

WINDCAVE END USER LICENSE AGREEMENT (EULA)

This Windcave End User License Agreement (this “**Agreement**”) is made as of the date you begin using Windcave Goods or Software (“**Effective Date**”), and is by and between WINDCAVE LIMITED, a company registered in England and Wales (“**Windcave**”) and you, the party using the Goods or Software to process Transactions (“**Customer**”).

1. Definitions and Interpretation

1.1 Definitions: In this Agreement, unless the context indicates otherwise:

Acquirer means a bank or any financial institution or a card issuer of financial or non-financial transactions which receives and transmits Transactions via the Windcave Solution;

Agreement means this end user license agreement (“EULA”);

Business Day means any day of the week except Saturday, Sunday or a statutory holiday in London;

Confidential Information means, in relation to either party, any information:

- relating to the terms of this Agreement;
- relating directly or indirectly to research or development by, accounting for, or the marketing of, the business of that party or its suppliers or customers;
- disclosed by that party to the other party on the express basis that such information is confidential; or
- which might reasonably be expected by the other party to be confidential in nature;

Customer means the customer specified on the signature page of this Agreement, and where applicable includes its employees, contractors and agents.

Customer Personal Data means all Personal Data subsisting in the data provided by the Customer, the users of the Windcave Solution, the Documentation, the Goods, or the Software, or input by Windcave on the Customer's behalf and which comes into the possession of Windcave as a result of or in connection with the supply of the Windcave Solution, the Documentation, the Goods, or the Software.

Data Protection Law means the EU Data Protection Directive 95/46/EC, the Data Protection Act 1998 and any other legislation in force from time to time which implements that Directive, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and any laws that replace or amend any of these (including without limitation the General Data Protection Regulation 2016 (Regulation (EU) 2016/679) (GDPR)), together with the equivalent legislation of any other applicable jurisdiction and all other applicable law, regulations, guidance and codes of conduct in any relevant jurisdiction relating to the processing of personal data and privacy including the guidance and codes of practice issued by the Information Commissioner's Office (ICO), the Article 29 Working Party, the European Data Protection Board or any other relevant supervisory authority from time to time.

Default Interest Rate means interest at the rate of 2% above the base lending rate charged by Windcave's bankers to Windcave from time to time;

Delivery takes place when the Customer receives the Goods from Windcave, or, in the case of returns, when the Goods arrive at Windcave's premises;

Device means hardware provided by Windcave to Customer from time to time to facilitate credit card transactions at Customer's locations

Documentation means any user, training or system manuals for the Windcave Solution (whether in printed or electronic form) which describes and provides guidance on the use of the Windcave Solution (or any aspect of the Windcave Solution);

Emergency Support Services means telephone support provided by Windcave for emergency breakdowns resulting in repeated failures in the transmission of Transactions and is available 24 hours a day, seven days a week by calling +64 9 377 6060 outside of Support Hours. Windcave will use reasonable efforts to respond to any emergency phone call within 30 minutes of receiving the support request;

Goods means goods and/or devices manufactured sold by Windcave or a related entity to any third party;

Insolvency Event means:

- a party is, in the reasonable belief of the other party, or is deemed to be, insolvent or unable or (being an individual) is deemed to have no reasonable prospect of being able (or admits its inability) to pay its debts as they fall due or stops or suspends payment of any of its debts or (being a partnership) has any partner to whom any of the foregoing apply;
- any expropriation, attachment, sequestration, distress, execution, enforcement of security or other legal process is levied, enforced or sued out on or against, or affects, any of a party's assets and is not discharged or stayed within 21 days;
- a party begins negotiations, or enters into, or gives notice of any intention to enter into, any statutory composition or arrangement, with one or more of its creditors in order to reschedule any of its obligations to pay or repay money (whether present of future, actual or contingent) (**Indebtedness**) because of actual or anticipated financial difficulties including giving notice of a meeting of creditors for the purpose of considering a proposal for a company voluntary arrangement or (being an individual) an individual voluntary arrangement;
- a moratorium is declared, or in any event comes into existence, over any of a party's Indebtedness (and remains undischarged after 5 Business Days);

- any petition is presented (and has not been dismissed, discharged or withdrawn after 5 Business Days of being advertised), application made (and, if not made by the party itself, has not been dismissed, discharged or withdrawn after 14 days), resolution proposed, notice of meeting given or other action, proceedings, procedure or step taken whether by a party or any third party for, or which may (other than for the sole purpose of a scheme for a solvent amalgamation or solvent reconstruction of that party) lead to:
 - the suspension of payments, winding up, dissolution, administration, receivership (whether administrative or otherwise) or reorganisation using a voluntary arrangement, scheme of arrangement or otherwise) of a party;
 - the appointment of a liquidator (both provisional and following a winding up), receiver (including a fixed charge receiver), administrative receiver, administrator, nominee, supervisor, compulsory manager or other similar officer in respect of a party or any of its assets; or
 - (where the party is an individual) bankruptcy, an individual voluntary arrangement or debt relief order;
- any event similar to any of those set out above in this definition occurs in relation to a party (including in any jurisdiction to which it is subject); or
- a party suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business;

