

Pay360 by Capita Terms of Business

This Agreement sets out the terms of business applicable to the Merchant's use of Pay360 by Capita's services
Pay360 by Capita General Terms

1. Parties to this Agreement

- 1.1. The Parties to this Agreement shall be as specified in the Schedule.

2. Contract Terms

- 2.1. The Pay360 by Capita terms of business that apply to the Service consist of the General Terms, the Special Conditions and the Merchant's Schedule(s), together with any Supplemental Agreement if applicable (the Agreement). The Pay360 by Capita Services can only be used to process Transactions when the Merchant has a current Acquirer Merchant Account (MOTO Merchant Account, Internet Merchant Account (IMA) or other approved Merchant Accounts).
- 2.2. This Agreement only applies to Pay360 by Capita Services and there are separate terms and conditions that are applied by an Acquirer to a Merchant Account.

3. Definitions

- 3.1. In these Terms of Business, the words and expressions listed below shall have the following meanings:
- Acquirer:** a financial institution with which the Merchant has entered into a Merchant Contract and Pay360 by Capita has entered into an agreement with or is accredited to forward Transaction Data for Authorisation, clearing and settlement. For the avoidance of doubt Pay360 by Capita is not the Acquirer;
- Additional Services:** means the additional services provided by Pay360 by Capita to the Merchant as set out in the Schedule (if any);
- Agreement:** the General Terms, together with the Special Conditions applicable to the Service, the Schedule and any Supplemental Agreement;
- Applicable Data:** any personal data which is transmitted by or on behalf of the Merchant to, or is otherwise processed by, Pay360 by Capita under this Agreement or which is generated under this Agreement;
- Application Management Fee:** the non-refundable amount payable by the Merchant to Pay360 by Capita as specified and in accordance with the Schedule;
- Authorisation:** a request for and subsequent confirmation from the Acquirer or the E-Money Issuer that a payment will be credited to the Merchant in respect of any Transaction subject to the terms of the agreement entered into by the Merchant with the Acquirer or the E-Money Issuer (whatever the case may be);
- Capita Group:** Pay360 by Capita and every other company which is for the time being a subsidiary or holding company of Pay360 by Capita or a subsidiary of any such holding company and for the purposes of this definition "subsidiary" and "holding company" shall have the meanings given to them by sections 1159 (1), (2) and (4) and 1159(3) Schedule 6 Companies Act 2006;
- Card:** any charge, credit, debit or payment card approved by Pay360 by Capita and the Acquirer from time to time;
- Cardholder:** a holder of any Card;
- Card Issuer:** the financial institution that issued the Card to the Cardholder;
- Chargeback:** means an invalid or disputed Transaction that is or may be charged to the Merchant by an Acquirer;
- Chargeback Period:** this is the period for which Chargebacks can be made as defined by Mastercard and Visa.
- Charges:** the fees and charges applicable to the services provided by Pay360 by Capita under this Agreement as set out in the Schedules (including but not limited to where applicable) the Set Up Fee,

Monthly Service Charge, Transaction Fees and Payment Failure Administration Fee) together with such other charges (including but not limited to Scheme Charges) as are notified to the Merchant by Pay360 by Capita from time to time;

Control: means:

- a) in relation to a body corporate, the power of a person to secure:
- b) by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate; or
- c) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate;
- d) that the affairs of the first mentioned body corporate are conducted in accordance with the wishes of that person; and
- e) in relation to a partnership, means the right to a share of more than one half of the assets, or of more than one half of the income, of the partnership;

Customer: means both a Cardholder and an E-Money Account Holder;

Data Protection Legislation: the Data Protection Act 1998, and from 25 May 2018, the General Data Protection Regulation (EU 2016/679) or any replacement legislation applicable in England and Wales from time to time and any other applicable laws relating to the processing of personal data.

Default Interest Rate: means the amount specified in the Schedule or if no amount is specified in the Schedule the Default Interest Rate shall be 4% above the base rate from time to time of Barclays Bank plc and or its successor bank(s);

Disputed Transaction: means a Transaction which has been disputed by a Customer, whether any such notification is made to Pay360 by Capita, the Acquirer or the Merchant;

Effective Date: The Effective Date shall be the date the Merchant registers and accepts this Agreement via the Pay360 by Capita website or the date specified in the Schedule, whichever is the later. If the Merchant did not accept this Agreement via the Pay360.co.uk Web Site and no date is specified in the Schedule, the Effective Date shall be the date the Schedule is signed by Pay360 by Capita's authorised signatory;

E-Money: monetary value, as represented by a claim on the issuer, which is:

- (a) stored on an electronic device;
- (b) issued on receipt of funds; and
- (c) accepted as a means of payment by persons other than the E-Money Issuer;

E-Money Account: means the trust account operated by the E-money Issuer into which monies collected from E-Money Account Holders are held for the purposes of allowing payments to the Merchants;

E-Money Account Holder: means a consumer who wishes to buy goods and/or services using funds the consumer has deposited in its E-money Account;

E-Money Issuer: means a third party approved by Pay360 by Capita in writing authorised by the Financial Services Authority to issue E-money to consumers;

Event Data means information relating to a Customer of the Merchant (other than Transaction Data);

Failure Notice: a notice from the Acquirer or the E-Money Issuer that a request for payment has been declined in respect of any Transaction;

Hosted Site: the payment page provided by Pay360 by Capita for the purpose of capturing and processing Transactions;

Initial Term: shall be from the Effective Date for the period specified in these General Conditions or as specified in the Schedule whichever is the longer;

Intellectual Property: copyrights (including rights in computer software), patents, trade marks, trade names, service marks, business names (including internet domain names), design rights, database rights, rights in undisclosed or confidential information (such as know-how, trade secrets and inventions (whether patentable or not)) and all other intellectual property or similar proprietary rights of whatever nature (whether registered or not and including applications to register or rights to apply for registration) which may now or in the future subsist anywhere in the world;

Merchant: the trading entity with whom Pay360 by Capita enters into the Agreement as identified in the Schedule;

Merchant Account: means the account or accounts provided by Merchant's Acquirer for the purposes of collecting, holding, remitting, deducting or otherwise dealing in funds pursuant to this Agreement in accordance with the terms of the Merchant Contract. Merchant Accounts can include MOTO (Mail

Order Telephone Order) and or Internet Merchant Accounts (IMA) or such other accounts as the Acquirer may determine from time to time.

Merchant Contract: the agreement between the Merchant and the Acquirer for acquiring services;

Merchant Product: means the goods and or services that the Merchant makes available for sale, or use through the Merchant Site;

Merchant Portal: the online resource provided by Pay360 by Capita which may be accessed by the Merchant or its authorised representatives for the purposes of receiving management information, reports, notices relevant to the Service and any other forms of information or functionality that Pay360 by Capita wishes to provide from time to time which may include any portal, extranet or other communication method notified to the Merchant;

Merchant Portal Manual: the online manual available on the Merchant Portal as updated from time to time;

Merchant Site: means Merchant web site(s) as notified to Pay360 by Capita by Merchant from time to time;

Monthly Service Charge: the amount payable by the Merchant to Pay360 by Capita each month during the Term as specified and in accordance with the Schedule;

Minimum Processing Commitment: means the volume of Transactions referred to in the Schedule.

Payment Application: the software service as a service provided by Pay360 by Capita to the Merchant for the purpose of capturing and processing Transactions.

Payment Failure Administration Fee: the fee set out in the Schedule;

Payment Method: the method by which the Merchant shall pay Pay360 by Capita all fees described under the Agreement as notified during sign up;

Pay360 Payment Services Platform: The Payment Platform provided to deliver the Services

Pay360 Payments User Guide: Documentation provided to assist users with the Operation of the Payment Service

Pay360 by Capita: the entity identified as such in Schedule. For the avoidance of doubt Pay360 by Capita is not the Acquirer;

Pay360 by Capita Acceptable Use Policy: the policy for acceptable use of the Service published by Pay360 by Capita from time to time and available at the URL as may be notified to the Merchant via the Merchant Portal from time to time;

Pay360 by Capita Refund Policy: means the policy for transaction refunds issued on the Merchant Portal from time to time;

Pay360 by Capita Site Content Policy: means the policy for hosted websites as issued on the Merchant Portal from time to time;

PCI-DSS: Payment Card Industry Data Security Standard;

Refund: means a Transaction where a Payment Transaction is reversed with the intention of crediting a Customer's account;

Relevant Tax: means value added tax, sales taxes, or any other similar liability to tax or duty;

Reporting: the provision of information in relation to Transactions and the Services provided to the Merchant via the Merchant Portal, e-mail and or any other communication method that Pay360 by Capita may reasonably use from time to time;

Scheme: means any organisation or payment system which manages and controls the issue and use of Cards and the clearing of Card transactions and which shall include (without limitation) Visa International and MasterCard Inc together with any other payment scheme and or E-Money Issuer as are notified to the Merchant by Pay360 by Capita from time to time;

Scheme Charges: means such fees, payments and or charges as may from time to time be levied by the Schemes in respect of a merchant and or a merchant's activities

Scheme Rules: means the operating rules and procedures issued by the Scheme and or E-Money Issuer Pay360 by Capita and or the Acquirer;

Schedule: the document setting out the services ordered by the Merchant from Pay360 by Capita and other information, which incorporates or refers to these Terms of Business;

