

SKRILL
MERCHANT TERMS AND CONDITIONS
Version 8.2 – September 2013

1. Definitions and Interpretation

1.1. The following terms when used in this Agreement or any document referred to herein shall have the following meaning:

Agreement means these Skrill Merchant Terms and Conditions, any cover pages hereto, any Schedules hereto and the Terms of Use;

Business Day means any day other than a Saturday or a Sunday or a public or bank holiday in England;

Card or Payment Scheme shall mean any card payment systems (such as VISA, MasterCard®, American Express or others, including national or local systems) or bank payment scheme (such as direct banking systems, direct debit systems or bank transfer systems);

Confidential Information means any information which is marked as "Confidential" or "Proprietary" or should be reasonably expected to be confidential having regard to the context of disclosure or the nature of the information; including, without prejudice to the generality of the foregoing, the terms of this Agreement as well as business plans, data, strategies, methods, customer and client lists, technical specifications, transaction data and customer data shall be deemed confidential;

Digital Wallet Payment Service means Skrill's digital wallet based payment service through which a Skrill account holder can send funds to a recipient using an e-mail address as the recipient's identifier (regardless of whether this is facilitated through the use of the Skrill Website or a payments gateway integrated into the Merchant Website or otherwise);

Gateway Service means any Skrill service using a payment gateway integrated into (but not necessarily hosted on) the Merchant Website for receiving payment instructions from a customer;

Manual means any of the technical manuals applicable to the Skrill Services, including but not limited to the Skrill Gateway Manual and the Automated Payments Interface Manual, each as amended from time to time and published on the Skrill Website, or, in case of a merchant integration through a third party service provider, any third party integration instructions or manuals;

Micro-Enterprise shall mean an enterprise which, at the time of the entering into this Agreement, is an enterprise as defined in Article 1 and Article 2(1) and (3) of the Annex to Recommendation 2003/361/EC;

Merchant means the Person who has entered into this Agreement for Skrill Services;

Merchant Account means the Merchant's registered electronic money account(s) held with Skrill in accordance with the Terms of Use;

Merchant Product/Service means any product or service offered by a Merchant to its customers and which is ordered, purchased, leased, or otherwise provided to a customer pursuant to a Transaction;

Merchant Website means the website operated by or on behalf of the Merchant (as amended from time to time) through which its customers are able to make Transactions;

Skrill means Skrill Ltd. (registered number: 4260907) whose registered office is at 25 Canada Square, London E14 5LQ United Kingdom;

Skrill Services means any services provided by Skrill under this Agreement, including the Digital Wallet Payment Service,

the Gateway Service and any other service as agreed between the parties from time to time;

Skrill Website means the website operated by Skrill (as amended from time to time) for the provision of its services, currently accessible at <http://www.skrill.com>, excluding any external websites to which the website points by way of hyperlink or otherwise;

Person means an individual, a body corporate, an association, a partnership, a trust or any other entity or organisation;

Regulatory Requirements means any law, statute, regulation, order, judgement, decision, recommendation, rule, policy or guideline passed or issued by parliament, government or any competent court or authority or any payment system (including but not limited to bank payment systems, card payment systems such as Visa, MasterCard, American Express etc. or any other payment, clearing or settlement system or similar arrangement that is being used for providing the services hereunder);

Reserve means an amount which is determined by Skrill (in its sole discretion) in accordance with clause 6, for the purpose of securing any claims by Skrill against the Merchant;

Security means any form of security requested by Skrill (in its sole discretion) from the Merchant including: (i) a Reserve and/or (ii) a bank guarantee or other such security;

Small Charity means a body whose annual income is less than £1 million and is

- (a) in England and Wales, a charity as defined by section 1(1) of the Charities Act 2006;
- (b) in Scotland, a charity as defined by section 106 of the Charities and Trustee Investment (Scotland) Act 2005;
- (c) in Northern Ireland, a charity as defined by section 1(1) of the Charities Act (Northern Ireland) 2008 or, until that section comes into force, a body which is recognised as a charity for tax purposes by Her Majesty's Revenue and Customs;

Terms of Use means the terms and conditions available [here](#), as amended from time to time in accordance with clause 18 of said Terms of Use, which govern the use of the Merchant Account;

Transaction means any transaction between a Merchant and its customer using the Skrill Services for the purchase or lease of goods or services from the Merchant and/or a transaction for the reversal of such a purchase or lease.

