM** means the Order Form to this Agreement.
- 1.1.37. **ORDER FORM ADDENDUM** has the meaning given to it in Condition 14.1.
- 1.1.38. **PARTY** means each party to this Agreement.
- 1.1.39. **PCIDSS** means the Payment Card Industry Data Security Standard.
- 1.1.40. **PERSONAL DATA** has the meaning given to it under GDPR.
- 1.1.41. **PLANNED GO LIVE DATE** has the meaning given to it in the Order Form.
- 1.1.42. **PROCESSING**, when used in relation to Personal Data, has the meaning given to it under GDPR (and cognate terms, such as Process, Processes and Processed, shall be defined accordingly).
- 1.1.43. **PROCESSING SERVICES** means services necessary to process card order requests, service a Card, process any Transaction and to provide reconciliation information to the Client in relation to Transactions and as further defined in Schedule 2 Part A.
- 1.1.44. **PROCESSOR** has the meaning given to it under GDPR.
- 1.1.45. **REGULATIONS** means all relevant laws, statutes, statutory instruments, acts, regulations, orders, and directives issued by government agencies, self-regulatory bodies, trade associations or industry bodies (whether or not having the force of law) applicable to the conduct of the business of the Client or GPS or in connection with their rights and obligations under this Agreement.



- 1.1.46. **REGULATOR** means any person or body concerned with the enforcement or supervision of, making or compliance with Regulations.
- 1.1.47. **REPRESENTATIVE** means all employees, temporary staff, independent contractors, part-time staff, call centre operatives, marketing and sales personnel, agents, representatives and all other people, in each case retained by or otherwise working under the direction of any member of either Party or a Co-Brander.
- 1.1.48. **SAFE COUNTRIES** means: (a) the countries that comprise the European Economic Area; (b) the United Kingdom; (c) all countries (or sectors within countries) with an adequacy decision from the EU Commission; (d) Australia, Singapore, Serbia and India; and (e) such other countries in which GPS's Affiliates or sub-processors may from time to time be established and with whom GPS has adequate safeguards (including but not limited to SCCs) in place.
- 1.1.49. **SCHEME** means MasterCard, VISA and/or any other electronic payment network for transmitting items and settlement thereof.
- 1.1.50. **SERVICE LEVEL** means each service level set out in the Service Level Agreement relevant to delivery and performance of the Services.
- 1.1.51. **SERVICE LEVEL AGREEMENT** means the service level agreement set out in Schedule 4.
- 1.1.52. **SERVICES** means, together, the Implementation Services, the Processing Services and the Additional Services.
- 1.1.53. **SETUP FEE** has the meaning given to it in the Order Form.
- 1.1.54. **TERM** means the duration of this Agreement, as set out in Condition 17.1.
- 1.1.55. **TRANSACTION** means any use of a Card (i) to purchase goods or services (ii) to obtain cash; (iii) to make a payment to a third party; (iv) to transfer value to another card or account; (v) for the purposes of loading credit or other value (whether on issue or initial distribution or by way of 'top up') to a Card. For the purposes of this Agreement this term refers to the purchase of goods or services and loading of credit. Transactions may be online or batch and include financial, authorisation, enquiry, reversal, and rejected transactions.
- 1.1.56. **TRANSACTION FEES** has the meaning given to it in the Order Form.
- 1.1.57. **WEB SERVICES** means the web service structures used to facilitate communications between GPS and its Client systems.

- 1.1.58. **WORKING HOURS** means 09:00 to 17:00, in London, England, in any Business Day.
- 1.2. Headings in this Agreement are for ease of reference only and do not affect its interpretation.
- 1.3. Unless the context requires otherwise, words in the plural includes the singular and the vice versa.
- 1.4. Where anything in this Agreement requires any Party to do or refrain from doing anything, the Party agrees that it is its obligation to ensure that its Representatives comply with the requirement.
- 1.5. A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.
- 1.6. Where applicable, references to specific GDPR Articles are to the equivalent Articles or provisions of UK GDPR.
- 1.7. The Order Form, Schedule, Appendices, and Order Form Addendum (where applicable), form part of this Agreement and shall have effect as if set out in full in the body of this Agreement.

## 2. Fees and other revenues

- 2.1. In consideration of the provision of the Services by GPS to the Client, the Client agrees to the payment of the Fees to GPS as set out in this Agreement.
- 2.2. Unless otherwise specified in the Order Form or agreed in writing between the Parties, all Fees payable to GPS by the Client shall be due for payment thirty (30) days following the issue of an invoice by GPS, unless such invoice contain a manifest error whereupon the Client shall promptly inform GPS of such error.
- 2.3. The Transaction Fees shall be invoiced to the Client on a monthly basis (or on such other regular basis or method as GPS may reasonably decide, including but not limited to direct debit, subject to the provision of reasonable advance notice to the Client).
- 2.4. If any payment is delayed for more than thirty (30) days, the Client agrees to pay interest on the overdue sum, which will accrue each day at a rate of 2% per annum above the Bank of England's base rate from the date payment was first due until payment of the overdue sum is received in full, whether before or after judgment, unless such payment relates to an invoice containing a manifest error by GPS.
- 2.5. GPS may, in its absolute discretion, increase the value of the Fees in line with the retail price index applicable in the United Kingdom subject to the provision to the Client of 30 days advance written notice.
- 2.6. The Setup Fee shall be payable in advance of the commencement of the Implementations Services and are non-refundable.

- 2.7. All Fees in this Agreement are quoted exclusive of any applicable taxes.
- 2.8. In the event of a dispute over any invoiced amount, Condition 21 shall apply.
- 2.9. Except as otherwise provided, the Parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this Agreement.