Security Data: any codes or other security measures relating to a Card or an E-Money Account which are or could be used to verify the identity of the Cardholder or E-Money Account Holder and/or the authenticity of a Transaction (including verification numbers, also known as CVV, CSV or CVC codes);

Service: the online system provided by Pay360 by Capita to the Merchant for the receipt of Transaction Data, the electronic transmission of Transaction Data to an Acquirer or the E-Money Issuer and communication between:

- a) Pay360 by Capita, the Acquirer and Merchant; and
- b) Pay360 by Capita, the E-Money Issuer and the Merchant

for the purpose of facilitating the settlement of Card and E-Money Account payment requests as may be further described in the Schedule, any Additional Services and any Supplemental Agreement and which for the avoidance of doubt shall include any service provided by Pay360 by Capita to the Merchant via the Merchant Portal and or as specified in this Agreement;

Set-Up Fee: the non-refundable amount payable by the Merchant to Pay360 by Capita as specified and in accordance with the Schedule;

Special Conditions: means the Special Conditions as applicable to the Service, the IMA Services or such other Services as specified in the individual Special Conditions as appropriate;

Supplemental Agreement: any agreement between the parties dated either the same date as the Schedule or later amending this Agreement;

Term: the term as specified in this Agreement, the Schedules and the Special Conditions applicable to the Service;

Transaction: means: (1) a request made via the Service for collection of payment from or to a Cardholder via the relevant Card Issuer on behalf of the Merchant; and or (2) a request made via the Service for collection of payment from or to an E-Money Account Holder via the relevant E-money Issuer on behalf of the Merchant; and or (3) a data request (including but not limited to authorisations) made via the Service;

Transaction Data: all information provided by a Customer or obtained from any other source in particular the Acquirer or E-Money Issuer that is required for an Authorisation and or processing of a Transaction;

Transaction Fee: the amount payable by the Merchant to Pay360 by Capita for each Transaction as specified and in accordance with the Schedule; and

Web Site: means Pay360 by Capita web site, at URL <http://www.Pay360.co.uk> or such other site as notified by Pay360 by Capita to the Merchant from time to time.

- 3.2. Where the Merchant consists of more than one person all such persons shall be jointly and severally liable for the performance of all Merchant obligations under the Agreement.
- 3.3. Headings to the clauses, the schedules, the appendices and the table of contents (if applicable) are inserted for convenience of reference only and shall be ignored in the interpretation of this Agreement.
- 3.4. In this Agreement, unless it is stated or the context otherwise requires:
 - 3.4.1. references to clauses, schedules and appendices are to be construed as references to clauses of, and special conditions, schedules and appendices to this Agreement and references to this Agreement includes such special conditions, schedules and appendices; and
 - 3.4.2. words importing the singular shall include the plural and vice versa; words importing a gender include every gender; and references to persons include natural persons, partnerships, and governmental and quasi-governmental bodies as well as bodies corporate and unincorporate; and
 - 3.4.3. references to statutory provisions shall be construed as references to those provisions as replaced, amended or re-enacted from time to time; and
 - 3.4.4. the rule of interpretation known as "ejusdem generis" rule shall not apply, so that, for example, any phrase introduced by the terms "including", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
 - 3.4.5. references to "include" or "including" or "in particular" are to be construed without limitation; and
 - 3.4.6. all sums payable hereunder are stated exclusive of value added tax and any other Relevant Tax, or sales or purchase tax which may be payable by the Merchant in addition to such sum.
- 3.5. If there is an inconsistency between any of the provisions in the General Terms, the Special Conditions, the Schedule or any Supplemental Agreement then the following order of precedence will apply:
 - 3.5.1. the Schedule;
 - 3.5.2. the General Terms;
 - 3.5.3. any Special Conditions relevant to the Service; and
 - 3.5.4. any Supplemental Agreement.

4. Term

- 4.1. The Initial Term is for a period of 24 Months or such period specified in the Schedule whichever is the greater. Upon each anniversary of the Initial Term the Agreement will automatically continue for a further year (the "Renewal Term") unless terminated by either party (without prejudice to Pay360 by Capita's right to terminate under this Agreement) giving to the other not less than three months' prior written notice, such notice not to expire during the Initial Term.

5. Payment Services

- 5.1. Pay360 by Capita will provide the Merchant with access to the Services listed in the Schedule to this Agreement for the Merchant to use in accordance with the Pay360 Payments User Guide as the same is amended from time to time and published on the Merchant Portal. The Merchant may customise the views and reporting in accordance with the parameters as specified in the Pay360 Payments User Guide.
- 5.2. Services described in the Pay360 Payments User Guide may be added to this Agreement by agreement in writing by the parties and shall be subject to such General Terms and Special Conditions as specified.
- 5.3. Pay360 by Capita will accept Transaction Data and Event Data from the Merchant for processing under the Pay360 Payment Services Platform. The Transaction Data and Event Data will be submitted in the format notified to the Merchant and contained in the integration guide relevant to the Pay360 Payment Services Platform as the same may be amended from time to time.
- 5.4. The Transaction Data shall be in relation to the payment methods as specified in the Payment Processing Service Order together with such other payment methods as the parties may from time to time agree in writing. Pay360 by Capita shall not be required to hold or process Transaction Data arising from or in connection with any payment method not previously agreed in writing.
- 5.5. The Event Data will be as specified in the Event Data fields and formats as agreed in writing by the parties. If the Merchant wishes to amend or delete any data field in the current Pay360 by Capita template other than changes as to the content, such change shall be subject to the change control process. Any such change will be classed as a bespoke request and as such may be subject to additional charges and or fees.
- 5.6. Pay360 by Capita is not required under this Agreement to provide the Merchant with access to the software and or any other process used by Pay360 by Capita to perform the Service.
- 5.7. Pay360 by Capita will accept Transactions from the Merchant and submit Transaction Data to the relevant Acquirer and the E-Money Issuer for the Term. On receipt of an Authorisation or Failure Notice, Pay360 by Capita shall provide details of the same to the Merchant via the Merchant Portal and/or via a payment notification.
- 5.8. Pay360 by Capita can only provide the Service if the Merchant has a Merchant Contract with an Acquirer and/or an agreement with an E-Money Issuer.
- 5.9. If there is a change in circumstances affecting the provision of the Service (including any regulatory or other change affecting the payment processing industry and/or any revised policies, guidelines or regulations issued by a Scheme direct to the Merchant or via the Acquirer or E-Money Issuer), Pay360 by Capita reserves the right in its sole option to make such alterations to the Service it deems reasonably necessary from time to time provided that such alterations shall not (unless as a consequence of legislative, regulatory or Scheme developments or due to circumstances reasonably beyond Pay360 by Capita's control) have a material adverse effect on the functionality of the Service.
- 5.10. Any alterations to the Service that are introduced pursuant to clause 5.9 shall be notified to the Merchant via the Merchant Portal.
- 5.11. This Agreement is personal to the Merchant and in no event shall the Merchant use the Service for the processing of Transactions on behalf of a third party.
- 5.12. This Agreement is for a "software as a service" and no software licences are granted as part of the Services.

6. Pay360 by Capita obligations

- 6.1. Pay360 by Capita will provide the Service in accordance with the terms of this Agreement and as set out in the Schedule(s).

- 6.2. In providing the Service, Pay360 by Capita will comply with all applicable laws and regulations and shall, so far as is reasonably practicable, comply with such requirements as are notified to it by each E-Money Issuer or Acquirer and or Scheme.
- 6.3. Pay360 by Capita will provide the Service with reasonable skill and care and in accordance with standard industry practice.
- 6.4. Pay360 by Capita will use reasonable endeavours to make the Service available to the Merchant at all times except in the circumstances set out in this Agreement and as specified on the Merchant Portal.
- 6.5. Pay360 by Capita will use reasonable endeavours to co-operate with each E-Money Issuer and the Acquirer and shall report to the Merchant promptly any relevant dispute between Pay360 by Capita and an E-Money Issuer or Acquirer and or Scheme.
- 6.6. Where reasonably practicable, Pay360 by Capita will publish advance notification of any changes affecting the Service or advice notes relating to the provision of the Service on the Merchant Portal. The Merchant should review the Merchant Portal for such announcements and notifications on Services and Service availability.

7. Settlement and remittance

- 7.1. Acceptance of any Transaction for processing by Pay360 by Capita, and Pay360 by Capita's online confirmation of an Authorisation to the Merchant and/or a Customer (whatever the case may be) does not guarantee the settlement of any Transaction.
- 7.2. The Merchant acknowledges that the Acquirer and the E-Money Issuer shall be solely responsible for paying the remittance to the Merchant and for the Authorisation and settlement of Transactions in accordance with the terms of the Merchant's agreement with the Acquirer and E-Money Issuer.
- 7.3. The Merchant is responsible for reconciling the settlement monies received from the Acquirer with the Transactions submitted to Pay360 by Capita for processing and to immediately notify Pay360 by Capita if there is any material discrepancy.
- 7.4. Pay360 by Capita accepts no liability to the Merchant for any losses, damages, costs or expense arising out of any failure to pay a remittance to the Merchant on the relevant due date. The Merchant acknowledges that Pay360 by Capita will not enter into possession of and/or have control over any settlement funds at any time.

