

## Legal Trading Name: Floor Fix Ltd

(e.g. Limited company name, or "trading as" name – this must match the name on your registered bank account)

Application reference: 005612

### MERCHANT ACCOUNT- STANDARD TERMS AND CONDITIONS

#### 1. DEFINITIONS AND INTERPRETATION

1.1 In this Contract:-

"Acceptable Use Policy"	means the Nochex Acceptable Use Policy as may be amended from time to time and published on the Nochex website;
"Account"	means a Nochex Emoney stored value account and " <b>Account Holder</b> " shall be construed accordingly;
"Acquirer"	means the financial institution to which the Company will route transaction data for authorisation, clearing and settlement purposes;
"Associated Company"	means in respect of the Company, any and all companies which are subsidiaries or holding companies of the Company (as appropriate) or any subsidiary of such holding company from time to time and " <b>subsidiary</b> " and " <b>holding company</b> " shall have the same meanings as set out in section 736 of the Companies Act 1985 as amended by section 144 of the Companies Act 1989;
"Authorisation"	means the methodology whereby the Card Issuer confirms that there are sufficient funds on the account to support the Card Transaction and that the Card has not been reported as lost or stolen;
"Available Balance"	has the meaning set out in Paragraph 8;
"Card"	means a current debit or credit card that the Company may accept for processing, as advised to the Merchant from time to time and " <b>Cardholder</b> " means the legitimate and rightful holder of a Card;
"Card Issuer"	means a financial institution that issues Cards to Cardholders;
"Card Transaction"	means a Transaction with a Nochex Card Account or an Xtra Account;
"Chargeback"	means a disputed Card Transaction that is or may be charged to the Company by the Card Issuer/Acquirer on behalf of the Cardholder;
"Company"	means <b>NOCHEX LIMITED</b> (Co. No. 03940921) or any Associated Company;
"Consumer"	means each and any Cardholder, Card Account Holder or Account Holder entering into a Transaction;
"Contract"	means the Term Sheet together with these terms and conditions as each may be varied from time to time in accordance with the terms set out below;
"Disputed Transaction"	means a Card Transaction which is disputed by a Cardholder either by notification from the Cardholder to the Company or the Card Issuer;

<b>"Emoney"</b>	means monetary value denominated in GBP Sterling, as represented by a claim which is stored on an electronic device, issued on receipt of funds and accepted as a means of payment by persons other than the issuer;
<b>"Fees"</b>	means those non-refundable charges specified in Paragraph 8 and the Term Sheet;
<b>"Fines"</b>	means any fine or amount which may be imposed on the Company for excessive Chargebacks or any fine or amount charged to the Company by any party as a result of any activity related directly or indirectly to the Merchant;
<b>"Merchant Account"</b>	means an Emoney account opened by the Company in the name of the Merchant for the purposed of providing the Merchant Service;
<b>"Merchant Sales"</b>	means the aggregate value of Transactions undertaken in the previous calendar month;
<b>"Merchant Service"</b>	Means the service provided by the Company to the Merchant allowing Consumers to purchase Emoney and use Emoney to pay for goods and services from the Merchant's website;
<b>"Merchant"</b>	means the person or partnership specified as such in the Term Sheet;
<b>"Nochex Card Account"</b>	means an account held with the Company whereby the Account Holder makes a purchase of Emoney by Card followed immediately by a purchase using the purchased Emoney and <b>"Card Account Holder"</b> shall be construed accordingly
<b>"Net Merchant Sales"</b>	means the value of Merchant Sales less the value of Refunds undertaken in the previous calendar month;
<b>"Refund"</b>	means either a reversal of a Card Transaction in order to credit the Cardholder (whether through a Nochex Card Account or otherwise) or reversal of an Account Transaction in order to credit an Account;
<b>"Registered Account"</b>	means the Merchant's registered UK bank account as notified and approved by the Company from time to time;
<b>"Term Sheet"</b>	means the term sheet signed by the Merchant setting out the details of the initial commercial terms applied by the Company to the Merchant Account;
<b>"Transaction"</b>	means a payment transaction carried out on the Merchant's website whereby the Company processes payment in respect of goods or services provided by the Merchant from either a Nochex Card Account, an Account or an Xtra Account;
<b>"Withdrawal"</b>	means converting part or all of the Available Balance held in the Merchant Account to GBP Sterling and transferring those funds to the Registered Account;
<b>"Xtra Account"</b>	means a transaction whereby a Consumer opens an Xtra Account with Nochex by making a purchase of Emoney by Card followed immediately by a purchase using the purchased Emoney.

