

123SEND LTD – TERMS AND CONDITIONS

These Terms and Conditions set out the basis on which One Two Three Send Limited (123Send Limited) will provide the Services and/or sell the Consumables as set out in the accompanying Order Form. Please read these Terms and Conditions carefully before signing the Order Form. Once the Agreement is in place, the terms and conditions will be binding on both parties.

1 DEFINITIONS

In these terms, the following words have the following meanings:

"Acquirer" means the financial services company to which Your Payment Transactions and Refund instructions are routed for authorisation and settlement.

"Agreement" means these Terms and Conditions together with the signed Order Form and any additional terms as may be referred to herein.

"Agreement Period" means the Minimum Term and any subsequent term until the Agreement is terminated.

"Card" means a current valid, credit, debit or charge card.

"Cardholder" means the individual holder of a Card.

"Cardholder Information" means information (in any reproducible format) which relates to a Cardholder or other identifiable individual, whether supplied by You for processing by Us or whether generated by Us in the course of performing Our obligations. This information may include some or all of the following information: Cardholder name and all data encoded on a Cardholder's Card.

"Charges" means the charges for the Services and Consumables as set out in the Order Form or any additional charges or fees set out in these Terms and Conditions.

"Consumables" means receipt rolls, ink cartridges and other consumables.

"Data Protection Law" means as applicable the Data Protection Act 2018, the General Data Protection Regulation ((EU) 2016/679), (and any UK law which implements or acts as a domestic equivalent of it in whole or in part), and any applicable laws, regulations or secondary legislation relating to privacy or data protection, as amended or updated from time to time, in so far as the same relates to the provisions and obligations of the Contract.

"Deposit" has the meaning given in clause 7.1.

"Disconnection Fee" means a fee of £25 plus VAT for the disconnection of the Payment Terminal(s) and/or Services.

"Minimum Term" means the minimum term set out in the Order Form, subject to earlier termination by Us in accordance with these terms and conditions.

"Network" means the PSTN, IP/WiFi/Broadband, or mobile telephone network or any other connectivity employed by Us to which the Payment Terminal(s) are connected as necessary from time to time.

"Network Provider" means the provider of the Network.

"Optomany" means Our sister company who may provide / facilitate some of the Services offered by Us.

"Control Centre (CC)" means the online support, management and reporting tool as is made available by Us and/or Optomany;

"Order Form" means the 123Send order form setting out Your details, the Payment Terminal(s), Services, Charges, Minimum Term and other applicable information.

"Our" **"Us"** and **"We"** means One Two Three Send Limited (123Send) a company registered in England and Wales with company number 03736624 whose registered office is at Vaughan Chambers, 4 Tonbridge Road, Maidstone, Kent, ME16 8RP and whose principal place of business is at 120 Leman St, London E1 8EU.

"Payment Terminal(s)" means the payment terminal(s) (if any) described in the Order Form which are provided to You for the purpose of processing Payment Transactions in accordance with the Agreement together with the related modem(s), SIM card(s), battery(s), product manual(s), charging base(s) and peripheral equipment provided with the payment terminal(s) but excluding the Consumables.

"Payment Transaction" means a Card transaction processed with the intention of a Cardholder incurring a liability resulting in monies being received from the Card issuer to Your Acquirer and credited to Your bank account.

"PCI DSS" means the Payment Card Industry Data Security Standard, a worldwide set of requirements set by the Payment Card Industry Security Standards Council.

"Privacy Policy" means the 123Send Privacy Policy which is available on the 123Send website www.123send.net (as updated from time to time).

"Reconnection Fee" means a fee of £25 plus VAT for the reconnection of the Payment Terminal(s) and / or Services.

"Refund" means a Card transaction processed with the intention of monies being remitted to the Cardholder's Card account.

"Services" means the services set out in the Order Form which may include (if detailed in the Order Form) the provision of the Network and payment terminal support services.

"SIM(s) / SIM Card(s)" means the card (if any) provided by Us for use with a Payment Terminal or any other equipment provided by Us which uses a Network for the provision of Services.

"Trade Association" means a Trade Association with which We have an association and to whose members We may offer discounted Charges.

"Working Day" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

"Warranty Period" means the period of time during which We will replace any terminal that develops a fault (not caused by accidental or malicious damage) free of charge.

"You" or **"Your"** means the customer named in the Order Form. If You are more than one person, each person will be jointly and severally liable under the Agreement.

2 BASIS OF THE AGREEMENT

2.1 We agree to provide the Services to You for the Agreement Period in accordance with these Terms and Conditions.

2.2 Where detailed in the Order Form, We will provide You with the Payment Terminal(s) set out in the Order Form to enable You to receive the Services.

2.3 Your Order Form shall only be deemed to be accepted when We have received a signed Order Form from You and Your Payment Terminal(s) has been despatched. If You do not sign the Order Form, Your continued use of the Services will be deemed acceptance of the Order Form and these Terms and Conditions. The Minimum Term will commence on the first Working Day following despatch of Your Payment Terminal(s).

2.4 The provision of the Payment Terminal(s) is subject to availability. If a Payment Terminal is not available, We will let You know and will offer You an alternative product.

2.5 The Agreement constitutes the entire agreement between You and Us. You acknowledge that You have not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Us which is not set out in the Agreement.

2.6 These terms and conditions apply to the Agreement to the exclusion of any other terms that You may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. No variation of the Agreement shall be effective unless it is in writing and signed by one of Our authorised representatives.