8. Payment

- 8.1. In consideration for providing the Service, the Merchant will pay the Charges to Pay360 by Capita in accordance with the payment terms set out in the Schedule. Unless varied in the Schedule, invoices shall be paid (in cleared funds) within 14 (fourteen) days of the date of invoice.
- 8.2. Pay360 by Capita will issue its invoices (including value added tax invoices where applicable) directly to the Merchant via the Merchant Portal and or e-mail and shall not be obliged to provide invoices in any other form.
- 8.3. All Charges shall be paid by the Merchant to Pay360 by Capita without deduction, set-off or counterclaim via the Payment Method.
- 8.4. The Merchant will sign such authorities as Pay360 by Capita may require to enable Pay360 by Capita to obtain payment of the Charges by debiting the Merchant's bank account or via any other means pursued by Pay360 by Capita, and the Merchant will authorise the Merchant's bank or other financial institution to pay on presentation all requests for payment of a direct debit initiated by Pay360 by Capita or other similar payment method as notified by Pay360 by Capita to the Merchant in respect of any amounts due to Pay360 by Capita under this Agreement.
- 8.5. The Merchant shall pay all reasonably incurred administration and processing expenses incurred by Pay360 by Capita and arising in connection with the failed collection of any debt including but not limited to any additional charges for non-collection. Any and all amounts outstanding or unpaid by the date specified in a duly raised invoice made under this clause 8 shall accrue interest at the Default Interest Rate.
- 8.6. If Pay360 by Capita cannot obtain payment by the Payment Method for whatever reason then the Merchant shall settle any amount due to Pay360 by Capita by cheque or debit/credit card in accordance with the timeframe set out in clause 8.1 above.
- 8.7. Without prejudice to any other right or remedy of Pay360 by Capita:

- 8.7.1. Pay360 by Capita may charge the Merchant the Payment Failure Administration Fee for each occasion on which it is unable to obtain payment from the Merchant's bank account in respect of any invoice. The Payment Failure Administration Fee may be increased from time to time but not more than once in each 12-month period, and Pay360 by Capita shall notify the Merchant of any such increase via the Merchant Portal and or by e-mail; and
- 8.7.2. if the Merchant fails to make any payment in cleared funds within 14 (fourteen) days of the date of the invoice, Pay360 by Capita may (without prejudice to Pay360 by Capita's other rights or remedies) suspend the Service until all amounts payable to it have been paid and/or Pay360 by Capita may terminate this Agreement with immediate effect on written notice to the Merchant; and
- 8.7.3. Pay360 by Capita may charge the Merchant interest (both before and after any judgment) on any amount unpaid when due at the Default Interest Rate until payment is made. If Pay360 by Capita employs a collection agency to pursue any outstanding payment(s), the Merchant shall be liable for the full costs incurred including any legal costs.
- 8.8. Pay360 by Capita may increase the Charges (or any of them) by giving not less than 30 days' notice to the Merchant. Notice of increases in the Charges may be given by e-mail or post or by publication on the Merchant Portal. The 30 day notice provisions of this clause 8.8 shall not apply to increases arising as a consequence of changes in legislation, regulation, Scheme Rules, taxes and or other circumstances beyond the reasonable control of Pay360 by Capita.
- 8.9. Except where specified in this Agreement, the Merchant is committed to the Initial Term, during which it will be liable for all Charges.
- 8.10. Unless otherwise specified all Charges commence on the Effective Date. Unless specified in the Pay360 by Capita Refund Policy or otherwise agreed in writing by Pay360 by Capita, the Application Management Fee and Set Up Fee are non-refundable.

9. Merchant obligations

- 9.1. The Merchant shall promptly provide to Pay360 by Capita such information (including details of its account with the Acquirer and where relevant with the E-Money Issuer) as may be requested by Pay360 by Capita for the purposes of activating the Service.
- 9.2. The Merchant acknowledges that any delay or failure to provide information and to comply with its obligations under this clause 9 may result in Pay360 by Capita being unable to provide the Service. Pay360 by Capita accepts no responsibility for any losses, costs, damages or other liabilities arising from its inability to provide the Service in such circumstances.
- 9.3. The Merchant represents and warrants that;
 - 9.3.1. the Merchant is contracting in its capacity as a business (not a consumer) and has full capacity to enter into this Agreement;
 - 9.3.2. the Merchant has obtained all permissions, approvals, consents and releases necessary in connection with the Merchant Product provided in relation to the Transactions (including but not limited to the Intellectual Property Rights of any third party) and that the Transaction and the Merchant Product relating to the Transaction is not in any way unlawful;
 - 9.3.3. all information provided to Pay360 by Capita in connection with its application for Services and any other information it provides under this Agreement is correct and that no information has been withheld which could reasonably be expected to have adversely affected Pay360 by Capita's decision to enter into this Agreement;
 - 9.3.4. in submitting Transactions for processing, the Merchant is complying with all applicable licensing obligations, Scheme Rules, Acquirer instructions, laws, regulations, restrictions and orders including but not limited to the appropriate declarations, payments, approvals and or disclosures required to be made to or received from any regulatory, tax authority, Scheme and or third party as a consequence of or arising in connection with the Transaction;
 - 9.3.5. the Merchant will notify Pay360 by Capita of any and or all Merchant Web Site(s) selling and or providing the Customer with the Merchant Product; and
 - 9.3.6. the Merchant has or will have prior to processing any Transactions a Merchant Contract and that no Transactions will be submitted to Pay360 by Capita unless a valid and current Merchant Contract is in place.

- 9.4. The Merchant shall not incur any liabilities on behalf of Pay360 by Capita or pledge Pay360 by Capita's credit or make any representations or give any warranty on behalf of Pay360 by Capita or hold itself out as having power to do any of these things.
- 9.5. The Merchant is responsible for resolving all disputes with Customers or other parties to a Transaction and undertakes to act in a reasonable manner to resolve them and shall ensure that Pay360 by Capita is not cited, contacted or requested for information in relation to such disputes. The Merchant acknowledges that Pay360 by Capita does not provide support to Customers and agrees to take sole responsibility for dealing with any questions, complaints or enquiries raised by any Customer in relation to a Transaction.
- 9.6. Any Transaction which has been accepted where the Customer is not present is taken entirely at the Merchant's own risk. The Merchant acknowledges and accepts that a Transaction of this nature may be subject to a later dispute, even where an authorisation was provided at the point of sale. The Merchant acknowledges that the Merchant is responsible for any Chargeback arising from a Transaction.

10. Compliance

- 10.1. The Merchant will comply with all Scheme Rules, applicable laws, regulations and codes of practice in the execution and performance of this Agreement and shall not use the Service or permit the Service to be used in any manner which could, in Pay360 by Capita's reasonable opinion, damage Pay360 by Capita's reputation or the reputation of any company within the Capita Group.
- 10.2. The Merchant warrants in submitting Transactions for processing, the Merchant is fully and promptly complying with;
 - 10.2.1. Scheme Rules, E-Money Issuer instructions and or the terms of the Merchant Contract;
 - 10.2.2. Pay360 by Capita's Acceptable Use Policy and Pay360 by Capita's Merchant Operational Guide and any reasonable operating instructions or procedural guides which Pay360 by Capita may issue from time to time;
 - 10.2.3. applicable laws, regulations, licensing obligations, restrictions and orders including but not limited to the appropriate declarations, payments, approvals and or disclosures required to be made to or received from any regulatory and or tax authority as a consequence of or arising in connection with the Transaction;in relation to accepting Cards or E-Money Account payments (whatever the case may be) in payment for goods or services supplied by the Merchant.
- 10.3. Any breach by the Merchant of the provisions of this clause 10 shall be deemed a material breach that is not capable of remedy for the purposes of this Agreement.
- 10.4. The Merchant shall take all reasonable steps to detect and prevent fraud against Pay360 by Capita or any Customer or other party involved in a Transaction. The Merchant shall immediately notify Pay360 by Capita if it knows or has reasonable grounds to suspect any fraudulent activity is being or may be committed in relation to the Service.
- 10.5. The Merchant shall keep Pay360 by Capita fully and effectively indemnified against all actions, claims, costs (including reasonably incurred legal fees on a solicitor and own client basis), damages, demands, expenses, losses and liabilities incurred by, or made against Pay360 by Capita as a result of the Merchant's acts, omissions or breach of this Agreement, Scheme Rules, Merchant Contract or any relevant law.

11. PCI-DSS

- 11.1. Pay360 by Capita warrants it will comply with all or any of Pay360 by Capita's PCI-DSS obligations and or requirements in accordance with Pay360 by Capita's accreditation.
- 11.2. Pay360 by Capita is responsible for securing Transaction Data which is solely in the possession of and under the control of Pay360 by Capita. Pay360 by Capita complies with its accreditation as a PCI-DSS service provider. PCI-DSS sets out the industry standards for maintaining a secure environment. A copy of Pay360 by Capita's PCI-DSS compliance certificate can be found on Pay360 by Capita's website: <http://www.Pay360.co.uk> or can be provided to the Merchant by contacting Pay360 by Capita's merchant support via the contact details displayed on the Pay360 by Capita Merchant Portal and or Web Site.