Intellectual Property means registered and unregistered trade marks (including logos and trade files), domain names, copyright, patents, petty patents, utility models, registered and unregistered designs, circuit layouts, rights in computer software, databases and lists, Confidential Information, software (whether in object code or source code), and all other rights anywhere in the world resulting from intellectual activity;

Payment Manager means Windcave Merchant Portal which Customer is able to access by logging onto the Windcave Website with an assigned username and password;

PCI Standards means the Payment Card Industry standards, requirements and guidelines issued by the Payment Card Industry Data Security Council from time to time including the Payment Card Industry Data Security Standard PIN Entry Device requirements and guidelines, and the Payment Application Data Security Standard;

Permitted Use means the transmission to, and receipt from, an Acquirer of data relating to Windcave Supported Transactions and expressly excludes, without limitation, use for the processing of transactions of, or for the benefit of, any person other than Customer;

Personal Data and Processing shall bear the respective meanings given to them in the Data Protection Act 1998 or General Data Protection Regulation 2016 (as applicable) (in each case as may be amended, updated, replaced or superseded from time to time) (and **Process** and **Processes** shall be construed accordingly).

Related Company in relation to Windcave, means any subsidiary or holding company from time to time of Windcave, and any subsidiary from time to time of a holding company of Windcave, where a **holding company** and **subsidiary** shall have the meaning defined in section 1159 of the Companies Act 2006 but, for the avoidance of doubt, as if section 1159(4) referred to “any body corporate incorporated anywhere in the world”, and the definition of “Related Company” shall include shall include WINDCAVE LIMITED, a company incorporated in New Zealand, and its subsidiaries;

Reseller means the party with whom Customer has entered into an agreement for the purchase of a license to the Windcave Solution;

Reseller Agreement means the agreement between the Customer and the Reseller;

Security Standards means each of:

- any data protection or data security standards issued by the card issuer of any credit card or debit card Customer accepts as payment for goods and services and which is used in connection with any Transaction or issued by any Acquirers; and
- the PCI Standards;

Software means the software and other related Windcave products which:

- form part of the Windcave Solution; and
- is owned or licensed by or developed by, or on behalf of, Windcave and supplied to Customer, including all upgrades, updates, alterations and modifications and other changes to such software by or on behalf of Windcave from time to time, but excluding any third party software and firmware forming part of, or supplied with, the Windcave Solution;

Support Services means and includes:

- Online Help: from time to time Windcave may display Frequently Asked Questions and Answers on the Windcave Website;
- General Support: enquiries may be sent to: support@windcave.com or made by telephone to 0800 088 6040. Windcave will respond to such enquiries during Support Hours;

Support Hours means the period from 9.00am to 5.30pm (UK time) on any Business Day and 9am to 5pm on non-Business days;

Tokenized Data means data for which Windcave has substituted a sensitive data element with a non-sensitive equivalent that has no extrinsic or exploitable meaning or value. **VAT** means United Kingdom value added tax or any other tax from time to time replacing or performing a similar fiscal function;

Transaction means a message pair consisting of a message relating to a Windcave Supported Transaction transmitted by a Customer to an Acquirer through the Windcave Solution and a response to that message from the Acquirer to the Customer through the Windcave Solution;

Windcave means WINDCAVE LIMITED, a company incorporated in England and Wales (company number 07835804);

Windcave Host means the Windcave host server known as Windcave Host to which Customer may be connected using the Software and which is in turn linked to an Acquirer to enable Windcave Supported Transactions to be processed in real time;

Windcave Logo means the Windcave logo supplied (in electronic format) by Windcave to Customer (as may be updated from time to time by Windcave);

Windcave Solution means the solution provided by Windcave for the transmission of data relating to credit card and debit card transactions between a merchant accepting payment for goods or services by means of a credit card or debit card and an Acquirer, incorporating certain software owned or licensed by Windcave (including all upgrades, updates, alterations and modifications to such software by or on behalf of Windcave from time to time) and including access (via the internet) to the Windcave Host and the Windcave Support Services;

Windcave Supported Transactions means transactions from Customers:

- (a) accepting payment for goods and services by means of credit card, debit card, prepaid card, gift card or any other means of payment which Windcave agrees to support through the Windcave Solution from time to time;
- (b) accepting loyalty cards, rewards cards, points cards, discount cards or club cards; or
- (c) providing services in relation to the sale and use of any of the cards referred to in paragraphs (a) and (b) above including the issue of such cards and the crediting or debiting of value to such cards; and

Windcave Website means the website maintained by Windcave and accessible by Customer for viewing transactions, data entry, refunding, report generating and other features related to Transactions.