- 1.2. Headings are for convenience only and shall not affect the construction or interpretation of this Agreement.
- 1.3. Unless the contrary intention appears, words in the singular include the plural and vice versa; words importing the masculine gender include the feminine and neuter and vice versa; references to persons include bodies corporate, unincorporated associations, partnerships or an authority.
- 1.4. Any phrase introduced by the term "included", "including", "in particular" or any similar expression will be construed as illustrative only and will not limit the sense of the words preceding that term.
- 1.5. If there is any conflict between the clauses of these Skrill Merchant Terms and Conditions and the Terms of Use, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.5.1. the cover pages to the Agreement;
 - 1.5.2. the Schedules to the Agreement;
 - 1.5.3. these Skrill Merchant Terms and Conditions;

- 1.5.4. the Terms of Use; and
- 1.5.5. any other document referred to in this Agreement or any other document attached to this Agreement.

2. Scope

- 2.1. This Agreement contains the terms for the provision of the Skrill Services as described in clause 4 and such other services as agreed between the parties in writing from time to time.
- 2.2. The Terms of Use shall form a binding part of this Agreement.

3. Term

- 3.1. This Agreement will continue in full force and effect unless and until either party terminates this Agreement by giving notice to the other party in accordance with the Terms of Use or clause 16.

4. Description of Services

- 4.1. Skrill's Digital Wallet Payment Service and Gateway Service facilitate the execution of payments from a customer to the Merchant. Any payment monies collected from customers and received by Skrill shall be transferred into the Merchant Account immediately after deduction of any fees due to Skrill.
- 4.2. The Merchant is aware that the receipt of a payment into the Merchant Account does not amount to the receipt of cleared funds. The Merchant remains liable to Skrill for the full amount of the payment and any fees deducted therefrom if the payment is later reversed for any reason (the "**Reversal Amount**"). In the event of a payment reversal, Skrill will first debit the Merchant Account with the Reversal Amount and any applicable third party chargeback or reversal fee. If Skrill is unable to fully recover the Reversal Amount and the applicable third party chargeback or reversal fee from the Merchant Account (including any monies transferred into it after the payment reversal), the Merchant is required to repay the Reversal Amount and/or any negative balance of the Merchant Account by uploading sufficient funds into the Merchant Account. Failure to do so is a breach of this Agreement. Repayment of the Reversal Amount and/or any negative balance is due immediately without notice. Skrill reserves the right, at any time, to send reminders or take debt collection measures including but not limited to mandating a debt collecting agency or solicitors to pursue the claim in court. Skrill reserves the right to charge the Merchant the expenses reasonably incurred in connection with any debt collection or enforcement efforts.
- 4.3. Skrill reserves the right to suspend or limit the Skrill Services pending full payment of any outstanding claims, charges, penalties, costs or charges by the Merchant.
- 4.4. Skrill reserves the right to suspend, at any time and at its sole discretion, the Merchant Account (or certain functionalities thereof such as uploading, receiving, sending and/or withdrawing funds), inter alia, for audit:
 - 4.4.1. where Skrill believes it is necessary or desirable to protect the security of the Merchant Account; or
 - 4.4.2. if any Transactions are made which Skrill in its sole discretion deems to be (a) made in breach of this Agreement or in breach of the security requirements of the Merchant Account; or (b) suspicious, unauthorised or fraudulent, including without limitation in relation to money laundering, terrorism financing, fraud or other illegal activities; or
 - 4.4.3. upon the insolvency, liquidation, winding up, bankruptcy, administration, receivership or dissolution of the Merchant, or where Skrill reasonably considers that there is a threat of the same in relation to the Merchant; or
 - 4.4.4. where anything occurs which in the opinion of Skrill suggests that the Merchant shall be unable to provide

the Merchant Products/Services and/or otherwise fulfil the contacts that it has with its customers; or

- 4.4.5. if the Transactions are for the sale of goods and/or services which fall outside of the agreed business activities of the Merchant, or where the Merchant presents a Transaction and fails to deliver the relevant goods and/or services and/or where the Merchant is third party processing and not delivering goods and/or services itself; or
- 4.4.6. where there is a change in the Merchant circumstances (including a deterioration in or change to the Merchant's financial position), or a change in the Merchant's business or in the Merchant Products/Services which Skrill considers, in its sole discretion, material to the continuation of the Skrill Services; or
- 4.4.7. where the Merchant undergoes a Material Change as defined in clause 5.11; or
- 4.4.8. if Skrill considers, in its sole discretion, that the level of chargebacks or number of claims for non-delivery of Merchant Product/Service that are being incurred in respect of the Merchant are unreasonable;

and Skrill will make reasonable efforts to inform the Merchant of any such suspension in advance, or if this is not practicable, immediately afterwards and give its reasons for such suspension unless informing the Merchant would compromise security measures or is otherwise prohibited by law or Regulatory Requirements.