### 3. The Card Programme

- 3.1. The provision by GPS of the Services, is dependent upon the Client providing such details of the Card Programme to GPS as GPS may reasonably require, including but not limited to:
  - 3.1.1. relevant Scheme approval documentation provided by the Issuer and/or the Scheme;
  - 3.1.2. the rules and parameters of the Card Programme;
  - 3.1.3. the design of the Card;
  - 3.1.4. the purposes and objects and marketing of the Card Programme;
  - 3.1.5. the projected volumes and turnover of the Card Programme;
  - 3.1.6. the details and roles and responsibilities of any Co-Brander involved in bringing the Card Programme to market; and
  - 3.1.7. the business model including but not limited to full details of the Card Fees.
- 3.2. Each Card Programme must:
  - 3.2.1. be and remain fully compliant with any rules or requirements of the Scheme; and
  - 3.2.2. be and remain fully compliant with all Regulations. The Client will notify GPS from time to time of any changes to Regulations which may affect the operation of any Card Programme and may at any time require GPS to modify or adjust any Card Programme, its rules or operation so far as this is necessary to ensure such compliance.
- 3.3. GPS must:
  - 3.3.1. ensure, to the extent that such matters are within its control, that each Card Programme is operated in accordance with the details and requirements in Condition 3.2;
  - 3.3.2. maintain or procure the maintenance and keeping of information collected by any Representative of GPS from Cardholders and, upon reasonable advance written notice from the Client deliver to the Client such records;
  - 3.3.3. notify the Client as soon as possible, and in any event within any such timelines as may be required by any Regulations, if it reasonably believes that the Card

Programme has been or is likely to be operated in a way which contravenes any duty that it or any Representative owes to any Cardholder or which is non-compliant with the details and requirements in Conditions 3.2, and this Condition;

- 3.3.4. comply with all applicable Regulations;
- 3.3.5. notify the Client as soon as reasonably practicable upon the occurrence of any event or becoming aware of any information that might, in reasonable opinion of GPS, impact on GPS's ability to operate Card Programmes or which might materially adversely affect GPS' business or its reputation; and
- 3.3.6. take such steps as the Client reasonably requires in order to ensure compliance with money laundering Regulations or to prevent money laundering.

### 4. Card Processing: Implementation Services

- 4.1. GPS will use good industry practice in the provision of the Implementation Services.
- 4.2. The Client agrees to use best endeavours to assist GPS in the delivery of the Implementation Services and will respond to all requests for assistance in a timely and professional manner.
- 4.3. With the exception of anything that is expressly specified in this Agreement as being supplied, provided, installed or implemented by GPS, the Client will supply, provide, install and implement (or arrange for the supply, provision, installation or implementation) any hardware, software, network and telecommunications systems, cards and any other facilities or services that might be necessary to enable the provision of the Services.
- 4.4. Where it is reasonably necessary to enable GPS to deliver, provide or maintain the Services (including any associated equipment or infrastructure) in accordance with this Agreement, the Client will allow or arrange for GPS and GPS Representatives to have access to any systems, networks or other facilities of the Client's or that are operated on the Client's behalf with the Client's consent. This access will be subject to the Client's normal security and access procedures as notified to GPS.
- 4.5. GPS and the Client agree to work together in good faith and on the terms of this Agreement to ensure that the Actual Go Live Date occurs on or before the Planned Go Live Date. GPS shall have no liability to the Client or otherwise in the event that the Actual Go Live Date is delayed for any reason beyond GPS' reasonable control, including, without limitation, the failure by the Client to comply with its obligations under this Agreement.

### 5. Card Processing: Processing Services and Additional Services

- 5.1. From the Actual Go Live Date GPS will provide the Processing Services and the Additional Services to the Client in accordance with and subject to the terms of this Agreement.

- 5.2. GPS will provide the Services with reasonable care and skill and in accordance with good industry practice.
- 5.3. GPS reserves the right from time to time to implement changes to the Services in the event that it is required to do so in accordance with Regulations, by the Regulator, or on written instruction from the Issuer. In such circumstances, GPS will use reasonable endeavours to provide as much advance notice as possible of any such changes, but is not bound to do so if to do so is not reasonably practicable.
- 5.4. GPS reserves the right from time to time to implement upgrades to the Services provided that the changes concerned do not result in any adverse effect on the provision of the Services in accordance with this Agreement and also provided that the changes concerned do not require the Client to have to make any material changes to its systems. GPS will use reasonable endeavours to provide the Client with as much advance notice as possible of any such changes.
- 5.5. Except to the extent expressly set out in this Agreement, no conditions, warranties or other terms apply to the Services or to the provision of any other goods or services under or in relation to this agreement.
- 5.6. Without prejudice to any of GPS's other rights under this Agreement, the Client agrees that GPS may, at any time for the purposes of transaction monitoring and capacity planning, monitor any and all data that relates to the Client's use of the Services.
- 5.7. GPS may give the Client reasonable instructions in relation to the Services or their operation, delivery or use. These instructions may include ones that are in the interests of security, quality or efficiency of the Services and any other matter relating to the Services. The Client must, and shall use reasonable endeavours to ensure that its Representatives, comply promptly with all such reasonable instructions. GPS shall not be liable for any breach of security or other failure relating to the Services where caused in whole or in part by the failure of the Client or its Representatives to comply with reasonable instructions issued under the terms of this Agreement.
- 5.8. Credentials for Authorised Users will be set up by GPS upon requests from the Client. The Client is obliged to, and shall procure that all Authorised Users will, ensure that all Credentials supplied by GPS are:
  - 5.8.1. kept safe, secure and confidential;
  - 5.8.2. are not used by any unauthorised person or in an unauthorised way;
  - 5.8.3. are assigned on a per individual basis; and
  - 5.8.4. are not shared between individuals.
- 5.9. GPS will not be responsible for any loss of, or unauthorised disclosure or use of any Credentials by the Client and the Client will indemnify GPS against all actions,

proceedings, costs, losses and damages of any kind directly or indirectly arising (in whole or in part) in connection with the loss of, or unauthorised disclosure or use of, any Credentials.