3 SERVICES

3.1 The details of the Services to be supplied by Us shall be as set out in this Agreement and as detailed in the Order Form. It is Your responsibility to ensure that such details are correct. Following the acceptance of the Order Form by Us, We shall provide the Services to You and You agree that such supply shall be subject to the terms and conditions of this Agreement. The Services We provide to You may include some or all of the facilities set out in this clause 3.

3.2 Airtime Services

3.2.1 We will fit the SIM(s) into and configure the Payment Terminal.

3.2.2 We will arrange GPRS connectivity to a suitable Network. You acknowledge that it is Your responsibility to provide the Network connectivity where GPRS airtime is not one of the Services provided.

3.2.3 In the event that geographic conditions prevent regular GPRS connection to the Network to operate the Payment Terminal, We will work with You to identify and supply alternative GPRS network SIM card(s) if available. If an alternative is not available, We will offer You an alternative terminal solution that is not reliant on GPRS connectivity. Additional charges may apply for the alternative terminal solution.

3.2.4 We cannot guarantee Network Coverage. If at any time during the term of the Agreement, Network coverage cannot be obtained by You, We will assist in finding an alternative Network or Payment Terminal solution where possible, however You will remain liable for the payment of all Charges and any additional costs.

3.3 WiFi / IP Services

Where We provide Payment Terminal(s) for connection to Your WiFi / IP Network:

3.3.1 You will need to connect the Payment Terminal to Your WiFi / IP Network according to Your own system requirements. We will provide instructions to You on how to do this.

3.3.2 a WiFi / IP connection is needed for the Payment Terminal(s) to connect to. You acknowledge that it is Your responsibility to provide the necessary Network connectivity.

3.3.3 You acknowledge that We are not responsible for the speed, maintenance, connectivity or efficiency of Your WiFi

/ IP Network and that responsibility for this lies solely with You.

3.3.4 You acknowledge that You will be responsible for the maintenance of all in-house systems (including WiFi / IP connections), their features and their PCI DSS compliance.

3.4 Transaction Routing Services

Where We provide transaction routing services We will:

3.4.1 Configure the Payment Terminal(s) with appropriate software for the processing of Payment Transactions or Refunds by any Card capable of being accepted by You under the Terms of Your agreement with Your Acquirer in accordance with the Acquirer details given by You in the Order Form;

3.4.2 Provide software upgrades for the Payment Terminal(s) from time to time; and

3.4.3 Facilitate the routing of Card authorisations and Payment Transactions to and from Your Acquirer

3.5 Control Centre (CC)

3.5.1 The Control Centre (CC) is a public facing browser based web application including a suite of tools allowing the reporting of draft transactions and the management of the payment environment for customers. Additional charges may apply for this Service;

3.5.2 Should You choose to use the CC Service You will be provided with log on and password details by Us. It is Your sole responsibility to maintain these passwords and ensure that they are kept secure. Should You choose to give access to Your CC account to others, this is done at Your own risk;

3.5.3 We may from time to time request that You change Your password for the CC. It is Your responsibility to make these changes when requested to do so by Us;

3.5.4 We and Optomany do not warrant that the CC service/software will be uninterrupted or error free;

3.5.5 We and Optomany reserve the right to amend or vary the Control Centre, provided that any such amendment or variation does not adversely affect the provision of the service.

3.6 Help Desk

We provide help desk and support services for Payment Terminal(s) provided to You by Us or for Payment Terminal(s) which are owned by You (if set out in the Order Form). Where We provide help desk and support services We will:

Provide access to a telephone help desk service available between the hours of 8.00am and 11.00pm Monday to Saturday and 10:00am to 5.00pm on Sundays and National and Bank Holidays (excluding Christmas Day). All support requests shall be logged by Us. We shall give each support request a support reference number

3.7 Support Services

Two Support Service options are available:

'Silver' Support Service - We will arrange repair or replacement of the Payment Terminal if it has been subject to accidental damage;

'Gold' Support Service - We will also arrange replacement of the Payment Terminal if it has been lost or stolen.

3.7.1 If the Payment Terminal develops a fault (excluding accidental or malicious damage) We will provide a replacement terminal free of charge if You are still within the first 12 months of your original agreement with Us "Warranty Period".

3.7.2 If the fault is reported to Us by You before 3.00pm on a Working Day, We will, unless prevented by circumstances outside Our control (including without limitation the Acquirer log on process for Merchant Identification Numbers, delivery location), arrange repair or replacement of the Payment Terminal on the next Working Day or the following Working Day thereafter if reported after 3.00pm.

3.7.3 Replacement Payment Terminals may be delivered on a Saturday if faults are notified by 3.00pm on a Friday (excluding Bank Holiday Friday). This will be subject to an exchange Charge unless You have taken Our Gold Support Service (as described above).

3.8 General Provisos and Exclusions

Our repair and replacement services under clause 3.7 are subject to the following specific conditions:

3.8.1 Our repair options may only be taken out at initial sign up or within the first 12 months of Your agreement. Where You take out a repair option after initial sign up, and within the

first 12 months of Your agreement, there will be a 90 day no-claim period which comes into effect immediately after purchase.

3.8.2 At Our discretion, a Support Service may be taken out after the first 12 months of the agreement have passed. In these circumstances, a 30 day no-claim period will come into effect immediately after purchase.

3.8.3 Our repair and replacement services shall not extend to damage caused by misuse or malicious acts;

3.8.4 Our repair and replacement services shall not cover Consumables;

3.8.5 We shall be entitled to levy a charge in respect of a Payment Terminal if, upon inspection, it is not found to be faulty;

3.8.6 if You are in arrears in respect of Your payment obligations under this Agreement, this will invalidate Your cover.