- 4.5. In addition, Skrill reserves the right (at its sole discretion) to suspend the Merchant Account (or certain functionalities thereof such as uploading, receiving, sending and/or withdrawing funds) at any time where it is required to do so under relevant and applicable laws and regulations. Skrill will make reasonable efforts to inform the Merchant of any such suspension unless Skrill is prohibited from doing so by law or under an order from a competent court or authority.
- 4.6. Where Skrill suspends the Merchant Account and/or the Skrill Services, Skrill shall reinstate the same and where necessary, provide new security details, such as a password, as soon as practicable after the reasons for the suspension cease to exist.
- 4.7. Notwithstanding clause 4.3, where the Merchant acts as a payer Skrill reserves the right to suspend at any time the Merchant Account login, password and other security details ("**Security Features**") if Transactions are made which Skrill has reasonable grounds to believe relate to (i) the security of the Security Features or (ii) the suspected unauthorised or fraudulent use of the Security Features. Skrill will inform the Merchant of any such suspension in advance, or, if this is not possible, immediately afterwards and give its reasons for the suspension unless to do so would compromise reasonable security measures or is otherwise unlawful. Skrill will reinstate the Security Features and where necessary provide new Security Features as soon as practicable after the reasons for the suspension cease to exist.
- 4.8. The Merchant acknowledges and agrees that the Skrill operates solely as a payment intermediary and that Skrill: (a) under no circumstances functions as a seller, buyer, dealer, middleman, retailer, auctioneer, supplier, distributor, manufacturer, broker, agent or merchant of Merchant Product/Service; and (b) makes no representations or warranties and does not ensure the quality, safety or legality of any Merchant Product/Service.
- 4.9. The Merchant acknowledges and agrees that any dispute regarding any Merchant Product/Service is between the sender and receiver of the funds and/or the supplier and receiver of the goods or services. Any Transaction connected with the Merchant Products/Services shall only obligate the Merchant. Skrill shall not be a party to any resulting dispute including but not limited to disputes over performance and liability issues relating to the delivery, quality, quantity or use of the Merchant Products/Services. Without applying the liability restrictions contained in clauses 13.1 and 13.2, the Merchant shall fully indemnify Skrill against any loss or liability (including full

reimbursement of any legal and professional costs) Skrill suffers or incurs as a result of, or in connection with, any claim made or threatened by a third party relating to any Merchant Products/Services.

5. Obligations

- 5.1. Skrill shall make available to the Merchant and its customers the Skrill Services as specified in this Agreement and as further described on the Skrill Website.
- 5.2. The Merchant shall open and maintain a Merchant Account by registering as a merchant on the Skrill Website. As part of the registration process, the Merchant shall accept the Terms of Use.
- 5.3. The Merchant shall integrate the Skrill Services into the Merchant Website and operate the same in accordance with the relevant Manuals.
- 5.4. The Merchant grants Skrill the right to access the Merchant Website for the purpose of conducting manual checks or automated searches in order to investigate the accuracy of information contained on the Merchant Website in relation to the Skrill Services, provided that (i) Skrill shall be under no obligation to conduct such searches or checks and (ii) any such searches shall under no circumstances be deemed an approval of any contents of the Merchant Website.
- 5.5. In addition to the security requirements set forth in the Terms of Use, the Merchant shall enable the login restriction tools offered in the "Merchant Tools" section of the Skrill Website for both the Automated Payment Interface (as defined in the Manuals) and the Merchant Account login through the Skrill Website. The Merchant shall further restrict any login to its Merchant Account to only one or a range of IP addresses. If the Merchant has registered more than one Merchant Account, the foregoing shall apply to all Merchant Accounts.
- 5.6. The Merchant shall submit to Skrill for pre-approval the content of every website that the Merchant intends to connect to its Merchant Account for accepting payments. The same applies if the content of the Merchant's website materially changes, including but not limited to, a material change of the Merchant Product/Services offered on the Merchant's website.
- 5.7. Without prejudice to payments prohibited under the Terms of Use, the Merchant shall not receive payments as consideration for the delivery of tobacco products, prescription or non-prescription drugs, pornographic content or services, illegal downloads, illegal gambling or goods or services infringing intellectual property rights of a third party, or for any other goods or services the offering or provision of which is illegal under applicable law.
- 5.8. The Merchant shall co-operate with Skrill to investigate any suspected illegal, fraudulent or improper activity.
- 5.9. Upon commencement of the Agreement and at any time thereafter for purposes of complying with Regulatory Requirements, the Merchant shall provide Skrill with such information as Skrill may request, including information about the Merchant's business, corporate structure and constitution, shareholders, partners, members, directors, key employees or, in the case of a trust, its beneficiaries. The Merchant shall provide, upon request by Skrill, copies of financial information and other information on the business of the Merchant, including bank and/or trade references.
- 5.10. The Merchant hereby authorises and consents to Skrill obtaining credit and financial information relating to the Merchant from any third parties and to undertake credit and financial reviews on the Merchant at its sole discretion.
- 5.11. The Merchant shall inform Skrill in writing of any changes to its business (including any change of control or constitution), business model or the goods and/or services it sells, leases or distributes or of any change to Regulatory Requirements to which it is subject (including but not limited to changes to or the revocation of the licences it requires for its business)

