

# **Coöperatieve Vereniging Smart2Pay Global Services U.A. Merchant Agreement**

Coöperatieve Vereniging Smart2Pay Global Services U.A.  
Smart2Pay is granted a Payment Institution License  
from Dutch Central Bank

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## MERCHANT AGREEMENT

between

**Coöperatieve Vereniging Smart2Pay Global Services U.A.**

and

**ewayits**

## CONTENTS

1	DEFINITIONS.....	3
2	THE SERVICES.....	6
3	CHARGES FOR THE PROVISION OF THE SMART2PAY SERVICES.....	8
4	COLLECTION AND SETTLEMENT.....	10
5	GUARANTEES AND INDEMNIFICATION.....	12
6	CONFIDENTIAL INFORMATION.....	13
7	LIABILITY.....	13
8	FORCE MAJEURE.....	14
9	TERM AND TERMINATION.....	14
10	THE RIGHT TO IMMEDIATELY REFUSE THE SMART2PAY SERVICES..	15
11	VARIOUS PROVISIONS.....	16
12	NOTICES AND CONSENTS.....	17
Appendix A	Tariffs.....	19
Appendix B	Power of attorney.....	20
Appendix C	Deposit.....	21
Appendix D	Service Level Agreement.....	22

**THIS AGREEMENT** is made and entered into on 5th of June 2018

by and between:

**Coöperatieve Vereniging Smart2Pay Global Services U.A.**,

a company duly incorporated and organised under the laws of The Netherlands,  
having its registered office/principal place of business at Brink 27c, 1251 KS, Laren NH,  
registration number Chamber of Commerce, Amsterdam: 34206701;  
hereinafter referred to as "Smart2Pay",

and

**ewayits**,

a company duly incorporated and organised under the laws of India,  
having its registered office/principal place of business at test, narsinghar 465669, madhya  
pradesh, India,  
registration number Chamber of Commerce: India: 8770782264;  
hereinafter referred to as "**the Merchant**",

WHEREAS

- A. Smart2Pay provides payment services to international merchants active on the web;
- B. Smart2Pay provides the Smart2Pay Services either in the form of Smart2Pay collecting payments from Merchant's Customers on Merchant's behalf or in the form whereby Smart2Pay is the technical processor of payments made by Merchant's Customers ("Gateway Only Payments");
- C. The Merchant is principally engaged in: idea;
- D. The Merchant wishes to engage Smart2Pay for and Smart2Pay has agreed to provide the Smart2Pay Services to the Merchant as set out in this Agreement.

**NOW, THEREFORE**, Smart2Pay and the Merchant have agreed the following:

**1. DEFINITIONS**

"Account" means the account opened and maintained by Smart2Pay in the name of the Merchant for the administration of the Smart2Pay Services provided to the Merchant. The Account shows an overview of the Smart2Pay Payments, Collected Payments, and Gateway Only Payments processed (if any), including those reversed, refunded, charged back or refused and the Tariffs and other amounts due from the Merchant;

"Agreement" means this agreement, including all appendices, as amended from time to time;

"Bank Transfer" means the Payment Method whereby Customers make their payments by transferring it to a Smart2Pay Bank Account. Bank Transfer is understood to be the generic term for domestic or international bank, credit, wire, and giro transfers;

"Card Payment" means the Payment Method whereby Customers make their payments by giving a card number to the Merchant or to Smart2Pay acting on behalf of the Merchant. Card Payment is understood to be the generic term for payments by domestic and international credit-, debit-, smart-, cash-, and charge cards;

"Cheque" means the Payment Method whereby Customers make their payments by making a cheque payable to the Merchant or to Smart2Pay acting on behalf of the Merchant. Cheque is understood to be the generic term for personal and bank cheques and euro cheques;

"Collected Payments" means Smart2Pay Payments from Merchant's Customers effectively collected by Smart2Pay or a Smart2Pay related entity on behalf of the Merchant, as a part of the Smart2Pay Services;

"Customer" means any legal or natural person who purchases goods or services offered by the Merchant and who has to pay the Merchant for its purchase;

"Direct Debit" means the Payment Method whereby Smart2Pay initiates the payment to be made by the Customer on behalf of the Merchant on the basis of a valid mandate or authorization received from the Customer and which shall be administered by the Merchant to execute such payment;

"Effective Date": the date as of which this Agreement is effective between the Parties, being either 1) the last signature date set forth in the signature section below or 2) the moment upon which the Merchant has provided its confirmation to accept the Agreement in a process of online contracting. The Agreement becomes binding upon Smart2Pay as set forth in clause 2.2;

