

1. INTRODUCTION

1.1 Docomo Digital Limited, a company incorporated and registered in England and Wales with company number 09969891 (“**Docomo**”). Registered address at 57-63 Scrutton Street, London, United Kingdom, EC2A 4PF.

1.2 These platform processing terms form a legal agreement between you (the “**Company**”) and Docomo, which governs your access and use of the processing services provided through NOMO by Docomo.

1.3 Docomo and Company hereinafter individually referred to as a “**Party**” or collectively as the “**Parties**”.

1.4 If you need to contact us for any reason, including to provide feedback or report any issue please e-mail us at: info@nomo.io

2. BACKGROUND

2.1 NOMO is a pay-out solution for online platforms. Using NOMO, incoming payments from Members can be paid, via Company’s PSP(s), into an account specified by Docomo resulting in credits to the E-money Account and resulting issue of e-money by E-money Account Provider. The resulting e-money in the E-Money Account can then be distributed in accordance with instructions provided by Docomo to the E-money Account Provider.

2.2 Docomo shall only provide Services when satisfied the integration requirements specified by Docomo have been completed by Company and that Company is in full compliance with this Agreement.

3. DEFINITIONS AND INTERPRETATION

In this Agreement (except where the context otherwise requires) the following words shall have the following meanings:

Agreement: these terms and conditions and the Commercial Agreement (as updated and/or amended from time to time);

Affiliate: any entity that directly or indirectly controls, is controlled by or under common control with another entity;

API: the application programming interface Docomo makes available to Company enabling Company Infrastructure to communicate with the NOMO Infrastructure;

Business Day: excluding Saturday, Sunday or public holiday when London banks are open for business;

Charges: the sums set out in the Commercial Agreement that Company shall pay to Docomo for the provision of the Services;

Commencement Date: date specified in Commercial Agreement;

Commercial Agreement: the NOMO Commercial Agreement which is an integral part of these NOMO Platform Processing Terms and shall form one and the same legally binding document throughout the Term;

Company Infrastructure: the infrastructure, servers, equipment, and Software which is used by Company and its suppliers (including the PSP(s)) to supply or perform Company Services, or otherwise receive the Services;

Company Services: services provided by Company to the Members from time to time;

Confidential Information: all information in any medium or format (including written, oral, visual or electronic) which is disclosed by one Party to the other, however conveyed, or which is otherwise obtained pursuant to this Agreement, whether before or after the Commencement Date, which is designated orally or in writing as confidential or would appear to a reasonable person to be confidential and which relates to a Party’s (or its Affiliate’s) business including its technical solutions, cost information, pricing information, mechanisms and models, products, operations, processes, plans or intentions, developments, trade secrets, know-how, design rights, market opportunities, personnel, suppliers and customers and all information derived from any of the above together with the existence or provisions of this Agreement and the negotiations relating to it. For the avoidance of doubt all details regarding the NOMO Infrastructure and Services and the functionality thereof shall be considered Confidential Information belonging to Docomo;

Consents: all approvals, consents, licences, permissions and authorisations as required from any government or similar body or any Regulatory Body which are, from time to time, necessary for the receipt of the Services by Company;

Dashboard: the web-based dashboard created and/or owned by Docomo which may be accessed by Company to review their activity in relation to the Services;

Data Protection Laws: any national Laws implementing Directive 95/46/EC of 24th October 1995 or replaces national Laws implementing such Directive together with any other rules applicable outside of the EU in relation to the protection of Personal Data;

Docomo: as set out under Clause 1.1;

Docomo Code of Ethics: Docomo’s then current code of ethics, which describes, amongst other things, permitted use of services provided by Docomo and its Affiliates, as may be updated by Docomo from time to time, the current version of which is located at www.docomodigital.com;

Docomo IPR: all Intellectual Property Rights owned by or licensed to Docomo and its Affiliates, including, without limitation all Intellectual Property Rights in (a) Docomo’s standard developments, tools, and business methodologies; (b) the API; (c) the NOMO Infrastructure; and (d) the Dashboard;

E-money Account: an e-money account used by Docomo representing stored value of payments from Members and Company before payments are distributed pursuant to this Agreement;

E-money Account Provider: provider of E-money Account facility as selected by Docomo;

Force Majeure: any cause preventing a Party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the Party so prevented including breach of this Agreement by the

other Party, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Party so prevented or of any other Party), nuclear accident or acts of God, war or terrorist activity, riot, civil commotion, malicious damage, compliance with any Laws or governmental order, rule, regulation or direction, industrial action by employees of any providers of electrical power, failure of technical facilities, unavailability of any third party systems or software, non-provision of services by any supplier, fire, flood, or storm or acts and/or omissions of network operators;

Good Industry Practice: the exercise of degree of skill, care, prudence, efficiency, foresight and timeliness reasonably be expected from persons skilled and experienced in providing services similar to the Services and Company Services (as applicable) from an organisation of same or similar size which operates in same industry sector;

Intellectual Property Rights: except as otherwise set forth herein and howsoever arising and in whatever media all right, title and interest in and to all, (a) registered and unregistered trademarks, service marks, trade names, business names, brand names, logos, get-up, domain names and URLs, registered design, design right, community design right, (including all goodwill associated with any such name); (b) moral rights, patents, patent applications, and patentable ideas, inventions, discovery or process and/or improvements; (c) trade secrets, proprietary information, and know-how; (d) all divisions, continuations, reissues, renewals, and extensions thereof now existing or hereafter filed, issued, or acquired and all similar or equivalent rights or forms of protection in any part of the world; (e) registered and unregistered copyrights including, without limitation, any forms, images, audio visual displays, text, software, database rights, goodwill and (f) all other intellectual property, proprietary rights and/or other rights related to intangible property;

Interest Rate: interest at a rate of 4% per annum above the base lending rate from time to time of National Westminster Bank;

Laws: any law, statute, subordinate legislation, rule, order, regulation, judgment, direction, guideline, code of practice, rules of procedure, policies, industry agreement or determination having the force of law from time to time applicable to a Party and relevant to this Agreement;

Losses: all losses, fines, liabilities and damages and all related costs, expenses and payments including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

Member: any individual customer of Company elected to utilise NOMO in relation to the making or receiving of payment in relation to Company Services;

Member Data: data used to identify Members, including, without limitation, names, telephone numbers, email addresses and other personal data of Members;

Member Verification Services

means the aspect of the Services identified as such in Clause 5;

NOMO: the pay-out solution for platforms provided by Docomo (as may be branded as such or otherwise solely at Docomo’s discretion) and which may be used by Members of that platform to receive payments in relation to that Member’s use of Company’s Services which are provided by that platform;