which might have an adverse impact on Skrill' compliance with applicable law or any of its Regulatory Requirement, or the Merchant's credit and/or financial standing ("**Material Change**") without undue delay prior to the change(s) coming into effect and in any event prior to taking or making payments related to the Material Change. Without applying the liability limits contained in clauses 13.1 13.2 and 13.3, the Merchant shall indemnify Skrill against all losses arising out of the Merchant's failure to notify Skrill of any such changes that are relevant for compliance with Regulatory Requirements applicable to Skrill or the Merchant.

- 5.12. The Merchant shall not charge its customers a processing fee, markup or other surcharge for making payments through the Skrill Services.
 - 5.13. The Merchant shall provide its customers with a clear and fair return and refund policy. Upon request, the Merchant shall provide to Skrill a copy of its return and refund policy and shall notify Skrill of any subsequent change to such policy.
- ## 6. Reserve and Security
- 6.1. Skrill may establish a Security in relation to the Merchant for the purpose of providing a source of funds to pay Skrill for any and all, actual and reasonably anticipated claims, losses, cost, penalties and expenses.
 - 6.2. If Skrill elects that the relevant Security shall include the establishment of a Reserve, then: Skrill shall be entitled to prevent the Merchant from withdrawing a sum determined by Skrill (in its sole discretion) from the Merchant Account. Alternatively, at Skrill' sole discretion, Skrill may elect for the Security to be a bank guarantee in which case the Merchant shall, upon request, procure a bank guarantee in favour of Skrill by a bank and in a form acceptable to Skrill and in an amount determined by Skrill. The Security shall remain in place regardless of any termination of this Agreement for as long as there are residual or contingent liabilities of the Merchant to Skrill. The amount of the Reserve (either expressed as an absolute amount or as a percentage of past payments into the Merchant Account) shall be determined by Skrill from time to time in its sole discretion. Where a Reserve has not been established at the commencement date of this Agreement, Skrill shall notify the Merchant of the imposition of a Reserve, its method of calculation, its amount as well as any increase or reduction of the Reserve without undue delay in writing at any time during the term of this Agreement.
 - 6.3. Without restricting Skrill' discretion under clauses 6.1 and 6.2, Skrill may take into account, amongst others, the following factors when determining the amount to be secured in a Reserve:
 - 6.3.1. the risk of the Merchant ceasing or transferring its business or a substantial part thereof;
 - 6.3.2. the risk of the Merchant materially altering the nature of its business;
 - 6.3.3. If the Merchant's business activities carry a higher than normal risk of chargebacks or other reversals of customer payments;
 - 6.3.4. the Merchant's overall financial standing;
 - 6.3.5. the risk of the Merchant becoming insolvent or otherwise unable to pay debts as they fall due;
 - 6.3.6. where Skrill receives a disproportionate number of customer complaints, chargebacks or other payment reversals, fines, penalties or other liability related to the Merchant Account; or
 - 6.3.7. where Skrill reasonably believes that the Merchant will not be able to perform its obligations under this Agreement.
 - 6.4. The Merchant agrees to provide Skrill, upon reasonable request and at the Merchant's expense, with information about its financial and operational status, including but not limited to the most recent financial statements and management accounts. The Merchant shall also undertake, at its own expense, any further action (including executing any necessary documents and registering any

form of document) necessary to establish such Security as is reasonably required by Skrill.

