

## LOYALTY PRO LIMITED Terms and Conditions

The Trader's attention is particularly drawn to the provisions of clause 9 (Limitation of liability).

### 1. Interpretation

1.1. The following definitions and rules of interpretation apply in this agreement:

**"Application"** means any software application developed by Loyalty Pro which enables the End User to securely access and use the Customer Loyalty Rewards Programme.

**"Business Day"** means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**"Confidential Information"** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives whether before or after the date of this agreement, including but not limited to:

- (a) the existence and terms of this agreement;
- (b) any information that would be regarded as confidential by a reasonable business person relating to:
  - (i) the business, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing party; and
  - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- (c) any information developed by the parties in the course of carrying out this agreement; and
- (d) any information obtained by Loyalty Pro in the course of carrying out the Customer Loyalty Rewards Programme.

**"Contract"** means the contract between Loyalty Pro and the Trader for the supply of Loyalty Management Services in accordance with these Conditions.

**"Control"** shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

**"Customer Agreement"** means the terms and conditions of the Customer Loyalty Rewards Programme as prescribed by Loyalty Pro from time to time, and at the Commencement Date the version set out in Schedule 2.

**"Customer Loyalty Rewards Programme"** means a programme which End Users enter into on the basis of the Customer Agreement, and will be run by Loyalty Pro as part of the Loyalty Management Services.

**"Data"** means any data or information, in whatever form, including images, still and moving, and sound recordings, including (but not limited to) any Personal Data.

**"Data Controller", "Data Processor", "Data Subject", "Personal Data" and "Appropriate Technical and Organisational Measures"** all have the meanings given in the Data Protection Legislation.

**"Data Protection Legislation"** means GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK.

**"Deliverables"** means the deliverables set out in Schedule 1.

**"End User"** means (a) customers of the Trader who subscribe for the Customer Loyalty Rewards Programme; and (b) customers of Loyalty Pro (who, for example, have subscribed for 'one time' on credit and debit cards as well as branded loyalty cards and the Wallet App).

**"End User Data"** means any Personal Data or information provided by End Users directly to Loyalty Pro and via a link from the Trader's web site and browser access point.

**"Equipment"** means the Sold Equipment and Loaned Equipment provided as part of the Loyalty Management Services as set out in Schedule 1.

**"GDPR"** means EU General Data Protection Regulation ((EU) 2016/679).

**"Initial Joining Fee"** means the initial fee payable under clause 6.1 as set out in Schedule 1.

**"Initial Set-Up Fee"** means the initial fee payable under clause 6.1 for the installation and initial set-up of any Equipment, as set out in Schedule 1.

**"Intellectual Property Rights"** means patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**"Loaned Equipment"** means the equipment provided as part of the Loyalty Management Services which will be returned to Loyalty Pro at the end of the Contract, as set out in Schedule 1.

**"Loyalty Pro"** means Loyalty Pro Limited (registered in England and Wales with company number 05907642).

“**Loyalty Management Services**” means the Equipment, Application and services supplied to the Trader as set out in Schedule 1 to this agreement.

“**Loyalty Reward Card**” means a card issued to End Users who sign up to the Customer Loyalty Rewards Programme.

“**Monthly Fees**” means the Fixed Monthly Loyalty Management Services Fee and the Fixed Monthly Marketing Services Fee payable on a monthly basis as per clause 6 and as set out in Schedule 1.

“**Order**” means the Trader’s order for the Loyalty Management Services as set out in the Trader’s purchase order form, or the Trader’s written acceptance of Loyalty Pro’s quotation, as the case may be. For Orders made online, please see clause 14.

“**Payment Provider**” means a payment provider authorized pursuant to clause 8.13 to provide Transaction Data to a TPP.

“**Permitted Use**” means internal business use (which shall not include the use of the End User Data by, or for the benefit of, any person other than the Trader)

“**Personal Data**” has the meaning set out in section 1(1) of the Data Protection Act 1998 and relates only to personal data, or any part of such personal data, in respect of which the Trader is the Data Controller and in relation to which Loyalty Pro is providing Loyalty Management Services under the Contract.

“**Premises**” means the premises set out in Schedule 1.

“**Privacy Policy**” means Loyalty Pro’s data protection and privacy policy (<https://www.clinkpoints.co.uk/business/privacy-policy>)

“**Sold Equipment**” means the equipment provided as part of the Loyalty Management Services, the title of which will pass to the Trader and will not be returned at the end of the Contract, as set out in Schedule 1.