NOMO Infrastructure: the infrastructure, servers, equipment and Software which is owned, used and/or licensed by Docomo to supply or otherwise perform the Services;

PSP: the payment service provider which is engaged by Company to receive and process payments in relation to Company Services;

Regulatory Body: any authority (whether or not having statutory authority) which has responsibility for regulating or enforcing any Laws relevant to the promotion, provision and operation of the Services and/or Company Services as applicable;

Security Standards: any security standards are specified by Docomo to Company from time to time;

Services: services specified in Clause 5 provided by or on behalf of Docomo to Company;

Software: computer programs in object code or source code;

Term: period when this Agreement is in effect as further described in Clause 4;

Third Party: any person or entity which is not a Party to this Agreement;

Virus: any item, software, device or code intended persons to, or likely to, or may: (a) impair or prevent the operation of any Software, mobile device, network or computer systems; (b) cause loss of, or corruption or damage to any Software, mobile device, network, computer systems or data; (c) prevent access to or allow unauthorised access to any Software, mobile device, network, computer system or data; (d) cause any Software, mobile device, network, computer systems to carry out any unauthorised actions including but not limited to performing any unauthorised billing or artificially inflating traffic on the NOMO Infrastructure; or (e) damage reputation of Docomo and/or NOMO, including, but not limited to any computer virus, malware, Trojan horse, worm, software bomb, authorisation key, licence control utility or software lock;

Website: means website set out in the Commercial Agreement, together with any other website or mobile application which is owned or operated by Company or its Affiliates;

Year: each consecutive 12 (twelve) month period commencing on the Commencement Date or the anniversary thereof.

The rules of interpretation in Clause 17(o) shall govern this Agreement.

4. TERM

The Term of this Agreement commences on the Commencement Date and will continue in force until terminated in accordance with the terms of this Agreement.

5. DOCOMO SERVICES

5.1 To facilitate the provision of the Services throughout the Term Docomo shall use all reasonable endeavours to supply the following to Company (all of which may be updated

by Docomo from time to time): (a) access to the API; (b) credentials for the Dashboard; and (c) details of the account into which payments from the PSP(s) must be directed in order for credits to be added to the E-money Account.

5.2 E-money Account Services

Docomo shall procure E-Money Account is available for receipt of payments from Company's PSP(s). The following steps apply in relation to E-money Account Services.

5.2.1 Pay-in:

Company's PSP(s) processes payment from Members and directs funds to the account specified by Docomo using the payment method specified by Docomo. The E-Money Account shall only operate in agreed currencies and payments made by Company's PSP(s) for credit of the E-money Account shall only be made in such agreed currencies.

5.2.2 Operation of the E-money Account:

a) Docomo requires that when the E-money Account Provider receives funds from the PSP(s) the E-money Account Provider issues an amount of e-money equivalent to amount of funds paid into the E-money Account (e.g. £100 of funds equals £100-worth of e-money). Uploaded funds will be credited to the E-money Account after funds received by E-money Account Provider. If funds received are subject to any reversal, E-money Account Provider will deduct such reversed transaction from the balance available. If Company's Account balance is insufficient, Docomo reserves the right to require repayment from Company of such shortfall, and Company agrees that it will immediately comply with such request.

b) The entitlement to the e-money when it is distributed from the E-Money Account shall be subject to the Commercial Agreement between Docomo and Company and as further described below. As Docomo has the direct relationship with the E-Money Account Provider all sums within the E-money Account are legally owned by Docomo.

c) Docomo is responsible, using its own internal systems, for recording who is entitled to the e-money within the E-money Account. Where Company identifies to Docomo that e-money is allocated to a particular Member, Docomo shall rely on the instructions of that Member regarding the treatment of that e-money in accordance with Docomo's agreement with that Member. This information is updated in near real-time based on information provided by Company via the API relating to pay-ins to the account, fees due to Docomo and Company, and pay-outs to Members.

d) Docomo shall make Company's e-money balance to which it is entitled available for access or display within the Dashboard and via the API. The display of available funds does not necessarily mean transactions to these funds cannot be reversed. Docomo reserves the right to reverse payments where payer or payer's bank or payment service provider has reversed an upload or other payment used to fund the payment to Company.

e) Docomo reserves the right to carry out all and any necessary money laundering, terrorism financing, fraud or other illegal activity checks before processing any upload, payment or pay-out transaction whether in whole or part.

f) The e-money held in the E-Money Account does not expire but will not earn any interest whatsoever at any time.

g) The E-Money Account is subject to upload, payment and pay-out limits due to security and legal requirements as may be determined by Docomo or E-Money Provider from time to time and Company may be asked to answer security questions or complete other activities Docomo reasonably requires regarding such transactions.

h) Company must ensure information supplied to the E-Money Account and any details of payments instructed and relevant beneficiaries is always complete, accurate and up to date and Docomo shall not be liable for any loss arising out of Company's failure to do so. Docomo may ask Company at any time to confirm and/or provide documents or other evidence as to the accuracy of this information.

5.2.3 Pay-out:

a) The fees Docomo is entitled to receive from use of the E-Money Account are specified in the Commercial Agreement.

b) E-Money Provider will only make pay-outs from the E-money Account based on prior written instructions received from Docomo. Company agrees it shall not instruct E-money Provider to make any payment from the E-money Account.

c) Any pay-out of fees due to Company are implemented by Company making request to Docomo via the Dashboard or API. Docomo will then instruct E-Money Provider to make relevant transfers of Company fees into an account nominated by Company. Pay-outs may only be made using a pay-out method as previously specified by Docomo in writing. Company must only instruct payments (either to itself or Members) where sufficient funds are available. Docomo shall be entitled to rely on instructions of Members where the e-money has been allocated to that Member.

d) Docomo shall instruct E-Money Account Provider to make payments to beneficiaries that Company identifies in accordance with Company's instructions. Payments may only be directed by Company to itself or Members with a NOMO account. It is Company's responsibility to ensure accurate and complete payment instructions for the beneficiary of a payment are provided to Docomo. Company agrees to provide Docomo with any additional information Docomo requests regarding payments within 2 (two) Business Days of request. Company hereby consents to Docomo or the E-Money Account Provider including beneficiary's full name, address and account number (and any other details required to enable compliance with anti-money laundering procedures) on the payment details to be sent to the beneficiary's bank or payment service provider to comply with anti-money laundering regulations. If Company provides incorrect beneficiary details Docomo is not liable for any loss Company incurs although will use reasonable efforts to assist Company in recovery of its payment; Docomo reserves right to charge a fee to cover its reasonable costs for doing this.

e) Company must notify Docomo in writing by email as soon as is reasonably practicable if it becomes aware of any unauthorised or incorrectly executed payments. Docomo shall

then inform E-Money Account Provider.

f) Docomo may refuse to implement Company's payment instructions because, for example, there are insufficient funds available, Company is in material breach of this Agreement, or Docomo reasonably believes payment unlawful. In these circumstances Docomo shall promptly notify Company, stating whatever possible reasons for refusal and procedures for rectifying payment detail errors that led to refusal. Docomo is entitled to pass-through to Company (and Company shall pay) any charge Docomo incurs due to payment instructions from Company which cannot be fulfilled. Docomo is not obliged to notify Company of its refusal to execute proposed transactions where Docomo reasonably believes such notification would be unlawful.

