

# Retail Merchant Services Limited

## Membership Agreement

### Definitions:

The following defined terms shall apply throughout this agreement:

**'You'** or **'Your'** refers to the merchant business named in the Application Form including employees, agents, sub-contractors and/or customers and any other person who is representing the Business to which this agreement relates;

**'We'**, **'Our'** or **'Us'** refers to Retail Merchant Services Limited, a company registered in England and Wales with company number: 06079704, whose registered office address is at Matrix House, North Fourth Street, Milton Keynes, Buckinghamshire, MK9 1NJ.

**'Membership Agreement'** means the agreement between You and Us governing Your membership as one of Our approved customers and comprising collectively of the terms of this agreement and the terms of the Application Form.

**'Application Form'** refers to the application form completed by You (which includes the Application Form Summary) as part of Your agreement for membership, detailing (amongst other terms) the 'Term' and the associated membership 'Charges'.

**'Application Form Summary'** refers to the summary of main commercial terms agreed between Us and You.

**'Initial Term'** refers to the initial term of the agreement, as noted in the Application Form.

**'Equipment'** refers to any hardware and if applicable any data smart card **'SIM'** supplied to You during the Term, including but not limited to card payment terminals.

**'Charges'** refers to the membership fees payable by You to Us for the provision of the Services, details of which are set out in the Application Form, including the RMS SOS Fee.

**'Services'** refers to any service that is provided to You by Us or by one of Our approved Suppliers or Partners, as detailed in the Application Form.

**'Suppliers'** refers to any third party who may be providing all or part of the Services and any other services or Equipment to You and with whom You will have a direct contractual relationship.

**'Partner'** means one of Our approved Partners who we may outsource or sub-contract part of the Services to and with whom You will not have a direct contractual relationship.

**'Member Benefits'** refer to the associated benefits of membership to which You are, or may become, entitled as part of Your agreement with Us.

A full list of Member Benefits, Suppliers and Partners can be found on our website at [www.retailmerchantservices.co.uk](http://www.retailmerchantservices.co.uk).

**Business Day** means a day other than a Saturday, Sunday or bank or public holiday.

**'Renewal Term'** has the meaning detailed in clause 2.8.

**'RMS SOS Fee'** means the fee for the accidental damage waiver described in clause 4, details of which are set out in the Application Form.

**'Term'** means the term of this agreement, consisting of the Initial Term together with any subsequent Renewal Term.

## 1. General Terms

- 1.1. This document, together with the completed Application Form and Application Form Summary, contains the entire terms and conditions upon which You have agreed to become one of Our members. These terms apply to the Membership 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.
- 1.2. Your completed Application Form is subject to Our required credit checks and financial due diligence.
- 1.3. We reserve the right, at Our discretion, to refuse Your application or to include conditions of Your Membership with Your prior agreement.
- 1.4. Once We have carried out Our initial pre-approval checks, You will be sent written notification confirming whether Your application has been accepted or declined. You acknowledge that Your Membership Agreement will only commence when Your application has been approved and You have been notified by Us in writing.
- 1.5. The Application Form details the duration of the Term of Your Membership Agreement and the associated Charges.
- 1.6. You acknowledge that this agreement is personal to You only and cannot be transferred, nor any of Your rights or obligations assigned, to another business or individual.
- 1.7. We may, from time to time, vary or amend the terms of Our Membership Agreement at Our discretion. The current terms of Our Membership Agreement will be available [RMS T&C's \[https://info.retailmerchantservices.co.uk/terms\]](https://info.retailmerchantservices.co.uk/terms) and will take effect between us 30 days after publication on that link. It is your responsibility to ensure you review this link periodically to ensure you are aware of any updates to Our Membership Agreement terms which if published on that link you will be deemed to have agreed to after the 30 day period after publication meaning you will be contractually bound by those updated terms in full irrespective of whether you have actually viewed these or not. Upon written request We will provide You with details of the specific changes made when a new version of Our Membership Agreement is uploaded to this link.
- 1.8. You must notify Us immediately in writing if You change any details regarding Your business, such as:
  - Business name
  - Business address
  - Bank details
  - Legal entity
  - Card acceptance method
  - Permanent closure or sale of any outlet
  - Any material change in the ownership, control or nature of Your business during the Term.