"Financial Institution" means any bank, financial institution, payment service provider or other party playing a role in the financial network at which the Merchant holds or maintains an account in its own name, and to which Smart2Pay technically processes Gateway Only Payments in accordance with the Smart2Pay Services;

"Gateway Only Payments" means the type of Smart2Pay Services whereby Smart2Pay Payments are processed technically by Smart2Pay and whereby the relevant Financial Institution directly settles the funds involved in the Gateway Only Payments to the Merchant. In case of Gateway Only Payments, Smart2Pay is specifically not 'in the 'money flow';

"Invoice" means any document - hard copy or electronic - with which the Merchant solicits payment from Customer;

"Parties" means both Smart2Pay and the Merchant;

"Party" means either Smart2Pay or the Merchant;

"Payment Methods" means the set of methods available to Merchants via the Smart2Pay Services enabling them to accept payment from Customers for the goods and/or services they offer.

"Service Level Agreement" means the agreement attached as Appendix D to this Agreement.

"Smart2Pay Bank" means the banks, financial institutions, payment service providers or other parties playing a role in the financial network where Smart2Pay (or its related entities) holds or maintains Smart2Pay Bank Accounts;

"Smart2Pay Bank Account" means the accounts at banks, other financial institutions, payment service providers or other parties playing a role in the financial network, held or maintained in the name of Smart2Pay or a Smart2Pay related entity in use for provision of the Smart2Pay Services whereby Smart2Pay collects Smart2Pay Payments in accordance with this Agreement;

"Smart2Pay Payment" means any payment processed by Smart2Pay in the context of the Smart2Pay Services, specifically payment by the Customer by way of any of the Payment Methods specified in Appendix A to this Agreement;

"Smart2Pay Services" means the services as specified in this Agreement delivered by Smart2Pay or a Smart2Pay related entity as set out in the Specification of Products and Services, which may be amended from time to time;

"Smart2Pay Statement" means the statement which Merchant receives from Smart2Pay at the moment of settlement from Smart2Pay to Merchant and which shows an overview of Collected Payments, Gateway Only Payments processed, Smart2Pay Payments that have been reversed, refunded, charged back or refused, the Tariffs and all other amounts due from Merchant to Smart2Pay for the delivery of the Smart2Pay Services under this Agreement. To the extent the Smart2Pay Statement shows the amounts due from Merchant to Smart2Pay, the Smart2Pay Statement is considered to be the invoice for Smart2Pay Services delivered.

"Smart2Pay Website" means the website of Smart2Pay to be found under the [www.Smart2Pay.com](http://www.Smart2Pay.com);

"Specification of Products and Services" means the documents Merchant Integration Guide and other Smart2Pay Supporting Documentation;

"Tariffs" means the tariffs, composed of Smart2Pay Fees and Smart2Pay Bank Fees, that

are applicable for the Smart2Pay Services, which are set out in Appendix A of this Agreement. The Tariffs are subject to changes from time to time.

"Trade Marks" means the registered trademarks, service marks and trade names owned by or licensed to Smart2Pay, as they may be amended from time to time.

## 2. THE SERVICES

- 2.1. The Merchant wishes to purchase and Smart2Pay will, subject to clause 2.2, provide the Smart2Pay Services in accordance with the terms and conditions as set out in this Agreement and in accordance with the Specification of Products and Services, which are known to the Merchant. These Specifications of Products and Services are subject to changes from time to time. Regarding these changes or amendments, article 12.2 shall not be applicable.
- 2.2. Smart2Pay, as a licensed Payment Institution, under supervision of Dutch Central Bank, has to comply with anti-terrorism, financial services laws and Know Your Customer ("KYC"-) requirements, identifying Merchant, its directors, its activities and its shareholders. Merchant in this respect must provide all information relevant and requested for by Smart2Pay. Merchant is obliged to keep such information up-to-date in the records of Smart2Pay and shall inform Smart2Pay of any changes. This means that in the process of concluding this Agreement or an (online) registration for the Smart2Pay Services, details, information and documentation as requested shall be provided or submitted. If Smart2Pay gives a Merchant access to an Account during that process, such Account will be available on a preliminary basis only and Smart2Pay may disable the access to it and delete the Account at any time and for any reason, until Smart2Pay has reviewed and approved all details, information and documentation required and the Merchant has been notified that it has been accepted by Smart2Pay as a Merchant. Only upon Smart2Pay's acceptance of the Merchant, the Agreement shall be binding upon Smart2Pay.
- 2.3. The Smart2Pay Services (the Payment Methods, currencies and countries as specified in this Agreement) shall be updated from time to time. International banking regulations, currency restrictions from local and/or central banks and/or acceptance criteria of Smart2Pay Banks and Financial Institutions may prevent or stop the Smart2Pay Services being rendered in certain countries.
  - 2.3.1. Smart2Pay shall use reasonable efforts to continue to provide the Smart2Pay Services to Merchant. In case Smart2Pay meets higher costs or unknown or new risks in relation to the delivery of certain specified

elements of the Smart2Pay Services to Merchant, Smart2pay may decide in its reasonable discretion to stop providing those elements of the Smart2Pay Services. Smart2Pay will give at least 1 month written notice of any discontinued elements of the Smart2Pay Services, unless this is not possible, given the reason for the decision.