“**Trader**” means the person who purchases Loyalty Management Services from Loyalty Pro.

“**Trader Data**” means any Personal Data obtained from the Trader which is not End User Data.

“**Trader Default**” has the meaning set out in clause 5.2.

“**Transaction**” means a point of sale purchase made by an End User with an enrolled payment card at a Trader.

“**Transaction Data**” means data supplied via a Payment Provider relating to a Transaction including the following: Merchant ID; card token; date; time; and amount.

“**Term**” means the minimum term of the Contract as set out in Schedule 1.

“**Variable Fees**” means the variable fees payable by the Trader as per clause 6 and as set out in Schedule 1.

- 1.2. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.3. Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.4. A reference to writing or written includes fax and email.

## **2. Basis Of Contract**

- 2.1. The Order constitutes an offer by the Trader to purchase Loyalty Management Services in accordance with these Conditions.
- 2.2. The Order shall only be deemed to be accepted when Loyalty Pro issues written acceptance of the Order at which point and on which date the Contract shall come into existence (“**Commencement Date**”).
- 2.3. Any samples, drawings, descriptive matter or advertising issued by Loyalty Pro, and any descriptions or illustrations contained in Loyalty Pro’s catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Loyalty Management Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4. These Conditions apply to the Contract to the exclusion of any other terms that the Trader seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5. Any quotation given by Loyalty Pro shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 2.6. Loyalty Pro is the entire legal and beneficial owner and licensor of any Equipment provided to the Trader during the supply of the Loyalty Management Services including the software enabling such Equipment to operate.
- 2.7. The risk in the Sold Equipment passes to the Trader when the Equipment is delivered to the Premises.
- 2.8. The risk in the Loaned Equipment passes to the Trader when the Loaned Equipment is delivered to the Premises and the Loaned Equipment shall be at the Trader’s risk for the duration of their possession by the Trader.
- 2.9. Title to the Loaned Equipment shall remain with Loyalty Pro and shall not pass to the Trader.
- 2.10. The Trader may use the Loaned Equipment exclusively to allow the performance of the Loyalty Management Services, but this right ceases immediately if any of the events listed in clause 10 occur.
- 2.11. The Trader acknowledges that it holds the Loaned Equipment in its possession as bailee for Loyalty Pro at all times.

## **3. Services and Restrictions**

- 3.1. Subject to the Trader not being in breach of its payment obligations under clause 6, the restrictions set out in this clause 3 and the other terms and conditions of this agreement, Loyalty Pro hereby grants to the Trader a non-exclusive, non-transferable right during the Term:
  - 3.1.1. to permit the End Users to use the Loyalty Reward Code and Loyalty Reward Management Services in accordance with the terms of the Customer Agreement;

- 3.1.2. to download the Application ("**Wallet App**") with which the End User can obtain loyalty points or rewards and setup an accompanying Customer Loyalty Rewards Account into which such points and other benefits may be collected for the purposes set out in clause 3.1.1.
- 3.2. The Trader shall not:
  - 3.2.1. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
    - 3.2.1.1. and except to the extent expressly permitted under this agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Wallet App and/or Documentation (as applicable) in any form or media or by any means; or
    - 3.2.1.2. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Wallet App;
  - 3.2.2. access all or any part of the Loyalty Management Services in order to build a product or service which competes with the Loyalty Management Services;
  - 3.2.3. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Loyalty Management Services and/or Deliverables available to any third party except the End Users, or
  - 3.2.4. attempt to obtain, or assist third parties in obtaining, access to the Loyalty Management Services and/or Deliverables.
- 3.3. The Trader shall:
  - 3.3.1. use all reasonable endeavours to prevent any unauthorised access to, or use of, the Loyalty Management and/or the Deliverables and, in the event of any such unauthorised access or use, promptly notify Loyalty Pro; and
  - 3.3.2. comply with any further obligations set out in the Customer Agreement that govern use of the Loyalty Management Services or the Software.
- 3.4. The rights provided under this Clause 3 are granted to the Trader only, and shall not be considered granted to any subsidiary or holding company of the Trader.