## 2. Services

- 2.1. The Services provided to You under this agreement may be provided by approved third party Suppliers or Partners.
- 2.2. Any third party Supplier providing Services to You will do so in accordance with their own terms and conditions and copies of such terms and conditions will be provided to You during the process of Your Application Form.
- 2.3. We may, at our discretion, out-source or sub-contract part of the Services provided to You to one or more of Our approved Partners. In doing so You will not have any direct contractual relationship with such Partners.
- 2.4. We will have sole discretion over the appointment of Suppliers and Partners.
- 2.5. You acknowledge that We accept no responsibility or liability for the provision of any Services or Equipment to You by such Suppliers or Partners.
- 2.6. There may be times when our Suppliers make changes to their own terms of and conditions of supply. Any changes may be communicated to You directly from the Supplier or through Us.
- 2.7. We may transfer any of Our rights and/or obligations under this agreement to any third party at Our discretion.
- 2.8. At the end of the Initial Term detailed in Your Application Form (subject to your right to terminate the agreement early in accordance with clauses 1.7 and 9.2) Your membership will continue on a rolling monthly basis ('**Renewal Term**') in accordance with these terms. This will ensure that You have business continuity. We may at that stage or before, contact You to discuss entering into a new Membership Agreement with You for a new fixed term. If You wish to cancel the agreement whether before, on, or after the expiry of the Initial Term, please refer to clause 9 '**Ending the Agreement**'.

## 3. Equipment

### 3.1. Provision of Equipment

- 3.1.1. You acknowledge, agree and confirm that any Equipment provided by Us or any Suppliers to You during the Term is provided free of charge on a gratuitous hire basis.
- 3.1.2. Ownership of the Equipment will at all times remain with Us or with the relevant Supplier (as applicable) and nothing in this Membership Agreement will give You any rights of ownership in

and to the Equipment at any time during the Term.

### **3.2. Delivery of Equipment**

**3.2.1.** Any Equipment provided to You by Us will be delivered to the business address supplied by You on Your Application Form, once approval has been received for account set up and the terminal/s order is placed. You will be notified when the Equipment has been ordered and supplied, with an expected delivery date.

**3.2.2.** Any dates for delivery are estimates only and We will not be liable for any losses suffered by You, resulting from any failure to meet any expected delivery dates communicated by Us to You.

**3.2.3.** It is Your responsibility to ensure that You are available to take receipt of the Equipment when notified.

### **3.3. Installation of Equipment**

**3.3.1.** If the Equipment supplied can be installed without any configuration, guidelines will be provided by Us with step by step instructions for set up.

**3.3.2.** If the Equipment supplied requires support for installation, We will schedule with You an appropriate time for one of Our employees or agents to install the Equipment at Your premises. We reserve the right to charge a fee for installation.

**3.3.3.** To enable authorised employees or agents to install or remove Your Equipment they will need access to Your premises. You agree to grant Our authorised employees and agents a licence to enter your premises specifically for these purposes. It is important that You provide appropriate space for the installation and adequate health and safety protection for Our employees or agents entering the premises.

**3.3.4.** We may from time to time replace the Equipment with similar or upgraded models, or it may be necessary to provide updated parts which We may require You to fit, as far as is reasonable.

### **3.4. Care and use of the Equipment**

**3.4.1.** It is Your responsibility to comply with all reasonable instructions provided by Us from time to time, including in respect of the Equipment and to ensure the Equipment is only used in accordance with those instructions and the provisions of this Agreement

**3.4.2.** In respect of the Equipment, You agree to;

**3.4.2.1.** keep the Equipment safe and secure, and comply with supplied operator instructions and statutory requirements in relation to the Equipment at all times; and

**3.4.2.2.** keep the Equipment in Your possession or control at all times and located at the premises detailed in Your Application Form, or as otherwise notified and agreed with Us in writing. The Equipment must not be removed from the premises without Our written consent, unless using a mobile or GPRS terminal; and

**3.4.2.3.** tell Us immediately if there is any misuse, or theft, or loss or damage to, or fault in the Equipment and take reasonable precautions to prevent of those things happening. You will be liable for and will fully indemnify Us from and against any loss or damage whatsoever caused to the Equipment by You or Your employees, agents, sub- contractors or customers however this is caused and whether or not any loss or damage is caused by any wilful or deliberate acts or negligence; and