- 11.3. The Merchant warrants it will comply with all or any PCI-DSS obligations and or requirements including but not limited to the Merchant's reporting, scanning and card data obligations and or such other fraud protection policies as may be approved or required by the Schemes from time to time and shall provide Pay360 by Capita with immediate notification of any breach or failure to comply.
- 11.4. The Merchant will not retain or store any Security Data except to the extent necessary for the authorisation of the relevant Transaction. The Merchant undertakes immediately after completion of each Transaction to procure the secure deletion or destruction of all associated Security Data. If the Merchant knows or has reason to believe that any Transaction Data (including Security Data) has been or may be lost, stolen or otherwise compromised, it shall immediately notify Pay360 by Capita of the same and provide full details of the circumstances leading to the relevant security breach.
- 11.5. The Merchant confirms it has in place and can take the appropriate action to ensure its website and or services are compliant with secure socket layer ("SSL") and has undertaken the necessary Payment Card Industry ("PCI") scans and or such other security actions as may be required under this Agreement, Scheme Rules, the E-Money Issuer and or as specified in the Merchant Contract.
- 11.6. The Merchant is responsible for securing Transaction Data in the Merchant's possession and for compliance with the Merchant's PCI-DSS obligations.
- 11.7. The parties agree the content of this Agreement may be disclosed to an approved PCI-DSS auditor for the purpose of a PCI-DSS audit.

12. Reporting

- 12.1. Pay360 by Capita shall from time to time make management information, invoice information, Transactions information, change notices, service announcements and scheduled downtime available to the Merchant via the Merchant Portal. Any use by the Merchant of the Merchant Portal shall be subject to the Pay360 by Capita Acceptable Use Policy and the Merchant Portal Manual as the same may be amended from time to time.
- 12.2. The Merchant accepts full responsibility for regularly reviewing the Merchant Portal for information posted by Pay360 by Capita. The Merchant acknowledges that it is solely responsible for maintaining its own procedures to ensure that it is aware of any new notices or information published on the Merchant Portal from time to time.
- 12.3. The Merchant acknowledges that the accuracy of any information provided by the Service:
 - 12.3.1. is subject to review by Pay360 by Capita as part of its normal procedures, and is subject to any changes that may be required following such a review by Pay360 by Capita;
 - 12.3.2. reflects the entries that have been posted in relation to the relevant Service and that can be accessed through the Service at the time the information is obtained, and so may not be completely up to date; and
 - 12.3.3. contains information provided from third parties including but not limited to the Acquirer, E-Money Issuer and or Schemes and as such may not always be an accurate reflection of the Merchant's Transactions and or be complete, accurate and or up to date at the time of posting and or publication.
- 12.4. The Merchant acknowledges that the Merchant:
 - 12.4.1. should carefully review the information obtained through using the Reporting and Transaction function within the Service;
 - 12.4.2. should notify Pay360 by Capita promptly of any errors, inconsistencies or other discrepancies of which the Merchant becomes aware;
 - 12.4.3. is responsible for reconciling all Transactions, and ensuring that they are consistent with the Merchant's provision of the Merchant Product to the Cardholder; and
 - 12.4.4. is responsible for reconciling the information provided in relation to Transactions via any Reporting function in a timely manner and will immediately notify Pay360 by Capita if the Merchant becomes aware of any discrepancy including but not limited to any adverse or favourable variances.
- 12.5. Without limiting any other provision of this Agreement, Pay360 by Capita does not represent or warrant that the Reporting and/or Transaction function can be used to satisfy any of the Merchant's legal, audit, compliance, risk or other requirements.

13. Security and Merchant systems

- 13.1. Pay360 by Capita is responsible for the security of Pay360 by Capita's own systems in accordance with its obligations to the Schemes and or PCI-DSS accreditation.
- 13.2. Pay360 by Capita is responsible for maintaining Pay360 by Capita's interfaces to an Acquirer with which Pay360 by Capita has an agreement to submit Transactions.
- 13.3. The Merchant is responsible for complying with the Pay360 by Capita Site Content Policy. Pay360 by Capita shall not be responsible for any losses, liabilities and expenses due to or arising from any failure by the Merchant to comply with the Pay360 by Capita Site Content Policy and or the merchant instructions available on the Merchant Portal or notifications emailed to the Merchant.
- 13.4. The Merchant is responsible for any integration to Pay360 by Capita and for maintaining its interface with Pay360 by Capita and updating its interfaces and connections arising from any changes implemented by Pay360 by Capita.
- 13.5. The Merchant is responsible for testing and the regular monitoring all integration links, interfaces and processing between Pay360 by Capita and the Merchant. The Merchant will notify Pay360 by Capita immediately the Merchant becomes aware of any problems with;
 - 13.5.1. the processing of Transactions;
 - 13.5.2. the integration with Pay360 by Capita;
 - 13.5.3. the interfaces to Pay360 by Capita; or
 - 13.5.4. any other problems with the settlement, systems and or processes.

14. Testing and integration

- 14.1. The Merchant acknowledges the integration process is determined by the Merchant and the Merchant's own website and the Merchant is solely responsible for integration. Pay360 by Capita may at its sole discretion and as a gesture of good will provide assistance to the Merchant with the integration process.
- 14.2. If the Merchant is unable to complete the integration, Pay360 by Capita will not be required to refund any amounts the Merchant has already paid to Pay360 by Capita, and is not liable for any costs, losses and or expenses arising from or in connection with the integration process and or the Merchant's website.
- 14.3. Pay360 by Capita shall not be liable for any errors, omission, losses or expenses arising directly or indirectly as a consequence of the integration process and or the Merchant's testing, the Merchant's website, integration and or the integration guides.

15. Term and termination

- 15.1. This Agreement shall commence on Effective Date and except as otherwise provided in the Agreement, continue in force for the Initial Term together with the Renewal Terms (if applicable).
- 15.2. Pay360 by Capita may, at its option, suspend the Service and/or terminate the Agreement with immediate effect on written notice to the Merchant if:
- 15.2.1. the Merchant has failed to pay any sum when due; or
 - 15.2.2. the Merchant commits any breach of the Agreement which either the Merchant has failed to remedy within 30 (thirty) days after written notice requiring it to do so or which is incapable of remedy; or
 - 15.2.3. the Merchant goes into liquidation or a petition is presented for the Merchant's administration liquidation; or
 - 15.2.4. Pay360 by Capita has reasonable concerns about the financial position of the Merchant; or
 - 15.2.5. the Merchant ceases or threatens to cease to carry on business or in any way changes the nature of its business and/or the nature of the goods and services it sells; or
 - 15.2.6. there is a change in Control of the Merchant or of any person who has Control of the Merchant either directly or through a chain of persons each of whom has Control over the next person in the chain, a change of Control occurring if any person acquires Control of the Merchant or any person who previously had Control of the Merchant ceases to have such Control (whether or not another person acquires Control of the other party); or
 - 15.2.7. the Merchant engages in any activity which, in the absolute discretion of Pay360 by Capita, directly or indirectly competes with the business of Pay360 by Capita or the business of the Capita Group; or
 - 15.2.8. the Merchant breaches the Scheme Rules, the Pay360 by Capita Acceptable Use Policy and/or the Brand Management Policy; or
 - 15.2.9. the Merchant ceases to have a Merchant Contract with an Acquirer or fails to enter into a Merchant Contract with an Acquirer or does not comply with the Pay360 by Capita risk and compliance processes applicable to a Merchant; or
 - 15.2.10. the Merchant is subject to a security breach, threat, virus and or adverse event which in the reasonable opinion of Pay360 by Capita is likely to compromise and or impact the processing of the Transactions; or
 - 15.2.11. the Merchant fails to comply with any instruction, notice and or request from Pay360 by Capita in relation to the use and or display of any Intellectual Property, including but not limited to any trademark and or logo of the Capita Group or Payment Application; or
 - 15.2.12. any event occurs in relation to the Merchant which in Pay360 by Capita's reasonable opinion could damage Pay360 by Capita's reputation, prove detrimental to Pay360 by Capita's business or may give rise to fraud, suspicion of fraud or any other criminal activity.
- 15.3. The Merchant may terminate this Agreement with immediate effect on written notice to Pay360 by Capita if:
- 15.3.1. Pay360 by Capita commits any material breach of this Agreement and in the case of a material breach capable of remedy, fails to remedy it within 30 (thirty) days after service, and confirmation of receipt, of a written notice requiring it to do so; or
 - 15.3.2. Pay360 by Capita goes into liquidation (except for the purposes of a solvent amalgamation or reconstruction and in a way that results in its successor company being bound by this Agreement) or a petition is presented for Pay360 by Capita's administration liquidation.
- 15.4. Either party may terminate this Agreement at its convenience by giving the other party not less than three (3) months' notice in writing, which termination shall be effective on the date of expiry of the Initial Term or a Renewal Term as applicable. In the event of termination by Pay360 by Capita in accordance with this clause 15.4, Pay360 by Capita shall reimburse to the Merchant any sums paid to Pay360 by Capita by the Merchant in advance for the unexpired portion of the Term following the date of termination.
- 15.5. The rights to terminate the Agreement given by this clause shall be without prejudice to any other right or remedy of Pay360 by Capita.

16. Consequences of termination

- 16.1. On termination of this Agreement for any reason each party shall cease to make use of the Intellectual Property belonging to the other party and the Merchant shall cease all access to the Service and shall remove all references to Pay360 by Capita from its website or any other promotional material.
- 16.2. Termination of this Agreement shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after the date of such termination.
- 16.3. In the event of termination of this Agreement for any reason other than termination by the Merchant pursuant to clause 15.3, the balance of Charges due in respect of any unexpired portion of the Initial Term or any subsequent Renewal Term (as described in Clause 4 and in the Special Conditions) shall immediately fall due and payable. The Merchant shall pay such amounts to Pay360 by Capita on receipt of a valid invoice from Pay360 by Capita.