## 2. **EMONEY MERCHANT SERVICE**

2.1 The Company will:

- 2.1.1 provide the Merchant with the Merchant Service to process Transactions in accordance with this Contract;
- 2.1.2 pay to the Registered Account any Withdrawal due in respect of the Merchant Service, subject to the provisions of this Contract; and
- 2.1.3 make available to the Merchant through the Company's Merchant management system statements showing the value of all Transactions.

## 3. **AUTHORISATION OF TRANSACTIONS**

3.1 Subject to Paragraph 7.5:-

- 3.1.1 Authorisation of Card Transactions shall not in any way be binding on the Company as to the validity of any Transaction or Transaction receipts;
- 3.1.2 the Company gives the Merchant no assurances that any given Transaction will be honoured; and
- 3.1.3 notwithstanding Authorisation, the Company reserves the right to exercise Chargeback or other rights of reduction or set-off under this Contract, including without limitation rights in accordance with Paragraph 9.

3.2 The Company shall seek on-line Authorisation from the Acquirer for all Card Transactions.

## 4. **TRADING LIMIT**

4.1 The Term Sheet may set out the Merchant's trading limit for aggregate Transaction value in any one calendar month (the "**Trading Limit**"). The Merchant shall not exceed the Trading Limit without the Company's prior written approval.

4.2 Transactions above the Trading Limit may be refused by the Company.

## 5. **TRANSACTION CONFIRMATIONS**

When the Merchant processes a Transaction the Company shall issue an email Transaction confirmation both to the Merchant and to the Consumer.

## 6. **REFUNDS**

6.1 Where the Merchant wishes to make a Refund to a Consumer, the Merchant shall advise the Company by such automated systems as the Company shall make available to the Merchant from time to time.

6.2 Refunds will only be made to the Card or Account to which the original Transaction was debited and not by any other method.

6.3 The Company shall only process Refunds to the extent of the Merchant's Available Balance. Where the Available Balance is less than the full amount of the requested Refund, the Refund will not be processed. However when an appropriate Available Balance appears on the Merchant Account, the Merchant may apply to process a Refund.

## 7. **CHARGEBACKS AND DISPUTED TRANSACTIONS**

7.1 Subject to clause 7.5, in the event of any Chargeback arising in respect of any Transaction the Company shall immediately be entitled to recover from the Merchant, in addition to any recovery in accordance with Paragraph 9:-

- 7.1.1 the amount paid by the Company in respect of the relevant Chargeback and/or Transaction; and/or
  - 7.1.2 any other costs and expenses the Company may incur as a result of or in connection with a Chargeback or Disputed Transaction
- 7.2 The Card Issuer's decision shall be conclusive as to the determination of any Chargeback. Wherever practicable, notice to the Merchant of a Chargeback will be accompanied by an explanation of the reason for it. Where the Company is notified of any invalid or Disputed Transactions the Company will notify the Merchant of the same by email, fax or letter accompanied by an explanation of the reason for it. The Company will flag the Transaction as disputed and debit it back to the Merchant. The Transaction shall be credited back to the Company if no longer disputed.
- 7.3 The Merchant shall:-
- 7.3.1 fully and properly investigate Disputed Transactions;
  - 7.3.2 take all reasonable steps to resolve disputes with Cardholders in a timely manner; and
  - 7.3.3 follow any procedures for handling Disputed Transactions and Chargebacks which the Company advises from time to time.