3.8.7 Once You have exceeded the number of replacements allowed under Your Support Service, You will be liable for the cost of any future replacement terminals for the remainder of Your agreement.

3.9 Provisos and Exclusions –Support Services

The Services provided under clauses 3.6 and 3.7 are also subject to the following specific conditions:

3.9.1 a replacement Payment Terminal will be of the same or improved specification to that of the swapped unit and may be from refurbished and / or returned stock;

3.9.2 Your report to Us of the theft or loss must be in writing, on the headed paper of Your business and contain full details of the date, time and circumstances of the theft or loss, together with a Police crime reference number in the case of theft and made as soon as practicable after the event;

3.9.3 replacement of the Payment Terminal under clause 3.7 shall be limited to no more than one occasion during the first 12 months of the Agreement Period and no more than two occasions during the Agreement Period after that (and an unused replacement in the first 12 months may not be carried over into the remaining Agreement Period) and all replacements are subject to the payment of the relevant Charges for the duration of the Minimum Term; and

3.9.4 We can withdraw the provision of the support services at any time after the Minimum Term.

Next day delivery may not be available to some locations and / or post codes. Where this is the case You will be notified of this at the time of requesting a replacement terminal and You will be provided with an expected delivery date.

3.9.5 The "Warranty Period" will only be applicable during the first 12 months of Your current terminal agreement with Us. If upon receipt of the terminal it is found to have been damaged by You, You will be liable for the cost of the replacement terminal.

3.10 Other Service Terms

Where We agree to provide any on-site services, You will be responsible for: (i) obtaining any necessary consents and passes to enable Our personnel to access the applicable site; (ii) ensuring that the site is suitable for the performance of the services; and (iii) ensuring that the health and safety of Our personnel is maintained. You acknowledge that a failure to comply with this clause could result in You being required to pay Us additional charges and expenses.

4 PROVISION OF PAYMENT TERMINAL(S)

4.1 The Payment Terminal(s) will be made available to You throughout this Agreement as part of the Services or (if specified in the Order Form) they will be sold to You. Save as set out in clause 6, any reference to Payment Terminal(s) shall include those which are made available as part of the Services and those which are sold to You.

4.2 We will endeavour to deliver the Payment Terminal(s) to the delivery location shown in the Order Form on the delivery date shown in the Order Form or otherwise notified to You by Us. Our standard delivery times are before noon (between 8am and 5pm) but this is not guaranteed.

4.3 You shall ensure that someone is available at the delivery location shown in the Order Form to take delivery of the Payment Terminal(s). You will still be liable to pay Us all Charges for the Services and Consumables if You do not take delivery of the Payment Terminal(s).

4.4 Where We have agreed to load Your digital file and/or logo on a Payment Terminal or replacement Payment Terminal (as the case may be) to be displayed on the screen or elsewhere, You are solely

responsible for providing the information and designs to be uploaded by Us and for updating Us with any alterations or changes required to Your digital file and/or logo. You shall ensure that You have the necessary rights to enable Us to use such digital files and logos and warrant that such use will not infringe the rights of any third parties. While We will endeavour to ensure that Your digital file and/or logo is correctly loaded onto the Payment Terminal, We will not be liable to You for a failure to do this.

5 PROVISION OF CONSUMABLES

5.1 You are responsible for providing all Consumables necessary for the operation of the Payment Terminal(s) or Services under the Agreement and for ensuring that those Consumables are compatible for the Payment Terminal(s).

5.2 We may sell Consumables to You for use with the Payment Terminal(s). In these circumstances, We will send You an invoice for the Consumables and payment will be taken by Direct Debit.

6 PURCHASE OF PAYMENT TERMINAL(S)

Where You purchase the Payment Terminal(s) from Us then, in respect of those Payment Terminal(s):

6.1 If the Payment Terminal develops a fault (excluding accidental or malicious damage) during the first 12 months post purchasing the terminal ("Warranty Period" a replacement terminal will be provided without charge.

6.2 The Services set out in clause 6 (and the Services set out in clause 7 following the Warranty Period) shall not apply unless explicitly set out in the Order Form or agreed between You and Us, and any replacement Payment Terminal(s) will be owned by Us.

6.3 Any Payment Terminal(s) returned for replacement under clause 3.7 shall become Our property on receipt by Us.

6.4 Reference to Payment Terminal(s) in the following clauses shall not apply: 7, 8.1, 8.5, 8.6, 9, 10.1.4, 10.1.5, 10.1.15, 10.1.16, 10.1.17, 10.4, 15.1.1 and 15.2.3.

6.5 Title in the Payment Terminal(s) will not pass to You until We receive payment in full (in cash or cleared funds) for such Payment Terminal(s) and any Services in respect of which payment has become due.

7 DEPOSIT AND CHARGES

7.1 Depending on the findings of Our risk assessment, You may be required to pay Us a deposit to act as security against default by You of payment of any Charges or any loss of or damage caused to the Payment Terminal(s) ("Deposit"). We will inform You of the amount of Deposit required. If You fail to pay the Charges in accordance with the Agreement, or cause loss or damage to the Payment Terminal(s), We shall be entitled to apply the Deposit against such default, loss or damage. The Deposit (or balance thereof) shall be credited back to You within 30 days of the end of the Agreement Period.

7.2 You must pay all Charges by Direct Debit on the due date. Prompt payment is an essential condition of the Agreement. Your payment obligations shall not be affected by the availability of the Services.