- 6.5. Skrill shall have the right, at any time, without notice to offset any claims, costs, charges, penalties and expenses from any Security, Reserve or current balance in the Merchant Account. In addition, the Merchant shall pay such amounts as Skrill notifies it into the Reserve to replenish any deducted amount. If required by Skrill, the Merchant shall pay such amounts into its Merchant Account as reasonably determined by Skrill to fund a Reserve or to react to any increased risk of payment reversals that are not covered by the Merchant Account's then current balance.
- 6.6. Notwithstanding any of the foregoing, where a Merchant incurs a negative balance on its Merchant Account or becomes otherwise liable for the repayment of monies, the Merchant shall be obliged to make good such negative balance or make a corresponding payment to Skrill within seven (7) days of Skrill's request or demand for such payment. In respect of overdue payments, Skrill has the right to charge interest in the amount of 4% above the base lending rate of Lloyds TSB Bank per year (accruing daily).

7. Warranties

Each party warrants and represents to the other party that:

- 7.1. it has and will maintain all required rights, powers and authorisations (in the case of Skrill the FCA authorisation) to enter into this Agreement and to fulfil its obligations hereunder;
- 7.2. it will perform its obligations hereunder with reasonable skill and care; and
- 7.3. it has in place and will maintain adequate facilities (including staff training, internal controls and technical equipment) to comply with its data protection, in the case of Skrill with the UK Data Protection Act, and confidentiality obligations hereunder.

8. Additional Merchant Warranties

The Merchant warrants and represents that:

- 8.1. where it is a registered entity (in any form, e.g. LLC), the Merchant will have and maintain at least one (1) director who is domiciled in the place of the Merchants incorporation and registered address;
- 8.2. it will deliver the Merchant Products/Services to its customers without undue delay;
- 8.3. the Merchant Products/Services that are made available to customers comply with applicable law in any jurisdiction in or to which the Merchant is making its goods and services available;
- 8.4. the Merchant has at all times all requisite licences and permits in place to engage in the advertising and provision of its goods and services; and
- 8.5. it is not receiving funds in connection with any illegal, fraudulent, deceptive or manipulative act or practice and that the Merchant is not sending or receiving funds to or from an illegal source.

9. Fees

- 9.1. The fees payable by the Merchant for the Skrill Services are as set out in the cover pages and/or the Fee Schedule. In addition, the fees set out in the Skrill merchant fees page as available [here](#) shall apply, unless indicated otherwise in the cover pages and/or the Fee Schedule.
- 9.2. Notwithstanding clause 9.1 above, the Merchant will be charged a monthly inactivity fee of 19.95 EUR (or equivalent), if no funds have been uploaded, withdrawn, sent or received through the Merchant Account(s) within the last six (6)

months. This shall however not apply to the extent that the Merchant is subject to the gateway usage fee as set-out on the merchant fees page.

- 9.3. Unless otherwise indicated, fees are quoted in Euro.
- 9.4. Unless otherwise stated, a chargeback fee of €25 per chargeback of credit or debit card transactions and €7 per chargeback of direct debits applies, regardless of whether the chargeback is subsequently challenged or reversed.
- 9.5. Fees are quoted exclusive of Value Added Tax. In case Value Added Tax or any other sales tax is or become chargeable, Skrill will add such tax to the amount payable but shall, where required, provide information on the net amount, the amount of tax and the tax rate applied.
- 9.6. Any fee payable by the Merchant shall be deducted from the Merchant Account balance. If the Merchant Account balance is insufficient, or the Merchant Account balance becomes negative, Skrill reserves the right to invoice the Merchant for any shortfall.
- 9.7. The fees are subject to change pursuant to clause 10.
- 9.8. Where Skrill is unable to deduct any fees or other monies payable by the Merchant from the balance of the Merchant Account Skrill shall issue an invoice for the amount owed. Invoices are payable within fifteen (15) days of the date of the invoice. In case of overdue payments, Skrill reserves the right to (i) charge interest in the amount of 4% above the base lending rate of Lloyds TSB Bank per year (accruing daily); and/or (ii) terminate this Agreement with immediate effect by giving written notice to the Merchant.

10. Change of Terms and Conditions

This Agreement is subject to change from time to time. Unless otherwise agreed, changes may be made by notice from Skrill to the Merchant under the following procedure:

- 10.1. Skrill shall give the Merchant notice of any proposed change to this Agreement (a "Change Notice").
- 10.2. A Change Notice may be given by letter to the current or last known trading address of the Merchant or the Merchant's registered office or by email to any of the emails registered with the Merchant Account.
- 10.3. The proposed change shall come into effect automatically
 - 10.3.1. two (2) months after the date of receipt of the Change Notice if the Merchant is a Micro-Enterprise or Small Charity, unless the Merchant gives written notice to Skrill that it objects to the proposed changes; or
 - 10.3.2. two (2) weeks after the date of receipt of the Change Notice if the Merchant is not a Micro-Enterprise or Small Charity, unless the Merchant gives written notice to Skrill that it objects to the proposed changes;