The Company has the right in respect of any Transaction to suspend the processing of such Transaction and/or withhold the amount of such Transaction until the satisfactory completion of any investigation.

- 7.4 In the event that the Company reasonably considers that there is a high risk of Chargeback the Company shall be entitled to retain funds from any Withdrawal to cover the potential amount of such Chargeback and/or recover from the Merchant such additional funds as the Company may reasonably specify to cover Chargebacks and potential Chargebacks.
- 7.5 Where a Chargeback or Disputed Transaction relates to a Transaction from an Account or a Nochex Card Account, the Company shall waive its rights of recovery of the Chargeback or Disputed Transaction from the Merchant, providing the Company is reasonably satisfied that:
- 7.5.1 the Merchant acted, and continues to act, reasonably;
  - 7.5.2 there is acceptable proof of delivery and receipt by the Consumer of the goods or services that the Merchant provided;
  - 7.5.3 that such goods or services were delivered in a timely fashion; and
  - 7.5.4 that such goods or services were of satisfactory quality, fit for purpose, as described and otherwise in accordance with all laws and regulations.

## 8. **WITHDRAWALS AND RETENTION**

- 8.1 "**Account Balance**" shall comprise all Transactions undertaken to the Merchant's order less all Withdrawals made after deducting:
- 8.1.1 all Refunds processed;
  - 8.1.2 the Fees;
  - 8.1.3 Chargebacks and any Fines to the Company passed on by the Acquirer in respect of Transactions;
  - 8.1.4 Disputed Transactions and any amounts reasonably required to cover potential or expected Refunds, Chargebacks or Disputed Transactions; and
  - 8.1.5 any other charges or amounts due to the Company under this Contract.

- 8.2 **"Available Balance"** is the value of the Emoney in the Merchant Account that is available for immediate Withdrawal (and for the avoidance of doubt excludes the Retained Balance);
- 8.3 **"Retained Balance"** is the value of the Emoney that the Company requires the Merchant to hold in the Merchant Account in accordance with Paragraphs 8.9 to 8.10 of this Contract.
- 8.4 The Merchant may initiate a manual Withdrawal at any time by logging into its account with the Company.
- 8.5 Each Withdrawal will be transferred by BACS to the Registered Account.
- 8.6 The Company may withhold from the Withdrawal:-
- 8.6.1 any amounts reasonably required to cover potential or expected Refunds, Chargebacks or Disputed Transactions; and/or
- 8.6.2 the amount of any excess trading over the agreed trading limit if one is set out in the Term Sheet.
- 8.7 In the event that the Account Balance is negative (i.e. the value of all items listed in Paragraph 8.1 exceeds the value of the Transactions made), the negative balance will be deducted from future Transactions and reflected in future Withdrawals when it shall be deducted from that Withdrawal together with any interest due thereon.
- 8.8 Notwithstanding Paragraph 8.7, the Company reserves the right at any time to recover from the Merchant all or part of such negative balance.
- 8.9 The Company requires the Merchant to hold the Retained Balance in the Merchant Account at all times during the term of this Contract, in the amount and at the rate specified in the Term Sheet.
- 8.10 The Company, at its absolute discretion, reserves the right to amend the amount and rate of the Retained Balance at any time.

## 9. **RECOVERY OF SUMS**

- 9.1 The Company shall be entitled to set-off, deduct or withhold without notice to the Merchant any sums due to the Company from the Merchant against any amounts payable to the Merchant by the Company. The Merchant shall not be entitled to set-off any sums owed by the Company to the Merchant from any sums due to the Company from the Merchant under this Contract or otherwise.
- 9.2 Where any sum is due to the Company or recoverable from the Merchant under the terms of this Contract or by operation of law and notwithstanding any other provision in this Contract, the Merchant unconditionally and irrevocably authorises the Company to deduct such sums from the Merchant Account and/or the Registered Account. As an alternative, the Company may request payment from the Merchant and such payment shall be made electronically (quoting the Merchant's account number) to the Company within 24 hours of receipt of the request.