7.3 You agree to pay the Charges for the whole of the Minimum Term whether or not You use the Payment Terminal(s) or Services during that time. Unless terminated in accordance with the Agreement, all Services will continue at the end of the Minimum Term and You will be required to continue paying the Charges under the end of the Agreement Period.

7.4 If You are a registered member of a relevant Trade Association You may be eligible for a discount on the Charges. If You cease to be a registered member such Trade Association during the term of the Agreement, You must notify Us in writing immediately and We will have the right to withdraw the discount from the date of termination of Your membership.

7.5 The Charges are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by You at the rate and in the manner from time to time prescribed by law.

7.6 All amounts due under this agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7.7 If You fail to make any payment due to Us under the Agreement by the due date for payment, then, without limiting Our rights and remedies, We may suspend the Services and You shall pay interest on the overdue amount at the rate of 4% per annum above the then current base rate of Royal Bank of Scotland plc. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment.

8 TITLE, RISK AND INSURANCE

8.1 The Payment Terminal(s) shall at all times remain Our property and You shall have no right, title or interest in or to the Payment Terminal(s) (save the right to possession and use of the Payment Terminal(s) subject to the terms and conditions of the Agreement).

8.2 The risk of loss, theft, damage or destruction of the Payment Terminal(s) shall pass to You on delivery and shall remain at Your

sole risk during the Agreement Period and any further term during which the Payment Terminal(s) are in Your possession, custody or control ("**Risk Period**") until such time as the Payment Terminal(s) are returned to Us. If the Payment Terminal(s) are damaged, stolen, lost or destroyed for any reason, You will still be liable to pay all Charges.

8.3 You must inspect the Payment Terminal(s) upon delivery and sign a delivery receipt confirming that there are no apparent defects or damages. Thereafter, You must notify Us by telephone call to the 123Send Customer Service Team (0800 54 23 123) within 4 hours (or at the start of the next Working Day if outside of working hours) of any loss or theft of or defect or damage to the Payment Terminal(s) and You must confirm such notification in writing within 2 Working Days. We may require You to provide a police report as evidence of the theft of any Payment Terminal.

8.4 If You lose a Payment Terminal and it is returned to Us, We may return it to You if it is still within the Agreement Period (or you have purchased it) and You have not been provided with a replacement but We may charge You a reasonable fee for doing so.

8.5 During the Agreement Period and the Risk Period, You shall, at Your own expense:

8.5.1 save where You have selected the Gold support service, obtain and maintain insurance for the Payment Terminal(s) to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident; and

8.5.2 obtain and maintain such other insurance as a prudent owner or operator of the Payment Terminal(s) would insure for, to cover any third party or public liability risks of whatever nature and however arising in connection with the Payment Terminal(s).

You shall provide Us with copies of the relevant insurance policies upon request.

8.6 Subject to You paying Us the applicable Charges, We may arrange insurance cover in respect of loss, theft or accidental damage of the Payment Terminal(s) if You select this option. In these circumstances, You will remain responsible for arrangement of such other insurance cover as is required under clause 8.5. Any subsequent Payment Terminal(s) supplied as a replacement will not be covered by Your original insurance cover and You will be required to obtain insurance cover as required under clause 8.5.

9 RETURN OF THE PAYMENT TERMINAL(S)

9.1 We may require You to return the Payment Terminal(s) to Us at the end of the Agreement Period (or upon termination of the Agreement if earlier) in the same condition as at the commencement of the Agreement Period (with the exception of fair wear and tear). Instructions for returning the Payment Terminal(s) will be provided at the time of return. Payment Terminal(s) will be returned at Your cost unless otherwise advised by Us in writing.

9.2 The Payment Terminal(s) must be returned to Us no later than two Working Days after the last day the Agreement Period (or termination of the Agreement if earlier) ("**Return Date**").

10 YOUR OBLIGATIONS

10.1 You undertake and agree:

10.1.1 to ensure that Your company details in the Order Form match those held by Your Acquirer against the merchant number You wish to use. You acknowledge that any inaccuracies may delay Your order and We will not be responsible for such delay;

10.1.2 to tell Us of any change in Your address or bank details and provide Us with any information (including that relating to Your financial position) that We may reasonably require in connection with You or the Payment Terminal(s) or Services provided under the Agreement;

10.1.3 to only use the Payment Terminal(s) and Services for the purpose of effecting Payment Transactions and Refunds in accordance with any operating instructions provided with the Payment Terminal(s) and Services or otherwise in accordance with Our instructions;

10.1.4 to keep the Payment Terminal(s) in good repair and condition and to be responsible for any loss or damage to the Payment Terminal(s), other than through fair wear and tear;

10.1.5 subject to clause 10.1.6, to keep the Payment Terminal(s) (including the SIM) in Your own possession in the UK, and not to alter, sell, lend or otherwise deal with the Payment Terminal(s) nor to allow any charge, lien, security or similar right to be created over the Payment Terminal(s);

10.1.6 that where You wish to take the Payment Terminal(s) abroad, that You will obtain prior written approval from both Us and the Acquirer. Where You have a mobile Payment Terminal, You agree to provide Us with written confirmation