- 2.3.2. Merchant understands that Smart2Pay may be forced to stop provision of certain specified elements of the Smart2Pay Services or impose additional restrictions or conditions for its further provision. Smart2Pay will give Merchant, to the extent possible, prior written notice of any such stop or further requirements.

Smart2Pay cannot be held responsible nor liable for the consequences of the Smart2Pay Services no longer being provided under these circumstances.

- 2.4. The Smart2Pay Services shall be provided under the levels of service agreed in the Service Level Agreement ("SLA"). In case Smart2Pay does not provide the Smart2Pay Services in accordance with the service levels, Smart2Pay may, under the conditions of the SLA, have to credit to Merchant the sums defined in the SLA as Service Credits.
- 2.5. All Merchant and Customer data, Invoices and other information to be provided by the Merchant to Smart2Pay shall comply with the specifications described in the Specification of Products and Services, and shall be delivered by the Merchant to Smart2Pay in the formats and in the manner set out in the Specification of Products and Services. Smart2Pay reserves the right to amend the specifications in the Specification of Products and Services, the formats and/or the methods of delivery set out in the Specification of Products and Services from time to time. Smart2Pay shall inform the Merchant in writing of such amendments in the Specification of Products and Services to the extent reasonably possible, at least one (1) month before the new specifications, formats and/or methods of delivery apply. Smart2Pay shall not be responsible nor liable for any consequences of the incorrect implementation or interpretation of the Specification of Products and Services by Merchant.
- 2.6. Smart2Pay reserves the right not to provide the Smart2Pay Services in relation to certain Smart2Pay Payments, for instance when the Customer data or the Invoices to be provided by the Merchant to Smart2Pay in relation to such Smart2Pay Payments do not comply with the specifications described in the Specification of Products and Services. Smart2Pay shall inform the Merchant in writing of such decision within seven (7) days after Smart2Pay requesting such information.
- 2.7. The Merchant explicitly confirms that he is aware of the specific processing flow, conditions, settlement delays and chargeback possibilities of the various Payment

Methods offered under Smart2Pay Services. It is therefore explicitly agreed that for the duration of this Agreement and after its expiry or termination, any defaults on Smart2Pay Payments made by Customers, including those reversed, refunded, charged back or refused, shall be at the risk and costs of the Merchant.

- 2.8. The Merchant shall use Smart2Pay as exclusive provider for all the Payment Methods available through this Agreement. The Merchant is not allowed to route any transaction to another provider of a specific Payment Method, if the specific Payment Method is available through Smart2Pay Agreement.
- 2.9. Any delivery -hardcopy or electronic- of Customer and Merchant data, Invoices or other information and/or any amounts payable to Smart2Pay shall be to its office in the Netherlands or to its electronic address(es), and at the sole expense of the Merchant, unless otherwise agreed by the Parties.
- 2.10. At the first request of Smart2Pay the Merchant shall prepare, execute, endorse and deliver at its own expense all such instruments or other documents that may be necessary to render the Smart2Pay Services and to carry out this Agreement, and shall forthwith take all such further measures as Smart2Pay may consider necessary in order to render the Smart2Pay Services and to carry out this Agreement.

### 3. CHARGES FOR THE PROVISION OF THE SMART2PAY SERVICES

- 3.1. In return for Smart2Pay providing Merchant with the Smart2Pay Services, Merchant shall pay to Smart2Pay the Tariffs and all other sums payable by Merchant to Smart2Pay in accordance with the terms and conditions set out in this Agreement.
- 3.2. For Smart2Pay Services whereby Smart2Pay collects Smart2Pay Payments on Smart2Pay Bank Accounts or such Smart2Pay Services in combination with Gateway Only Payments, Smart2Pay shall settle the Collected Payments to the Merchant in accordance with article 2.6 of this Agreement after deduction of the Tariffs due from the Merchant to Smart2Pay and after deduction of any Smart2Pay Payments that have been rejected, refused, reversed, charged back or refunded.
- 3.3. In case Smart2Pay processes Gateway Only Payments for Merchant, the Financial Institution shall settle directly to the Merchant on the basis of the agreement that the Merchant has signed for this purpose with the relevant Financial Institution. Smart2Pay shall not be responsible nor can Smart2Pay be held liable for settlement of Gateway Only Payments, by the relevant Financial Institution.