#### **4. Supply of Loyalty Management Services**

- 4.1. Loyalty Pro shall supply the Loyalty Management Services to the Trader at the Premises in accordance with Schedule 1 in all material respects.
- 4.2. Loyalty Pro shall use all reasonable endeavours to meet any performance dates specified in Schedule 1, but any such dates shall be estimates only and time shall not be of the essence for provision of the Loyalty Management Services.
- 4.3. Loyalty Pro reserves the right to amend Schedule 1 if necessary to comply with any applicable law or regulatory requirement or if the amendment will not materially affect the nature or quality of the Loyalty Management Services, Loyalty Pro shall notify the Trader in any such event.
- 4.4. Loyalty Pro warrants to the Trader that the Loyalty Management Services will be provided using reasonable care and skill.
- 4.5. This agreement, unless terminated earlier in accordance with clause 9, shall remain in force for the Term following the Commencement Date, after which time the agreement will renew on a monthly basis until such time as the Trader fails to pay the Monthly Fee as detailed in Schedule 1 or the Trader is in breach of any other term or condition of this agreement or the agreement is terminated in accordance with clause 10.

#### **5. Trader's responsibilities**

- 5.1. The Trader shall:
  - 5.1.1. ensure that the terms of the Order are complete and accurate;
  - 5.1.2. ensure that the End User signs the Customer Agreement prior to being provided with a Loyalty Reward Card and/or being accepted as a member of the Customer Loyalty Rewards Programme.
  - 5.1.3. co-operate with Loyalty Pro in all matters relating to the Loyalty Management Services;
  - 5.1.4. provide Loyalty Pro, its employees, agents, consultants and subcontractors, with access to the Trader's premises, office accommodation and other facilities as reasonably required by Loyalty Pro;
  - 5.1.5. provide Loyalty Pro with such information and materials as Loyalty Pro may reasonably require in order to supply or install the Loyalty Management Services, and ensure that such information is complete and accurate in all material respects;
  - 5.1.6. prepare the Trader's premises for the supply of the Loyalty Management Services;
  - 5.1.7. keep all materials, equipment, documents, Loaned Equipment and other property of Loyalty Pro (Loyalty Pro Materials) at the Trader's premises in safe custody at its own risk, maintain the Loyalty Pro Materials in good condition until returned to Loyalty Pro, and not dispose of or use the Loyalty Pro Materials other than in accordance with Loyalty Pro's written instructions or authorisation;
  - 5.1.8. not remove, deface or obscure any identifying mark or packaging relating to the Loaned Equipment or any other Loyalty Pro Materials;
  - 5.1.9. maintain the Loaned Equipment in satisfactory condition and in accordance with instructions from Loyalty Pro from time to time;

- 5.1.10. pay for the replacement of any Loaned Equipment which is lost; and
  - 5.1.11. ensure that its employees are trained to use the Loyalty Management Services and Equipment and that only trained employees use the Loyalty Management Services or operate the Equipment provided as part of the Loyalty Management Services.
- 5.2. If Loyalty Pro's performance of any of its obligations under the Contract is prevented or delayed by any act or omission of the Trader or failures by the Trader to perform any relevant obligation ("**Trader Default**"):
- 5.2.1. without limiting or affecting any other right or remedy available to it, Loyalty Pro shall have the right to suspend performance of the Services until the Trader remedies the Trader Default, and to rely on the Trader Default to relieve it from the performance of any of its obligations in each case to the extent the Trader Default prevents or delays Loyalty Pro's performance of any of its obligations;
  - 5.2.2. Loyalty Pro shall not be liable for any costs or losses sustained or incurred by the Trader arising directly or indirectly from Loyalty Pro's failure or delay to perform any of its obligations as set out in this clause 5.2; and
  - 5.2.3. the Trader shall reimburse Loyalty Pro on written demand for any costs or losses sustained or incurred by Loyalty Pro arising directly or indirectly from the Trader Default.

## **6. Charges and Payment**

- 6.1. The Trader shall pay to Loyalty Pro the Initial Joining Fee and Initial Set-Up Fee on entry into the Contract.
- 6.2. The Trader shall pay the Monthly Fees on a monthly basis, in advance on or before the first day of the month in question after the Commencement Date.
- 6.3. Monthly Fees shall be payable by the Trader to Loyalty Pro by means of a direct debit or standing order.
- 6.4. The Trader shall pay the Variable Fees as provided in Schedule 1.
- 6.5. All sums payable under this agreement are exclusive of VAT or any relevant local sales taxes, for which the Trader shall be responsible.
- 6.6. If the Trader fails to make any payment due to Loyalty Pro under this agreement by the due date for payment, then, without limiting Loyalty Pro's remedies under clauses 10 and 11, the Trader shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Trader shall pay the interest together with the overdue amount.
- 6.7. The Trader shall pay all sums due to Loyalty Pro under this agreement without any set-off, deduction, counter-claim and/or withholding of monies.