## 10. **FEES**

- 10.1 In consideration for the Company providing the Merchant with the Merchant Service, the Merchant agrees to pay the Company the Fees as follows:-
- 10.1.1 a one-time account setup fee payable on account activation (the **"Set-up Fee"**);
- 10.1.2 a percentage charge on all Transactions (the **"Transaction Percentage"**); and
- 10.1.3 a fixed charge for all Transactions (the **"Transaction Fee"**).
- 10.2 Without prejudice to its other rights, the Company may withdraw or suspend the Merchant Service if Fees or other sums payable to the Company are not paid when due.

10.3 The Merchant shall pay and the Company shall be entitled to recover from the Merchant all costs incurred by the Company in dealing with Consumer disputes, Refunds, Chargebacks, Disputed Transactions or other administration relating to Transactions.

10.4 The Company reserves the right to increase the Fees in respect of individual Card Transactions if such Transactions cause an increase in the Company's costs.

## 11. **TERM AND TERMINATION**

11.1 This Contract shall commence on the date that the Company opens the Merchant Account following receipt of the Term Sheet signed by the Merchant.

11.2 The Contract, subject to earlier termination pursuant to Paragraph 11.3, will continue in force for a minimum period of 12 months and shall continue thereafter unless and until terminated by one party giving to the other not less than 30 working days notice to expire at the end of a calendar month.

11.3 The Company will be entitled to suspend the Merchant Service and/or terminate the Contract with immediate effect by notice to the Merchant if:

11.3.1 the Merchant fails to pay any amounts due to the Company by the due date

11.3.2 the Merchant breaches any warranty or other term of this Contract or if any claim described in Paragraph 13 occurs;

11.3.3 the Merchant fails to notify the Company in writing of any change in the nature of the Merchant's business or the goods and/or services supplied;

11.3.4 anything happens to the Merchant or a matter is brought to the Company's attention which in the Company's opinion may affect the Merchant's ability or willingness to comply with all or any of its obligations or liabilities under this Contract;

11.3.5 anything happens in relation to the Merchant or any matter is brought to the Company's attention which in the Company's opinion could damage the Company's reputation, or could prove detrimental to its business or may give rise to fraud or suspicion of fraud or other criminal activity including, without limitation, where the Company determines that the level of Chargebacks or invalid Transactions undertaken by the Merchant is excessive or unreasonable; or

11.3.6 the Merchant becomes insolvent or in the Company's opinion there is any material adverse change in the Merchant's financial condition, business or assets.

11.4 Upon termination of this Contract:-

11.4.1 the Merchant will immediately discontinue the use of all Merchant Services provided by the Company;

11.4.2 the Merchant shall not be relieved from its obligation to pay any outstanding Fees or other sums that are owed to the Company;

11.4.3 the Available Balance shall be adjusted to take account of all sums due to the Company;

11.4.4 the Company shall be entitled to recover from the Merchant all sums due to the Company under this Contract;

11.4.5 the Retained Balance shall be released 180 days after the date of termination of this Contract;

11.4.6 expiry or termination of this Contract shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party; and

- 11.4.7 expiry or termination of this Agreement shall not prejudice or affect any right or obligation which expressly or by implication is intended to survive expiry or termination including obligations of confidentiality and any indemnities given to the Company by the Merchant.

## 12. MERCHANT OBLIGATIONS

### 12.1 The Merchant warrants that:-

- 12.1.1 all information provided to the Company including any information provided as part of the application process by the Merchant is complete, accurate and not misleading;
- 12.1.2 no information has been withheld which, if provided, could have materially affected the Company's decision to enter into this Contract;
- 12.1.3 the Registered Account is lawfully owned by the Merchant;
- 12.1.4 the Merchant will use all reasonable endeavours to maintain the value and reputation of the Company and shall refrain from doing anything which may adversely affect the reputation of the Company; and
- 12.1.5 the Merchant will conduct its business affairs in an ethical manner and in accordance with the terms and intent of this Contract, and in compliance with all applicable government regulations.