(in each case, an "Objection Notice").
- 10.4. Skrill may stipulate in a Change Notice a different time period for the coming into effect of any change, provided that this may not be less than two (2) months for Micro-Enterprises and Small Charities.
- 10.5. If no Objection Notice is received by Skrill within the stipulated time frame, the Merchant is deemed to have accepted the change.
- 10.6. The Merchant has the right to terminate this Agreement with immediate effect at any time and without charge after receiving a Change Notice and before any change stipulated in the Change Notice becomes effective.
- 10.7. Unless the parties agree otherwise and subject to clause 10.6, a Merchant's Objection Notice shall be deemed to constitute a notice to terminate this Agreement with the termination effective immediately before the date on which the proposed change would otherwise come into effect under clause 10.3.

11. Taxes

It is the Merchant's responsibility to determine which, if any, taxes apply to the payments received, and to report and remit the correct tax to the appropriate tax authority. Skrill is not obligated to determine whether taxes apply, and is not responsible to collect, report, or remit any taxes arising from any Transaction.

12. Intellectual Property

- 12.1. For the duration and strictly for the purpose of this Agreement, the parties grant each other a non-exclusive, worldwide, royalty-free, non-transferable licence to copy, use and display any logo, trademark, trade name or other intellectual property owned by, or licensed to the other party, to the extent that Skrill is entitled to grant a sublicense.
- 12.2. Any use, adaptation or amendment of intellectual property (except for non-material adaptation or amendments necessitated by the use for a particular purpose as contemplated by the parties) shall be subject to prior written approval by the party licensing the intellectual property in question. No party shall use the other party's intellectual property or mention the other party in any public communication without the first party's prior written approval.
- 12.3. Except as expressly stated, nothing in this Agreement shall grant or be deemed to grant to any party any right, title or interest in any logos, trademarks, trade names or other intellectual property licensed to that party by the other party.
- 12.4. In using the other party's intellectual property (or intellectual property licensed to that other party by a third party), each party shall follow the other party's reasonable instructions having regard to the purpose of such use under this Agreement and the jurisdiction in which the other party's intellectual property is used. With respect to intellectual property owned or licensed by Card or Payment Schemes, the Merchant shall also follow instructions given by the relevant Card or Payment Scheme. The Merchant shall not use such intellectual property in a way that is or may be detrimental to the business or brand of the relevant Card or Payment Scheme.
- 12.5. Each party warrants and represents that it owns or has the right to use and sub-licence any intellectual property which it uses or licenses for use to the other party.
- 12.6. Without prejudice to its right to give instructions under clause 12.4, Skrill reserves the right at any time and in its sole discretion to require the Merchant to stop displaying, distributing or otherwise making use of the intellectual property licensed to the Merchant by Skrill.
- 12.7. Each party ("**Indemnifying Party**") shall indemnify and hold harmless the other party and its employees and directors ("**Indemnified Party**") for and against any and all claims, losses, liabilities, costs expenses or damages (including reasonable legal fees) incurred by reason of any claim, demand, lawsuit or action by a third party (other than an employee or director of the Indemnified Party) resulting from an actual or alleged infringement of any third party intellectual property right in connection with material provided by the Indemnifying Party.
- 12.8. The indemnity under clause 12.7 shall only be available if the Indemnified Party:
- 12.8.1. uses reasonable efforts to notify the Indemnifying Party of such claim as early as possible and in writing;
 - 12.8.2. uses reasonable efforts to mitigate the loss or amount of the claim;
 - 12.8.3. refrains from admitting any liability or settling any claim without the prior written consent of the Indemnifying Party; and

- 12.8.4. provides, at its own cost, reasonable cooperation in the defence or settlement of such claim.