## **7. Intellectual Property Rights**

- 7.1. All Intellectual Property Rights in or arising out of or in connection with the Loyalty Management Services (other than Intellectual Property Rights in any materials provided by the Trader) shall be owned by Loyalty Pro.
- 7.2. Loyalty Pro grants to the Trader, or shall procure the direct grant to the Trader of, a licence during the term of the Contract to copy the Deliverables (excluding materials provided by the Trader) for the purpose of receiving and using the Loyalty Management Services and the Deliverables in its business.
- 7.3. The Trader shall not sub-license, assign or otherwise transfer the rights granted in clause 7.2.
- 7.4. The Trader grants Loyalty Pro a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Trader to Loyalty Pro for the term of the Contract for the purpose of providing the Loyalty Management Services to the Trader.

## **8. Data Protection and Data Processing**

- 8.1. The Trader and Loyalty Pro acknowledge that for the purposes of the Data Protection Legislation:
  - 8.1.1. the Trader and Loyalty Pro are the joint Data Controllers in respect of any Personal Data processed by each of them; and
  - 8.1.2. both Loyalty Pro and the Trader are Data Processors in respect of any Personal Data.
- 8.2. The Trader acknowledges that in order to provide the Loyalty Management Services, Loyalty Pro will be provided with End User Data and will need to process this End User Data. The parties will obtain the necessary permissions from the End User required under Data Protection Legislation, so that the End User Data may be processed by both Loyalty Pro and the Trader.
- 8.3. Loyalty Pro is the owner of any copyright and database rights in the End User Data and may freely use End User Data for such purposes as Loyalty Pro sees fit (subject to the Privacy Policy). The Trader shall be allowed to access End User Data once per calendar month and shall be licenced to use the End User Data for the Permitted Use.
- 8.4. The Trader may access the End User Data for:
  - 8.4.1. assessing behaviours and spending profiles; and
  - 8.4.2. setting up personalised marketing campaigns to the Trader's End User base (whether such campaign is managed by the Trader or by Loyalty Pro (the "**Permitted Purposes**"). The Trader may not access or use the End User Data for any purposes other than the Permitted Purposes.