5.2.4 Prohibited Payments:

a) Company undertakes, warrants and represents to Docomo it shall not use E-money Account for any illegal purposes, including, without limitation, fraud or money laundering.

b) Docomo reserves right, in its reasonable discretion, to impose 'acceptable use' terms in relation to operation of the E-money Account and provision of any payment service including prohibition of certain categories of payment transactions.

c) If Company conducts or attempts to conduct transactions in violation of prohibitions contained herein Docomo reserves right to reverse transaction, and/or suspend access to the E-money Account, and/or report transaction to relevant Regulatory Body, and/or claim damages from Company.

5.2.5 Relationships with Members:

a) Docomo shall have direct relationships with each Member due to Member's NOMO account. Accordingly, Docomo shall be entitled to communicate with E-Money Account Provider in order to effect distribution of e-money which Members are entitled to in accordance with its agreement with the Member. The balance due to Members per transaction shall be based upon information provided by Company via the API.

b) Where agreed between Docomo and Company that Members can use their 'available' e-money balance to pay for additional services from another Member using Company Services (regardless of whether Members are entitled to the e-money balance from using Company Services, or otherwise), the remainder of this section shall be applicable.

c) If Members pay for services using their 'available' balance, Company will send instructions to Docomo using the API and Docomo shall update its internal records to identify who is entitled to e-money from transactions (and information available to Company via the Dashboard and API shall be updated accordingly).

5.2.6 Service Levels:

Docomo shall use all reasonable endeavours to ensure E-Money Account Services are available 99.5% of the time during each calendar month. This calculation excludes unavailability due to scheduled maintenance or a Force Majeure event.

5.2.7 Dashboard and Member Support:

a) Docomo shall use reasonable endeavours to make the Dashboard available to Company. The Dashboard shall be available online via a web-browser and will enable Company to:

- i. monitor and manage its interactions with Docomo;
- ii. access appropriate user support (as described below);
- iii. instruct payments to Members and manage relationships with Members; and
- iv. view reports outlining recent activity in the E-money Account.

Although Docomo uses reasonable endeavours to ensure data and reports provided via the Dashboard are current and correct, any information provided via the Dashboard should not be relied upon for financial reconciliation and used for informational purposes only.

b) Docomo shall provide an online helpdesk facility via the Dashboard in order to allow Company to contact Docomo's (second level) support staff in event of issues and Docomo shall consider and respond to any reports via the helpdesk in accordance with Docomo's standard response times.

5.2.8 Member Verification Services:

Docomo shall make available a service to Company whereby identity of Members shall be checked (the "Member Verification Service"). The Member Verification Service is described in the remainder of this Clause. The Member Verification Service is intended to check whether documentation provided by Members appears to be authentic and corresponds with information supplied by that Member. The Member Verification Service is conducted on Docomo's behalf by a third party (the "Member Verification Service Provider").

5.2.9 Provision of Services:

a) The Member Verification Service checks shall be automatically carried out prior to a first payment being made to Members in accordance with Docomo requirements except:

- i. where Company informs Docomo it had conducted verification of the identity of Members which is satisfactory to Company and has provided evidence of such checks to Docomo in a form satisfactory to Docomo (a "Company Check"); or
- ii. if services which are equivalent to the Member Verification Services have recently been conducted in relation to that Member on behalf of another platform using the Services (a "Recent Check") (see Clause below 'Sharing' for further details).

b) Member Verification Service checks shall also be carried out:

- i. if there was significant change in relation to a Member's circumstances such as a change of a Member's passport, name, address or banking details. Docomo reserves right to add further examples to this list of "significant change" events as it deems necessary; and
- ii. in accordance with Docomo's standard Member verification procedures.

5.2.10 Sharing:

a) Company agrees that the results of its Member Verification Services can be shared with other platforms who use the Services, in consideration of the following. If there has been a Recent Check, and such verification remains valid in accordance with the rules

specified in the previous Clause, Docomo may conclude, in its discretion, that it need not conduct a further verification check in relation to the Member prior to a payment being instructed to that Member.

b) Company also agrees that any information which is supplied by Company to Docomo pursuant to a Company Check may be retained by Docomo and the results of a Company Check shared with other platforms who use the Services. Accordingly, Company hereby grants to Docomo a perpetual, sub-licensable, transferrable, royalty free irrevocable licence to use and retain any information which is supplied pursuant to a Company Check.

5.2.11 Documentation:

Verification checks can generally be applied to the following documents which utilise the Latin alphabet: (i) ID Documents/passports; (ii) Bank Account Details; and (iii) Proof of Address documents. The documents acceptable to Docomo shall be specified by Docomo to Members and such list may be updated by Docomo from time to time.

5.2.12 Process for Member Verification Service:

The Member Verification Service involves checking images of qualifying documentation sent by Members regarding their identity. The Member Verification Service shall include the following steps in (a) to (e) below:

- a) Transmission by Members of the Member's documents to Docomo or a third party specified by Docomo.
- b) An examination of the Member Data contained in the documents transmitted and a check of the documents' consistency, with respect to redundancy criteria (control keys, internal redundancy of information) and Member Data in a single file, to check the general format and compliance, and to confirm the authenticity of the document.
- c) The Member Verification Service automatically and interactively extracts information contained in the document and performs the check as follows:
 - i. ID documents/passports: verified data includes name, forenames, date of birth, date of validity and authenticity of the MRZ band.
 - ii. Bank account details: verified data includes IBAN, BIC or Sort Code, account number and account holder.
 - iii. Proof of address: verified data includes name, address and date of issue.

d) When Member Data cannot be processed automatically, a human operator at the Member Verification Service Provider performs an additional check. Where appropriate, Member Data is extracted manually in a dedicated interface of the Member Verification Service.

e) If the Member Verification Service concludes the Member Document is accurate, payment to the Member shall be processed. If the identity of the Member cannot be verified, Docomo shall inform Company and the Member and request further verification information.