- from Your Acquirer and allow Us at least 7 Working Days before travelling to enable Us to set up international roaming. You understand and accept that an additional cost will be payable by You to Us for this service;
- 10.1.7 to only connect the SIMs to the Payment Terminal(s) and Network and not to use the SIM for any other purpose;
- 10.1.8 not to transfer the SIM from one Payment Terminal to another without Our prior approval;
- 10.1.9 not to be directly or indirectly involved or to knowingly, recklessly or negligently permit any other person to be involved in any fraud or any fraudulent, illegal or improper activity and shall notify Us immediately upon becoming aware of any such fraud or activity. You agree to implement and comply with such procedures and rules adopted by Us from time to time concerned with fraud or any fraudulent, illegal or improper activity;
- 10.1.10 to keep confidential and not to disclose to any third party any personal identification number issued by Us permitting access to the Services or any Cardholder Information;
- 10.1.11 not to allow (whether directly or indirectly) any alteration to the configuration of the SIMs, Payment Terminal(s) or any of their constituent parts without obtaining Our prior permission
- 10.1.12 to ensure that the Payment Terminal(s) are operated in a proper manner by trained competent staff;
- 10.1.13 to keep Us fully informed of all material matters relating to the Payment Terminal(s);
- 10.1.14 to permit Us or Our duly authorised representative to inspect the Payment Terminal(s) at all reasonable times;
- 10.1.15 not to do or permit to be done any act or thing which will or may jeopardise Our right, title and/or interest of in the Payment Terminal(s);
- 10.1.16 to take all reasonable steps to ensure that the Payment Terminal(s) are not confiscated, seized or taken out of Your possession or control under any distress, execution or other legal process, but if the Payment Terminal(s) are so confiscated, seized or taken, You shall notify Us and shall use Your best endeavours, at Your expense, to procure an immediate release of the Payment Terminal(s) and shall indemnify Us on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- 10.1.17 to ensure that at all times the Payment Terminal(s) remains identifiable as being Our property;
- 10.1.18 not do or permit to be done anything which could invalidate the insurances referred to in clause 8;
- 10.1.19 where a WiFi / IP Network is used by the Payment Terminal(s), You will ensure that the Network is available and that the Network connection supports WPA2-PSK technology.
- 10.2 You expressly represent and warrant to Us that:
- 10.2.1 You are legally entitled and authorised to enter into the Agreement;
- 10.2.2 You will not infringe any intellectual property rights in the Payment Terminal(s) or Services or in Your use thereof and You will not violate the privacy of any third parties or any applicable law, statute, or regulation; and
- 10.2.3 You will not copy, modify, decompile or sub-licence any software or other intellectual property rights relating to the Payment Terminal(s) or Services without Our prior written consent;
- 10.2.4 all the information provided by You whether in the Order Form or otherwise is complete and accurate.
- 10.2.5 You will maintain and comply with all applicable PCI DSS requirements.
- 10.3 In the event of any unauthorised use of the Payment Terminal(s) abroad in breach of the terms of the Agreement, We reserve the right to terminate Your Agreement and charge You all outstanding Charges together with any other charges and expenses incurred by Us as a result of that breach.
- 10.4 You acknowledge that We will not be responsible for any loss of or damage to the Payment Terminal(s) arising out of or in connection with any negligence, misuse, mishandling of the Payment Terminal(s) or otherwise caused by You or Your officers, employees, agents and contractors, and You undertake to indemnify Us on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by You to comply with the terms of the Agreement.
- 11 **PCI COMPLIANCE**
- 11.1 We will throughout the Agreement Period remain certified in accordance with the requirements of PCI DSS, such certification to be evidenced by a current Attestation of Compliance which is available for inspection on request.
- 11.2 To the extent that We are in possession of Cardholder Information, We shall, to the extent required by the requirements of PCI DSS, be responsible for such Cardholder Information.
- 11.3 We warrant that all Payment Terminal(s) provided under this Agreement will, at the time of initial deployment be PCI PTS approved.
- 11.4 You will maintain and comply with all applicable PCI DSS requirements to the extent You handle, have access to, or otherwise store, process or transmit any cardholder data or sensitive authentication data, or manage Your cardholder data environment.
- 11.5 You will comply with all obligations made known to You by Us and where otherwise required in relation to PCI DSS.
- 12 **SERVICES**
- 12.1 We will remain liable to pay all Charges due under the Agreement notwithstanding any unavailability, suspension or disconnection of the Network or other Services. You acknowledge that it is Your responsibility to provide the Network connectivity where GPRS airtime is not one of the Services provided.
- 12.2 We may (at Our discretion) suspend the Services and/or disconnect any or all Payment Terminal(s) from the Network if You fail to pay any sums when due or are otherwise in breach of the Agreement or no longer hold a merchant account or if We reasonably believe You are using the Payment Terminal(s) or Services for illegal purposes or purposes for which it is not intended.
- 12.3 If disconnection occurs by reason of clause 12.2, We may charge a Reconnection Fee for any subsequent reconnection.
- 12.4 Payment Terminal(s) that include a 'Roaming SIM' do not guarantee coverage. A Roaming SIM enables the Payment Terminal to connect to the stronger of any of the included Networks (as may change from time to time) or for the user to manually change the Network the SIM attempts to connect to. Roaming SIMs are subject to additional Charges as quoted by Us.
- 12.5 While Network Providers make every effort to ensure the security of their Networks, You acknowledge that for reasons beyond Our control or beyond the control of the Network Provider, there is a risk that Your communications may be intercepted or accessed by those other than the intended recipient.
- 12.6 We do not warrant that access to the Network or the provision of the Services will be uninterrupted or virus free.
- 12.7 All numbers allocated by Us to You for use by You whether on the Network or otherwise are not Your property and You shall not be entitled to use any such number after the Agreement has come to an end. We reserve the right to reallocate or change any such number from time to time during the term of the Agreement and shall have no liability to You on account of any such change.
- 12.8 We shall be entitled at any time, without liability to You to:
- 12.8.1 improve, modify, suspend, test, maintain, withdraw or repair the Services and the SIMs in whole or in part even if this requires suspending the operation of the Services provided We shall use reasonable endeavours to minimise the disruption resulting therefrom;
- 12.8.2 improve, modify, suspend or withdraw the Services and the SIMs in whole or in part and in order to prevent or limit the incidence of any fraud or to facilitate the early detection of any fraud; and
- 12.8.3 withdraw the Services if the Network Provider determines to withdraw the same generally.
- 12.8.4 We shall endeavour to give You as much notice as is reasonably practicable in the circumstances in advance of any improvement, modification, suspension, withdrawal, discontinuance, testing, maintenance or repair referred to above.
- 12.9 Without prejudice to clause 12.8, We shall have the right at any time without notice and without liability to suspend the Services or any part thereof and/or disconnect the Payment Terminal(s) and charge You a Disconnection Fee in any of the following circumstances:
- 12.9.1 if the quality of the Services and/or the SIMs may be or is impaired or otherwise adversely affected due to any act or omission of You or allowed by You; or
- 12.9.2 if Your equipment used in connection with the Services infringes or is alleged to infringe the intellectual property rights of a third party; or
- 12.9.3 if We become aware of, or have reasonable cause to believe that, fraudulent or unlawful use of the Payment Terminal(s), SIMs and/or the Services is taking place; or
- 12.9.4 if in Our opinion You fail to take or unreasonably delay in taking any necessary action in respect of fraud or unlawful activity when the particular circumstances of such fraud or activity have been notified to You by Us; or