- 8.5. If the Trader requires End User Data more frequently than once per calendar month, the Trader may request additional access from Loyalty Pro, who shall charge the Trader such fees as they set out upon receipt of a request under this clause 8.4.
- 8.6. On termination of the Contract for any reason, the Trader shall no longer have any right to use the End User Data and such rights granted under clause 8.3 and clause 8.4 shall cease.
- 8.7. Loyalty Pro shall process the Personal Data :
  - 8.7.1. in accordance with the terms of the Customer Agreement and the Privacy Policy;
  - 8.7.2. for the following purposes:
    - 8.7.2.1. to supply and manage the Loyalty Management Services;
    - 8.7.2.2. to manage and improve the Customer Loyalty Rewards Programme;
    - 8.7.2.3. to manage and improve the Wallet App and any applications Loyalty Pro may develop in connection with the Loyalty Management Services and/or the Customer Loyalty Rewards Programme;
    - 8.7.2.4. to help Loyalty Pro to develop and improve our services, information technology systems, know-how;
    - 8.7.2.5. to help Loyalty Pro understand End User's habits as a customer and provide the End User with personalised offers and services;
    - 8.7.2.6. to provide End Users with relevant marketing communications (including by email, post or online advertising), relating to our services, and those of our suppliers, partners and affiliates;
    - 8.7.2.7. to contact End Users about the Customer Loyalty Rewards Programme.
- 8.8. Loyalty Pro shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data.
- 8.9. Each party warrants to the other that it will process the Personal Data in compliance with all applicable Data Protection Legislation and all laws, enactments, regulations, orders, standards and other similar instruments.
- 8.10. Loyalty Pro warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:
  - 8.10.1. take Appropriate Technical and Organisational Measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:
    - 8.10.1.1. the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
    - 8.10.1.2. the nature of the data to be protected; and
    - 8.10.1.3. take reasonable steps to ensure compliance with those measures.
- 8.11. Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this clause 8.
- 8.12. The Trader agrees to indemnify and keep indemnified and defend at its own expense Loyalty Pro against all costs, claims, damages or expenses incurred by Loyalty Pro or for which Loyalty Pro may become liable to due to any breaches of the Trader's obligations under this clause 8 which result from security breaches arising through the use of the Trader's own equipment, the Trader's Wi-Fi connection or computer systems.
- 8.13. Loyalty Pro may authorise third party processors and subcontractors ("**TPPs**") to process:
  - 8.13.1. Personal Data; and/or
  - 8.13.2. Transaction Data- provided that the contract with such TPP complies with Data Protection Legislation.
- 8.14. The Trader consents to the Payment Provider monitoring payments made via the Trader's payment card terminals, and to the Payment Provider accessing the corresponding payment data (as required by any TPP appointed by Loyalty Pro) for the sole purposes of enabling the Payment Provider to:
  - 8.14.1. identify, track and record point of sale purchases made by End Users with an enrolled payment card; and
  - 8.14.2. provide the Transaction Data to a TPP (at the date of the Contract, this includes (but is not limited to) Fidel Limited and any TPP which may be appointed in addition or substitution for Fidel Limited.
- 8.15. Loyalty Pro will :
  - 8.15.1. provide the Trader with the Transaction Data, or a sub-set thereof;
  - 8.15.2. only use the Transaction Data for the sole purpose of enabling it to administer the Customer Loyalty Rewards Programme and to fulfil rewards to End Users in connection with the Customer Loyalty Rewards Programme (the "**Permitted Use**");
  - 8.15.3. retain the Transaction Data only as long as necessary for the Permitted Use and in any event no longer than 7 years from the date of the Transaction;
  - 8.15.4. not share, transfer or disclose the Transaction Data to any third parties, or otherwise cause Transaction Data to be disclosed to any third parties (other than TPPs appointed under clause 8.12 above).
- 8.16. The Trader agrees that in respect of any Transaction Data received from Loyalty Pro, it will:

- 8.16.1. only use the Transaction Data for the sole purpose of enabling it to fulfil rewards to End Users in connection with the Customer Loyalty Rewards Programme;
- 8.16.2. retain the Transaction Data only as long as necessary for the purposes set out in clause 8.15.1 and in any event no longer than 7 years from the date of the Transaction;
- 8.16.3. not share, transfer or disclose the Transaction Data to any third parties, or otherwise cause Transaction Data to be disclosed to any third parties.

**9. Limitation of liability (the Trader's attention is particularly drawn to this Clause).**

- 9.1. Nothing in the Contract shall limit or exclude Loyalty Pro's liability for:
  - 9.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - 9.1.2. fraud or fraudulent misrepresentation; or
  - 9.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 9.2. Subject to clause 9.1, Loyalty Pro shall not be liable to the Trader, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
  - 9.2.1. loss of profits;
  - 9.2.2. loss of sales or business;
  - 9.2.3. loss of agreements or contracts;
  - 9.2.4. loss of anticipated savings;
  - 9.2.5. loss of use or corruption of software, data or information;
  - 9.2.6. loss of or damage to goodwill; and
  - 9.2.7. any indirect or consequential loss.
- 9.3. Subject to clause 9.1, Loyalty Pro's total liability to the Trader, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the total Charges paid under the Contract.
- 9.4. The terms implied by:
  - 9.4.1. sections 3 to 5 of the Supply of Goods and Services Act 1982; and
  - 9.4.2. sections 13 to 15 of the Sale of Goods Act 1979are, to the fullest extent permitted by law, excluded from the Contract.
- 9.5. Loyalty Pro does not warrant and makes no representations that: (a) the use of the Loyalty Management Services will be uninterrupted or error free; or (b) that the Loyalty Management Services, and/or the information obtained by the Trader through the Loyalty Management Services - will meet the Trader's requirements.
- 9.6. Loyalty Pro shall not be liable for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Trader acknowledges that the Loyalty Management Services may be subject to limitations, delays and other issues inherent in the use of such communications facilities.
- 9.7. The Trader acknowledges and accepts that Loyalty Pro may enter into similar agreements to this Contract with third parties, and may independently develop, use, sell or licence documentation, products and/or services which are similar to those provided to the Trader under this Contract.
- 9.8. This clause 9 shall survive termination of the Contract.