- 5.10. The Client must notify GPS immediately if it has reason to believe that:
  - 5.10.1. any Credentials have been or may have been lost, disclosed to or in the possession of anyone other than the person who is supposed to keep or use them in connection with the use of the Services;
  - 5.10.2. any Credentials have been or may be used by an unauthorised person or in an unauthorised way; or
  - 5.10.3. the safety, security or confidentiality of any Credentials have been or may be compromised in any other way.

In such circumstance, GPS will block access by any person using such compromised Credentials as soon as reasonably possible and provide replacement Credentials to any Authorised User if requested by the Client as soon as reasonably possible.

- 5.11. GPS will assume that the use of Credentials allocated to an Authorised User indicates that the person accessing the Services using those Credentials is the Authorised User concerned. GPS will not carry out any independent verification of Authorised Users other than the fact that the Credentials used by them relate to the Authorised User concerned.
- 5.12. GPS reserves the right at any time to suspend the right of an Authorised User to access or use the Services in order to maintain the security or integrity of the Services or to prevent misuse. GPS agrees to reinstate such access once it can be demonstrated that there is no longer any threat to the security or integrity of the Service.
- 5.13. In the event that the Client wishes to receive further Additional Services from GPS, the parties agree to document those changes in writing.

## **6. Client's Obligations**

- 6.1. The Client must:
  - 6.1.1. not make (in whole or in part) the Services or Documentation available to any third party except to the extent that it is agreed in writing between the parties;
  - 6.1.2. take all necessary steps to ensure that the Client is able to lawfully use the Services in accordance with Regulations, including but not limited to Regulations of the Scheme;
  - 6.1.3. satisfy itself that the Services are suitable for the Client's needs. GPS will have no liability to the Client or anyone else if the Services (or any one of the Services) are not suitable;

- 6.1.4. only use the Services in accordance with the Documentation and other reasonable instructions given by GPS from time to time;
- 6.1.5. only allow Authorised Users to use the Services on the Client's behalf;
- 6.1.6. be responsible for all use made of the Services by any of the Client's Representatives;
- 6.1.7. take, and procure that all Authorised Users take, all necessary security measures in relation to an Authorised User's Credentials in accordance with Condition 5.8.
- 6.1.8. not without GPS's prior written agreement, create links (whether from any website or anything else) to any part of the Services nor cause the Services to appear or be accessed in any form other than the form intended by GPS;
- 6.1.9. promptly provide all information, materials and assistance reasonably required by GPS to enable GPS to provide the Services; and
- 6.1.10. not obtain or attempt to obtain any unauthorised access to any of GPS's computer systems.

## **7. Security**

- 7.1. GPS will notify the Client as soon as possible, and in any event within such timelines as may be required by any Regulations, of any breach of security relating to the Services of which it becomes aware to the extent that it may be reasonably likely to affect the Client or the Client's use of the Services.
- 7.2. GPS will take all necessary steps to maintain appropriate technical and organisational measures as to prevent unlawful processing or access to data in respect of Authorised Users and Credentials and against accidental loss or destruction of or damage to such data.
- 7.3. GPS will not obtain or attempt to obtain any unauthorised access to any of the Client's computer systems
- 7.4. The Client agrees to set up, maintain and regularly review reasonable internal security measures and shall be responsible for ensuring the security of its own computing and communications equipment and the safe transmission of data relating to the Services. The Client is responsible for ensuring that its security measures are adequate for its use of the Services.
- 7.5. The Client must notify GPS as soon as possible of any unauthorised use of the Services or any unauthorised or fraudulent Transaction of which it becomes aware.
- 7.6. GPS may at any time suspend the Client's access to or use of the Services provided that it (on reasonable grounds) believe that this is a necessary and justifiable measure to maintain the security or integrity of the Service or to prevent its misuse. The Client shall cooperate with GPS'

reasonable request during this time including, but not limited to, the production of forensics reports related to any such incident. GPS agree to notify the Client promptly of any such suspension and reinstate the Client's access once there is no longer any perceived threat to the security or integrity of the Service. Any such suspension will not be treated as an outage for the purposes of this Agreement and will not be treated as a breach of this Agreement by GPS.

- 7.7. The Client will notify GPS as soon as possible, and in any event within such timelines as may be required by any Regulations, of any breach of security relating to the Services of which it becomes aware to the extent that it may be reasonably likely to affect GPS.
- 7.8. In the event of any breach as defined in Condition 7.7, GPS shall be permitted to conduct an audit, in accordance with Condition 11, of the Client's relevant records, systems and procedures in order to properly investigate the breach and the Client shall cooperate fully with such audit.
- 7.9. The Client represents and warrants that it is responsible for its compliance with the applicable PCIDSS, Scheme rules and Regulations. GPS shall not be liable for any actions, proceedings, costs, losses or damages arising out of or in connection with any breach or suspected breach of the PCIDSS, Regulations or Scheme rules or any audit, claim or investigation arising from the same. The Client agrees to indemnify GPS the Processor against all actions, proceedings, costs, losses and damages which GPS incurs or suffers in any way, directly or indirectly relating to any breach or suspected breach of the PCIDSS, Regulations or Scheme rules or any audit, claim or investigation arising from the same.