1.2 Interpretation: In this Agreement, unless the context indicates otherwise:

- (a) expressions defined in clause 1.1 have the defined meaning throughout this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) clause and other headings are for ease of reference only and will not affect this Agreement's interpretation;
- (d) the term **includes** or **including** (or any similar expression) is deemed to be followed by the words without limitation;
- (e) references to a **person** include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
- (f) references to any statutory provision are to statutory provisions in force in England and Wales and include any statutory provision which amends or replaces it, and any bylaw, regulation, order, statutory instrument, determination or subordinate legislation made under it;
- (g) any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done; and
- (h) all monetary amounts are stated exclusive of VAT and in GBP (£).

2. Term

2.1 Term: This Agreement commences on the Effective Date and will continue until terminated under clause 11 of this Agreement.

3. Payment

3.1 This section reserved.

4. Joint Responsibilities

Each party represents and agrees:

4.1 Power and Authority: that it has full power and authority necessary to validly enter into and perform all its obligations under this Agreement; and

4.2 Requirements: to comply with the other party's reasonable security, confidentiality and operational requirements of which it has been given reasonable notice.

5. Customer Responsibilities

Customer:

5.1 Suitability: has made, and will continue to make, its own assessment of the suitability, adequacy, compatibility and appropriateness of the Windcave Solution for its purposes;

5.2 Comply with Instructions: will comply with Windcave's restrictions, instructions and Documentation in relation to the use of the Windcave Solution, including those set out in this Agreement;

5.3 Use by Others: will ensure that only authorised persons use the Windcave Solution and that the Windcave Solution is used only for the Permitted Use and as expressly authorised under this Agreement;

5.4 Responsibility for Use: will accept all responsibility for the reliance on and use of the Windcave Solution by Customer and its employees, contractors and agents;

5.5 Obtain Equipment etc.: will obtain and maintain all equipment, software and services needed to enable it to receive and use the Windcave Solution;

5.6 Accurate Customer Information: warrants that all information provided by Customer to Windcave is accurate and correct, and that Customer will notify Windcave in writing if such information changes or ceases to be accurate in any way;

5.7 Provide Sufficient Information: will ensure that sufficient information is given to Windcave to enable Windcave to comply with its obligations under this Agreement and that such information is timely, complete and accurate;

5.8 Personal Information: acknowledges and agrees that any personal information concerning Customer or its personnel which is provided to Windcave by or on behalf of Customer may be:

- (a) used by Windcave for the purpose of providing the Windcave Solution, the Support Services and any other services to Customer;
- (b) disclosed by Windcave to its Related Companies and other services providers to enable Windcave to provide the Windcave Solution, the Support Services and any other services to Customer; and
- (c) transferred to jurisdictions outside the European Economic Area notwithstanding the fact that such jurisdictions may not have data protection laws as stringent as those in place within the European Economic Area and warrants that it has obtained consent from all such personnel for Windcave to process their personal information for the purposes and in the manner described herein.

5.9 Notify of Third Party Infringement: will immediately notify Windcave upon becoming aware of any third party infringing Windcave's Intellectual Property rights in any manner;

5.10 Responsible for Connecting to Windcave Host: is responsible for all charges and costs associated with connecting to the Windcave Host to operate the Windcave Solution. Windcave will provide Customer with reasonable technical information and Software necessary to enable Customer to connect to the Windcave Host; and

5.11 Comply with Law Generally: will comply with all relevant laws, including all statutory, regulatory and common laws, in its use of the Windcave Solution and carrying out its obligations under this Agreement.

5.12 Improperly Deposited Funds: If Windcave deposits funds in Customer's bank account(s) that do not rightfully belong to Customer ("Improperly Deposited Funds"), Customer shall return the Improperly Deposited Funds to Windcave without offset within five (5) calendar days of a written request to do so by Windcave. If Customer fails to comply with the terms of this clause, Windcave may immediately suspend services to Customer until Customer returns the Improperly Deposited Funds. Customer will be liable to Windcave for the Improperly Deposited Funds, and all costs (including legal costs on a solicitor-client basis) incurred by Windcave in recovering the Improperly Deposited Funds.