13. Liability

- 13.1. Neither party shall be liable in contract, tort (including negligence or breach of statutory duty) or otherwise for any indirect or consequential loss or damage of any kind including punitive or exemplary damages or for any loss of profit or loss of contract, loss of goodwill or reputation, loss of opportunity, loss of revenue or third party loss whether foreseeable or otherwise.
- 13.2. Subject to clauses 13.3, 13.4 and 13.5 and any other clause explicitly excluding the effect of this clause, the aggregate liability of Skrill in contract, tort, negligence or otherwise arising out of or in connection with this Agreement in any period of 12 months from the commencement date or any anniversary thereof (each a "Contract Year") shall be limited to the lower of (i) EUR 10,000 (ten thousand) or (ii) the total amount of fees received by Skrill from the Merchant in the previous Contract Year (or, in the first Contract Year, the fees received to date).
- 13.3. Nothing in this Agreement shall operate to exclude or restrict a party's liability
- 13.3.1. for fraud and fraudulent misrepresentation;
 - 13.3.2. for death or personal injury due to negligence;
 - 13.3.3. for payments pursuant to clauses 4.2, 6.6 and 9;
 - 13.3.4. for remittance payments due to the Merchant subject to the provisions of this Agreement;
 - 13.3.5. for wilful and malicious misconduct;
 - 13.3.6. for damage to real or tangible personal property;
 - 13.3.7. for a breach of clause 14 (Confidentiality) (subject to clause 13.6); and
 - 13.3.8. to the extent that such exclusion or restriction is prohibited under applicable law.
- 13.4. Unless expressly stated otherwise, no indemnity obligation under this Agreement shall be subject to the limitations of liability contained in this clause 13.
- 13.5. In case of a breach by the Merchant of any of the clauses 5.3 to 5.9 (inclusive), clause 7, clause 8, or clause 12 (with regard to intellectual property licensed to the Merchant under a sub-license granted by any Card or Payment Scheme) :
- 13.5.1. the liability restrictions of clauses 13.1 and 13.2 shall not apply;
 - 13.5.2. the Merchant shall indemnify Skrill against all third party claims, losses, damages, fines, penalties, arising out of or in connection with such breach;
- provided always that any contributory negligence on Skrill' part shall be taken into account so as to reasonably and proportionately reduce the Merchant's liability under this clause.
- 13.6. Skrill shall not be liable for any of the following:
- 13.6.1. a hardware, software or internet connection is not functioning properly;
 - 13.6.2. any suspension or refusal to accept payments which Skrill reasonably believes to be made fraudulently or without proper authorisation;
 - 13.6.3. the payment instructions received contain incorrect or improperly formatted information; or
 - 13.6.4. unforeseen circumstances preventing the proper performance despite any reasonable precautions taken by Skrill. Such circumstances may include but are not limited to acts of God, power outages, fire, flood, theft, equipment breakdowns, hacking attacks, internal mechanical or systems failures as well as downtimes of the Skrill Website.

14. Confidentiality

- 14.1. During the term of this Agreement and thereafter, each party shall use and reproduce the other party's Confidential Information only for purposes of this Agreement and only to the extent necessary for such purpose and will restrict disclosure of the other party's Confidential Information to its employees, consultants, advisors or independent contractors with a need to know and will not disclose the other party's Confidential Information to any third party without the prior written approval of the other party.
- 14.2. Notwithstanding the foregoing, it will not be a breach of this Agreement for either party to disclose Confidential Information of the other party if required to do so under law or in a judicial or governmental investigation or proceeding.
- 14.3. The confidentiality obligations shall not apply to information that (i) is or becomes public knowledge through no action or fault of the other party; (ii) is known to either party without restriction, prior to receipt from the other party under this Agreement, from its own independent sources as evidenced by such party's written records, and which was not acquired, directly or indirectly, from the other party; (iii) either party receives from any third party reasonably known by such receiving party to have a legal right to transmit such information, and not under any obligation to keep such information confidential; or (iv) information independently developed by either party's employees or agents provided that either party can show that those same employees or agents had no access to the Confidential Information received hereunder.

15. Data Protection

- 15.1. Each party, when acting as data processor, shall process personal data in accordance with Regulatory Requirements, in the case of Skrill with the UK Data Protection Act.
- 15.2. Where one party acts as the data processor ("Data Processor") of personal data processed by the other party as data controller ("Data Controller"), the Data Processor shall at all times follow the Data Controller's reasonable instructions with regards to the personal data processed.
- 15.3. In case the Merchant integrates any fast registration gateway functionality as further described in the relevant Manuals in order to facilitate payments by new Skrill customers, the Merchant shall procure all necessary consents from such customers to process and share with Skrill any data required to facilitate the use of such fast registration functionality.

16. Termination

- 16.1. Without prejudice to termination rights under the Terms of Use, Skrill may terminate this Agreement immediately:
 - 16.1.1. if the Merchant files a petition for bankruptcy, becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of its creditors, or a receiver is appointed for the Merchant or its business, or the Merchant goes into liquidation either voluntarily (otherwise than for reconstruction or amalgamation) or compulsorily;
 - 16.1.2. upon the occurrence of a material breach of this Agreement by the Merchant if such breach is not remedied within five (5) business days after written notice is received by the Merchant identifying the matter or circumstances constituting the material breach; or
 - 16.1.3. if the Merchant violates or fails to comply with any applicable law, regulation or any order by a competent court or government authority.
- 16.2. The Merchant may terminate this Agreement at any time without reason by giving notice to Skrill.
- 16.3. Skrill may terminate this Agreement at any time without reason

- 16.3.1. by giving two (2) months' notice if the Merchant is a Micro-Enterprise or Small Charity; or
- 16.3.2. by giving three weeks' notice if the Merchant is not a Micro-Enterprise or Small Charity.