## **8. Liability**

- 8.1. Any liability that GPS may have under or in relation to this agreement or the Service is not excluded or limited to the extent that it arises from any claim for:
  - 8.1.1. death or personal injury caused by GPS's negligence or that of GPS's Representatives;
  - 8.1.2. fraud or fraudulent misrepresentation by GPS or GPS's Representatives; and
  - 8.1.3. any liability that cannot lawfully be excluded under any applicable Regulations.
- 8.2. Subject to Condition 8.1 neither Party shall be liable to the other in any way whatsoever (whether due to breach of contract, negligence, misrepresentation or for any other reason and whether or not we have been informed or are aware of the possibility of such loss arising) for any:
  - 8.2.1. indirect or consequential loss;
  - 8.2.2. loss of revenue;
  - 8.2.3. loss of profits;

- 8.2.4. loss of goodwill;
- 8.2.5. loss of anticipated savings;
- 8.2.6. loss of customers;
- 8.2.7. loss of business;
- 8.2.8. loss under or liability in relation to any other contract (including any contract with a Cardholder); and/or
- 8.2.9. loss incurred by or in relation to any Cardholder.
- 8.3. Subject to Conditions 8.1 and 8.2, and excluding any indemnities provided in this Agreement, GPS's liability under or in relation to this Agreement and the provision of the Services (whether due to breach of contract, negligence, misrepresentation or for any other reason and including liability to repay any sums already paid to GPS under this Agreement) shall be limited as follows:
  - 8.3.1. in relation to each event or series of connected events, to an amount equal to the Transaction Fees paid or payable to GPS by the Client under this Agreement for the three complete months immediately prior to the month in which the relevant event (or first in a series of connected events) occurs;
  - 8.3.2. in relation to all events occurring in any given year (which for these purposes means each period of a year starting with the Actual Go Live Date and each succeeding anniversary of the Actual Go Live Date), to an aggregate amount equal to the Transaction Fees paid or payable to GPS by the Client under this Agreement during said year. With any series of connected events, all such connected events will for the purposes of this condition be treated as occurring in the year in which the first event occurred; and
  - 8.3.3. in the aggregate, in relation to the total liability under or in relation to this Agreement or the provision of the Services, to a maximum of £250,000 (Two Hundred and Fifty Thousand Pounds Sterling).
- 8.4. GPS will not be liable for any breach of this Agreement or for any interruption to or non-availability of the Service to the extent that the breach, interruption or non-availability results directly from:
  - 8.4.1. any illegal, unlawful or wrongful act or omission by the Client or its Representatives;
  - 8.4.2. GPS acting upon instructions from Regulators, the Scheme or the Issuer;
  - 8.4.3. any defect or failure in or of any system, network or other facility that GPS or its Representatives are not responsible for providing under this Agreement;
  - 8.4.4. use of the Service by the Client and its Representatives other than in accordance with normal operating procedures as described in the Documentation or as otherwise reasonably notified to the Client by GPS;
  - 8.4.5. the Client's use of the Services other than in accordance with this Agreement;
  - 8.4.6. the Client's use of the Services other than in accordance with the Documentation and reasonable instructions given by GPS from time to time;
  - 8.4.7. any other wrongful act or omission by the Client or its Representatives;
  - 8.4.8. any act or omission of anyone accessing any part of the Service using the Credentials of an Authorised User (unless the person accessing the system is a Representative of GPS, or has obtained the Credentials as a result of demonstrable negligence by GPS or its Representatives);
  - 8.4.9. any problems arising from or in relation to any computer system, network or other facility other than those for which GPS are expressly responsible in accordance with the terms of this Agreement (including any system, network or other facility to which the Services are connected, such as computer systems operated by the Client);
  - 8.4.10. any act or omission of the Scheme or the Issuer;
  - 8.4.11. any act or omission of any relevant regulatory authority; and/or
  - 8.4.12. any act or omission of any Cardholder.
- 8.5. Without affecting any other express exclusions or limitations in this Agreement, GPS's delivery of the Services and other obligations under this Agreement is subject to the Client complying in a timely manner with its obligations as set out in this Agreement. GPS will not be liable for any breach of this Agreement to the extent that it arises from a failure by the Client to respond to a reasonable request or comply in a timely manner with its obligations as set out in this Agreement.
- 8.6. Except in respect of any fraudulent or illegitimate Transactions being committed by its Representatives, GPS shall have no liability for any loss or damage whatsoever arising from or related to any fraudulent or illegitimate Transactions and the Client shall fully indemnify GPS in respect of any actions, proceedings, costs, losses and damages arising from such fraudulent Transaction.
- 8.7. The Client will take all necessary measures to prevent fraudulent Transactions being made using the Service.
- 8.8. GPS will take all necessary measures to avoid any fraudulent or illegitimate Transactions being committed by its Representatives.
- 8.9. The Client will indemnify GPS against all actions, proceedings, costs, losses and damages of any kind directly or indirectly arising (in whole or in part) by reason of the Client's failure to comply with Conditions 7.4, 7.5 and 7.7.



## 9. The Scheme

- 9.1. The Client must pay all costs and expenses associated with its own membership of the Scheme, or in the instance that the Issuer is the member of the Scheme the Client must pay the costs and expenses involved in the setting up and arrangement of the Issuer's sponsorship of the Client's Card Programmes. GPS is not responsible for costs and expenses association with the Client's or the Issuer's membership of the Scheme.