**3.4.2.4.** at all times insure the Equipment and keep the Equipment fully and adequately insured with a reputable insurer against any loss or damage by accident, fire, theft and any other risks (including third party damage) against which it is usual to insure the Equipment, or as we may reasonably require from time to time. If You receive any insurance monies following the loss of or damage to the Equipment such monies shall be held by You on trust for us and pay such monies to Us on demand and You shall provide us evidence of such insurances if we request it within seven days of such a request being received by You

**3.4.2.5.** not remove, alter or obscure any text or label on or forming part of the Equipment; and

**3.4.2.6.** specifically in respect of any data smart card 'SIM' supplied to You, not act in any way that might damage the SIM or the telecommunications network of the owner of the SIM;

**3.4.3.** Failure to comply with this clause 3.4 may result in Us terminating Your Membership Agreement under clause 9.3 below and/or relying on Our right under clause 3.7.2 below to recover any losses or damages We suffer as a result of Your breach.

### **3.5. Our service level promise**

**3.5.1.** If there is any fault in the Equipment You can call our Customer Service Team and We will endeavour to fix this remotely with You where possible.

**3.5.2.** We will endeavour to replace any faulty or damaged Equipment, where You are not liable for any faults in the Equipment, within the following timeframes:

**3.5.2.1** If You inform us by 3pm, receipt of a replacement terminal by the end of the following Business Day\*

**3.5.2.2** If You inform us after 3pm, receipt of a replacement terminal by the end of the second

Business Day after Your call\*

*\*If the business location is in Northern Scotland, Western Wales, Devon, Cornwall, Ireland or other UK Offshore areas, the timescales will vary and be dependable on reasonable availability of delivery options.*

### **3.6. Return of Equipment**

- 3.6.1. All Equipment in Your possession must be returned to Us upon termination of this agreement regardless of the reason for termination.
- 3.6.2. All Equipment must be returned to Us either through a courier arranged by Us, or returned via Royal Mail with specific instructions provided by Us.
- 3.6.3. All Equipment must be returned to Us promptly after termination of the agreement and in any event, no later than 30 days from the date of termination.
- 3.6.4. Failure to return the Equipment to Us following the termination of the agreement will result in a charge of £399 +VAT.

### **3.7. Protecting Our ownership of the Equipment**

3.7.1. During the Term, You must not:

- 3.7.1.1. Sell or offer for sale, assign, let, mortgage or charge, pledge, hire out, loan, or otherwise dispose of the Equipment
- 3.7.1.2. part with or share possession of the Equipment; or allow any lien on the Equipment
- 3.7.1.3. allow any distraint, execution or other legal process against the Equipment
- 3.7.1.4. modify or interfere with the Equipment or allow any third party to do so;
- 3.7.1.5. cover, remove or interfere with any name plate, serial number, trade mark or other mark on the Equipment or allow any third party to do so;
- 3.7.1.6. reverse engineer, alter, modify, copy or analyse the software supplied with the Equipment or sub-licence or assign the right to use the software or sub-licence or assign the right to use the Equipment to any third party; or use the software other than for Your own use as per the terms of this agreement.

3.7.2. You shall indemnify and hold Us harmless in respect of all losses, damages, costs and expenses suffered or incurred by Us as a result of any breach of any of the above provisions in relation to the Equipment You or those persons You are responsible for under this agreement.

## **4. RMS SOS**

- 4.1. Unless otherwise agreed with Us, You shall pay the RMS SOS Fee in accordance with clause 6
- 4.2. Subject to clauses 4.1, 4.3 and 4.4, provided You pay the RMS SOS Fee:
  - 4.2.1. in the event of any accidental damage to the Equipment:
    - 4.2.1.1. You shall not be liable to Us for such damage and We waive Our right to recover any amounts from You under clause 3.4 in respect of such damage; and
    - 4.2.1.2. We shall comply with the service level promise set out in clause 3.5 in respect of any repair or replacement for the damaged Equipment; and
  - 4.2.2. You shall not be required to insure the Equipment against accidental damage under clause 3.4.2.4.
- 4.3. You must give to Us such assistance, co-operation and information as We reasonably require, including giving Us access to the Equipment, for the purpose of establishing the cause of damage to the Equipment.
- 4.4. Clause 4.2 shall not apply in respect of any damage to the Equipment that We reasonably believe was caused by intentional acts or negligence.