### 12.2 The Merchant will:

- 12.2.1 provide the Company in a timely manner with accurate information regarding the financial standing and any other information reasonably requested by the Company;
- 12.2.2 advise the Company in writing of any errors in the Merchant Service;
- 12.2.3 not permit or authorise any other person to use the Merchant Service nor use the Merchant Service as agent of or otherwise for the benefit of any other supplier of goods or services;
- 12.2.4 fully comply with any rules imposed by the Card Issuers/Acquirers;
- 12.2.5 offer for sale through the Merchant Service, only products and services that are reasonably within the ordinary scope of the Merchant's business as notified to the Company during the application process (and as varied in accordance with this Contract);
- 12.2.6 offer products or services for sale only if the Merchant has legitimate rights to market and sell such products or services;
- 12.2.7 offer products or services for sale only if they are in compliance with the Acceptable Use Policy, and in all other respects act in compliance with the Acceptable Use Policy;
- 12.2.8 display on its website and any other promotional material, in such manner as the Company may require, such promotional signs or other material which may be provided by the Company and use of names or designs approved by the Company solely to indicate that the Company accepts Card payments for goods and services that the Merchant supplies, and are processed by the Company. The Merchant shall not use any other material referring to the Company without the Company's prior written approval. The Merchant shall display the brand name and logo of any Card Scheme which the Company notifies the Merchant is applicable;
- 12.2.9 not use the Merchant Services in any manner, or in furtherance of any activity which may constitute a violation of any law or regulation or for any improper purpose or which may cause damage to the Company's reputation or subject the Company to investigation, prosecution or legal action;

- 12.2.10 immediately notify the Company in accordance with Paragraph 23.1 if:
- (a) there is any material change in the nature of the product or services offered on the Merchant's website; or
  - (b) any technical alterations are made to the Merchant's website which might affect its integration with the Company's payment page;
- 12.2.11 be responsible for the statements, instructions, acts or omissions of any person who reasonably appears to have authority to act on its behalf;
- 12.2.12 provide the Company with any information reasonably required to assess creditworthiness and advise the Company as soon as the Customer becomes aware of a material adverse change in its financial standing or an intention to close down its on-line business or transfer to another processor or Acquirer;
- 12.2.13 advise the Company as soon as the Customer becomes aware of major or multiple product defects or logistics problems which could give rise to Chargebacks or refunds;
- 12.2.14 act in a reasonable manner to resolve Cardholder Disputes or potential disputes;
- 12.2.15 describe accurately on its website, including a full description of its trading name, address, telephone number and URL, what goods and services are being offered for sale, the price, the action which must be taken to make a purchase, the point at which a sale is completed, and details of delivery, shipping, returns and refund policies and comply at all times with any laws governing consumer and/or internet transactions (including the Distance Selling Regulations); and
- 12.2.16 comply with any code of best practice that the Company may provide to the Merchant including security to ensure Transactions are transmitted in an encrypted form using such protocol notified by the Company to the Merchant from time to time.

12.3 Breach of this Paragraph 12 shall entitle the Company to:-

- 12.3.1 re-assess the Merchant and immediately revise the Term Sheet or any term(s) contained therein to the extent that the Company believes necessary to allow the Merchant to continue to receive the Merchant Service; or
- 12.3.2 immediately terminate this Contract.