5.2.13 Service Levels:

- a) Docomo shall use all reasonable endeavours to ensure Member Verification Services are available 99.5% of the time during each calendar month. This calculation excludes unavailability due to scheduled maintenance or a Force Majeure event.
- b) Docomo shall use industry standard automated checks to provide the Member Verification Services, although it should be noted that such checks may not be 100% accurate given the automated nature of such checks.

5.2.14 Changes:

Docomo may make any changes to the technical specification of the Services and/or providers used to provide the Services in its discretion. In addition, Docomo may make any changes to the Services in order to ensure continued operation of the NOMO Infrastructure and the Services in accordance with the Law, Good Industry Practice and/or any applicable card scheme rules. Docomo shall not be obliged to notify Company of such changes, except where such changes shall require, in Docomo's reasonable opinion, a variation to this Agreement, in which case both Parties agree they shall promptly execute such amendment in accordance with Clause 17 (j). Company may propose changes to the scope or execution of the Agreement (including the Services) by presenting to Docomo, in writing, the proposed changes and the effect that those changes will have on: (a) the Services; (b) Docomo's existing Charges; and (c) any of the terms of this Agreement, ("**Change Order**"). If Docomo agrees to Company's proposed changes, both Parties shall sign the Change Order and that Change Order shall amend this Agreement.

6. COMPANY OBLIGATIONS

6.1 Company undertakes, warrants and represents to Docomo from the Commencement Date and throughout the Term it shall:

- a) implement, and conduct all relevant development work in order to successfully implement the API and allow integration between the NOMO Infrastructure and Company Infrastructure. Docomo shall endeavour to notify Company of any material updates to the API impacting Company Services and Company shall also successfully implement such updates without charge to Docomo, within 30 (thirty) days of such notification and immediately notify Docomo in writing if there is any delay or inability to do so;
- b) promptly and fully co-operate with and assist Docomo in all matters relating to or impacting the Services;
- c) certify all documentation, information, data, items and materials reasonably required by or provided to Docomo in connection with the Services are supplied to Docomo when required, are accurate, complete and in the format required by Docomo;
- d) ensure that sufficient background and any other necessary checks have been conducted in relation to any Members who use Company Services, as required by applicable Laws and in accordance with Good Industry Practice;
- e) be responsible for the provision of Company Services to Members and shall provide adequate support to Members and shall manage the relationship with Members in all

matters relating to Company Services;

- f) notify PSP(s) of the arrangements with Docomo at least 14 (fourteen) days prior to the first live use of the Services, and direct PSP(s) to pay all incoming funds from Members into the relevant account specified by Docomo;
- g) ensure that it shall make the resulting transfers of funds into the relevant account specified by Docomo contemporaneously or promptly following any instruction (via the API or otherwise) for the payment of sums to the E-Money Account;
- h) provide Docomo in writing with Company's bank details in order to allow Docomo to manage pay-outs to Company and any change of the same to be recorded in writing to Docomo;
- i) comply with the technical requirements, standards, and systems specified by Docomo from time to time. Docomo shall notify Company of any updates to the requirements, standards, and systems and Company shall implement such updates, without cost, within 30 (thirty) days of such notification;
- j) ensure all consents required from Members are obtained beforehand in order to facilitate necessary data sharing with Docomo;
- k) protect and keep confidential the Dashboard credentials supplied by Docomo;
- l) nominate one internal "Superuser" to access and use the Dashboard on behalf of Company (for written approval by Docomo). This "Superuser" can then nominate additional 'users' who may also access and use the Dashboard;
- m) provide all support to Members in relation to Company Services and also provide reasonable support to Members in respect of NOMO and operate a "first line" helpdesk for Members for any queries they have in relation to their account (such as in relation to amounts owed to the Member); and
- n) only utilise the Services in accordance with the Docomo Code of Ethics.

7. PAYMENT

7.1 **Payment:** Company shall pay Docomo the Charges set out in the Commercial Agreement in accordance with the terms detailed therein.

7.2 **Charge Calculations:** The total price charged by Docomo to Company shall be based on calculations made by Docomo's technical systems and such calculations shall be deemed accepted by Company, except in the case of manifest error which can be adequately demonstrated by Company.

7.3 **VAT and other Charges:** All payments referred to in this Agreement are stated exclusive of value added tax and Company is solely liable and agrees to pay all sales and other taxes related to the Services or payments made by Company hereunder (other than taxes based on Docomo's Charges). All fees owed by Company to any Third Party, such as to PSP(s), are Company's sole responsibility and are not covered by this Agreement.

7.4 **Set-Off:** Docomo may set-off any amounts owed to it by Company in connection with this Agreement from any sums payable by Docomo to Company. Company shall have no right to set-off, counter-claim, deduct or withhold (other than any deduction or withholding of tax as required by applicable Laws) under this Agreement and shall not be entitled to apply any amount due to Docomo under this Agreement in or towards payment of any sums owing by Docomo to Company in relation to any matter whatsoever.

7.5 **Withholding:** All payments due to Docomo shall be made without any deduction or withholding on account of any tax, duty, charge or penalty except as required by Laws, in which case the sum payable to Docomo in respect of which such deduction or withholding is to be made shall be increased to extent necessary to ensure after making such deduction or withholding, Docomo receives and retains (free from any liability in respect thereof) a net sum equal to the sum it would have received if such deduction or withholding had not occurred.

7.6 **Interest:** All times for payment of the Charges or any other monies by Company hereunder shall be of the essence. Without prejudice to the foregoing, if Company fails to make any payment due to Docomo under this Agreement by the due date for payment then Company shall be liable to pay interest on the overdue amount at the Interest Rate. Such Interest Rate shall accrue on a daily basis and be compounded quarterly from the due date until actual payment of the overdue amount whether before or after judgment. Company shall pay the Interest Rate together with the overdue amount together with all costs and expenses incurred by Docomo in the collection of any overdue amount(s) and Docomo shall be entitled to suspend its performance under this Agreement with immediate effect without liability if any sum owed by Company is outstanding.

8. WARRANTY

8.1 Both Parties warrant that as at the Commencement Date and throughout the Term each Party shall (a) ensure that it has the right and power to grant to the other Party the rights and licences granted under this Agreement; (b) ensure entering into and performance of its obligations under this Agreement has been duly authorised; (c) ensure that there are no agreements or arrangements with any Third Party, the terms of which prevent it from entering into this Agreement or would materially impede the performance by it of its obligations under this Agreement; (d) comply with all applicable Laws; (e) not infringe any Intellectual Property Rights of a Third Party; (f) not libel, defame, cause injury to, invade the privacy of or otherwise infringe or violate the rights of any person or Third Party; (g) use only personnel who are competent and have the experience which is appropriate for the performance of the tasks to which they are allotted and who shall perform those tasks in an efficient and professional manner; (h) perform all obligations under this Agreement in accordance with Good Industry Practice; (i) not disparage the other Party or the other Party's trademarks, websites, products or Services, or display any such items in a derogatory or negative manner on any website or in any public forum or press release; and (j) Ensure its signatory to the Commercial Agreement is authorised

to sign the Commercial Agreement on its behalf.