## **5. E-Commerce**

- 5.1. The following terms of this clause 5 apply only to the e-commerce Services supplied to You (including virtual terminal, e-com payment gateway, pay by link or shopping cart integration).
- 5.2. By agreeing to these terms, You acknowledge that the relevant e-commerce Services will be supplied by one of Our approved Partners and not by Us directly.
- 5.3. Your contract with Us for the provision of e-commerce Services will be on a twelve month basis as stated in Your Application Form and Application Form Summary and You will be entitled to terminate that part of this agreement, relevant to one or more of the e-commerce Services by giving Us no less than 30 days notice.
- 5.4. Should you terminate all or part of the e-commerce Services provided to You under this agreement in accordance with clause 5.3 there will be no cancellation fees payable to Us. However, You will remain liable to pay any Suppliers any cancellation fees due and owing to the Suppliers as detailed in their terms and conditions.
- 5.5. You will be solely responsible for ensuring that any e-commerce Services purchased by You are compatible with any website, applications or other platforms owned or operated by You and can be fully integrated within such websites, applications or other platforms. We accept no liability for any failure of the e-commerce Services supplied to You caused by any acts or omissions of Our Suppliers or Partners, or caused by any integration or compatibility issues.

## **6. Payments**

Terms and Conditions 2021 (7) [www.retailmerchantservices.co.uk](http://www.retailmerchantservices.co.uk)

- 6.1. We will supply You with itemised quarterly invoices during the Term detailing all applicable Charges as specified in Your Application Form;
- 6.2. All Charges are payable by You by quarterly Direct Debit in advance and will only be considered as paid when We receive payment in cleared funds in our designated account. Alternative methods of payment may be accepted relating to this agreement as exceptions, by prior agreement with Us.
- 6.3. All payments must be paid directly by You and not by an agent or their representative or any other third party on Your behalf.
- 6.4. If You fail to pay any amount when due, then in addition to any other rights or remedies available to Us in law, We will be entitled to charge interest on such overdue amounts at the rate specified in the Late Payment of Commercial Debts (Interest) Act 1998, from the due date for payment until the date we receive payment (together with applicable interest) in cleared funds.
- 6.5. In addition, where you fail to make any one or more payment when due, We may suspend all or any part of the Services until the payment is received by Us in full and in cleared funds.
- 6.6. We accept no liability for any Charges that may be made by Your Bank and/or Building Society for processing and/or setting up the direct debit.
- 6.7. It may be necessary for Us to alter any Charges or alter any other term of this agreement by giving at least 30 days notice in writing to You, unless the change is a change in the rate of VAT, when the change will take effect immediately from the date of the change in VAT.

## 7. Data Protection

- 7.1. As part of Your application it is necessary for Us to disclose Your information to credit reference agencies, Suppliers and Partners, for the purpose of making credit decisions and appropriately assessing Your application and so that the Services can be provided to You. In signing Your Application form, You have agreed for Us to disclose Your information as is necessary, for Us to obtain a decision on the whether Your application passes our relevant credit checks.
- 7.2. Your Personal data will not be shared with third parties unless it is necessary for the performance of the contract between us.
- 7.3. Some personal data may need to be transferred outside the EEA for underwriting purposes. Where personal data is transferred outside the EEA, We will ensure that appropriate provisions and safeguards are put in place and will obtain Your explicit consent and will comply at all times with Our obligations as a data controller and processor under the General Data Protection Regulation ('GDPR').
- 7.4. All personal data will be stored only for the purposes of maintaining Your account and performing this contract and the Services or Equipment associated with it and for marketing purposes, as per Your agreed preferences notified to Us during the application process. Further details of how Your personal data will be used and held by Us can be found in Our Privacy Policy available on our website at [www.retailmerchantservices.co.uk/privacy-policy](http://www.retailmerchantservices.co.uk/privacy-policy).
- 7.5. We may contact You from time to time with regards to Services or Equipment updates.