- 16.4. Any termination under the Terms of Use shall be deemed a termination of this Agreement.

17. Assignment, Third Party Rights

- 17.1. The Merchant may not assign any of its rights under this Agreement to a third party without the prior written consent of Skrill.
- 17.2. The Merchant may not out-source the performance of any of its obligations under this Agreement without the prior written consent of Skrill, such consent not to be unreasonably withheld.
- 17.3. No person who is not a party to this Agreement shall have rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of this Agreement.
- 17.4. In case the Merchant
 - 17.4.1. acquires another existing Skrill merchant or its business;
 - 17.4.2. is acquired or its business is acquired by another existing Skrill merchant;
 - 17.4.3. merges with another existing Skrill merchant; or
 - 17.4.4. enters into a cooperation with another existing Skrill merchant

the Merchant shall pay, upon Skrill' notice to the Merchant, either (i) its current fees or (ii) the current fees applicable to the other merchant or (iii) such reasonable combination of its own current fees and the fees payable by the other merchant as determined by Skrill. Skrill shall send a notice within one (1) month of the later of (a) completion of the acquisition, merger or cooperation, or (b) Skrill' gaining knowledge of such acquisition, merger or cooperation. If no notice is sent within this time period, the Merchant shall continue to pay its current fees. In case the Merchant is a Micro-Enterprise or Small Charity, the fee change shall apply on the date which is two (2) months after the Merchant's receipt of the notice. Any change to the fees will be treated as a change to this Agreement for the purposes of clause 10. Notwithstanding clause 10 in case the Merchant is not a Micro-Enterprise or Small Charity, the fee change shall apply on the date which is one (1) week after the Merchant's receipt of the notice.

18. Relationship of the parties

The Merchant and Skrill are independent contractors under this Agreement, and nothing herein will be construed to create a partnership, joint venture or agency relationship between them. Neither party has authority to enter into agreements of any kind on behalf of the other.

19. Non-solicitation of employees

The Merchant undertakes that it will not for the term of this Agreement and a period of six months thereafter on its own behalf or on behalf of any person directly or indirectly canvass, solicit or endeavour to entice away from Skrill or an associated company any person who has at any time during the term of this Agreement been employed or engaged by Skrill or an associated company.

20. Notices

- 20.1. Any notice to be given under this Agreement must be given in writing and delivered either by hand, first class prepaid post or other recognised delivery service, or by facsimile. Notwithstanding the foregoing, Skrill may give notice to the Merchant by sending an email to any of the email addresses registered with the Merchant Account.
- 20.2. The parties agree to conduct all communication in relation to this Agreement in English. Where Skrill sends or accepts communication in another language, this shall be for convenience

only and shall not change English as the agreed language of communication for future communications.

21. Choice of law and forum

This Agreement and any legal relationship between the parties arising out of or in connection with it shall be governed by and construed in accordance with the laws of England regardless of the venue or jurisdiction in which a dispute is being determined. Each party hereby irrevocably submits to the non-exclusive jurisdiction of the English Courts.

22. Waiver

Any waiver of a right under this Agreement shall only be effective if agreed or declared in writing. A delay in exercising a right or the non-exercise of a right shall not be deemed a waiver and shall not prevent a party from exercising that right in the future (subject to the provisions of the Limitations Act 1980).

23. Severability

If any part of this Agreement is found by a court of competent jurisdiction to be invalid, unlawful or unenforceable then such

part shall be severed from the remainder of the Agreement, which shall continue to be valid and enforceable to the fullest extent permitted by law.

24. Entire Agreement

This Agreement including all Schedules and other documents referred to herein and the Terms of Use and all documents referred to therein, represents the entire agreement of the parties in relation to its subject matter. Each party acknowledges that it has entered into this Agreement in reliance only on the representations, warranties, promises and terms contained in this Agreement and, save as expressly set out in this Agreement, neither party shall have any liability in respect of any other representation, warranty or promise made prior to the date of this Agreement unless it was made fraudulently.

25. Variation

Subject to clause 18 of the Terms of Use and clause 10 above, no variation or amendment to this Agreement shall be effective unless recorded in writing and signed by the duly authorised representatives of both parties.