8.2 Without limiting the foregoing, Company further undertakes, represents and warrants to Docomo that throughout the Term (a) Data which is supplied by Company and the PSP(s) to Docomo is correct and complete and may be relied upon by Docomo; (b) All necessary consents have been obtained for the collection, storage, transfer, and processing of the Member Data and for the use of the Member Data by Docomo to provide the Services; (c) There are no actions, suits proceedings or regulatory investigations pending or threatened against it or any of its group companies that might be reasonably expected to adversely effect the performance of its obligations under this Agreement; (d) Company will comply at all times with any applicable Laws concerning consumer rights including but not limited to the following items: (i) pre-contractual disclosure obligations; (ii) formal requirements for long distance selling; (iii) rights to withdraw; (iv) delivery; (v) information requirements; (vi) unfair commercial practises and (vii) advertising, promotions or prize giving; and (e) Company Services and all materials issued by or on behalf of the Customer during the Term or any Third Party relating to the Customer Services shall not (i) be improper, indecent, immoral, obscene, defamatory, racist or otherwise unlawful; (ii) be violent or abusive in nature; (iii) be sexual in nature; (iv) cause, or be reasonably likely to cause, serious offence in Docomo's opinion; (v) be operated or used fraudulently; (vi) be used to send unsolicited messages to Members at any time; and (vii) in Docomo's sole opinion, bring Docomo or its Affiliates into disrepute.

8.5 Upon request from Docomo, Company shall provide to Docomo at Company's sole cost (a) such assistance and/or information as Docomo may from time to time reasonably require in order to comply with all or any requirements and conditions at any time and from time to time imposed by Applicable Law or by any conditions applicable by any Regulatory Body, or any other competent authority or public body which are or may be applicable to or affect the Services to be provided under the terms of this Agreement; (b) information relating to Company Services including but not limited to any complaints and/or questions received by Company from Members; (c) such information as Docomo reasonably requires in respect of Company's marketing activities in relation to Company Services; and (d) details of all Third Party.

8.6 Notwithstanding anything to the contrary in this Agreement Docomo shall be entitled to pass all or any part of such information provided to Docomo to any Regulatory Body or any other competent authority, court or public body which may require the same. Any such disclosure by Docomo shall not place Docomo in breach of this Agreement.

8.7 Company warrants that any Third party shall provide such information and assistance as set out in this Clause 8 to Docomo.

8.8 Company shall provide Docomo with immediate written notification of any breach or suspected breach of any Applicable Law in relation to the Services of which Company becomes aware.

8.9 Except as expressly set forth above, and to the fullest extent permitted by applicable Laws, Docomo its Affiliates and its licensors, as applicable, make no warranty of any kind, express, implied or statutory, regarding the Services or the NOMO Infrastructure. To the maximum extent permitted by law, all conditions and warranties which may otherwise have been implied into this Agreement or otherwise be deemed to have been given in relation to the Services, including without limitation the implied warranties of satisfactory quality, fitness for particular purpose and non-infringement, are hereby expressly disclaimed by Docomo its Affiliates and its licensors.

8.10 Company acknowledges that neither Docomo nor its Affiliates or licensors represented or warranted the Services will be uninterrupted, error free or without delay or without compromise of the security systems related to the Services or that all errors will be corrected.

9. INDEMNITY

9.1 Without prejudice to Clause 8.9, each Party shall at all times indemnify in full and on demand and hold the other Party harmless from and against all and any Losses that the other Party has suffered pertaining to (a) any breach of Law by that Party relating to this Agreement; or (b) any non-compliance by that Party with Clause 16 (Data Management) by that Party.

9.2 Company shall at all times indemnify in full and on demand and hold Docomo and its Affiliates harmless from and against all and any Losses (including reasonable professional fees), claims and proceedings arising from (a) any claim relating to the infringement or alleged infringement or misappropriation of any Third Party's Intellectual Property Rights suffered as the result of the supply or receipt of Company Services, or otherwise resulting from the delivery or use of any deliverable or data which has been supplied by Company (a "Claim"); (b) any Claim by Members and/or the PSP(s) in relation to Company Services which are made against Docomo or its Affiliates (regardless of the subject matter of that Claim); and/or (c) any false or otherwise invalid instructions for the payment of credits into or out of the E-money Account which are provided by Company, or for any instructions which are not subsequently substantiated by the requisite funds being promptly paid into (in the case of a credit) or otherwise being available (in the case of a pay-out) in the E-Money Account; and/or (c) any Virus introduced into the Dashboard as a result of an act or omission of Company.

9.3 In the event of a Claim, the Party giving the indemnity (the "Indemnifying Party") shall (a) as soon as reasonably practicable, give written notice of the Claim to the other Party (the "Indemnified Party"), specifying the nature of the Claim in reasonable detail; (b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Indemnified Party; (c) allow Indemnified Party to conduct the defence of such Claim, and (d) take such action as the Indemnified Party may reasonably request to avoid, dispute, compromise or defend the Claim.

9.4 A Party will use all reasonable endeavours to mitigate any Losses it may incur in relation to any Claim which would otherwise be recoverable pursuant to this Agreement

from the other Party.

10. INTELLECTUAL PROPERTY

10.1 All Intellectual Property Rights belonging to a Party shall remain owned by that Party and nothing in this Agreement shall transfer ownership or any aspect of ownership of the other Party's Intellectual Property Rights to the other Party.

10.2 Docomo hereby grants to Company a non-exclusive, non-transferable licence to use the NOMO Infrastructure solely to extent necessary to receive Services during the Term.

10.3 Company hereby grants to Docomo and its Affiliates a royalty-free, non-exclusive, transferable licence to use any and all Intellectual Property Rights owned or licensed by Company, or developed by Company during the Term (including Company Infrastructure) to the extent necessary for Docomo to provide the Services during the Term. Notwithstanding the generality of the foregoing, Company hereby grants to Docomo and its Affiliates a royalty-free, non-exclusive, transferable licence to use Company's logo to market the NOMO services as required by Docomo from time to time. Company hereby acknowledges and agrees that all right, title and interest in and to the Services and the Docomo IPR is and will continue to be owned exclusively by Docomo and/or its licensors and Company thereby agrees to make no claim of interest in, or ownership of, any such Intellectual Property Rights.