- 3.4. The Tariffs for the Smart2Pay Services are set out in Appendix A. Smart2Pay reserves the right to amend the Tariffs for any of the Smart2Pay Services from time to time. Smart2Pay shall inform the Merchant in writing of such amendments at least three (3) months before the new Tariffs apply. Should a Smart2Pay Bank change its Fees, Smart2Pay has the right to amend the Tariffs of a specific Payment Method within a shorter period of time. Merchant has the right to immediately stop the processing of Smart2Pay Payments of the specific Payment Method for which Tariffs are increased, should the notification period be less than three months.
- 3.5. The Tariffs shall be due and payable upon the date i) of receipt of the Collected Payments or ii) such Smart2Pay Payments should have been received by Smart2Pay or iii) of processing of Gateway Only Payments, and shall be charged commencing from the date on which an Account has been opened in the name of the Merchant. The set-up fee, account opening fee and monthly account fee shall be due from the Effective Date of the Agreement.
- 3.6. Smart2Pay shall settle the Collected Payments (as agreed in clause 2.2) by means of a regular bank transfer (unless otherwise agreed) to the Merchant periodically as agreed upon with the Merchant. Upon each settlement by Smart2Pay, the Merchant shall receive a Smart2Pay Statement.
- 3.7. Smart2Pay shall be entitled to set off the amounts due from Merchant to Smart2Pay against the Collected Payments to be settled to the Merchant during the following settlement period.
- 3.8. If at any time the Collected Payments are not sufficient to compensate the amounts due from Merchant to Smart2Pay, Smart2Pay shall notify the Merchant and the Merchant shall be obliged to pay to Smart2Pay the full amount indicated in the Smart2Pay Statement, in accordance with the instructions on it and within 5 working days. At any time Smart2Pay shall be entitled to deduct the full amount from the deposit referred to in article 4 of this Agreement. The Merchant hereby waives the right to set-off any claims it may have against Smart2Pay and hereby agrees to bear any bank charges, fees, costs and/or taxes in connection therewith. Merchant explicitly agrees that Smart2Pay Payments can only be settled once to Merchant.
- 3.9. The details of the Collected Payments, Gateway Only Payments, the Tariffs and any Smart2Pay Payments that have been reversed, refunded, charged back or refused recorded by or on behalf of Smart2Pay, shall serve as complete proof, unless the Merchant provides proof to the contrary.
- 3.10. Smart2Pay is entitled to charge the Merchant the statutory interest rate for all Smart2Pay invoices over due and for any deficits caused by the amount of Collected Payments not being sufficient to cover the amounts due and not paid in accordance with the instructions on the Smart2Pay Statement as indicated in clause

2.8. Any statutory interest shall be stated on the Smart2Pay Statement.

#### 4. COLLECTION AND SETTLEMENT

- 4.1. In the case where the Merchant instructs Smart2Pay to collect from the Customer in a different currency than the local currency in which Smart2Pay will receive the funds from the Customer; Smart2Pay will handle the currency conversion between the Customer and Smart2Pay. This conversion between the collected and received currency will happen prior to the Customer authorising and completing the Smart2Pay Payment to Smart2Pay. In this case the Merchant will not bear any exchange rate costs.
- 4.2. If the Parties agree that Smart2Pay has to settle the Collected Payments in a currency other than the one in which they were collected, Smart2Pay converts them following an exchange rate, derived from the rates published at XE.com on the business day prior to the day of settlement by Smart2Pay to Merchant, as shown as conversion rate in the Smart2Pay Statements, which rates are due from Merchant to Smart2Pay. The conversion table which Smart2Pay will apply is specified in Appendix A.
- 4.3. Any Customer data Smart2Pay and its related entities receive from the Merchant shall be used for the sole purpose of rendering the Smart2Pay Services. Smart2Pay and its related entities act as data processors when providing the Smart2Pay Services to Merchant. This means that Smart2Pay will act under direction and responsibility of the Merchant in accordance with applicable Dutch privacy laws. Both Smart2Pay and Merchant shall implement appropriate technical and organizational measures to protect personal data against misuse.
- 4.4. The Merchant hereby instructs Smart2Pay, on the basis of a power of attorney provided for the term during which Smart2Pay shall provide the Smart2Pay Services, to:
  - 4.4.1. invoice and collect all payments due from Customers to Merchant for which Merchant uses the Smart2Pay Services,
  - 4.4.2. prepare, execute, endorse and deliver in the Merchant's name all instruments or other documents that Smart2Pay may consider necessary or advisable in order to provide the Smart2Pay Services under this Agreement, including without limitation endorsement of Cheques in favour of Smart2Pay.