17. Liabilities

- 17.1. Nothing in this Agreement shall exclude or limit the liability of either party:
 - 17.1.1. for death or personal injury resulting from the negligence of that party or its directors, officers, employees, contractors or agents; or
 - 17.1.2. in respect of fraud or of any statements made fraudulently by that party or its directors, officers, employees, contractors or agents.
- 17.2. Subject to clause 17.1 above, Pay360 by Capita shall not be liable to the Merchant whether in contract (including under any indemnity or warranty), in tort (including negligence), under statute or otherwise for any:
 - 17.2.1. loss of profit;
 - 17.2.2. loss of revenue;
 - 17.2.3. loss of anticipated savings;
 - 17.2.4. loss or corruption of data;
 - 17.2.5. loss of contract or opportunity;
 - 17.2.6. loss of goodwill;
 - 17.2.7. processing charges;
 - 17.2.8. borrowing costs;
 - 17.2.9. costs relating to the integration to Pay360 by Capita and or other systems or operational costs associated with the Merchant's use of the Services;
 - 17.2.10. expenses incurred by the Merchant in relation to or in connection with the Merchant's website and or the content thereon;
 - 17.2.11. Cardholder compensation payments (including but not limited to not ex gratia payments);
 - 17.2.12. costs associated with Cardholder disputes; or
 - 17.2.13. indirect or consequential loss of whatever nature including any loss of a type described in sub-clauses 17.2.1 to 17.2.12 above which could be regarded as indirect or consequential and whether or not reasonably foreseeable, reasonably contemplatable, or actually contemplated by the parties at the time of execution of this Agreement.
- 17.3. Subject to clauses 17.1 and 17.2 above the parties agree that:
 - 17.3.1. in the event that Pay360 by Capita shall be liable to the Merchant in contract (including under any indemnity or warranty), in tort (including negligence), under statute or otherwise, the liability of Pay360 by Capita to the Merchant shall be limited, to the full extent permissible by the law, in respect of each event or series of connected events to an amount equal to the amount of Charges paid by the Merchant to Pay360 by Capita in the calendar year in which the claim is first notified to Pay360 by Capita; and
 - 17.3.2. in no event shall the total cumulative liability of Pay360 by Capita to the Merchant under this Agreement exceed an amount equal to the amount of Charges paid or payable by the Merchant to Pay360 by Capita during the preceding twelve months of the Term.
 - 17.3.3. This clause shall not limit the Merchant's liability to pay Pay360 by Capita any amounts due under this Agreement.

- 17.4. Any action against Pay360 by Capita must be brought within 12 months after the cause of action arises.
- 17.5. The parties agree that the limitations on liability contained in this Agreement have been subject to commercial negotiation and are reasonable in all the circumstances.
- 17.6. Pay360 by Capita does not accept any responsibility for the accuracy of Transaction Data or any liabilities to the Merchant or other third party for any inaccuracies or misrepresentations contained in the Transaction Data.
- 17.7. Pay360 by Capita does not represent or warrant that the Merchant's use of the Service will be secure, timely, uninterrupted or error-free or that the Service will meet the Merchant's requirements. For the avoidance of doubt, Pay360 by Capita does not give any representation or warranty that the Service will alert the Merchant to, avert or prevent occurrences of fraudulent use of Cards or E-Money Accounts and other transaction methods and the Merchant acknowledges that it should obtain insurance against such fraudulent behaviour. The Service is provided on an "as is" and "as available" basis and for commercial use only.
- 17.8. Except as expressly provided in this Agreement, all warranties, conditions, representations or other terms implied by statute or common law are excluded to the fullest extent possible by law.
- 17.9. Any typographical, clerical or other error or omission in any promotional material or other information issued by Pay360 by Capita (including information on the Merchant Portal and on Pay360 by Capita's website) shall be subject to correction without any liability on the part of Pay360 by Capita.

18. Confidentiality

- 18.1. The parties to this Agreement will at all times keep confidential information acquired in consequence of this Agreement and relating to the other party, except for information which (i) they may be entitled or bound by law to disclose, or (ii) they have been requested by regulatory agencies or investigatory authorities to disclose, or (iii) they may need to disclose to their professional advisers where reasonably necessary.
- 18.2. No press release or other communication whatsoever to be published by or in the media concerning the subject matter of this Agreement shall be published without the prior written consent of each of the parties to this Agreement.
- 18.3. Confidential information includes but is not limited to information relating to pricing, systems, software and or Services provided by Pay360 by Capita and or any part of the Capita Group to the Merchant.
- 18.4. The obligations of confidentiality in this Agreement shall survive the termination of this Agreement and continue unless and until any of the relevant confidential information enters the public domain through no fault of the relevant Party, its officers, employees, agents or other representatives.
- 18.5. The Merchant acknowledges and accepts that Pay360 by Capita may;
- 18.5.1. carry out or commission credit checks on the Merchant for the purpose of obtaining an indication as to whether the Merchant is likely to be able to pay the Charges; and
- 18.5.2. disclose information to the Schemes, E-Money Issuers and or Acquirers as is required in connection with the Transactions and or in relation to the Merchant or the Merchant's Product.

19. Data Protection

- Within this Agreement the terms "controller", "data subject", "personal data", "personal data breach", "process" ("processed" to be construed accordingly) and "processor" shall have the same meanings as in the Data Protection Legislation.
- 19.1. With respect to the Parties' rights and obligations under this Agreement, the Parties acknowledge that in relation to Applicable Data that comprises either (i) Event Data or (ii) Merchant personal data, the Merchant is the data controller and Pay360 by Capita is the data processor, and in relation to Applicable Data that comprises Transaction Data, the Issuer, the Acquirer or the Scheme (as applicable) is the data controller, the Merchant is the data processor, and Pay360 by Capita is a sub-processor. References to the data controller in this clause 19 should therefore be read and construed as being references to the Merchant, the Issuer, the Acquirer or the Scheme as applicable.
- 19.2. The parties acknowledge their respective obligations under the Data Protection Legislation and shall give each other such assistance as is reasonable to enable each other to comply with such obligations, however, for the avoidance of doubt the Merchant agrees that where Pay360 by Capita has satisfied

a contractual obligation under this Agreement, then such satisfaction of the contractual obligation is deemed to satisfy the same or similar requirement under the Data Protection Legislation.

- 19.3. The Merchant warrants, represents and undertakes to Pay360 by Capita that it has lawful grounds for processing the Applicable Data.
- 19.4. The parties confirm that the information relating to the subject matter and duration of the processing; the nature and purpose of the processing; the type of personal data; the categories of data subjects; and the obligations and rights of the data controller have been set out in this Agreement and in Annex 1 Part 1.
- 19.5. Where Pay360 by Capita processes the Applicable Data under or in connection with this Agreement, Pay360 by Capita shall:
 - 19.5.1. save as required otherwise by law, only process such Applicable Data as is necessary to perform its obligations under this Agreement, and only in accordance with the data controller's documented instructions;
 - 19.5.2. put in place appropriate technical and organisational measures to meet its own obligations under the Data Protection Legislation;
 - 19.5.3. ensure Pay360 by Capita staff who will have access to the Applicable Data are subject to appropriate confidentiality obligations;
 - 19.5.4. be entitled to engage sub-processors to process the Applicable Data subject to Pay360 by Capita ensuring that equivalent requirements to those set out in this clause are imposed on any sub-processor(s), Pay360 by Capita remaining fully liable for the performance of the sub-processor's obligations and where applicable, providing to the data controller reasonable prior notice of any addition, removal or replacement of any such sub-processors;
 - 19.5.5. not process or transfer the Applicable Data outside the European Economic Area without the prior documented consent of the data controller (which consent is hereby given in respect of the processing of data by those third parties described [in Annex 1 Part 2]). For the avoidance of doubt, any consent given under this clause includes the consent to transfer the Applicable Data to the United Kingdom;
 - 19.5.6. have in place the appropriate technical and organisational security measures to protect the Applicable Data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access;
 - 19.5.7. notify the data controller without undue delay after becoming aware of any personal data breach involving the Applicable Data, taking into account the nature of processing and the information available to Pay360 by Capita;
 - 19.5.8. take appropriate technical and organisational measures, insofar as is possible, to assist the data controller in responding to requests by data subjects for access to or rectification, erasure or portability of the Applicable Data or for restriction of processing or objections to processing of the Applicable Data (but Pay360 by Capita will not itself respond to any such data subject request except on written instructions from the data controller). Furthermore Pay360 by Capita will, upon the request of the Merchant, provide assistance to the Merchant relating to the Merchant's security; impact assessment; data breach reporting requirements; and data protection or data privacy authority consultation obligations under the Data Protection Legislation taking into account the information available to Pay360 by Capita. Pay360 by Capita may charge the Merchant its reasonable costs (or the rates otherwise agreed between the parties) for its time spent and expenses incurred in providing the Merchant with co-operation and assistance as required by this clause;
 - 19.5.9. make available to the Merchant such information as the Merchant reasonably requests and Pay360 by Capita is reasonably able to provide, and, permit and contribute to such audits, including inspections, conducted by the Merchant (or the Merchant's appointed auditors), as is necessary to demonstrate Pay360 by Capita's compliance with the Data Protection Legislation. The Merchant will give reasonable notice of any audit and will be fully liable for any associated costs (including those of Pay360 by Capita); and
 - 19.5.10. save as may be required by law AND/OR where the parties have agreed that Pay360 by Capita e.g. legal claims/regulatory requirements may need to retain the Personal Data to support potential chargebacks within the Chargeback Period at the Merchant's cost, or retain card on file data at the Merchant's request, and optionally either delete or return the Applicable Data to the Merchant on expiry or termination of this Agreement,