## 10. Card activity, management information and reconciliation

- 10.1. The Client shall connect to GPS using the Services for the purpose of monitoring Transactions, receiving management information, performing financial reconciliations and other such daily and periodic activity required by the Client to effectively operate its Card Programmes.
- 10.2. The Client and GPS will communicate using Web Services for activities including but not limited to Card activation, Card load, Card unload, Card Fee deductions, Card expiry and other such card related activities required by the Client to effectively operate its Card Programmes. Any reference in this Agreement to information supplied 'in writing' shall include the provision of information via the Web Services. The Web Services will be specified by the Client and GPS in the agreed form and will be amended and upgraded from time to time. Use of Web Services are subject to the Web Service Fair Use Policy in Appendix 1 to these Terms and Conditions.
- 10.3. GPS will provide daily files to the Client in the agreed form detailing Card balances and Transactions for the purpose of the Client's financial reconciliations with the Issuer such daily files to be specified by the Client and GPS.
- 10.4. Upon written request from GPS, such request not to be more frequent than once every twelve (12) months, the Client shall provide updated due diligence documentation to GPS as GPS may reasonably require which may include, but not be limited to, identification and proof of address of directors. The Client shall also provide notice to GPS of any change in director or change of Control during the Term.

## 11. Rights of Assistance & Audit

- 11.1. GPS and the Client shall co-operate with an Authorised Agent of each other or any Regulator in such matters as the Parties reasonably require, including in connection with the discharge of any duty under the Regulations. Such co-operation may include access to relevant personnel, documentation, information, data, systems, premises and communications networks in the possession custody or control of the either Party subject to Conditions 11.2 and 15.
- 11.2. Either Party shall be entitled from time to time on a minimum of thirty (30) days' written notice or the most expedient time possible where the Regulator requires a

different period (if shorter) and no more frequently than the minimum number of times per year required by the Regulations, to require the other Party to permit any duly Authorised Agent of the other Party or any Regulator to audit its relevant records, systems and procedures for either or both of the following purposes:

- 11.2.1. to assess the other Party's compliance with the Regulations or this Agreement: or
- 11.2.2. to enable the other Party or its Authorised Agent to carry out any right or duty conferred or imposed by the Regulations;
- 11.2.3. to assess any sums payable or receivable by the other Party or in respect of which the Party is otherwise accountable to the other Party.
- 11.3. GPS' co-operation with Conditions 11.1 and 11.2 is subject to the conditions that:
- 11.3.1. to the fullest extent possible under the Regulations, the duly Authorised Agent or Regulator will not be able to access any data centre(s) operated by GPS which are multi-client environments where GPS is bound to existing strict duties of confidentiality to those other GPS clients;
- 11.3.2. GPS shall not breach compliance with its obligations as a Processor under Data Protection Law;
- 11.3.3. GPS shall not breach compliance with any other legal or regulatory commitment, including but not limited to the Regulations.
- 11.4. Either Party shall for the purpose of an audit under Condition 11 and subject to Condition 11.3, at all reasonable times during Working Hours provide access to its premises, relevant records, systems, procedures and staff as may be reasonably necessary or desirable in connection with the audit.
- 11.5. GPS shall bear all costs, expenses, and any other associated fees in connection with the undertaking of all GPS managed routine audits or inspections, or where an audit or inspection is undertaken in response to a confirmed GPS cause of Personal Data Breach.
- 11.6. The Client shall bear all costs, expenses, and any other associated fees incurred by GPS and its associated organisations in connection with the undertaking of any audit or inspection which is undertaken at the express request of the Client or Controller.
- 11.7. Where GPS undertakes an audit or inspection (including routine) with an appropriately qualified auditor the report shall be permissible in full or partial response to request for audit received from the Client or Controller.

## 12. Additional Obligations of GPS

- 12.1. GPS must:
- 12.1.1. notify the Client of its Account Manager;

- 12.1.2. not undertake any business which it is not authorised to do by the relevant authorities, including a Regulator or the Scheme, and comply with relevant Regulations so far as they are applicable in relation to the services provided to the Client; and
- 12.1.3. at all times comply and continue to comply with the Regulations so far as they are applicable.

### **13. Additional Obligations of the Client**

- 13.1. The Client must: -
  - 13.1.1. notify GPS of its Account Manager;
  - 13.1.2. at all times comply and continue to comply with the Regulations, the requirements of the Scheme, and must not do or omit to do anything which may lead to the closure or failure of any Card Programme or the failure to honour any responsibilities to Cardholders or others under such Card Programme; and
  - 13.1.3. take reasonable steps to ensure that its Representatives cannot procure, connive or be party to any Cardholder fraud, point of sale fraud, or other Card fraud or cloning in relation to any Card Programme.
- 13.2. The Client acknowledges that Issuer approval may be required for changes that have a material impact on any Card Programme under this Agreement and that the Client is solely responsible for procuring such approval prior to GPS implementing any such change.
- 13.3. The Client is responsible for ensuring that it provides GPS with the latest contact details for its business, Representatives and Authorised Users.
- 13.4. The Client acknowledges that GPS does not run sanctions check on its clients and third party contractors as part of its due diligence procedures.

### **14. Change Control**

- 14.1. Either Party may propose changes to the selection, scope or execution of the Services but no proposed changes shall come into effect until a relevant Order Form Addendum has been signed by both Parties. An Order Form Addendum shall be a document setting out the proposed changes and the effect that those changes will have on:
  - 14.1.1. the Services;
  - 14.1.2. the Fees;
  - 14.1.3. the timetable for the implementation of the Services; and
  - 14.1.4. any of the other terms of the relevant Order or Agreement.
- 14.2. If GPS wishes to make a change to the Services, it shall provide a draft Order Form Addendum to the Client.
- 14.3. If the Client wishes to make a change to the Services:

- 14.3.1. it shall notify the GPS and provide as much detail as GPS reasonably requires of the proposed changes, including the timing of the proposed change; and
- 14.3.2. if such change to the Service is agreeable to GPS, GPS shall, as soon as reasonably practicable after receiving the information at Condition 14.3.1 and in any event no later than 7 Business Day thereafter, provide a draft Order Form Addendum to the Client.
- 14.4. If the Parties:
  - 14.4.1. agree to an Order Form Addendum, they shall sign it and that Order Form Addendum shall amend the relevant Order Form; or
  - 14.4.2. are unable to agree an Order Form Addendum, either Party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in Condition 21.
- 14.5. Notwithstanding the remainder of this Condition 14, GPS shall be entitled to make such reasonable changes to these Terms and Conditions and Schedules that may be necessary to ensure the continued compliance with Regulations and ensure new Services are accurately described and GPS shall ensure that the Client is notified of such changes.