5.13 Requisite Review of Payline Portal: Customer shall be required, on a daily basis, to review with due care Customer's payline portal, established by Windcave, to review for transactions for errors. If an error is discovered by Customer, Customer must notify Windcave in writing within three (3) Business Days of the date an error occurs; provided, that Windcave will have no liability or obligations of any kind with respect to errors that are not reported to Windcave within such three (3) Business Day period. In addition, Customer shall be required to, on a daily basis review with due care bank settlement files to ensure deposits occur without error. If an error is discovered by Customer, Customer must notify Windcave in writing within three (3) Business Days of the date an error occurs; provided, that Windcave will have no liability or obligations of any kind with respect to errors that are not reported to Windcave within such three (3) Business Day period. Windcave's liability under this clause 5.13 (Requisite Review of Payline Portal) of the Agreement is governed by, and fully subject to, the terms of Section 10 (Liability) of this Agreement.

5.14 Return of Old Goods: For Goods that Customer ceases using for the Permitted Use ("Unused Goods"), Customer will return such Unused Goods to Windcave within 30 calendar days. Unused Goods include, but are not limited to, Goods Customer has ceased using due to the Goods becoming obsolete, Goods that no longer operate, and Goods that are replaced. Customer will pay all shipping fees and costs associated with returning the Unused Goods to Windcave. Alternatively, instead of returning Unused Goods to Windcave, Customer may provide Windcave a secure destruction certificate evidencing that the Unused Goods were destroyed in compliance with the Security Standards within the same 30 calendar day period.

6. Windcave's General Responsibilities

Windcave will:

6.1 Care and skill: perform its obligations under this Agreement with care, skill and diligence; and

6.2 Good faith: comply with all relevant laws and co-operate with Customer (and Customer's service providers) in connection with the Windcave Solution.

6.3 Data Processor: The parties acknowledge and agree that, if and to the extent that Windcave processes personal information relating to the Customer and/or its personnel, Windcave shall be a data processor in respect of that personal information and the Customer shall be the data controller (the terms "data processor" and "data controller" shall have the meaning given to them in the Data Protection Act 1998). Windcave shall process such personal information (a) for the purposes of performing its obligations under this Agreement; and (b) in accordance with the Customer's reasonable instructions from time to time.

6.4 No Requirement to Decrypt Tokenized Data: Unless expressly required to do so by law, Windcave will be under no obligation to decrypt and transmit Tokenized Data to Customer or any third party.

7. Windcave Warranties

7.1 PCI Standards: Windcave confirms that Windcave will throughout the term of this Agreement comply with the requirements of the PCI Standards.

7.2 Limitations on Warranties: To the fullest extent permitted by law, except as expressly set out in this Agreement, Windcave excludes all warranties, conditions, terms, representations or undertakings, whether express, implied, statutory or otherwise, including any condition or warranty of merchantability or fitness for a particular purpose. Windcave does not warrant that:

- (a) the Windcave Solution, the Goods, the Software or the Documentation will meet Customer's requirements; or
- (b) the Windcave Solution or the Documentation will be uninterrupted or error free, or that all errors will be corrected;

8. Intellectual Property

All Intellectual Property rights in the Windcave Solution, the Goods, the Software, the Documentation and any work or thing developed or created by or on behalf of Windcave under or in connection with this Agreement (such work or thing being **Developed Works**), are exclusively owned by Windcave (or Windcave's licensors or suppliers). Customer acknowledges that there is no transfer of title, Intellectual Property rights or ownership of:

- (a) the Windcave Solution, the Goods, the Software, the Documentation or any part thereof; or
- (b) any Developed Works;

to Customer under this Agreement and Customer will not dispute Windcave's (or Windcave's licensors or suppliers) ownership of the property referred to in this clause 8.

9. Indemnity

9.1 Customer indemnifies Windcave at all times against any liability, loss (including consequential loss), damage or cost (including legal costs on a solicitor-client basis) suffered or incurred by Windcave, its employees, contractors and agents, and all actions, proceedings, claims or demands made against Windcave as a result of any negligent act or omission or any breach of this Agreement by Customer, its personnel or agents.

10. Liability

To the fullest extent permitted by applicable law:

10.1 Remedy: Subject to clauses 10.2 and 10.3, Customer's sole and exclusive remedy for breach of any warranty or of any of Windcave's obligations under this Agreement is (at Windcave's option) the supply or re-supply of the Windcave Solution, the Goods, the Software, or the Documentation or the refund or waiver of amounts paid by Customer to Windcave for the relevant part of the Windcave Solution, the Goods, the Software, or the Documentation which is the subject matter of, or directly related to, the breach.