- 12.9.5 if the Services are subject to technical failure, modification or maintenance, or access to the Services is denied to Us and/or the Network Provider for any reason.
If We subsequently resume provision of the Services, or reconnect the Payment Terminal(s) or SIMs to the Services, We shall be entitled to charge You a Reconnection Fee.
- 12.10 The Services and SIMs are made available on the basis that:
- 12.10.1 they are not used for anything unlawful, improper or immoral;
- 12.10.2 they are not used to make offensive or nuisance communications in whatever form, or to make or receive reverse charge calls;
- 12.10.3 You do not act or omit to act in any way which will or may injure or damage any persons or the property of any persons (whether or not employees, agents or representatives of Us), or howsoever cause the quality of the Services and/or the SIMs to be impaired;
- 12.10.4 they are only used with the Payment Terminal(s) approved by Us and all relevant laws and regulations, and any policy rules of Us, Your acquiring, any other relevant bank, the PCI Security Standards Council, and the Network Provider are followed;
- 12.10.5 the SIMs are not removed from the Payment Terminal(s) unless prior written approval has been received from Us;
- 12.10.6 they are only used for the purpose of facilitating Payment Transactions and Refunds and are not used to send, receive, upload, download or otherwise facilitate any material which is offensive, indecent, defamatory, of a menacing nature, a nuisance, a breach of privacy or otherwise unlawful and You shall use all reasonable endeavours to prevent the use of the Services and/or the SIMs for spamming, malicious communications or any similar activities to these and comply with all Our and/or generally accepted industry requirements, guidelines and similar documents of instructions including without limitation those in relation to location based services, adult content services and the protection of minors through controlling access to such services by means of barring of handsets or similar means.
- 12.11 In the event that the You fail to comply with Your obligations under the Agreement, We shall have the right (without prejudice to Our other rights and remedies):
- 12.11.1 at any time without notice and without liability to disconnect the Services and / or relevant SIMs from the Services and charge You the Disconnection Fee;
- 12.11.2 if the breach of the Agreement relates to use of SMS data, to charge You for such SMS (as appropriate) plus any charges due in respect of usage outside of the UK together with any associated costs and expenses; and
- 12.11.3 if the breach of the Agreement relates to the use of UK mobiles or fixed lines, to charge You for all such usage together with any associated costs and expenses.
- 13 LIABILITY**
- 13.1 You acknowledge that You have selected the Payment Terminal(s), Consumables and Services as being suitable for Your requirements. Other than where You are dealing as a consumer and as a result have the benefit of certain implied rights, the Agreement sets forth the full extent of Our obligations to You. In particular, there are no conditions, warranties or other terms, express or implied, in relation to the Payment Terminal(s), Consumables or Services, including as to quality, fitness for a particular purpose or any other kind whatsoever. Any condition, warranty or other term concerning the Payment Terminal(s), or Services, which might otherwise be implied into or incorporated within the Agreement, whether by statute, common law or otherwise, is expressly excluded.
- 13.2 Nothing in the Agreement shall exclude or in any way limit Our liability for death or personal injury caused by Our negligence or for fraud or fraudulent misrepresentation or for any other liability which cannot be excluded by law.
- 13.3 Without prejudice to clause 13.2, neither We nor the Network Provider shall be liable whether in Agreement, tort (including negligence), misrepresentation or otherwise, for:
- 13.3.1 any damage to property;
- 13.3.1 loss of profits;
- 13.3.2 loss of revenue; loss of use;
- 13.3.3 loss of business or missed opportunities;
- 13.3.4 loss of goodwill;
- 13.3.5 loss of savings or wasted expenditure; or
- 13.3.6 any indirect or consequential loss or damage, in each case whether direct or indirect, however caused, even if foreseeable.
- 13.4 Without prejudice to clause 13.2, Our maximum aggregate liability for breach of the Agreement (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in Agreement, tort (including negligence), misrepresentation or otherwise, shall in no circumstances exceed the Charges paid or payable by You under the Agreement in the three month period immediately prior to the event giving rise to the claim.
- 14 TERMINATION**
- 14.1 Either party may terminate the Agreement on or after the last day of the Minimum Period by giving the other party not less than 1 month's notice in writing in accordance with clause 20.
- 14.2 We may terminate the Agreement at any time if:
- 14.2.1 You do not pay any of the Charges or any other sums agreed to be paid under the Agreement punctually on the due date for payment; or
- 14.2.2 You breach any other term of Agreement which (if it is capable of remedy) has not been remedied by You within five days of notice from Us requiring it to be so; or
- 14.2.3 You suspend, or threaten to suspend, payment of Your debts or are unable to pay Your debts as they fall due or admit inability to pay Your debts or (being a company or limited liability partnership) You are deemed unable to pay Your debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) You are deemed either unable to pay Your debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986; or
- 14.2.4 You commence negotiations with all or any class of Your creditors with a view to rescheduling any of its debts, or makes a proposal for or enter into any compromise or arrangement with Your creditors; or
- 14.2.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with Your winding up; or
- 14.2.6 You suspend or cease, or threaten to suspend or cease, carrying on all or a substantial part of Your business;
- 14.2.7 You (being an individual) are the subject of a bankruptcy petition or order or You die or, by reason of illness or incapacity (whether mental or physical), You are incapable of managing Your own affairs or become a patient under any mental health legislation; or
- 14.2.8 We have reason to believe that any of the events listed above is likely to occur.
- 15 LIABILITY ON TERMINATION OR EXPIRY**
- 15.1 On termination or expiry of the Agreement, for whatever reason:
- 15.1.1 You must immediately return to Us all Payment Terminal(s). If You fail to do so, We reserve the right to retake possession of the Payment Terminal(s) and / or charge You the cost of the Payment Terminal(s) plus any losses, costs and expenses incurred by Us. We (or Our authorised representatives) may without notice and at Your expense, retake possession of the Payment Terminal(s) and for this purpose may enter any premises at which the Payment Terminal(s) are located; and
- 15.1.2 all customer numbers shall revert to Us; and
- 15.1.3 You shall return all SIMs to Us and permit the disconnection of all and any SIMs which We connected to the Services and shall indemnify Us against all liability howsoever arising for such disconnection.
- 15.2 On termination or expiry of the Agreement, for whatever reason, You shall pay to Us:
- 15.2.1 all arrears of Charges and other sums due and unpaid (together with interest calculated in accordance with clause 7.7);
- 15.2.2 all Charges which (had the Agreement not been terminated) were agreed to be paid by You to Us in respect of the Agreement Period, less a potential discount to be applied at Our sole discretion;
- 15.2.3 any costs and expenses incurred by Us in recovering the Payment Terminal(s) and/or in collecting any sums due under the Agreement (including any storage, insurance, repair, transport, legal and remarketing costs); and
- 15.2.4 where applicable, any losses, costs and expenses incurred by Us as a result of any breach of the Agreement by You.
- 15.3 Termination or expiry of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
- 16 FORCE MAJEURE**
- We shall not be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of Our obligations under the