## 8. Limitation of Liability

- 8.1. This clause sets out the entire financial liability of Us (including any liability for the acts or omissions of Our employees, agents or sub-contractors) to You in respect of (i) any breach of the Membership Agreement; and (ii) any use made by You of the Services or the Equipment.
- 8.2. If any Equipment supplied by Us under this agreement becomes defective in any way, then provided the defect has not been caused by any act or omission by You or Your employees, agents, sub-contractors or customers, Our obligation and liability is limited to the repair or replacement of the Equipment.
- 8.3. We will not be liable to You for any acts or omissions of Our Suppliers or Partners, including any failure by Our Suppliers or Partners to perform any part of their Services or the supply of the Equipment.
- 8.4. Nothing in this agreement will limit or exclude Our liability for death or personal injury caused by negligence or for any damage or liability incurred as a result of fraud or fraudulent misrepresentation.
- 8.5. Subject to clause 8.4, We will not be liable to You for:
  - 8.5.1. loss of profits;
  - 8.5.2. loss of business;
  - 8.5.3. depletion of goodwill and/or similar losses;
  - 8.5.4. loss of anticipated savings;
  - 8.5.5. loss of goods;
  - 8.5.6. loss of contracts;
  - 8.5.7. loss of or corruption of data or information; or
  - 8.5.8. any other special, indirect, consequential or pure economic loss, costs, damages, charges and expenses.
- 8.6. Our maximum liability to You under this agreement (whether for breach of contract, negligence, breach of statutory duty or otherwise) will be limited to the value of Charges You have paid to Us under this agreement up to the point of breach.

## 9. Ending the Agreement

- 9.1. The following conditions apply if You wish to terminate the Membership Agreement with Us:

**Terms and Conditions 2021 (7) [www.retailmerchantservices.co.uk](http://www.retailmerchantservices.co.uk)**

- At least 30 days notice must be provided to Us at any time.
- All Equipment must be returned at the end of the Term or the Renewal Term in good condition and in accordance with clause 3.6.
- Your termination will be acknowledged by Us in writing and any final invoices will be issued and payable immediately when the termination is confirmed.

**9.2.** Upon termination of the agreement You will be liable to pay the following charges, dependent on the date of termination relative to the Term:

Notification period	Termination Charges
<b>At least 30 days before the end of the Initial Term, to terminate with effect from the end of the Initial Term</b>	You remain liable to pay all membership Charges up to the end of the Initial Term but there will no additional termination fees payable to Us.
<b>During the Initial Term, to terminate before the end of the Initial Term</b>	You are liable to pay Us the following: <ul style="list-style-type: none"> <li>• Remaining membership Charges up to the end of the Initial Term; and</li> <li>• A sum in liquidated damages equal to £40 for each month remaining in the Initial Term following the date of termination (which You acknowledge is a genuine pre-estimate of the loss We would suffer in the event You terminate this agreement early); and</li> <li>• £200 administration fee</li> </ul>
<b>During the Renewal Term</b>	You remain liable to pay all Charges up to the end of the relevant Renewal Term. Should You serve notice to terminate the agreement mid-way through a month then You will remain liable to pay the Charges for the next full subsequent month.

**9.3. Early termination by Us**

**9.3.1.** We may terminate this agreement immediately if:

- We reasonably think that any information You have provided, regarding this agreement, is incorrect or misleading;
- You breach any of the terms of this agreement and/or any contract with any Supplier;
- You fail to pay any amount when due under the terms of this agreement;
- You suspend or cease trading, or threaten to suspend or cease trading;
- We have reasonable cause to believe that the termination of the agreement is necessary, to enable us to protect our interests or those of any of our Suppliers or Partners, or to comply with any legal or regulatory requirements.

**9.3.2.** In the event of termination for any of the above reasons, We are entitled to recover from You all unpaid amounts owed to Us under this agreement, including termination charges as detailed below:

Charges
<ul style="list-style-type: none"> <li>• Remaining membership Charges up to the end of the Initial Term and any Renewal Term; and</li> <li>• A sum in liquidated damages equal to £40 for each month remaining in the Initial Term following the date of termination (which You acknowledge is a genuine pre-estimate of the loss We would suffer in the event You terminate this agreement early); and</li> <li>• £200 administration fee</li> </ul>

**9.4.** Ending this agreement will not affect any of Our rights already accrued or any liabilities under the terms and conditions of this agreement.

**10. Notices**

**10.1.** We will serve any notices, information or demand on You by posting it or leaving it at your address last known to Us.

**10.2.** You will serve notice on Us by posting it or leaving it at Our registered office address, shown at the beginning of this agreement or any other address We may specify from time to time

**10.3.** If any notice, information or demand is served by post it will be deemed to be received by the other party at noon two Business Days after the date it was posted.

**11. Governing Law and Jurisdiction**

**11.1.** This agreement will be governed by and interpreted under English Law. Legal proceedings in connection with this agreement must be taken in English Courts.