10.2 Limitation: To the fullest extent permitted by law, in no event will Windcave's total liability to Customer in connection with this Agreement for any one or more defaults as described in clause 10.1 exceed £2,000.

10.3 Limitation Subject to Law: Nothing in this Agreement shall limit or exclude the liability or remedy for any act, omission or matter, liability for which may not be excluded or limited under applicable law.

10.4 Exclusion: To the fullest extent permitted by law, in no event will Windcave be liable to Customer whether in contract, tort (including negligence) or otherwise in respect of any:

- (a) loss of data, lost profits, loss of revenue, loss of goodwill, loss of business or for any indirect, consequential or special loss, damage, cost or expense suffered or incurred by Customer arising out of, or in connection with, this Agreement;
- (b) loss, damage, cost or expense suffered or incurred by Customer, to the extent this results from any act or omission by Customer; or any event described in clause 13.

11. Termination

11.1 Termination Upon Notice:

- (a) Windcave may terminate this Agreement at any time on not less than 3 months' prior written notice to Customer.
- (b) Customer may terminate this Agreement at any time on not less than 3 months' prior written notice to Windcave, provided Customer has first terminated the Reseller Agreement in accordance with the terms of such Reseller Agreement.

11.2 Breach of Licence Terms: Without limiting Clause 11.1(b), any use of the Windcave Solution by Customer for any purpose other than the Permitted Use, or any breach by Customer of the provisions of clause 16 will be deemed to be a material breach of this Agreement which is not reasonably capable of remedy.

11.3 Consequences: Expiry or termination of this Agreement will not affect the rights or obligations of the parties which have accrued prior to or accrue on termination or which by their nature are intended to survive termination (including clauses 3, 7, 8, 10, this 11.3, 12, and together with those clauses which are incidental to, and required in order to give effect to, those clauses). Upon termination of this Agreement, Customer must immediately cease use of the Windcave Solution, the Software and the Documentation.

12. Confidentiality

12.1 Confidential Information: Each party will maintain as confidential at all times, and will not at any time, directly or indirectly:

- (a) disclose or permit to be disclosed to any person;
- (b) use for itself or to the detriment of the other party, any Confidential Information of the other party except as, and then only to the extent:
 - (i) required by law;

- (ii) that the information is already or becomes public knowledge, otherwise than as a result of a breach, by the receiving party, of any provision of this Agreement;

- (iii) that the information is disclosed to the receiving party, without restriction, by a third party and without any breach of confidentiality by the third party;

- (iv) that the information is developed independently by the receiving party without reliance on any of the Confidential Information of the other party;

- (v) authorised in writing by the other party; or

- (vi) reasonably required by this Agreement (and, without limiting the effect of this clause, a party may disclose Confidential Information of the other party only to those of its officers, employees or professional advisers on a "need to know" basis, as is reasonably required for the implementation of this Agreement.

12.2 Windcave's Intellectual Property: Without limiting the effect of clause 12.1, Customer will treat information about Windcave's Intellectual Property as the Confidential Information of Windcave.

13. Force Majeure

Neither party (**Affected Party**) will be liable for any act, omission or failure by it under this Agreement if that act, omission or failure results directly from an event or circumstances beyond the reasonable control of the Affected Party, provided that:

13.1 Notice: whenever the Affected Party becomes aware that such a result has occurred or is likely to occur, the Affected Party will, as soon as practicable, notify the other party by written notice accordingly;

13.2 Continued Performance: each party will continue to use its best endeavours to perform its obligations as required under this Agreement; and

13.3 No Deemed Acceptance of Extra Costs: neither party will be deemed to have accepted any liability to pay or share any extra costs which may be incurred by the other party in complying with this clause or otherwise resulting from such act, omission or failure; and

14. General

14.1 Entire Agreement: This Agreement records the entire arrangement between the parties relating to all matters dealt with in this Agreement and supersedes all previous arrangements, whether written, oral or both, relating to such matters.

14.2 Disputes: If the parties fail to negotiate a resolution to a dispute within a reasonable time (and at most 20 Business Days), either party may require that the dispute be submitted to mediation, such mediation to take place in London, England. If the parties fail to agree on a mediator within 5 Business Days of the submission to mediation, one will be appointed by the President for the time being of the Law Society or its successor. In the event of any submission to mediation:

- (a) the mediator will not be acting as an expert or as an arbitrator;
- (b) the mediator will determine the procedure and timetable for the mediation; and
- (c) the parties will share equally the cost of the mediation.

All discussions in mediation will be without prejudice and will not be referred to in any later proceedings (if any). Neither party may issue any legal proceedings (other than for urgent interlocutory relief) relating to any dispute, unless that party has first taken all reasonable steps to comply with the dispute resolution process above.