A separate power of attorney, which Smart2Pay shall use in its relation to the Smart2Pay Banks in order to collect payments from Merchant's Customers on behalf of Merchant, shall be signed by the Merchant, and is attached to this Agreement as Appendix B.

- 4.5. All taxes, charges, fees and expenses related to the activities of the Merchant and to the collection or settlement of payments by Smart2Pay shall be solely borne by Merchant. Merchant shall indemnify and hold Smart2Pay harmless from and against any claim or action for payment of taxes and penalties and interest should any governmental or tax authority take the position that, such taxes were due by Merchant or Smart2Pay in the course of Merchant's activities and receiving payment from its Customers. Smart2Pay is entitled to deduct such amounts from the settlement in addition to the other elements stated in clause 2.2 and Merchant shall replenish any balance resulting from such deduction in accordance with clause 2.8.
- 4.6. Collected Payments are considered to fully acquit Customer from its obligation to pay for the goods and/or services purchased from Merchant, irrelevant of the Payment Method used. The Merchant remains entitled to demand payment of the Customer until the moment such payment qualifies as a Collected Payment. If payments made by Customers do not result in Collected Payments, the Merchant remains entitled to demand payment of the full amount to the Customer and the Customer remains obliged to make such payment in full.

## 5. GUARANTEES AND INDEMNIFICATION

5.1. The Merchant represents and warrants that during the term of this Agreement:

- A. the Merchant is duly incorporated, organised and validly existing under the laws of the jurisdiction of its incorporation, have all requisite powers, licences and permits and have undertaken all actions and have fulfilled all conditions to enter into, to perform under and to comply with its obligations under this Agreement;
- B. the business carried on by the Merchant is a legitimate, lawful business and the Merchant is not engaged in any conduct or transactions which may be considered unlawful in any jurisdiction in which the Merchant conducts business and the Merchant complies with all laws, regulations and requirements applicable to their business and to the Payments;
- C. the Customer data have been collected and processed in a lawful manner, in compliance with the applicable data protection laws and/or privacy laws and that

these data may be used by Smart2Pay to render the Smart2Pay Services;

D. all data and information in relation to Smart2Pay's compliance with KYC-requirements are correct and up-to-date;

E. all the Smart2Pay Payments made by Direct Debit have been validly executed and delivered by the Customers who are purported to have signed the Direct Debit mandates.

5.2. The Merchant shall indemnify and keep Smart2Pay from and against: any and all claims, losses, liabilities, costs, and other expenses incurred as a result of or arising directly or indirectly out of, or in connection with:

A. any misrepresentation, breach of warranty or non-fulfilment of any undertaking on the part of the Merchant under this Agreement;

B. any claims, demands, awards, judgements, actions and proceedings made by any third party, arising out of or in any way connected with the Merchant's performance under this Agreement or Merchant's use of the Smart2Pay Services,

C. any penalties, fines or fees imposed by banks or financial institutions (or in the case of Gateway Only Payments, imposed by Financial Institutions) for any reason, arising out of or in any way connected with the transactions between the Merchants and its Customers,

5.3. In the event of breach of any of the representations and warranties by the Merchant or non-fulfilment by the Merchant of any other obligation contemplated by this Agreement, the Merchant shall be obliged to compensate Smart2Pay fully for any ensuing damage and/or loss, without prejudice to any other remedies available to Smart2Pay.

## 6. CONFIDENTIAL INFORMATION

6.1. All information and/or data provided by the Merchant, collected by Smart2Pay from the Merchant or relating to Smart2Pay designated as confidential or reasonably deemed confidential as a result of the nature of its content shall be considered confidential information ("Confidential Information") and shall not be disclosed to any third party except as may be required to provide the Smart2Pay Services in accordance with the terms hereunder, or except as may be required by law or

pursuant to a lawful request of a government agency. Each Party remains the owner of all data it made available to the other Party. Parties to this Agreement undertake to take all steps deemed necessary to protect the confidentiality of the Confidential Information.