- Agreement if such delay or failure result from events, circumstances or causes beyond Our reasonable control.
- 17 CONFIDENTIAL INFORMATION**
- 17.1 You undertake that You shall not at any time, disclose to any person any confidential information concerning the business, pricing, affairs, customers, clients or suppliers of 123Send Limited or of any member of the group of companies to which it belongs, except as permitted by clause 17.2. You shall not use such confidential information for any purposes other than performing Your obligations under the Agreement.
- 17.2 You may disclose the confidential information:
- 17.2.1 to Your employees, officers, representatives or advisers who need to know such information for the purposes of carrying out Your obligations under the Agreement provided that You ensure that such people comply with this clause 17; and
- 17.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority provided that, to the extent You are legally permitted to do so, You gives Us as much notice of such disclosure as possible.
- 18 DATA PROTECTION**
- 18.1 You acknowledge that We may use Your name, contact details and other information which We collect about You in the performance of the Contract in accordance with Our Privacy Policy.
- 18.2 This clause 18 is in addition to, and does not relieve, remove or replace, Your or Our obligations under Data Protection Law.
- 18.3 Any terms or words defined in Data Protection Law and used in this clause 18 relating to Personal Data shall, for the purposes of this clause 18, have the meaning set out in Data Protection Law. The term "Personal Data" shall have such meaning as given under Data Protection Law and it shall, for the purposes of the Contract, include Cardholder Information. This clause 18 shall be read in accordance with Data Protection Law, and in the event that any of the provisions of this clause 18 are deemed invalid, unlawful, unenforceable or non-compliant with Data Protection Law to any extent, they shall be deemed modified to the minimum extent necessary to make it valid, legal, enforceable and compliant under Data Protection Law whilst maintaining the original intention of this clause 18.
- 18.4 You and We acknowledge our understanding that for the purposes of Data Protection Law, You will generally be the data controller and We will generally be the data processor in relation to Personal Data provided by You which is processed by Us in connection with the performance by Us of Our obligations under the Contract. However, You further acknowledge that there may be some circumstances where We will act as a data controller in relation to such Personal Data. In particular, We may act as a data controller in respect of Personal Data relating to Your personnel (for the purposes of managing Our relationship with You), and as required by banks or card schemes in respect of any continued retention of cardholder Personal Data for fraud prevention purposes and to deal with reversed or disputed transactions. The details of processing required by Data Protection Law to be set out in the Contract are as follows (and You acknowledge such details as accurate and comprehensive):
- 18.4.1 **Subject Matter.** Our supply of the Services to You.
- 18.4.2 **Nature and Purpose.** We will process the Personal Data for the purposes of providing the Services to You in accordance with the Contract. This may include (but is not limited to) sending transaction authorisation requests to card schemes and acquiring banks which act as data controllers (or processors of controllers) in their own right, and are not Our sub-processors.
- 18.4.3 **Duration.** The Rental Period and such period following the Rental Period until deletion or return of the Personal Data by Us in accordance with the Contract. Cardholder Information is retained for 5 years following a transaction to enable tokenisation, reporting and support enquiries.
- 18.4.4 **Types of Personal Data and categories of data subject.** Cardholder Information (and associated Personal Data) of Your customers as provided to Us by (or at the direction of) You (including by card schemes and acquiring banks).
- 18.5 Where Personal Data is processed by Us as a data processor on Your behalf in connection with the Contract, We shall:
- 18.5.1 process that Personal Data only on Your written instructions (and You hereby instruct Us to process that Personal Data as required to perform Our obligations under the Contract) unless We are required by the laws of England and Wales or of any member of the European Union or by the laws of the European Union applicable to Us to process Personal Data (**Applicable Laws**). Where We are relying on Applicable Laws as the basis for processing Personal Data, We shall notify You of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Us from so notifying You;
- 18.5.2 only appoint sub-processors as permitted under the Contract;
- 18.5.3 ensure that We have in place appropriate technical and organisational as required by Data Protection Law;
- 18.5.4 ensure that all Our personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- 18.5.5 not transfer any Personal Data outside of the European Union and the UK unless Your prior written consent has been obtained (save that where You instruct Us to transfer Personal Data to card schemes or acquiring banks located outside of the European Union and the UK, You hereby instruct Us to transfer the relevant Personal Data outside of the European Union and the UK for that purpose);