### **15. Intellectual Property**

- 15.1. All Intellectual Property Rights belonging to either Party at the Commencement Date, shall remain at all times that Party's property and the neither Party will acquire any right, title and/or interest in the other Party's Intellectual Property Rights as a result of this Agreement except for the purpose of carrying out its obligations under this Agreement.
- 15.2. All Intellectual Property Rights belonging to Co-Brander's shall remain at all times the Co-Brander's property and neither Party will acquire any right, title and/or interest in the Co-Brander's Intellectual Property Rights as a result of this Agreement except for the purpose of carrying out its obligations under this Agreement.
- 15.3. Upon expiry or termination of this Agreement each Party shall forthwith discontinue the use of the other Party's Intellectual Property Rights and the Intellectual Property Rights of Co-Brander's without compensation for such discontinuation.
- 15.4. Each Party grants to the other, a worldwide, royalty-free, non-exclusive, non-transferable licence during the Term to access and use the other Party's logo for the purposes of marketing and advertising, subject always to such marketing or advertising being carried out within the terms of the relevant Party's brand guidelines or in accordance with that Party's reasonable instructions and subject to the relevant Party providing written consent to such use, not to be unreasonably withheld or delayed.

### **16. Confidential Information**

- 16.1. All Confidential Information relating to either Party is passed to and shall be received and kept by the other Party and any Representative in the strictest confidence and shall be used only for purposes connected with the subject of this Agreement and for no other purpose.
- 16.2. GPS shall not permit any Representative or Co-Brander to disclose, divulge or grant access to such information to anyone.
- 16.3. All Confidential Information relating to GPS, Co-Branders and Representatives is passed to and shall be received and kept by the Client in the strictest confidence and the Client shall not disclose, divulge or grant access to the Confidential Information to any other party.
- 16.4. Neither Party may make any use of Confidential Information other than as expressly stated in this Agreement. For the avoidance of doubt neither Party is permitted to use information regarding Cardholders for any purposes other than purposes connected with the operation of this Agreement and compliance with Regulations.
- 16.5. Notwithstanding the foregoing provisions either Party may disclose Confidential Information if required to do so by a court of law or Regulations or for the purposes of an audit under Condition 11.
- 16.6. Upon termination of this Agreement the Parties shall: -
  - 16.6.1. as soon as reasonably practicable destroy, irrevocably erase or return to the relevant Party any Confidential Information provided by that Party pursuant to this Agreement; and
  - 16.6.2. within five (5) Business Days of being so requested provide the relevant Party with a written statement clearly stating that this Condition has been fulfilled.
- 16.7. If and to the extent that any Regulation requires information to be preserved, so that a Party or any Representative does not destroy confidential information pursuant to a request under Condition 15.6, the Party retaining the Confidential Information must notify the relevant Party in writing giving details of the Confidential Information which has not been destroyed.

#### **17. No joint venture, partnership or agency**

- 17.1. Neither GPS nor any Representative is, nor must GPS or any Representative at any time hold itself out as being, the agent of the Client for any purpose whatsoever and this Agreement shall not be construed as or treated as creating any partnership or joint venture between the Parties or between the Client and any Representative.
- 17.2. GPS acknowledges that it has no authority or power to bind the Client, nor create any liability on behalf of the Client save for that arising to the Scheme as a result of the issue of Cards in support of Card Programmes or as a result of the Conditions of this Agreement.

#### **18. Term**

- 18.1. Following the end of the Initial Term (or, if applicable, a Renewal Term), this Agreement will automatically renew for three (3) year terms (the “**Renewal Term**”) unless either Party delivers a notice of termination to the other Party not fewer than one hundred and eighty (180) days prior to the end of the Initial Term or any applicable Renewal Term.
- 18.2. Either Party may terminate this Agreement immediately by serving written notice if: -
  - 18.2.1. in respect of the other Party a petition is (other than a petition which is frivolous or vexatious and which is withdrawn or stayed within twenty (20) Business Days) presented or a notice of resolution is given for the winding up of the other Party (except for the purpose of a solvent amalgamation or reconstruction) or that other Party has suffered the appointment of a receiver, an administrator or administrative receiver to manage its business affairs and property or if that Party has ceased to be able to pay its debts as they fall due;
  - 18.2.2. if the other Party has committed a material breach of any Condition and where such breach can be remedied has failed to remedy it within twenty-eight (28) days after service upon it of a written notice specifying the breach in question and requiring it to be remedied; or
  - 18.2.3. any licence, approval or consent required by the Scheme or any Regulation for the other Party to conduct any business under this Agreement is withdrawn, suspended or stopped.
- 18.3. GPS shall be entitled to terminate this Agreement immediately in the event that:
  - 18.3.1. the Issuer provides written notice to GPS that the Card Programme must be terminated or that the Issuer will no longer provide services related to the operation of the Card Programme to the Client;
  - 18.3.2. the Client fails to comply with its obligations under Condition 2 (excluding any dispute over payment which is caused by manifest error on the part of GPS) and (where such breach can be remedied) has failed to remedy it within twenty-eight (28) days after service upon it of a written notice specifying the breach in question and requiring it to be remedied; or
  - 18.3.3. the Client is subject to a change of Control without the prior written consent of GPS.
- 18.4. The Client may terminate this Agreement on service of three (3) months’ notice in writing to GPS at any time if:
  - 18.4.1. GPS fails to meet any Service Level for six (6) consecutive months; and
  - 18.4.2. no remediation plan has been agreed in writing between the parties.