### 13. **INDEMNITIES**

- 13.1 The Merchant shall indemnify and keep indemnified the Company against all losses, costs, expenses, damages and liabilities incurred by the Company as a result of any claim brought against the Company by any Cardholder, card issuer or other third party as a result of:-
- 13.1.1 breach of this Contract by the Merchant; and/or
  - 13.1.2 wilful or negligent acts of omissions of the Merchant, its employees, agents or representatives.
- 13.2 The Merchant agrees that as between the Merchant and the Company it is the Merchant's responsibility to prove to the Company's satisfaction that the debit of a Card was fully and properly authorised by the Cardholder.
- 13.3 If a claim is brought against the Merchant by a Cardholder, a Card Issuer or other third party the Company will be entitled to settle or otherwise deal with it at its absolute discretion, including taking such steps as are reasonable to mitigate any potential loss the Company may incur and the Company shall be entitled to recover all costs of such actions in accordance with Paragraph 13.1.

14. **COMPLIANCE**

The Merchant shall ensure compliance with all applicable local laws in the execution and performance of this Contract and without prejudice to the Company's rights shall immediately bring to the Company's attention in writing any circumstances that prevent compliance with this Contract.

15. **PROCESSING CURRENCY**

All Transactions are denominated in GBP Sterling and Withdrawals shall be made in GBP Sterling.

16. **CUSTOMER'S WEBSITE**

16.1 The Merchant agrees to display on the home page and the payment page of its website a logo and link provided by the Merchant indicating that the Merchant is a client of the Company.

16.2 The Merchant hereby agrees to the Company referring to the Merchant as a Nochex Merchant in the Company's promotional material should the Company so wish. The Company may with the Merchant's prior agreement use the Customer's Trademark in accordance with policies as provided to the Merchant from time to time.

16.3 The Company may issue a policy in relation to the Merchant's obligations under this Paragraph 16. The Merchant shall comply with such policy as if set out herein.

17. **LIMITATION OF LIABILITY**

17.1 Except in respect of death or personal injury resulting from its negligence, and subject to Paragraph 17.2, the Company's cumulative liability for any loss or damage arising with respect to any given Transaction shall be limited to the value of that Transaction less the applicable processing fees payable to the Company under this Contract in respect of that Transaction.

17.2 In no circumstances whatsoever shall the Company be liable, in contract, tort (including negligence), or otherwise for:

17.2.1 losses special to the particular circumstances of the Buyer;

17.2.2 indirect or consequential losses;

17.2.3 recall costs and business disruption or interruption costs;

17.2.4 cost incurred in connection with the removal, disposal or storage of defective goods;

17.2.5 damage to goodwill or reputation;

17.2.6 loss of profits or contribution;

17.2.7 wasted expenditure;

17.2.8 damage to property; or

17.2.9 losses arising from third party claims,

resulting from any act or omissions on the Company's part or any other person authorised by the Company.

17.3 Each of the sub-conditions in Paragraph 17.2 are to be regarded as separate and severable Paragraphs. If any sub-condition shall be or become void or unenforceable in whole or in part, the other provisions shall remain valid and enforceable.

17.4 The Company's Fees are compiled assuming that the limits of liability set out in this Paragraph 17 are observed. Accepting greater levels of potential liability would render the supplies concerned unacceptably risky for the return anticipated by the Company. The Merchant therefore fully acknowledges and accepts the limits on liability in this Paragraph 17.

17.5 The Company shall have no liability for any failure or delay caused by the Merchant's acts or omissions or resulting from actions taken by the Merchant in good faith to avoid violating a law, rule or regulation of any governmental authority or which is caused by circumstances beyond the Company's control whether foreseeable or not, including (without limit) breakdown or failure in transmission links or any third party equipment, strike or industrial dispute.

## 18. **CONFIDENTIALITY AND RECORD KEEPING**

18.1 The Merchant shall not create or use any lists of Card Holders or Card numbers other than for the purpose of making payment to the Company or providing Refund details to the Company. The Merchant must not use any other information in relation to the Company's business except in accordance with this Contract.