- 18.5.6 taking into account the nature of the processing, assist You, at Your cost, in responding to any request from a data subject (insofar as this is possible) and in ensuring compliance with Your obligations under Data Protection Law with respect to (taking into account the information available to Us) security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 18.5.7 notify You without undue delay on becoming aware of a Personal Data breach, and (with regard to Our obligations under clause 18.5.9) immediately inform You if (in Our opinion) an instruction of Yours infringes Data Protection Law;
- 18.5.8 at Your written direction, delete or return Personal Data and copies thereof to You on termination of the Contract unless required by Applicable Law to store the Personal Data; and
- 18.5.9 make available to You all information necessary to demonstrate Our compliance with this clause 18 (which shall remain Our confidential information under clause 17) and allow for and contribute to audits by You or Your designated auditor. You shall be responsible for Your (and any third party auditor's) fees and expenses. Our (and any sub-processor's) assistance and granting of access shall be at Your expense (based on Our and any sub-processor's reasonable costs) and We shall give You details of applicable costs in advance of any audit. Any inspection shall be on not less than 90 days' written notice (unless agreed otherwise in writing between You and Us), during normal business hours and subject to such reasonable measures as We (or any sub-processor) requires in relation to Our security and confidentiality requirements and not causing disruption to Our business activities.
- 18.6 You hereby specifically authorise Us to appoint any sub-processor notified in writing to You by Us prior to the agreement of the Contract or any amendment to it agreed under clause 21 and generally authorise Us to appoint further or alternative sub-processors on such sub-processors' terms of business which incorporate data protection obligations which are the same in effect as those relating to Personal Data set out in this clause 18. Where We appoint or replace a sub-processor We shall notify You and give You an opportunity to object. If You wish to object to such changes, You must do so within 30 days of receiving such notice, by notifying Us in writing accompanied by Your reasons for such objection. Following any such objection, We may engage with You to provide alternatives or assurances in relation to such change. If You (acting reasonably in relation to Your legal or regulatory compliance obligations) continue to object to such changes You may, within 30 days of receipt of the original notice, terminate on written notice without penalty the relevant Services directly affected by that change. Where You do not provide written notice of such termination, or continue to use such Services following the change, You shall be deemed to have accepted such change. We shall remain fully liable for all acts or omissions of any sub-processor engaged by Us.
- 18.7 You shall ensure that You have all necessary consents and notices in place (and give the required consent and authority) to enable Us to process Personal Data (of You and Your customers as anticipated under the Contract in relation to the Services in accordance with Data Protection Law. You shall indemnify Us for all claims, losses and liability which We may suffer as a result of a breach by You of this clause 18.7.
- 19 ASSIGNMENT AND OTHER DEALINGS**
- You may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of Your rights and obligations under the Agreement.

20 **NOTICES**

20.1 Any notice given to a party under or in connection with the Agreement shall be in writing and shall be:

20.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service to the address for that party set out in the Order Form (or such other address as is given by that party for service of notices); or

20.1.2 sent by email to the email address for that party set out in the Order Form (or such other email address as is given by that party for service of notices).

20.2 Any notice shall be deemed to have been received:

20.2.1 if delivered by hand, on signature of a delivery receipt;

20.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the next Working Day after posting;

20.2.3 if sent by email, at 9.00 am on the next Working Day after sending.

20.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

21 **CHANGES TO THESE TERMS AND CONDITIONS**

We reserve the right to amend these terms and conditions at any time. Unless otherwise stated, the amended terms will be effective from the date they are posted on Our website or otherwise provided to You. If You use the Payment Terminal(s) or Services after We have published such changes, You will be agreeing to be bound to those changes. If You do not agree to be bound by the changes then You should immediately stop such use and contact Us.

22 **WAIVER**

No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

23 **SEVERANCE**

If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

24 **GOVERNING LAW AND JURISDICTION**

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