10.4 Except to the extent permitted by applicable Laws, Company shall not disassemble, decompile, decrypt, extract, reverse engineer, prepare a derivative work based upon, distribute, or time share the Docomo IPR or any components thereof, or otherwise apply any procedure or process to the Services or components thereof in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings or any algorithm, data, process, procedure or other information contained therein. Company shall not rent, sell, resell, lease, sublicense, loan or otherwise transfer the Services or components thereof in whole or part. Nothing in this Clause shall prevent Company from creating code which is expressly required in order to integrate the API with Company Infrastructure.

10.5 Company shall immediately notify Docomo in writing of any (a) actual, threatened or suspected claim for any Intellectual Property Rights in connection with the NOMO Infrastructure and/or the Services of which it becomes aware; and (b) any proceedings threatened or commenced against it in which ownership or validity of any Intellectual Property Rights in connection with the NOMO Infrastructure and/or the Services is called into question.

10.6 Notwithstanding the foregoing, in the event of a claim, demand, action or proceeding that the technology underlying the NOMO Infrastructure and/or Services, or any portion thereof infringes or misappropriates any Third Party's Intellectual Property Rights or other right or if in Docomo's reasonable opinion, such claim, demand, action or proceeding is likely to occur, Docomo shall have the right, at Docomo's sole cost and expense, to either (a) obtain the right to continued use of the affected portion of the NOMO Infrastructure and/or Services (as applicable) for Company; or (b) modify or replace, in whole or in part, the affected portion of the NOMO Infrastructure and/or Services (as applicable) to eliminate the infringement or misappropriation. If Docomo is unable to achieve the foregoing (a) or (b) in a commercially reasonable manner in Docomo's sole discretion, Docomo shall have the right to immediately terminate this Agreement upon written notice to Company without liability therefor. The provisions of this Clause constitute Company's sole remedy and Docomo's exclusive liability related to the NOMO Infrastructure and Service with respect to any actual or alleged infringement, violation, or misappropriation of any Intellectual Property Rights and Company hereby waives any other right or remedy that it may have in this regard.

11. LIMITATION OF LIABILITY

11.1 Subject to Clauses 11.2 and 11.4, under no circumstances shall the total aggregate liability of either Party and its Affiliates under or in relation to this Agreement, including (but not limited to) liability for breach of contract, misrepresentation (whether tortious or statutory), tort (including but not limited to negligence), or breach of statutory duty, exceed, in total, for all claims which arise in a Year, the greater of €10,000 (ten thousand Euros) or 100% of the Charges paid to Docomo by Company hereunder in the previous Year (as applicable).

11.2 The limitations of liability in Clause 11.1 shall not apply in respect of any liability arising from the indemnities in Clause 9.

11.3 Subject to Clause 11.4, neither Party shall be liable to the other (or to any person claiming under Clause 17(m), for any of the following types of loss or damage arising under or in relation to this Agreement any (a) loss of profits, business, contracts, anticipated savings, goodwill, or revenue or any wasted expenditure (regardless of whether any of these types of loss or damage are direct, indirect or consequential); or (b) indirect or consequential loss or damage whatsoever, even aware of the possibility of such loss or damage to the other Party.

11.4 Nothing in this Agreement shall operate so as to exclude or limit the liability of either Party for death or personal injury arising out of negligence, fraud or fraudulent misrepresentation, or for any other liability which cannot be excluded or limited by law.

11.5 Company acknowledges that Docomo is not a financial or credit reporting institution. Docomo is responsible only for providing the Services and is not responsible for the results of any credit inquiry, the operation or availability of Websites or the conduct of any financial institutions, including the PSP(s), or for any damages or costs Company suffers or incurs as a result of any instructions given, actions taken or omissions made by Company, the PSP(s) or any ISP.

12. INSURANCE

12.1 Company shall at its own cost be solely responsible for obtaining and maintaining in force during the Term of this Agreement and for a term of 6 (six) Years thereafter policies of insurance with a reputable insurance company adequately covering all and any liability which may be incurred by Company arising out of the acts and/or omissions of Company in connection with this Agreement as a minimum the following insurances (a) employer's liability: for a minimum amount of cover of €10,000,000 (ten million Euros) per event or local currency equivalent; (b) professional indemnity: for a minimum amount of cover of €10,000,000 (ten million Euros) per event or local currency equivalent; and (c) public liability: for a minimum amount of cover of €10,000,000 (ten million Euros) per event or local currency equivalent.

12.2 Upon Docomo's request Company shall provide Docomo such written evidence and documentation as is required to prove Company's continuing compliance with its obligations under this Agreement. Company shall administer its insurance policies in accordance with Good Industry Practice and shall do nothing to knowingly invalidate any such insurance policies.

13. TERMINATION AND SUSPENSION

13.1 **Termination Without Cause:** Either Party shall be entitled to terminate this Agreement by (a) giving the other Party a minimum of 60 (sixty) days prior written notice at any time during the Term; or (b) by written notice to the other having immediate effect if the Parties jointly agree in writing to so terminate.

13.2 Suspension and/or Termination With Cause:

a) Either Party can terminate this Agreement if (a) the other Party commits a material breach of the terms of this Agreement which is incapable of remedy; and/or (b) the other Party commits a material breach of this Agreement which is capable of remedy and, having received from the other Party written notice of such breach stating the intention to terminate this Agreement, the breach is not remedied, fails to remedy the breach within 30 (thirty) days; and/or (c) the other Party ceases to carry on its business or threatens not to carry on its business, becomes insolvent or has a liquidator, receiver or administrative receiver appointed to it or over any part of its undertaking or assets or passes a resolution for its winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction where the resulting entity shall assume all of the liabilities of it) or a court of competent jurisdiction makes an administration order or liquidation order or similar order, or that other Party enters into any voluntary arrangement with its creditors or is unable to pay its debts as they fall due; and/or (d) any event occurs which is analogous under a foreign jurisdiction to any event listed in Clause 13.2(c).

b) In addition to the rights of Docomo specified herein, if Docomo becomes aware that the Services (whether in whole or part), the NOMO Infrastructure, Company Services or any part thereof does not comply with the Law or any applicable card scheme rules or infringes Third Party rights or is contrary to Docomo Code of Ethics, Docomo will (at its option) have the automatic right to cease providing access to the NOMO Infrastructure and/or the Services or parts thereof until such time as the matter has been rectified to Docomo's satisfaction.

c) Notwithstanding the above, Docomo may without prejudice to any other rights which it may have upon giving prior written notice suspend or terminate this Agreement with immediate effect as Docomo deems appropriate in its sole discretion, as follows (a) Company perpetrates or is suspected of any fraud; (b) Company causes or fails to fix a security breach relating to the Services or Company Services; (c) Company fails to promptly respond to an inquiry from Docomo concerning the accuracy or completeness of the information Company is required to provide pursuant to this Agreement; (d) in the event that certain Third Party licenses or access to Third Party components of the Services are terminated; and (e) there is a change of control of Company which has not been pre-approved in writing by Docomo.