14.3 Waiver: No waiver of any breach, or failure to enforce any provision, of this Agreement at any time by either party shall in any way limit or waive the right of such party to subsequently enforce and compel strict compliance with the provisions of this Agreement.

14.4 Severance: Any provision (or part of a provision) in this Agreement which is or becomes unenforceable, illegal or invalid for any reason shall be severed and shall not affect the enforceability, legality, validity or application of any other provision (and/or the remainder of that provision) which shall remain in full force and effect.

14.5 Assignment: Windcave may assign all or any of its rights and obligations under this Agreement to any person without Customer's consent. Customer may not transfer or assign any of its liabilities or rights under this Agreement to any other person without Windcave's prior written consent (such consent not to be unreasonably withheld provided Windcave is satisfied as to the suitability of the assignee and Customer meets Windcave's reasonable costs in relation to the assignment).

14.6 Amendment: Except as expressly provided for in this Agreement, no amendment to this Agreement will be valid unless recorded in writing and signed by a duly authorised senior representative of each party.

14.7 Governing Law and Jurisdiction: This Agreement is governed by the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales in respect of all matters relating to this Agreement.

14.8 Remedies: The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law, except as expressly provided in this Agreement.

14.9 Subcontracting: Windcave may appoint subcontractors to perform any of its obligations under this Agreement.

14.10 Counterparts and Copies: This Agreement may be signed in any number of counterpart copies which read together, will constitute one and the same document. Any facsimile copy of this agreement or copy of this agreement sent via email in PDF format (including any facsimile copy or copy sent via email in PDF format, of any document evidencing either party's signature of this agreement) may be relied upon by the other party as if it were an original copy.

This Agreement may be entered into on the basis of an exchange of such facsimile or PDF copies.

- 14.11 Notices:** Any notice or other communication to be given under this Agreement must be in writing and delivered by hand, registered mail or facsimile to Customer or Windcave (as the case may be) at the respective addresses specified on page 1 of this Agreement (or such other address as either party specifies by notice in writing to the other, from time to time). Receipt shall be deemed upon delivery by hand, 5 Business Days after posting, or upon receipt of an error free facsimile transmission confirmation (whichever is applicable).
- 14.12 No Partnership or Agency:** Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of the other party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 14.13 Third Parties:** A person who is not a party to this Agreement shall not have any rights to enforce its terms.
- 14.14 Conflicts:** In the event of any conflict or inconsistency between this Agreement and the terms of a purchase order provided by Customer to Windcave, this Agreement shall govern and control.
- 15. Licence**
- 15.1 Grant of Licence:** Windcave grants to Customer a non-exclusive, non-transferable licence to use the Windcave Solution, the Goods, the Software and the Documentation for the Term of this Agreement solely for the Permitted Use. Any other use or dealings with the Windcave Solution, the Goods, the Software or the Documentation without the prior written consent of Windcave will be a material breach of this Agreement. Except to the extent specifically authorised under this Agreement, Customer must not sub-license, transfer, assign, rent or sell any of the Windcave Solution, the Goods, the Software or the Documentation or the right to use the Windcave Solution, the Goods, the Software or the Documentation.
- 15.2 Windcave Warranty:** Windcave warrants that Windcave has the right and authority to grant to Customer the licence set out in clause 15.1, in accordance with the terms of this Agreement.
- 16. Terms of Use**
- 16.1 Adequacy:** Customer must satisfy itself as to the adequacy, appropriateness and compatibility of the Windcave Solution and/or the Goods for its requirements. Without limiting clause 7.1, Customer acknowledges that it has not relied on any statements or representations on the part of Windcave as to performance or functionality, verbal or otherwise, except as expressly recorded in this Agreement.
- 16.2 Windcave Logo:** If Customer uses a capture method for credit or debit card processing using a system which is not hosted by Windcave, Customer agrees to display the Windcave Logo in a readily visible position on the user interface of Customer's system where the credit or debit card data is captured. The Windcave Logo must not be altered or used for any other purpose without the prior written consent of Windcave.
- 16.3 Compliance:** If Customer is not compliant with one or more of the Security Standards, Customer must not capture or store any credit or debit card number or expiry date locally on Customer's or a non-compliant third party's system.
- 16.4 No Right to Copy, Alter or Modify:** Subject to clause 16.8, Customer must not, and must not permit any other person to, copy, reproduce, translate, adapt, vary, repair or modify all or any part of the Windcave Solution, the Goods, the Software or the Documentation by any means or in any form without Windcave's prior written consent.
- 16.5 Permitted Use:** Customer may not:
- use the Windcave Solution, the Goods, the Software or the Documentation for any purpose other than the Permitted Use; or
 - use the Software independently of the other components of the Windcave Solution unless Windcave has given prior written consent to do so.
- If this Agreement is terminated, Customer's right to use the Windcave Solution, the Software and the Documentation will automatically terminate and Customer must immediately remove all copies of the Software from its system(s) and return the Windcave Solution, the Goods, the Software and the Documentation to Windcave
- 16.6 Reverse Engineering:** Customer must not, and must not permit any other person to, reverse assemble or decompile the whole or any part of the Software.
- 16.7 No Third Party Use:** Except as expressly provided for in this Agreement, the Customer must not provide, or otherwise make available, the Windcave Solution, the Goods, the Software or the Documentation or any component thereof in any form to any person (**Third Party**) without the prior written consent of Windcave.
- 16.8 Backup Copies:** Customer may make a reasonable number of copies of the Software for backup and disaster recovery purposes only.
- 16.9 Installation:** Customer will be responsible for, and all bear all costs associated with, the installation, operation, maintenance and support of the Goods.
- 16.10 Labels:** Customer will not remove or deface any labels affixed by Windcave to the Goods. Customer will not affix any label to the Goods.
- 16.11 Windcave Testing Prior to Launch:** Prior to any permitted use of Windcave products and/or Software by Customer or any third party, Windcave shall be entitled at its sole discretion to test all Windcave products and Software that Customer purchases, rents, or intends to use for up to seven (7) Business Days ("Pre-launch Testing"). Such Pre-launch Testing shall also entitle