- 18.5. Any termination of this Agreement shall be without prejudice to any antecedent breach or liability or any continuing obligations.
- 18.6. For the avoidance of doubt, the obligations in Conditions 15, 16 and the GPS Data Protection Schedule shall continue after and notwithstanding termination of this Agreement.
- 18.7. For a period of up to six (6) months starting on the earlier of the date of notice of termination or actual termination of this Agreement, and notwithstanding termination of this Agreement for any reason ("**Termination Assistance Period**") provided that the Client pays GPS's reasonable pre-agreed costs of doing so:
- 18.7.1. GPS shall, if the Client requests continue to provide the Services in accordance with the requirements of this Agreement; and
- 18.7.2. the Parties shall co-operate to ensure the orderly transition of the functions and operations included in the Services to the Client or its third-party supplier.
- 18.8. In the event that GPS discontinues the provision of any of the Additional Services, it shall provide as much advance notice to the Client as is reasonably practical and the Parties shall agree such amendments as may be required to this Agreement.

## 19. Assignment

- 19.1. GPS shall not without the written consent of the Client, assign, transfer, charge or deal in any other manner, except in respect of an Affiliate, with this Agreement or any of its rights under it, nor purport to do any of the same, the whole or any part of its rights or obligations under this Agreement without the Client's prior written authority, which shall not be unreasonably withheld. GPS shall be entitled to sub-contract the whole or any part of its obligations under this Agreement provided that GPS shall remain liable for the actions of any relevant sub-contractor in the fulfilment of such obligations.
- 19.2. The Client shall not without the written consent of GPS assign, transfer, charge or deal in any other manner with this Agreement or any of its rights under it, nor purport to do any of the same, nor sub-contract the whole or any part of its rights or obligations under this Agreement without GPS's prior written authority which shall not be unreasonably withheld or delayed.

## 20. Severability

- 20.1. If any provision or part-provision of this Agreement is found by any Court or administrative body of competent jurisdiction to be invalid, illegal or unenforceable, it shall be deemed deleted, but shall not affect the validity of enforceability of the rest of this Agreement.
- 20.2. If any provision or part-provision of this Agreement is deemed deleted under Condition 19.1, the Parties shall negotiate in good faith to agree a replacement provision

that, to the greatest extent possible, achieved the intended economic, legal and commercial result of the original provision.

## 21. Disputes

- 21.1. In the event of a dispute with respect to any matter under this Agreement the Parties adopt the following procedure for its resolution: -
- 21.1.1. the Account Managers will negotiate in good faith with each other to attempt to resolve the dispute;
- 21.1.2. if the Account Managers are unable to reach agreement within two (2) weeks (or such longer period as may be mutually agreed) of each other becoming aware of the dispute, it must be referred to the respective chief executive officers of the Parties;
- 21.1.3. if the dispute is not resolved within two (2) weeks of the time for it to be referred to the respective chief executive officers as above, either Party may request referral of the dispute in writing for final settlement to an independent expert to which the other may agree in writing within two (2) weeks and such referral shall only take place, and the following provisions in this Condition shall only apply, where such agreement is given;
- 21.1.4. the appointment of an independent expert shall be determined by mutual consent and in the event that mutual consent cannot be achieved shall be determined by the President of the Law Society in England and Wales at the joint expense of the Parties; and
- 21.1.5. the Independent Expert's decision is, in the absence of fraud or manifest error, final and binding on the Parties. The Independent Expert's fees shall be borne by the Parties in equal shares unless the Independent Expert determines that the conduct of either Party is such that it should bear all or a greater proportion of such fees, in which case the Parties shall abide by the Independent Expert's determination.
- 21.2. Each Party shall, unless the Parties agree otherwise in writing:
- 21.2.1. accept such terms and conditions as the Independent Expert may seek to impose in relation to the discharge of his or her functions;
- 21.2.2. give the Independent Expert such assistance, facilities and information as the Independent Expert requests in the discharge of the Independent Expert's functions and as such Party is reasonably able to provide; and
- 21.2.3. make all reasonable efforts to ensure that the Independent Expert reaches a decision as soon as practicable.

## 22. Anti-Slavery and Human Trafficking Laws



- 22.1. In performing their obligations under this Agreement, the Parties shall:
- 22.1.1. comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
  - 22.1.2. not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
  - 22.1.3. use reasonable endeavours to include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this Condition 21;
  - 22.1.4. notify the other Party as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Agreement;
  - 22.1.5. maintain a complete set of records to trace the supply chain of all Services provided in connection with this Agreement; and
- 22.2. The Parties each represent and warrant that at the date of this Agreement it not has been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 22.3. Either Party may terminate the Agreement with immediate effect by giving written notice to the other Party if that Party commits a breach of Condition 22.

### **23. Entire Agreement**

- 23.1. This Agreement contains the entire agreement between the Parties with regard to its subject matter to the exclusion of all other terms and conditions and prior or collateral agreements, negotiations, notices of intention and representations. Each Party acknowledges that in entering into this Agreement (and any documents referred to in it), it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement or those documents.
- 23.2. Subject to the change control procedure set out in Condition 14, this Agreement may only be varied if it is in writing and signed by a duly authorised Representative of each Party.

### **24. Waiver**

- 24.1. A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and signed by the person waiving such right or remedy and shall not be deemed a waiver of any subsequent right or remedy.

- 24.2. The delay of enforcement or the non-enforcement of any of the terms of this Agreement by either Party shall not be construed as a waiver of any of the other rights of that Party arising out of the breach or any subsequent breach of any of the terms of this Agreement and no right, power or remedy conferred upon or reserved for either Party in this Agreement is exclusive of any other right, power or remedy available to that Party and each such right, power or remedy shall be cumulative.