## 7. LIABILITY

- 7.1. In no event shall a Party be liable in contract or in tort for any indirect or consequential loss or damage caused by that Party's failure to fulfil its obligations under this Agreement or otherwise, including, but not limited to, loss of profits, business, contracts, revenues or anticipated savings, even if the Party has been advised of the possibility of such damages.
- 7.2. Smart2Pay shall under no circumstances be liable for compensation of damage caused by acts or omissions of third parties. This expressly excludes Smart2Pay's liability for acts or omissions of i) Smart2Pay Banks, ii) those of Financial Institutions where Merchant holds or maintains accounts in its own name (in the case of Gateway Only Payments) and iii) for events or activities originating outside the systems of Smart2Pay (such as internet disturbances, malfunctions in third party systems and e-crime) except in case such events or activities were caused by the intent or gross negligence of Smart2Pay. Merchant explicitly acknowledges that this also means that Smart2Pay will under no circumstances compensate Merchant for late or non-performance, insolvency or bankruptcy of Smart2Pay Banks (and in the case of Gateway Only Payments of Financial Institutions) due to which Merchant receives late or no settlement at all for the Smart2Pay Payments.
- 7.3. Except in case of gross negligence or wilful misconduct, the total liability of Smart2Pay for proven direct damage and/or loss towards Merchant arising from or in connection with this Agreement howsoever caused in respect of any material breach of contract, in tort or otherwise will be limited to an amount equal to the total sum of the Smart2Pay Fees (identified sub A in Appendix A "Tariffs") payable for the Smart2Pay Services during the calendar year in which the liability arises.
- 7.4. Any right of compensation pursuant to this article shall be invalidated if (legal) proceedings/action to claim compensation have not been instituted within one (1) year of the damage and/or loss having arisen.
- 7.5. Within the limitation of liability expressed herein, Smart2Pay is liable for any such claim, provided always that any amounts recovered by Merchant directly from Smart2Pay, Smart2Pay related entity, Smart2Pay Bank or a Financial Institution in respect of any claim or claims under this Agreement, shall stand to the credit of and

shall not be recovered a second time against Smart2Pay. Example given; a rightfully claimed amount by the Merchant cannot be received twice.

## 8. FORCE MAJEURE

- 8.1. Neither Party shall be responsible for loss or damage suffered by the other Party as a result of the first Party's failure to perform its obligations under this Agreement due to any events beyond the first Party's control which events include for Smart2Pay, but not be limited to: war, riots, fire and calamities, interruption of business operations, strike, lock-out, government actions, Smart2Pay Banks or other third Parties failing to fulfil their obligations, or circumstances on the part of Smart2Pay, such as lack of labour, strike and lock-out, accidents operations and break down of computer software or hardware, irrespective of whether such circumstances were foreseeable or not.

## 9. TERM AND TERMINATION

- 9.1. The Agreement shall enter into force for an indefinite period. Merchant may have to enter into separate agreements for Smart2Pay Services provided by separate legal entities within Smart2Pay group, which require to concur with this Agreement. To the extent the separate agreements are concluded for a longer term than this Agreement, the term of this Agreement shall be adjusted in line with the term of the separate agreement. Merchant shall for the duration of the Agreement route its transactions for the Payment Methods mentioned in Appendix A to Smart2Pay.
- 9.2. Parties shall be entitled to terminate the Agreement at any time by giving written notice. Merchant may request a notice period of 1 month.
- 9.3. Notwithstanding articles 10.1 and 10.2, either Party may terminate the Agreement with immediate effect upon written notice, send as registered postal mail, to the other Party, without any term or notice and/or judicial intervention being required in the event that:
- A. a trustee or receiver is appointed for either Party for any or all such Party's property;
  - B. either Party becomes insolvent or unable to pay debts as they mature, or ceases to so pay, or makes an assignment for the benefit of creditors;

- C. bankruptcy or insolvency proceedings under bankruptcy or insolvency code or similar law, whether voluntary or involuntary are properly commenced by or against a Party;
  - D. either Party is dissolved or liquidated;
  - E. either Party materially breaches the terms and conditions of this Agreement and fails to reasonably cure such breach upon thirty (30) days written notice from the other Party.
- 9.4. Smart2Pay shall have the right to terminate the Agreement with immediate effect upon written notice to the Merchant without judicial intervention, in the event that:
- A. the integrity or reputation of Smart2Pay is brought or threatened to be brought into disrepute by the Merchant or any current or past Customer;
  - B. the number of reversed or charged back Smart2Pay Payments exceeds the limit of 0.5% over any calendar month. This current limit shall be adjusted at any time if Smart2Pay and/or international card scheme rules require this;
  - C. there is a material change in the management or control of the Merchant or any transfer of any substantial part of the Merchant's business without Smart2Pay prior consent which consent shall not unreasonably be withheld.
- 9.5. The termination of this Agreement shall not affect any provision of this Agreement which by its wording or nature is intended to remain effective and to continue to operate in the event of termination of this Agreement, and shall not prejudice or affect the rights of either Party against the other in respect of any breach of the terms and conditions of this Agreement. The clauses that always survive the termination of this Agreement are, but not limited to 2.9, 4.4, 4.5, 5, 6 and 7.