Windcave to three (3) Business Days to test transaction processing and settlement.

- 17. Rental/Loan of Goods**
- 17.1 This section reserved.**
- 18. Purchase of Goods**
- 18.1 This section reserved.**
- 19. No Licence to Sell**
- 19.1** Where Customer agrees to purchase Goods from Windcave or a third party, the Customer shall have no right to sell the Goods, and must not lend, lease, transfer, modify or otherwise deal with the Goods without first obtaining Windcave's written consent.
- 20. Windcave Support Services**
- 20.1 Support:** Windcave will provide the Support Services to Customer.
- 20.2 Emergency Support Services and Other Services:** Windcave may make available the Emergency Support Services. If Customer requires Emergency Support Services and/or services additional to the Support Services Windcave may, if it agrees to provide those services to Customer, charge Customer for those services on a time and materials basis and on such other terms and conditions as may be agreed between the parties.
- 20.3 Alterations to Software:** Windcave may, at its sole discretion, alter, upgrade, update or change the Windcave Solution at any time during the Term of this Agreement. Where Windcave believes that such alteration, upgrade, update or change will, or is likely to, materially affect Customer's use of the Windcave Solution, Windcave will endeavour to notify Customer of this in advance. Customer acknowledges and agrees that, if Customer fails to promptly install all updates to any software forming part of the Windcave Solution supplied by Windcave in connection with this Agreement, Customer may be unable to process Transactions and that:
- Windcave will not be liable to Customer under this Agreement in respect of such inability; and
 - Windcave will be released from any obligation to supply the Support Services during any period which Customer has failed to install any such update.
- 20.4 Windcave Website:** Customer acknowledges and agrees that Windcave may, at its sole discretion, determine what information, data, features and functionality is made available to Customer via the Windcave Website. Customer agrees to comply with any terms that Windcave may specify in relation to Customer's use of the Windcave Website. In the event of any inconsistency between the terms and conditions of this Agreement and those on the Windcave Website, the terms and conditions of this Agreement will apply to the extent of that inconsistency. Windcave will supply user names and passwords to enable authorised users of Customer to access the Windcave Website. Customer must keep such user names and passwords secure and made known only to authorised users and will be responsible for all use of the Windcave Website through use of Customer's user names and passwords. If Customer breaches any term of this Agreement or the terms of use of the Windcave Website, Windcave may disable Customer's user names and password.
- 21. General Data Protection Regulation (GDPR) Compliance Provisions**
- 21.1** The Customer, to the extent it is a data controller, warrants and represents that:
- it will comply at all times with the Data Protection Law and not do or cause anything to be done or omit to do anything that would, or is likely to, place Windcave in breach of the Data Protection Law; and
 - it has provided all information necessary to, and obtained any requisite consent from, any individual who is the subject of the Customer Personal Data for the purpose described under this Agreement in accordance with its obligations under the Data Protection Law.
- 21.2** Taking into account the state of technical development and the nature of Processing, Windcave shall implement appropriate technical and organisational measures to protect the Customer Personal Data against accidental or unlawful destruction, loss, alteration and unauthorised disclosure or access.
- 21.3** As at the date of this Agreement, the Customer gives a general written authorisation to Windcave to engage any agent, sub-contractor or other third party ("**Sub-processor**") subject to Windcave informing the Customer of any intended changes concerning the addition or replacement of any Sub-processors and allowing the Customer to object to such changes. If the Customer does object to any Sub-processor, then Windcave will not use that Sub-processor. If any Sub-processor is identified as an authorised Sub-processor and used by Windcave for such Sub-processing services, the Customer consents to their appointment as a Sub-processor under this Agreement subject to Windcave putting in place an agreement with such Sub-processor in accordance with the requirements under this clause.
- 21.4** To the extent that Windcave Processes any Customer Personal Data, Windcave shall:
- only Process the Customer Personal Data in accordance with its provision of the Windcave Solution, the Goods, the Documentation, and the Software in accordance with this Agreement and on the documented instructions of the Customer from time to time;
 - subject to clause 21.5, not transfer, or otherwise directly or indirectly disclose, any the Customer Personal Data to countries outside the European Economic Area (EEA) without the prior written consent of the Customer except where Windcave is required to transfer the Customer Personal Data by the laws of the member states of the EU or EU law (and shall inform the Customer of that legal requirement before the transfer, unless those laws prevent it doing so);