14. CONSEQUENCES OF TERMINATION

14.1 Upon termination of this Agreement for whatever reasons (a) Docomo will cease providing the Services, and (b) Company shall pay any and all Charges due and owing to Docomo within 10 (ten) days of termination; (c) subject to Company's compliance with Clause 14.1(b) Docomo shall direct the E-money Account Provider pay any sums in the E-Money Account which are due and owing to Company into a bank account of Company which has been nominated by Company (although, for the avoidance of doubt, no sums which are due to Members shall be repaid to Company); and (d) upon termination, Company's rights to use the Services, and any other rights granted hereunder, shall immediately cease, and Company shall, if requested by Docomo, destroy any copy of the materials licensed to Company hereunder and referenced herein, if any. Except as expressly set out herein each Party will be released from all obligations and liabilities to the other occurring or arising after the date of such termination.

14.2 Any termination of this Agreement shall be without prejudice to any other rights or remedies a Party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either Party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination and in particular without limiting the foregoing Clauses Indemnity, Intellectual Property Rights, Limitation of Liability, Consequences of Termination, Confidentiality, Dispute Resolution, Notices, Non-Solicitation, Publicity and Governing Law and Jurisdiction shall survive any termination of this Agreement.

15. CONFIDENTIALITY

15.1 **Confidentiality Obligations:** Each Party (a) shall not disclose to any Third Party

or use any Confidential Information disclosed to it by the other except as expressly permitted in this Agreement and for purposes of performing this Agreement (for the avoidance of doubt the disclosure of Member Data to E-money Account Provider and provider engaged by Docomo to provide Member Verification Services are permitted hereunder); and (b) shall take reasonable measures to maintain confidentiality of all Confidential Information of the other Party in its possession or control, which shall in no event be less than the measures it uses to maintain the confidentiality of its own proprietary information or Confidential Information of similar importance. Each Party further agrees to use the other Party's Confidential Information only for the purpose of its performance under this Agreement. In addition, receiving Party shall not reverse engineer, disassemble or decompile any prototypes, software or other intangible objects which embody Confidential Information and which are provided to the receiving Party hereunder.

15.2 **Limitation of Confidentiality:** The Obligations set forth in Clause 15.1 above do not apply to information that (a) is in or enters the public domain without breach of this Agreement; (b) the receiving Party lawfully receives from a Third Party without restriction on disclosure and without breach of a nondisclosure obligation; (c) the receiving Party knew prior to receiving such information from the disclosing Party and/or develops independently, without access or reference to the Confidential Information; (d) is disclosed with the prior written approval of the disclosing Party; or (e) is disclosed 5 (five) Years from the effective date of termination or expiration of this Agreement.

15.3 **Exceptions to Confidentiality:** Notwithstanding the Confidentiality Obligations set forth in Clause 15.1 above, each Party may disclose Confidential Information of the other Party (a) to the extent required by a court of competent jurisdiction or other governmental authority or otherwise as required by any Laws but only after alerting the other Party of such disclosure requirement and, prior to any such disclosure, allowing (where practicable to do so) the other Party a reasonable period of time within which to seek a protective order against the proposed disclosure; or (b) on a "need-to-know" basis under an obligation of confidentiality substantially similar in all material respects to those confidentiality obligations in this Clause 15 to its legal counsel, accountants, contractors, consultants, banks and other financing sources.

16. DATA MANAGEMENT

16.1 "Controller", "Data Subject", "Personal Data", and "Processing", and shall have the meaning given in Directive 95/46/EC. It is acknowledged that Docomo will have a direct relationship with the Members due to the Members installation of the NOMO mobile application and/or opening a NOMO account. Notwithstanding the remainder of the provisions listed below, Docomo may store and Process any Member Data and other information gathered as part of the Services in accordance with any consents which Docomo has obtained (either directly or indirectly) from the applicable Member, and any such Processing shall be considered to be in accordance with this Agreement. For the purposes of this Agreement, each Party shall be considered a data Controller in relation to any Personal Data within Member Data provided to it by the other Party, and accordingly any such transfer of Member Data shall be considered a "Controller to Controller" transfer. Company undertakes it will obtain all necessary consents from all Members to enable their Member Data to be supplied to, or otherwise obtained and stored by, Docomo for use in relation to the Services, including in particular ensuring such consent expressly covers (a) purposes for which such Member Data has been collected; (b) intended recipients or categories of recipients of the Member Data (including, for the avoidance of doubt Docomo and the service providers engaged by Docomo to provide the Services); (c) which parts of Member Data are obligatory and which parts, if any, are voluntary and (d) how Member Data can be accessed and, if necessary, rectified.

16.2 Without prejudice to obligations in Clause 16.1 where required by Docomo Company shall present Docomo's privacy policy or relevant extracts thereof if so instructed to Members and require acceptance by each Member prior to sharing Member's Member Data to Docomo. Company shall immediately inform Docomo in writing if any consent or acceptance given by a Member pursuant to Clause 16.1 is withdrawn and if so, shall cease supplying Member Data in relation to affected individual Member until a new consent or acceptance (as applicable) is provided by the Member.

16.3 Each Party undertakes in relation to Personal Data which forms part of the Member Data, it shall a) comply with Data Protection Laws; b) implement appropriate technical and organisational security measures to protect such Member Data; and c) promptly inform the other Party about any accidental or unauthorised access to and/or use of the Member Data, which results from any non-compliance with this Clause 16.

17. GENERAL

a) **Force Majeure:** If either Party to this Agreement is prevented or delayed in the performance of any of its obligations under this Agreement by Force Majeure, and if such Party gives written notice thereof to the other Party specifying the matters constituting Force Majeure, together with such evidence as it reasonably can give and specifying the period for which it is estimated that such prevention or delay will continue, then the Party affected by the event of Force Majeure shall be excused the performance from the date of such notice for so long as such cause of prevention or delay shall continue. The Party so affected by Force Majeure shall use all reasonable endeavours to resume performance of this Agreement as soon as it can. If the event of Force Majeure continues for more than 30 (thirty) days and the affected Party is unable to resume its performance within this period, the other Party not in default may terminate this Agreement forthwith by written notification to the Party in default to that effect, without incurring liability.