18.2 The Merchant shall not disclose in any way any lists of Card Holders or Card numbers, or any other information hereunder or any information in relation to the Company's business, to any party, except where:-

18.2.1 the information was lawfully in the possession of the Merchant prior to the term of this Contract;

18.2.2 the information is or becomes public knowledge through no fault or action of the Merchant;

18.2.3 the information is lawfully acquired by the Merchant from a third party independently of this Contract; or

18.2.4 the Merchant is required to disclose the information by any governmental agency lawfully requesting the same or by any court of competent jurisdiction acting pursuant to its powers or otherwise as required by any law.

18.3 The Merchant shall ensure that Consumers are notified where any information relating to them will be passed to any third party in accordance with the provisions of this Paragraph 18 or otherwise.

18.4 The Merchant acknowledges that Consumers shall authorise the Company to release Transaction receipts and any data or information relating to Transactions or Cards or Cardholders to any party (including without limitation the Acquirer) as is reasonably necessary for the purpose of fulfilling the Company's payment processing obligations or for the purposes of fraud, other criminal detection or as required by law.

18.5 The Merchant agrees that the Company may disclose information concerning the Merchant to the Company's Acquirer and the Card Issuers and other third parties for the purpose of assisting in identifying suppliers or others involved in amongst other things, fraud or suspected fraud, or who are or were suspected to be insolvent, or for use in any complaint, Cardholder query or information systems on which the Company's Acquirer may operate, or similar.

## 19. **VARIATION**

19.1 Subject to the remainder of this Paragraph 19, these terms and conditions may be varied by the Company from time to time upon giving the Merchant not less than five (5) working days' notice in writing from and including the date of notification.

19.2 The terms contained in the Term Sheet may be varied by the Company from time to time in writing by giving the Merchant not less than five (5) working days' notice from and including the date of notification.

19.3 The Company may at its absolute discretion amend the Fees (detailed in Paragraph 8 and the Term Sheet) by way of notice served to the Merchant in accordance with Paragraph 23.1 of this Contract. Any such amendment will take effect not less than ten (10) working days from and including the date of notification.

19.4 For the purposes of this Paragraph, notification to a Merchant upon logging onto the Company's system shall constitute valid written notification.

## 20. **ASSIGNMENT**

The Contract is entered into between the Company and the Merchant as principals and the Merchant shall not be entitled to assign the benefit or burden of it or of any interest in it without the prior written consent of the Company. The Company shall be entitled to sub-contract the whole or part of its obligations under the Contract and to assign its interest in the Contract.

## 21. **RETENTION OF RECORDS**

21.1 The Merchant shall retain copies of all Transaction receipts in the form of electronic data, with respect to Transactions submitted and any subsequent refunds made by the Company pursuant to this Contract for a period of 3 years.

21.2 The Merchant will provide copies of Transaction receipts to the Company within 5 working days of any request to do so being received by the Merchant from the Company.

## 22. **ENTIRE AGREEMENT**

The Contract sets out the entire Contract between the Merchant and the Company, and no representations, warranties or assurances, written or oral, which are not specifically set out herein shall be implied as terms of this Contract. This shall not exclude or limit the liability of either party for fraudulent misrepresentation.

## 23. **GENERAL PROVISIONS**

23.1 Any written notice may be delivered in person or sent by email, post, or by fax to the addresses of set out on the Term Sheet. The Merchant shall quote its account number on any notice.

23.2 Notices shall be deemed duly given 48 hours after posting by first class post (72 hours if second class), or immediately if delivered in person, or if by email or fax at the time of transmission if within normal business hours failing which the start of the next working day.

23.3 The Merchant agrees that the Company may act on email notices or instructions which reasonably appear to emanate from the Merchant or an authorised employee or agent.

23.4 Any messages that originate from the Merchant's server or the server of a third party designated by the Merchant and are received in the same form as sent will be deemed to be authorised by the Merchant and the Company shall not be liable for any consequence of processing such messages. The Company is not responsible for the security of data residing on a server of the Merchant's or a third party designated by the Merchant.