- (c) ensure that access to the Customer Personal Data is limited to Windcave's personnel and authorised Sub-Processors who need access to it to satisfy its obligations under this Agreement and who are subject to an enforceable obligation of confidence with regards to the Customer Personal Data;
 - (d) taking into account the nature of the Processing, assist the Customer (by appropriate technical and organisational measures), insofar as this is possible, in relation to any request from any data subject for: access, rectification or erasure of the Customer Personal Data, or any objection to Processing;
 - (e) notify the Customer in writing without undue delay if any the Customer Personal Data has been disclosed in breach of this clause 21 (General Data Protection Regulation (GDPR) Compliance Provisions);
 - (f) notify the Customer promptly if it becomes aware of a breach of security of the Customer Personal Data, such notices shall include full and complete details relating to such breach;
 - (g) provide such assistance (at the Customer's cost) as the Customer may reasonably require in relation to:
 - (i) the need to undertake a data protection impact assessment in accordance with the Data Protection Law; and
 - (ii) any approval of the Information Commissioner or other data protection supervisory authority to any Processing of the Customer Personal Data; and
 - (h) on termination of this Agreement, at the Customer's cost and its option, either return all of the Customer Personal Data (and copies of it) or securely dispose of the Customer Personal Data except to the extent that any applicable law requires Windcave to store the Customer Personal Data.
- 21.5** Windcave shall be permitted to transfer the Customer Personal Data to countries outside of the EEA to the extent that any one or more of the following applies:
- (a) Windcave has in place with the non-EEA receiving entity the EU model contractual clauses as set out in Decision 2010/87/EU or any alternative version of those clauses issued by the European Commission or a supervisory authority from time to time;
 - (b) the transfer is to a non-EEA country that is deemed to have an adequate level of protection from time to time by the European Commission or such other supervisory authority;
 - (c) to the extent that the transfer is to a Windcave group company located outside of the EEA, Windcave's group of companies has in place Binding Corporate Rules for the transfer of Personal Data to a non-EEA group company, the Windcave has in place with the non-EEA group company the EU model contractual clauses as set out in Decision 2010/87/EU (or any alternative version of those clauses issued by the European Commission or a supervisory authority from time to time) or an intra-group transfer agreement that provides for the necessary protection of the Customer Personal Data in accordance with Data Protection Law;
 - (d) there is an approved code of conduct in place by an association or other body representing Windcave or the Customer that applies to the non-EEA territory or territories to which the Customer Personal Data is to be transferred;
 - (e) there is an approved certification mechanism in place in respect of the non-EEA territory; or
 - (f) to the extent that the transfer is to an entity located in the United States, such entity participates in the EU-US Privacy Shield or such other mechanism that may replace or supersede it from time to time.
- 21.6** At the Customer's cost, Windcave shall allow for a reasonable audit (no more than once per annum) by the Customer and any auditors appointed by it in order for Windcave to demonstrate its compliance with this clause 21. For the purposes of such audit, upon reasonable notice, Windcave shall make available to the Customer and any appointed auditors all information that the Customer deems necessary (acting reasonably) to demonstrate Windcave's compliance with this clause 21.
- 21.7** In Windcave's reasonable opinion, to the extent that it believes that any instruction received by it is likely to infringe the Data Protection Law or any other applicable law, Windcave shall promptly inform the Customer and shall be entitled to withhold provision of the Windcave Solution, the Documentation, the Goods, and the Software until the Customer amends its instruction so as not to be infringing.