### **25. Notices**

- 25.1. All notices, requests, demands, approvals, consents and other communications under this Agreement ("**Notices**") shall be given in writing and shall be duly and validly given or made if given or served by hand or sent by email or pre-paid registered or recorded delivery post to the address of the relevant Party as stated in the Order Form or to any address subsequently notified by the relevant Party to the other Party in writing for such purpose.
- 25.2. Notices given or served by personal delivery shall be deemed to be given or served on the date of delivery. Notices sent by pre-paid registered or recorded delivery shall be deemed to be given or served on the 2nd Business Day after the day of posting. Any notice sent by email shall be deemed to have been served at the time of delivery provided that such email is sent before 4.00 p.m. on a Business Day and where such email is sent at any other time it shall be deemed to have been sent at 9.00 a.m. on the next following Business Day.

### **26. Third Party Rights**

- 26.1. A person who is not a Party to this Agreement has no right enforce any term of this Agreement.

### **27. Non-solicitation**

- 27.1. While this Agreement remains in effect and for one (1) year following the termination of the Agreement, neither Party shall directly or indirectly recruit, solicit or hire any senior or skilled employee of the other Party, or induce or attempt to induce any such employee of a Party hereto to terminate his/her employment with the other Party; provided that either Party shall be permitted to hire any such employee of the other Party who responds to a general employment advertisement or solicitation.
- 27.2. While this Agreement remains in effect, the Client shall not directly or indirectly seek to procure the Services, any other services provided pursuant to this Agreement or any services which are similar to the Services from any third party provider, nor shall it seek to provide the Services, any other services provided pursuant to this Agreement or any services which are similar to the Services to any third party which the Client knows or ought to know is a client of GPS.

### **28. Marketing and PR**

- 28.1. The Client agrees to work with GPS in good faith to produce a case study for this project following completion of implementation and provides GPS with its consent to allow GPS to use such case study in its marketing activities.
- 28.2. Neither Party shall make any announcement, press release or public statement relating to the existence of this Agreement or any relationship with the other Party without the prior written consent of the other Party.
- 28.3. The Client will ensure that its Representatives do not misrepresent GPS or the Services provided by GPS to prospective customers or end-users, or do or say anything which materially damages GPS's reputation. The Client will be responsible for all statements and representations made by the Client including any relating to GPS or GPS software, subscriptions and Services and the Client will indemnify GPS for any costs or losses it incurs as a result of those statements or representations. This does not apply to statements or representations concerning GPS or the software, subscriptions and Services which GPS expressly authorises the Client to make or which are otherwise available in the public domain.

#### **29. Force Majeure**

- 29.1. Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations, with the exception of the Client's obligations under Condition 2, under this Agreement to the extent that such delay or failure result from events, circumstances or causes beyond its reasonable control ("**Force Majeure Event**"). If a Party is delayed or prevented from performing its obligations by a Force Majeure Event for more than 90 days, the Party not affected may terminate this Agreement by giving at least 14 days' written notice to the affected Party.

#### **30. Governing Law**

- 30.1. This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales and the Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction.

#### **Appendix 1 - Web Service Fair Use Policy**

##### **Mandatory:**

1. The Client architecture will incorporate client-side load management capabilities ensuring no more than twenty (20) concurrent webservice calls.
2. The Client commits to optimising processes to exclude redundant Web Service calls including but not limited to expired Cards, dormant Cards Accounts, or closed Cards/Card Accounts.
3. The Client commits to optimising processes to keep repeat calls to a minimum profile, where these are required detail of operational process requirement is shared with GPS to enable discussion on design optimisation.
4. The Client commits to the following on request for optimisation from GPS:
  - 4.1. Incident Related:
    - 4.1.1. Provision of a documented committed response plan within four (4) hours of issue detection.
    - 4.1.2. Committed response plan must deliver minimum mutually agreed improvements within <24 hours.
  - 4.2. Non-Incident Related:
    - 4.2.1. Provision of a documented committed response plan within no more than five (5) Business Days of issue detection.
    - 4.2.2. Committed response plan must deliver minimum mutually agreed improvements within ten (10) Business Days.
  - 4.3. Any change in documented plan scope or timeline to be discussed and agreed with GPS.
  - 4.4. Immediate minimum adjustment of service usage as defined by GPS may include but not be limited to:
    - 4.4.1. Request for stop on service usage.
    - 4.4.2. Modification to scheduling if usage is tied to a bulk/batch scheduled process.
  - 4.5. Provision of updates to GPS on progress of response plan at mutually agreed intervals.
5. The Client commits to a review of all operational batch/bulk processes leveraging Web Services before production deployment, review to include but not be limited to:
  - 5.1. Process schedule definition
  - 5.2. Process webservice usage profile
6. The Client commits to notification to GPS with a minimum of twelve (12) weeks in advance of operational program changes which may change webservice usage profile by >10%.
7. The Client commits to notification to GPS with a minimum of twelve (12) weeks in advance of production release/activation of features which will leverage webservices previously unused.
8. GPS reserves the right to return an error response (HTTP error message 404, GPS response 909 or equivalent) on detection of usage in breach of this fair usage policy.
9. Web Service Specific:
  - 9.1. Card statement – The Client will seek to execute call on a one-time basis and store information in a client-side data store.

##### **Recommended:**

10. The Client will advise GPS of a high-level operational use for Web Service calls, this enables improved service impact assessment within GPS.

11. The Client commits to provision of Web Service operational use case scenarios which are directly linked to active Cardholder volumes.
12. The Client will provide evidence to GPS of volume test demonstrating load management on request.