## 10. THE RIGHT TO IMMEDIATELY REFUSE THE SMART2PAY SERVICES

- 10.1. Smart2Pay shall have the right to immediately refuse providing the Smart2Pay Services to the Merchant if:
- A. the Merchant does not meet the criteria as set out by Smart2Pay, Financial Institution or a Smart2Pay Bank and which may be amended from time to time, and/or



- B. the number of rejected, refused, reversed, charged back and refunded Smart2Pay Payments exceeds a limit that Smart2Pay, Financial Institution or a Smart2Pay Bank at its sole discretion considers reasonable. Smart2Pay shall inform the Merchant in writing of such decision within seven (7) days.

## 11. VARIOUS PROVISIONS

- 11.1. Smart2Pay renders the Smart2Pay Services under the Agreement as an independent Party and is not authorised to act as an agent or representative of the Merchant (except for the authorisation to provide invoicing and/or collection of Smart2Pay Payments on behalf of the Merchant as provided herein). The Agreement does not create a legal partnership or joint venture.
- 11.2. Smart2Pay reserves the right to amend the terms and conditions of this Agreement, provided there is an applicable change or amendment to a (local) statutory regulation, local and international banking regulation and/or currency restriction from local and/or central banks which mandates such change applies to the Merchant. Smart2Pay shall, to the extent reasonably possible, inform the Merchant in writing of such changes or amendments at least thirty (30) days before the new changes or amendments become effective.
- 11.3. In case Smart2Pay or a Smart2Pay related entity receives a penalty from a Smart2Pay Bank, Financial Institution or authority, related to the Merchant's business, Smart2Pay shall be entitled to charge this penalty fee or claim via the normal invoicing process. Should it not be possible to withhold from a settlement, then Merchant shall reimburse Smart2Pay within 5 working days.
- 11.4. The Agreement and any disputes shall in all respects be exclusively governed by and interpreted in accordance with the laws of The Netherlands. Any dispute in contract or at law arising out of or in connection with the Agreement that cannot be settled amicably shall be submitted to the competent court in Amsterdam, The Netherlands.
- 11.5. This Agreement is the entire agreement and understanding between the Parties with respect to the Smart2Pay Services specified and agreed upon in the Agreement and supersedes all prior oral and written agreements and understandings between them with respect to said Smart2Pay Services. Other terms and conditions of Smart2Pay and/or the Merchant, referred to or attached to any instrument issued by Parties do not apply to the services agreed in this Agreement.
- 11.6. The Merchant shall not assign or transfer any or all of their rights and/or obligations under the Agreement nor any part of it, nor any benefit nor interest in or under it, to



any third party without the prior written consent of Smart2Pay which shall not be unreasonably withheld.

11.7. The Merchant hereby grants Smart2Pay a non-exclusive license to use, for the duration and the purpose of this Merchant Agreement, the Merchant company name, trademark, all related logos, icons, any other images, marketing materials provided to Smart2Pay by the Merchant and agreed between the Parties from time to time and any other publicly information available, for the purpose of identifying the Merchant as a client of Smart2Pay. Merchant shall request Smart2Pay's prior written consent before it makes any reference to Smart2Pay and/or the Smart2Pay Services except in instances where it is necessary in connection with the use of the Smart2Pay Services.

## 12. NOTICES AND CONSENTS

12.1. All notices required by this Agreement to be given by either Party to the other Party shall be in English, unless otherwise specifically agreed upon, and shall be sent by postal mail, fax or e-mail and shall be addressed to the last known address of the other Party and shall be confirmed by registered postal mail if so required. Such notices shall be deemed to have been received by the other Party at the date of delivery.

12.2. Parties shall not unreasonably withhold any consent or approval required under this Agreement.

**IN WITNESS WHEREOF**, the Parties to this Agreement have executed the same on the date shown on page 3 of this Agreement.

Accepted by Smart2Pay  
Date: 05-06-2018 14:33

## Appendix A Tariffs

Settlement frequency: Weekly/monthly settlement, whereas settlement will only occur upon the moment that the settlement due is an aggregate amount of EUR 100 or more.