- provided always that nothing in this clause shall oblige Pay360 by Capita to provide assistance which does not relate directly to the Service performed pursuant to this Agreement.
- 19.6. Pay360 by Capita shall inform the Merchant in writing if, in Pay360 by Capita's opinion, an instruction from the Merchant infringes the Data Protection Legislation but only in relation to a breach of General Data Protection Regulation ((EU 2016/679)) and/or other Union or Member State data protection provisions and not jurisdictions outside of these areas. However, the Merchant acknowledges that:
- 19.6.1. any information Pay360 by Capita provides is not legal advice or guidance in anyway whatsoever, and that Pay360 by Capita makes no warranty or representation regarding the information (express or implied); and
- 19.6.2. this clause shall not relieve the Merchant of its obligation to ensure that all instructions to Pay360 by Capita comply with all applicable legislation, including all Data Protection Legislation; and
- 19.6.3. Pay360 by Capita may charge the Merchant its reasonable costs (or the rates otherwise agreed between the parties) for its time spent and expenses incurred in providing the Merchant with co-operation and assistance as required by this clause.
- 19.7. Notwithstanding anything to the contrary in this Agreement, if any of the following occur:
- 19.7.1. any changes/modifications to the Data Protection Legislation (including in connection with the withdrawal of the United Kingdom from the European Union and/or the EEA) including the requirement to amend, update, modify or replace any systems Pay360 by Capita use to process the Personal Data;
- 19.7.2. any new, clarified or amended guidance or policies issued by a supervisory authority;
- 19.7.3. any direction or instruction issued by a supervisory authority (whether relating to the Merchant or Pay360 by Capita in respect of the Service (including any processing of the Applicable Data),
- then any increased effort or costs incurred by Pay360 by Capita in association with the aforementioned shall be additionally chargeable to the Merchant.
- 19.8. The Merchant shall indemnify and keep indemnified Pay360 by Capita against any liability, fines, claims, demands, expenses and costs (including legal fees) arising as a result of: any breach of the Data Protection Legislation by the Merchant, or Pay360 by Capita acting in accordance with any instruction, policy or procedure of the Merchant.
- 19.9. The Merchant warrants and represents that **any Merchant instruction, policy or procedure shall be lawful.**
- 19.10. **Data Consent** - The Merchant consents to Pay360 by Capita's use of;
- 19.10.1. information relating to the Merchant and the Merchant's business (including personal data) in accordance with the Data Protection terms set out in this Agreement and
- 19.10.2. the Merchant's personal data for marketing and research purposes as specified in accordance with the Data Protection terms set out in this Agreement. .
- In using the Service the Merchant is consenting to the use of their personal data as specified.
- 19.11. **Marketing Consent** – The Merchant hereby consents to the use of its personal data for marketing and research purposes and as specified in accordance with the Data Protection terms set out in this Agreement Pay360 by Capita Privacy Policy. If the Merchant wishes to withdraw the Merchant's consent to marketing at any time the Merchant may notify Pay360 by Capita at 1 Finsbury Square, London, EC2 1AE or email pay360marketing@capita.co.uk.
- 19.12. **Cookies Consent** - The Merchant's attention is brought to the Cookies Policy and Cookies Information notices that appear on the Pay360 by Capita website and the Merchant acknowledges they have read these notices. By using the Pay360 by Capita Services and websites, the Merchant agrees Pay360 by Capita can place the type of cookies described in the Cookies Policy on its computer and or device used to access the Pay360 by Capita websites and or Services.
- 19.13. If at any stage the Merchant wishes to withdraw its consent and or remote the Cookies, the Merchant may do so by using the procedures described in the Cookies Policy and or described at <http://www.allaboutcookies.org>.
- 19.14. The Merchant acknowledges Pay360 by Capita will not be liable for any problems and or failures associated with the use of the Pay360 by Capita's websites and or the Service arising directly or indirectly from the Merchant's settings and or choices in relation to the use of Cookies.

20. Brand Management

- 20.1. The Merchant shall (subject to the Pay360 by Capita Brand Management Policy) display Pay360 by Capita trademarks for the purpose of informing the Merchant's Customers that the Merchant processes the Customer's payments using Pay360 by Capita.
- 20.2. Pay360 by Capita hereby gives the Merchant a non-exclusive right to display Pay360 by Capita trademarks (including but not limited to its name and logo) on the Merchant's website for the duration of this Agreement (but reserves the right to withdraw such consent at any time and for any reason). The Merchant acknowledges that failure to comply with the Pay360 by Capita Brand Management Policy is a material breach of this Agreement.
- 20.3. The Merchant warrants and represents the Merchant's Intellectual Property and/or Merchant Product does not and will not infringe the Intellectual Property Rights or any other similar rights of any third party.
- 20.4. The Merchant hereby grants Pay360 by Capita a world-wide, non-exclusive, royalty-free right and licence to use, display and reproduce the Merchant's trade marks and other Intellectual Property Rights solely in connection with the provision of the Service. Pay360 by Capita agrees to adhere to the Merchant's reasonable usage guidelines, as notified in writing by the Merchant to Pay360 by Capita from time to time.

21. Force majeure

- 21.1. Neither party shall be liable to the other or be deemed to be in breach of this Agreement by reason of any delay in performing, or any failure to perform any of its obligations, if the delay or failure was due to any cause beyond the party's reasonable control including (without limitation) flood, fire, acts of terrorism, civil disturbance, acts of any government or authority, revocation of any licence or consent, default of any supplier or sub-contractor, failure of any power supply, theft, malicious damage, strike lock-out or industrial action, or the failure of any machine computer data processing system or network failures or communication link or failure in manufacture, production or the act or omission of Government or supply by third parties of equipment or services or by any other circumstance whatever beyond its reasonable control. For the avoidance of doubt, this does not include the withdrawal of or failure to obtain facilities with an Acquirer, Scheme or an E-Money Issuer.

22. Contracts (Rights of Third Parties) Act 1999

- 22.1. For the avoidance of doubt, nothing in this Agreement shall confer on any third party any benefit or the right to enforce any term of this Agreement.

23. Notices and variation

- 23.1. From time to time Pay360 by Capita may modify this Agreement by giving not less than 30 days notice in writing to the Merchant by email and or by publication on the Pay360 by Capita Web Site or the Merchant Portal. If the Merchant does not agree with those modifications, the Merchant should contact Pay360 by Capita as soon as possible and no later than 15 working days from the date of the notification. By continuing to use the Service after such notifications take effect, the Merchant has indicated the Merchant's acceptance of those modifications.
- 23.2. Pay360 by Capita may give less than 30 days notice if the modification is as a consequence of legal, regulatory, tax or Scheme changes and or other circumstances reasonably beyond Pay360 by Capita's control.
- 23.3. Any written notice may be delivered in person or sent by email, post, airmail or by fax to:
 - 23.3.1. the Merchant at the address shown in Pay360 by Capita records as notified by the Merchant from time to time; and
 - 23.3.2. Pay360 by Capita at 1 Finsbury Square, London, EC2A 1AE, UK or such other address as may be notified to the Merchant from time to time.
- 23.4. Notices shall be deemed duly given 48 hours after posting by first class post (72 hours if second class and airmail), or immediately if delivered in person or if by email or fax then at the time of transmission if within normal business hours failing which the start of the next business day.

- 23.5. The Merchant agrees that Pay360 by Capita may act on email notices or instructions which reasonably appear to emanate from the Merchant or the Merchant's authorised employee or agent.
- 23.6. For the purposes of this clause 23, "notice" shall include any request, demand, instruction, communication or other document.

24. Assignment

- 24.1. This Agreement may not be assigned by either party. Neither party shall be entitled to novate the benefit, in whole or in part, of any rights or obligations under this Agreement without the prior written consent of the other party.
- 24.2. The Merchant hereby consents to any novation of this Agreement made by Pay360 by Capita to another member of the Capita Group in which case such novation and transfer is permitted subject to any such novation being to a card payment processing entity accredited in accordance with industry standards

25. Entire Agreement

- 25.1. This Agreement represents the entire agreement and understanding between the parties in relation to its subject matter and supersedes all prior agreements, understandings or arrangements made by either party whether oral or written.
- 25.2. Each party acknowledges that it is not entering into this Agreement in reliance on any representation of the other except those contained in this Agreement and in the event of misrepresentation (other than fraudulent misrepresentation) the only remedy available shall be a claim for a breach of contract.

26. Governing law and jurisdiction

- 26.1. The Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with English law.
- 26.2. The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.

27. Waiver & Severability

- 27.1. Failure by either party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such rights, nor operate so as to bar the exercise or enforcement thereof or of any other right on any later occasion.
- 27.2. Each provision of this Agreement is severable and distinct from the other. If any provision of this Agreement is found illegal, invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of this Agreement shall remain in full force and effect.