- b) Dispute Resolution:** The Parties shall attempt in good faith to resolve promptly any dispute arising out of or relating to this Agreement through negotiation between nominated representatives of each Party no later than 30 (thirty) days following a written notification of such dispute to the other Party. In default of a resolution between the Parties within that period, the Parties agree to enter into mediation in good faith to settle the dispute in accordance with the Centre for Effective Dispute Resolution Model Mediation Procedure ('CEDR'). Unless otherwise agreed between the parties within 14 (fourteen) days of notice of the dispute, the mediator will be nominated by CEDR and the mediation shall be conducted in London, England in the English language. If, and to the extent that, the Parties do not resolve any dispute or any issue in the course of any mediation within 45 (forty five) days of the Alternative Dispute Resolution Notice, either Party shall be at liberty to commence court proceedings in accordance with this Agreement in respect of such unresolved dispute or issue. Notwithstanding the above nothing shall prevent either Party from immediately commencing court proceedings where such proceedings are deemed necessary by that Party to protect its Intellectual Property Rights, Confidential Information or data, including without limitation the right to commence proceedings for injunctive or other equitable relief.
- c) Corrupt Gifts and Payments:** Neither Party shall offer, give or agree to give any person employed by or connected with the other Party any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to this Agreement, or for showing or forbearing to show favour or disfavor to any person in relation to this Agreement.
- d) Notices:** Except as otherwise expressly specified herein all notices, requests or other communications shall be in writing, in English language and be deemed to have been given if delivered personally or mailed, by certified or registered mail, postage prepaid, return receipt requested, to the Parties at their respective addresses. All notices, requests or communications shall be deemed effective upon personal delivery or 10 (ten) days following deposit, first class postage prepaid in the mail. Email communication shall be valid except for formal notices.
- e) Further Assurance:** At its own expense each Party shall, and shall use all reasonable endeavours to procure that any necessary Third Party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving effect to this Agreement.
- f) Non-solicitation:** Each Party agrees not to and shall procure members of its Affiliate shall not solicit, offer employment to, or use the Services of any employee of the other Party involved in performing or receiving the Services (otherwise than a genuine recruitment process made available to a member of the public) for a period of 12 (twelve) months from date of their last involvement with the provision or receipt of the Services except where the other Party gives its consent in writing and any such breach will result in the Party in breach paying the other Party the equivalent of 6 (six) months' salary of each affected employee. The Parties acknowledge such amount is a reasonable pre-estimate of the loss that would be suffered.
- g) Waiver:** No delay or omission by a Party in exercising any right or remedy under this Agreement shall operate to impair such right or remedy or be construed as a waiver thereof. A failure by either Party hereto to exercise or enforce any rights conferred upon it by this Agreement shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.
- h) Assignment and Sub-contracting:** Company shall not sub-contract or delegate or purport to sub-contract or delegate its rights or obligations under this Agreement in whole or in part without Docomo's prior written consent, which shall not be unreasonably withheld or delayed. Upon such consent being granted by Docomo, Company will not be relieved from any of its obligations as set out herein. Docomo shall be entitled to subcontract the performance of its obligations hereunder to any Affiliate or Third Party, including the E-money Account Provider and to the provider of the Member Verification Services. In addition, Docomo may at any time assign, mortgage, charge, novate, declare a trust over or deal in any other manner with any or all of its rights and/or obligations under this Agreement, provided Docomo gives prior written notice of such dealing to Company. Following receipt of such notice Company shall do all things and execute all such documentation as is necessary to give effect to Docomo's rights under this Clause.
- i) Publicity:** Neither Party may issue any press release or make any public statement about the terms of their relationship or about Docomo's provision of any Services to Company without the other Parties prior written consent on each occasion (such consent not to be unreasonably withheld, conditioned or delayed).
- j) Amendments:** This Agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by each Party. All amendments or modifications of this Agreement shall be binding upon the Parties despite any lack of consideration. Notwithstanding the above, the Commercial Agreement pertaining hereto may be updated by Docomo in accordance with the terms of the Commercial Agreement.
- k) Severability:** Any provision hereof found illegal, invalid or unenforceable shall be ineffective to the extent of such prohibition and shall be replaced by an enforceable provision to the same or nearest possible equivalent effect.
- l) Relationship:** Nothing contained herein shall be construed as creating a joint venture, partnership or employment relationship between the Parties, nor shall either Party have any right, power or authority to create any obligation or duty express or implied on behalf of the other Party, except as expressly set out herein.
- m) Third Party Rights:** Only the Parties and their successors and permitted assignees shall have a right to enforce any provision of this Agreement, except a) an Affiliate of a Party; or b) a Regulatory Body.
- n) Costs:** Except as expressly stated herein, each Party is solely responsible for the costs and expenses of performing its obligations hereunder.
- o) Interpretation:** The headings in this Agreement are for convenience only and not intended to have any legal effect; all references to Clauses and to the Commercial Agreement are references respectively to clauses in the Commercial Agreement to this Agreement; references to a "person" shall be deemed to include an individual, a company or an unincorporated business or other body or legal person; all references to a statute is deemed to include any statutory modification, extension or re-enactment thereof for the time being in force; references importing the singular shall include the plural and vice versa; and words such as "in particular", "including" or other words indicating that examples falling within more general wording follow shall not be construed as limiting in any way the scope of the preceding more general wording. This Agreement may not be construed adversely to a Party solely because that Party prepared it. In the event of any conflict or inconsistency between the documents forming this Agreement, the terms of these terms and conditions shall prevail over the Commercial Agreement.
- p) Entire Agreement:** This Agreement contains the whole agreement and understanding between the Parties and supersedes all prior agreements, warranty, statement, representation, arrangements and understandings and that each Party acknowledges that in entering into this Agreement it has not relied upon any oral or written statements, collateral or other warranties, assurances, representations or undertakings which were made by or on behalf of the other Party in relation to the subject-matter of this Agreement at any time before its signature. Nothing in this Agreement shall restrict or exclude any liability for (or remedy in respect of) fraud or fraudulent misrepresentation or fraudulent concealment.
- q) Counterparts:** This Agreement may be executed in any number of counterparts each of which when executed shall be an original and all of which together shall constitute one and the same Agreement.
- r) Governing Law:** Any dispute arising out of or relating to this Agreement will be governed by and construed in accordance with English Law and the Parties submit to the exclusive jurisdiction of the English Courts.

Last Updated: 5 January 2018