Smart2Pay will only pay the funds of transactions for which it has received the funds from the Smart2Pay Bank. Each Payment Method can have a different settlement delay: this is the time between the successful processing of the payment and the moment the Smart2Pay Bank or provider settles the funds to the Smart2Pay bank account.

Settlement currency: EUR.

Settlement frequency (daily/weekly methods): weekly.

Settlement delay (daily/weekly methods): all transactions that are processed during Friday 0:00 UTC (day 1) – Thursday 23:59 UTC (day 7) period, and settled to Smart2Pay (before and after day 7), will be settled to Merchant on the following Tuesday (day 12).

Settlement frequency (monthly methods): monthly.

Settlement delay (monthly methods): once a month in EUR (with a month delay). All transactions that are processed during day 1 – day 30 period, and settled to Smart2Pay after this period, will be settled to Merchant on the following month (day 60 latest).

### A. Tariffs:

The applicable tariffs are published on the website [www.smart2pay.com](http://www.smart2pay.com). Any decrease of the tariffs shall be applied immediately. Any increase of the tariffs is subject to the notification procedure according to article 3.4 of this Agreement.

### B. Exchange rate conversion table

Currency	Spread
Standard currency conversion	3%
Non-standard currencies - BRL	4.5%
Non-standard currencies - CLP, MXN	5%

## Appendix B Power of attorney

### POWER OF ATTORNEY

The undersigned:

**ewayits,**

a company duly incorporated and organised under the laws of India, having its registered office/principal place of business at test, narsinghar 465669, madhya pradesh, India, hereinafter referred to as "**the Merchant**",

declares to give power of attorney, which shall be automatically revoked upon termination of the Merchant Agreement, to:

**Coöperatieve Vereniging Smart2Pay Global Services U.A.,**

a company duly incorporated and organised under the laws of The Netherlands, having its registered office/principal place of business at Brink 27c 1251 KS Laren NH, The Netherlands, hereinafter referred to as "Smart2Pay",

on behalf of the undersigned:

to invoice and collect all payments due from the Customers of the Merchant on behalf of the Merchant which payments are made via bank transfer, direct debit, cheque, credit card or otherwise, and to prepare, execute, endorse and deliver in the Merchant's name all instruments or other documents that Smart2Pay or a Smart2Pay related entity, may consider necessary or advisable, including without limitation the endorsement of cheques in favour of Smart2Pay or a Smart2Pay related entity.

and furthermore to do anything which the attorney deems necessary, all this with the power of substitution.

Signed in test, narsinghar 465669, madhya pradesh, India, 5th of June 2018

For and on behalf of

## **Appendix C Deposit**

Smart2Pay will delay the settlements to the Merchant by 7 (seven) days.

## **Appendix D Service Level Agreement**

### **Uptime**

- Smart2Pay shall use all commercially reasonable efforts to provide the Smart2Pay Services with an availability of 99% per month ("Uptime"). The Smart2Pay Services are available when Smart2Pay payment platform is initiating Smart2Pay Payments and when it is responding to Merchant communication as described in the Merchant Integration Guide.

### **Downtime**

- Downtime is the aggregate amount of time during which Smart2Pay is unable to provide the Smart2Pay Services.
- Unavailability of the Smart2Pay Services as a result of scheduled maintenance of scheduled deployments is not accounted for as Downtime.
- Unavailability of the Smart2Pay Services as a result of acts or omissions of Merchant, Smart2Pay Banks, Financial Institutions, general internet failures, failures of certain Payment Methods and other events not reasonably attributable to Smart2Pay is not accounted for as Downtime.

### **Merchant's obligations**

- Merchant shall immediately notify Smart2Pay of any downtime experienced and shall cooperate with Smart2Pay in order to investigate and resolve any unavailability.

### **Service Credits**

- In the event Smart2Pay fails to provide the Smart2Pay Services in accordance with the agreed level of availability, Smart2Pay shall pay to Merchant, as a sole and exclusive remedy to Merchant, the amounts of Service Credits calculated in accordance with the table below:
- Merchant shall not be entitled to deduct any Service Credits from any amount due from Merchant to Smart2Pay.

Availability of the Smart2Pay Services	Credit on monthly invoice Smart2Pay Fees
99.00 % 98.99%	2.50 %
98.98 % 97.99 %	4.00 %
97.98 % 96.99 %	5.00 %
96.98 % 95.99 %	6.00 %
95.98 % 94.99 %	7.00 %
Less than 94.99 %	8.00 %

## Termination

- Merchant is entitled to terminate the Merchant Agreement with immediate effect upon notice to Smart2Pay if Smart2Pay fails to provide the Smart2Pay Services in accordance with this SLA for 3 consecutive months.