28. General

- 28.1. This Agreement may be executed in any number of counterparts which taken together shall constitute a single instrument. Execution and delivery of this Agreement may be evidenced by fax or electronic transmission.
- 28.2. Both parties warrant that they have full capacity and authority to enter into this Agreement and that this Agreement is executed by a duly authorised representative of the relevant party.
- 28.3. Where the Merchant has incurred any liability to Pay360 by Capita, whether under this Agreement or otherwise and whether such liability is liquidated or unliquidated, Pay360 by Capita may set off the amount of such liability against any sum that would otherwise be due to the Merchant under this Agreement.
- 28.4. Nothing in this Agreement shall be deemed to constitute a partnership between the parties nor constitute any party as the agent of the other party.

29. Acquirer Merchant Contract

- 29.1. The acquisition services offered by the Acquirer are subject to a separate contract. Nothing in this Agreement shall purport to limit the ability of the Acquirer to terminate the Acquirer's Merchant Contract and or vary any terms that apply therein.
- 29.2. Pay360 by Capita is not authorised to vary the terms or conditions contained in an Acquirer's Merchant Contract.
- 29.3. The Merchant acknowledges that Pay360 by Capita may not process Transactions unless the Merchant has a valid and current Merchant Contract.
- 29.4. Any changes to the Acquirer are subject to the prior written consent of Pay360 by Capita. Such consent may include a variation to this Agreement and/or an increase in the Charges for the Service.
- 29.5. The Merchant acknowledges that changes to the Merchant's Acquirer may result in an interruption to, suspension of and/or termination of the Service.

30. Intellectual Property

- 30.1. All Intellectual Property in the Service and any Intellectual Property created by Pay360 by Capita in any works arising from or in connection with the performance of the Service shall be proprietary to Pay360 by Capita, and Pay360 by Capita hereby grants to the Merchant a non-exclusive licence to use such Intellectual Property for the Term of this Agreement solely for the purposes of accessing the Hosted Site (if provided by Pay360 by Capita), use of the Payment Application (if provided by Pay360 by Capita) and/or for the purposes of using the Service..
- 30.2. Intellectual Property supplied to the Merchant by Pay360 by Capita may not be distributed to and/or copied to any third party without the prior express written consent of Pay360 by Capita and the Merchant shall take all steps required to protect Pay360 by Capita's Intellectual Property from disclosure to or access by any third party.
- 30.3. All other Intellectual Property which either party (the Licensing Party) permits the other party to use shall remain the exclusive property of the Licensing Party.
- 30.4. The Merchant acknowledges that from time to time the Service and or any ancillary service may use and/or incorporate Intellectual Property and or data supplied by third parties. The terms applicable to any such Intellectual Property and or data shall be incorporated into and or referenced in the Schedules, published via the Merchant Portal and or Pay360 by Capita Acceptable Use Policy.
- 30.5. The Merchant shall ensure that any content (including but not limited to trademarks and other materials) loaded to the Hosted Site shall;
 - 30.5.1. comprise the property of the Merchant or that the Merchant is licensed to use such Intellectual Property; and
 - 30.5.2. comply with the Pay360 by Capita Site Content Policy.
- 30.6. The Merchant shall immediately notify Pay360 by Capita if there is any claim by a third party that any content supplied by the Merchant is in breach of any third party rights or the Pay360 by Capita Site Content Policy.
- 30.7. The Merchant shall immediately remove any content from the Hosted Site that Pay360 by Capita determines is in breach of this clause 30.
- 30.8. Upon notice by the Merchant and or a third party of any breach of this clause 30, Pay360 by Capita may at its sole discretion terminate the Merchant's access to the Hosted Site and the Merchant Portal.
- 30.9. The Merchant shall indemnify Pay360 by Capita against all damages, losses and expenses arising as a result of any action or claim arising from the Merchant's breach of its obligations under this clause 30.
- 30.10. Pay360 by Capita's rights under this clause 30 shall survive termination of this Agreement.

31. Acceptance & Authorisation

- 31.1. If so offered by a Customer Pay360 by Capita will accept for processing a Card or other payment which Pay360 by Capita is authorised to accept. Acceptance for processing and on-line authorisation of the Transaction does not guarantee payment by the Customer or otherwise.
- 31.2. Acceptance of a Transaction by Pay360 by Capita shall in no way either directly or indirectly prove or be deemed to prove the validity of any Transaction or Transaction receipts. The Merchant hereby accepts that Pay360 by Capita are providing no assurances that any Transaction will be honoured or that Pay360 by Capita shall not exercise any Chargebacks or other rights of reduction or set-off under this Agreement even where such Transaction has been authorised.

32. Third Party Applications and Third Party Integrations

- 32.1. From time to time the parties may agree that the Merchant may submit and/or receive data and/or Transaction Data via a third party application that has completed a successful integration to Pay360 by Capita including but not limited to a mobile application ("Third Party Data Service").
- 32.2. The Merchant agrees that Pay360 by Capita may disclose information, Transaction Data and or Confidential Information as is reasonably required in relation to the Third Party Data Service.
- 32.3. Pay360 by Capita will not be required to disclose any data and or Transaction Data if the Third Party Data Service is not compliant with the appropriate PCI-DSS accreditation or standard and/or if the disclosure is not compliant with applicable Scheme Rules or laws.
- 32.4. Any Charges associated with the Third Party Data Service shall be as specified in the Schedule or as notified to the Merchant in writing by Pay360 by Capita from time to time.
- 32.5. Pay360 by Capita is not liable for any claims, errors or omissions arising from or in connection with the performance of any such Third Party Data Service and/or the maintenance of any Third Party Data Service.
- 32.6. The Merchant acknowledges that Pay360 by Capita may if in the reasonable opinion of Pay360 by Capita the Third Party Data Service compromises and or has an adverse impact upon the Services;
 - 32.6.1. terminate and/or suspend an integration with any Third Party Data Service;
 - 32.6.2. decline to accept data and/or Transactions from or submit data and or Transactions to the Third Party Data Service.
- 32.7. Termination or suspension of the Third Party Data Service by Pay360 by Capita does not breach or terminate this Agreement.
- 32.8. The Merchant agrees that Pay360 by Capita may treat any communication from the Third Party Data Service in relation to the operation and use of the Third Party Data Service integration as though it has been issued by the Merchant. Pay360 by Capita may disclose information in relation to the individual transactions submitted by the Third Party Data Service to the Merchant's nominated Third Party Data Service supplier as specified in the Schedule.

33. Transaction Information

- 33.1. The Charges and chargeable events for each Service are as specified in the Schedule.
- 33.2. The Merchant will also pay the Acquirer for the acquiring services received by the Merchant under the Merchant Contract. Details of these fees and charges are contained in the Merchant Contract and do not form part of this Agreement.
- 33.3. All Charges referred to in this Agreement shall be exclusive of taxes which will be levied at the appropriate rate as applicable and as the same may be amended from time to time. Scheme fees and charges shall be levied and or payable by the Merchant as required by the Scheme Rules.

34. Merchant Data Obligations

- 34.1. In addition to the obligations specified in the General Terms, the Merchant is responsible for;
 - 34.1.1. obtaining all necessary consents and permission to provide Transaction Data and or Event Data to Pay360 by Capita for use with the Pay360 Payment Services Platform;
 - 34.1.2. the development and maintenance of the integration used by the Merchant to submit Transaction Data and or Event Data from the Merchant to the Pay360 Payment Services Platform;
 - 34.1.3. monitoring the Service on a regular basis and reporting any problems or anomalies to Pay360 by Capita in a prompt and timely manner;
 - 34.1.4. the reconciliation of any settlement and/or Transaction information associated with the Service; and
 - 34.1.5. ensuring all Transaction Data and/or Event Data submitted to Pay360 by Capita under the Agreement is submitted via the integrations to the Pay360 Payment Services Platform.

[Clause 35 will only apply if the Merchant has a minimum processing commitment or exclusivity].

35. Processing volumes

- 35.1. The Merchant acknowledges the Charges and fees offered by Pay360 by Capita reflect the volumes of Transactions to be submitted by the Merchant. For the duration of this Agreement, the Merchant agrees that Pay360 by Capita shall either be;
 - 35.1.1. the Merchant's exclusive online card payment service provider (Sole Service Provider); or
 - 35.1.2. where agreed by the Parties, the Merchant shall comply with any Minimum Processing Commitment specified in the Schedule.
- 35.2. If the Minimum Processing Commitment for a calendar month is not achieved the Merchant agrees to pay the difference between Fees and Charges due in relation to the actual Transactions (excluding Failed Transactions) processed during the relevant calendar month and the Fees and or Charges that would have been payable had the Minimum Processing Commitment be achieved.
- 35.3. The Merchant further agrees that, during this Agreement, where Pay360 by Capita is the Sole Service Provider, the Merchant shall not use the services of any third party to process the Transactions or provide services similar to the Services referred to in this Agreement without the prior written consent of Pay360 by Capita.
- 35.4. If, at the date of the Agreement Pay360 by Capita is to be the Sole Service Provider, the Merchant processes Transactions or uses services of an alternative payment service provider (Alternative Service Provider) which directly or indirectly competes with the Services provided by Pay360 by Capita, the Merchant agrees to serve notice of termination on the Alternative Service Provider as soon as the contract with the Alternative Service Provider allows, unless Pay360 by Capita has agreed otherwise and Pay360 by Capita has provided its prior written consent.

[Clause 36 will only apply if the Merchant is a Gaming Merchant].