23.5 This Contract shall supersede any previous agreement, whether written or oral, or any other understanding between the Merchant and the Company relating to its subject matter.

23.6 The Merchant may not assign this Contract or any rights hereunder, directly or by operation of law, without the prior written consent of the Company which consent may be withheld for any reason at the Company's absolute discretion.

23.7 The Merchant is not the Company's agent and is not entitled to contract on the Merchant's behalf in any way with the Company's Merchants, Cardholders or other third parties.

- 23.8 Subject to the right of any Associated Company to enforce any term of this Contract, the Company and the Merchant are the only parties who may rely on or enforce this Contract and for this reason the Contract (Rights of Third Parties) Act 1999 is excluded.
- 23.9 If any provision of this Contract is held invalid or unenforceable by any court of law, it is the intention of the parties that all other provisions of this Contract be construed to remain fully valid.
- 23.10 This Contract shall be governed by and construed in accordance with English law and both the Merchant and the Company agree to submit to the sole jurisdiction of the English courts.
- 23.11 No failure or delay by the Company in exercising its rights under the Contract shall be construed as a waiver or release of that right unless otherwise agreed by the Company in writing.
- 23.12 Where the due date for payment is not specified in this Contract or otherwise specified by the Company in a request for payment, the due date for payment shall be 24 hours from the sum due or the request being notified to the Merchant. Where the Merchant fails to pay any sum by its due date, the Company may charge interest at the rate of 3% per month above the Lloyds TSB Bank base rate from time to time, compounded monthly whether before or after judgement on any sum which the Merchant fails to pay. Interest accrued may be applied to the Merchant Account.
- 23.13 The Merchant shall quote its account number on all correspondence with or notices to the Company.
- 23.14 Any use of the Merchant Account by the Merchant shall constitute acceptance of the Contract.

## 24. **INTERPRETATION**

In this Contract:

- 24.1 the subject headings of the paragraphs and sub paragraphs of this Contract are included for convenience only, and shall not affect the construction or interpretation of any of its provisions;
- 24.2 reference to "this Contract" includes any amendments to these terms and conditions and the Term Sheet and any variation thereto;
- 24.3 any reference to a statute, statutory provision or statutory instrument includes a reference to that statute, statutory provision or statutory instrument together with all rules and regulations made under it as from time to time amended, consolidated or re-enacted;
- 24.4 any phrase introduced by the terms "including", "include", "in particular" or any similar expression will be construed as illustrative and the words following any of those terms will not limit the sense of the words preceding those terms;
- 24.5 the words "in writing" and "written" shall be interpreted to include any document which is recorded in manuscript, typescript and any electronic communication (as defined in Section 15 of the Electronic Communications Act 2000);
- 24.6 the words "day" and "month" mean calendar day and calendar month unless otherwise stated;
- 24.7 the words "working days" shall mean Monday to Friday, excluding bank and public holidays;
- 24.8 the word "partnership" shall mean an entity comprising more than one person, where all such persons shall be jointly and severally liable for the performance of the Merchant's obligations notwithstanding the signatories to this Contract; and
- 24.9 except as otherwise expressly provided in this Contract, all remedies available to either party under this Contract are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.

**Version 5<sup>th</sup> June 2006**

The Company	Nochex Limited (Company Number 03940921), whose registered address is Leeds Innovation Centre, 103 Clarendon Road, Leeds LS2 9DF
Legal Merchant Name / Nochex account ID / Application Reference Number	Floor Fix Ltd  005612
Company Registered Address	Jaylea House 25a Waltham Rd  Bournemouth  UK  BH7 6PE
Company Number (if applicable)	06226216

## Terms

Transaction rates  Processing rate variable  Processing rate fixed	  2.90% per transaction and £0.20 per transaction
Limits for unregistered customer  Per transaction (per card)  Per day (per card)  Cumulative (per card)	  £500 £500 £1,000
Card territory	UK Only / International
IP address	Standard
Withdrawals	