36. Prohibited Jurisdictions – Gaming Merchants

- 36.1. The Merchant acknowledges that Pay360 by Capita may at its sole discretion decline to process Transactions originating from gambling or any other prohibited service, including but not limited to Transactions originating from cardholders and or activities located in or deemed to be located in the jurisdictions listed in clause 36.4 (the “Prohibited Jurisdictions”).
- 36.2. Pay360 by Capita reserves the right as the consequence of legal, regulatory and or Scheme advice received by Pay360 by Capita and at its sole discretion to amend the Prohibited Jurisdictions by notification to the Merchant in writing from time to time.
- 36.3. Subject to legal, Scheme and or regulatory restrictions, Pay360 by Capita shall use reasonable endeavours to provide the Merchant with not less than 30 days’ notice in writing of any such changes under clause 36.2 providing always that nothing in this Agreement will require Pay360 by Capita to process any Transaction which is not in accordance with relevant laws, regulations, regulatory requirements and or Scheme Rules.
- 36.4. For the purpose of this Agreement, Prohibited Jurisdictions shall mean;
- 36.4.1. China
- 36.4.2. Hong Kong
- 36.4.3. Israel
- 36.4.4. Malaysia
- 36.4.5. Singapore
- 36.4.6. Turkey
- 36.4.7. USA
- As the same may be amended by Pay360 by Capita by notice in writing from time to time.

[Clause 37 to 39 will only apply if the Merchant Administrator structure is used].

37. Appointment of Merchant’s Administrator

- 37.1. The Merchant has appointed the organisation specified in the Schedule as its billing administrator (“Merchant’s Administrator”) for the purpose of the administration and operation of this Agreement as specified therein and, if specified in the Ancillary Services Agreement, to provide the technical and physical interface as a service provider for the Merchant with Pay360 by Capita.
- 37.2. The Merchant shall not, during the continuance of this agreement, appoint any other person, firm or company as its Merchant’s Administrator without the prior written consent of Pay360 by Capita.
- 37.3. For the purpose of the administration of this Agreement;
- 37.3.1. Pay360 by Capita is instructed and authorised by the Merchant to provide information and instruction relating to this Agreement and payment processing to the Merchant’s Administrator;
- 37.3.2. The Merchant’s Administrator is instructed and authorised by the Merchant to provide information and instruction relating to this Agreement and payment processing to Pay360 by Capita.
- 37.3.3. The Merchant’s Administrator is instructed to perform the functions specified in this Agreement including but not limited to those set out in clause 3 and clause 4 of this Agreement and Pay360 by Capita is hereby notified of the Merchant’s request for the Merchant’s Administrator to perform these functions as the Merchant’s Administrator.
- 37.4. The Merchant shall notify Pay360 by Capita in writing of any variation and or termination of its appointment of the Merchant’s Administrator as its Merchant’s Administrator to the extent any such variation or termination impacts the administration of this Agreement.
- 37.5. Termination of the appointment of by the Merchant of the Merchant’s Administrator shall not terminate this Agreement.
- 37.6. For the purpose of these clauses the following definitions will apply;
- Ancillary Service Agreement:** the agreement between the Merchant Administrator and the Merchant for services;
- Merchant Administrator:** the person and or organisation specified in the Schedules.

38. Warranties in respect of the Merchant’s Administrator

- 38.1. The Merchant warrants that;
- 38.1.1. all Merchant Identifications (MIDs) provided to Pay360 by Capita via the Merchant's Administrator are assigned to the Merchant by an Acquirer;
 - 38.1.2. all Transactions submitted to Pay360 by Capita by the Merchant originate from goods or services provided by the Merchant and or the Merchant's Administrator as a service provider for the Merchant.

39. Invoicing via the Merchant's Administrator

- 39.1. The Merchant appoints the Merchant Administrator to administer the payment of Charges payable by the Merchant to Pay360 by Capita under this Agreement and the provisions of clause 5 of the General terms shall be varied as set out in this clause 39.
- 39.2. The Merchant agrees that Pay360 by Capita will, at the sole discretion of Pay360 by Capita, issue invoices for all Charges, fees and payment due under the Agreement to;
- 39.2.1. the Merchant Administrator; or
 - 39.2.2. to such other legal entity may be agreed in writing by the parties from time to time; or
 - 39.2.3. the Merchant if no Merchant Administrator has been appointed by the Merchant.
- 39.3. Pay360 by Capita will, for the duration of the Merchant Administrator appointment, issue its invoices under this Agreement (including value added tax invoices where applicable) to the Merchant Administrator and shall not be obliged to provide invoices directly to the Merchant. The Merchant may obtain information on the number of Transactions processed via the Merchant Portal.
- 39.4. The Merchant acknowledges that the Merchant has entered into an Ancillary Service Agreement with the Merchant Administrator and that the Charges due under this Agreement per Transaction may be incorporated into invoices issued to the Merchant by the Merchant Administrator and included in the generic transaction payment description. The Merchant Administrator shall not be required to provide the Merchant with a separate invoice for Charges due under this Agreement.
- 39.5. Pay360 by Capita acknowledges that receipt from the Merchant Administrator of payment of the Charges due under this Agreement shall discharge the Merchant's liability in respect thereof.
- 39.6. If the Merchant terminates its Ancillary Service Agreement Pay360 by Capita shall be entitled to terminate this Agreement or may at Pay360 by Capita's sole discretion elect to bill the Merchant direct and apply the Charges specified in the Schedule.
- 39.7. The Merchant's obligation to pay Pay360 by Capita direct and/or to pay any new Merchant Administrator shall not apply until notice has been given in writing to the Merchant in accordance with the terms of this Agreement.
- 39.8. The Merchant agrees that information in relation to the Services under this Agreement may be disclosed by Pay360 by Capita to the Merchant Administrator.
- 39.9. The Merchant acknowledges that Pay360 by Capita is not liable in any way for the performance of and or obligations contained in the Ancillary Service Agreement.
- 39.10. The parties agree that the Merchant Administrator is not authorised to vary and or amend any of the terms in this Agreement.

[Clause 40 will only apply if the Merchant has a Merchant Notification Service]

40. Merchant Notification Process

- 40.1. Any alterations to the Services that require notification to the Nominated Merchant Contact under this Agreement will be notified to the Merchant via the Merchant Portal and via the Merchant Notification Process.
- 40.2. For the purpose of this clause the following definitions shall apply;
- Merchant Notification Process;** the procedure for providing notification to the Merchant as specified in the Schedule;
 - Nominated Merchant Contact;** the person and or persons identified in the Schedule.

[Clause 41 will only apply if promotional activity is agreed.]

41. Promotional Activity

- 41.1. The Merchant agrees to participate in the promotional and marketing activity (“Promotional Activity”) as specified in the Schedule, such activity to commence 4 weeks after the Effective Date, together with such other Promotional Activity as the parties may agree from time to time.
- 41.2. Except to confirm the existence of this Agreement, Pay360 by Capita shall not make any press announcements or publicise this Agreement or its contents or the relationship between the parties in any way without the prior written consent of the Merchant, which shall not be unreasonably withheld or delayed.
- 41.3. Pay360 by Capita agrees that the text and layout of any promotional and or marketing materials will be provided to the Merchant for the Merchant’s consent prior to publication such consent not to be unreasonably withheld or delayed.
- 41.4. Each party represents that its Intellectual Property (including any trademarks and or any other materials provided to the other party) used for promotional activity does not and will not infringe the Intellectual Property Rights or any other similar rights of any third party.
- 41.5. For the purpose of the promotional activity and any other activity that may be agreed between the parties from time to time, the Merchant hereby grants Pay360 by Capita a non-exclusive, royalty-free right and licence to use, display and reproduce the Merchant’s trademarks and other Intellectual Property Rights solely in connection with the provision of the Service. Pay360 by Capita agrees to adhere to the Merchant’s reasonable usage guidelines, as notified in writing by the Merchant to Pay360 by Capita from time to time.
- 41.6. The parties shall co-operate in issuing such press releases and similar media statements in respect of the Service offered under this Agreement as either party may deem reasonably appropriate from time to time.
- 41.7. Each party shall have the right to inform their customers and the public regarding the existence of, but not the terms of, this Agreement.
- 41.8. Each party may use the other's name in marketing their respective products and services and may link to each other's websites, but neither party will perform any actions that will harm the other's or its customers' name and reputation.
- 41.9. Any use of the other party’s trademarks and or brand shall be in accordance with the owning party’s Brand Management Policies as notified in writing to the other party from time to time and in accordance with the terms of this Agreement.

Annex 1
Personal Data and processing activity

Subject matter of the processing	Transactional Payment Processing
Duration of the processing	Transaction processing is transient at the point of time of the transaction but our policy is to retain the transaction data to support international payment card scheme defined chargeback timescales, or, if card on file is requested by a cardholder via a merchant or organisation, for the duration of the validity of the card.
Nature and purpose of the processing	The nature and purpose of the processing is to enable data subjects to make payments for good and services by facilitating the payment processes between the data subject, the relevant merchant or organisation providing the goods or services and the associated components of the wider financial system including acquirers, banks and schemes.
Type of personal data	Personal data to support the payment for goods and services, including name, account details, and payment details associated with the transaction as defined by the merchant, organisation, acquirer, bank or scheme.
Categories of data subjects	Individuals who wish to make payments for goods and services.
Obligations and rights of the Merchant	As defined in the terms in this agreement.