**10. Termination**

- 10.1. Without affecting any other right or remedy available to it, Loyalty Pro may terminate the Contract with immediate effect by giving written notice to the Trader if:
  - 10.1.1. the Trader fails to pay any amount due under the Contract on the due date for payment; or
  - 10.1.2. there is a change of Control of the Trader.

**11. Consequences of Termination**

- 11.1. On termination of the Contract;
  - 11.1.1. the Trader shall immediately pay to Loyalty Pro all of Loyalty Pro's outstanding unpaid invoices and interest and, in respect of the Loyalty Management Services supplied but for which no invoice has been submitted, Loyalty Pro shall submit an invoice, which shall be payable by the Trader immediately on receipt;
  - 11.1.2. all rights granted to the Trader under this agreement shall cease;
  - 11.1.3. the Trader shall cease all activities authorised by this agreement; and
  - 11.1.4. the Trader shall return:
    - 11.1.4.1. all of the Loyalty Pro Materials and Loaned Equipment; and
    - 11.1.4.2. any Deliverables which have not been paid for. If the Trader fails to comply with this Clause, Loyalty Pro may, at its option charge the Trader:

- 11.1.4.3. one year's aggregate rental charges for the Loyalty Pro Materials plus £289 for each item of Loaned Equipment; or
- 11.1.4.4. the equivalent of 12 months' fixed monthly charge for the Loyalty Management Services
- 11.2. Loyalty Pro shall be entitled to enter the Trader's premises and take possession of all of the Loyalty Pro Materials and Loaned Equipment. Until they have been returned, the Trader shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 11.3. In the event the Contract is terminated for any reason before the Term has ended, the Trader shall pay the costs of returning the Loaned Equipment to Loyalty Pro, and the balance of the Monthly Fees for the remainder of the Term shall become immediately due and payable.
- 11.4. Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of Contract which existed at or before the date of termination or expiry.
- 11.5. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## **12. Confidentiality.**

- 12.1. The Trader undertakes that it shall not at any time disclose to any person any Confidential Information except as permitted by clause 12.2.
- 12.2. The Trader may disclose the other party's Confidential Information:
  - 12.2.1. to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. The Trader shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 12; and
  - 12.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3. The Trader shall not use the Confidential Information for any purpose other than to perform its obligations under the Contract.

## **13. General**

- 13.1. **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 13.2. **Assignment and other dealings.**
  - 13.2.1. Loyalty Pro may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
  - 13.2.2. The Trader shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Loyalty Pro.
- 13.3. **Entire agreement.**
  - 13.3.1. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
  - 13.3.2. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
  - 13.3.3. Nothing in this clause shall limit or exclude any liability for fraud.
- 13.4. **Further Assurance.** The Trader shall, at its own expense, use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Contract.
- 13.5. **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 13.6. **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 13.7. **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or

part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

**13.8. Notices.**

13.8.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number.

13.8.2. Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by fax, at 9.00 am on the next Business Day after transmission.

13.8.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

**13.9. Third party rights.**

13.9.1. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

13.9.2. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

13.10. **No Partnership of Agency.** Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

13.11. **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

13.12. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

13.13. **Language.** These Conditions and the Contract are made only in the English language.

13.14. **Services in UK only.** Loyalty Pro may on a case by case basis with Loyalty Pro's prior written agreement perform the Loyalty Management Services outside the UK. .

**14. ONLINE ORDERS**

14.1. This clause 14 applies to Orders made via Loyalty Pro's website only. You should print a copy of these Conditions or save them to your computer for future reference.

14.2. In respect of this clause 14, "Order" shall include any order made via Loyalty Pro's website.

14.3. When placing an online Order, the Trader must follow onscreen prompts. Each online order is an offer by the Trader to purchase the Loyalty Management Services subject to these Conditions.

14.4. Loyalty Pro's order process allows the Trader to check and amend any errors before submitting an Order to Loyalty Pro. The Trader must carefully check the Order before confirming it. The Trader is responsible for ensuring that any Order is complete and accurate.

14.5. After the Trader places an Order, Loyalty Pro will send an email to acknowledge receipt of the Order, but this email does not constitute an acceptance of the Order. Acceptance of the Trader's Order will take place as described in clause 14.6.

14.6. Loyalty Pro accepts an Order when it sends an email to the Trader to accept it ("**Order Confirmation**"). The Order Confirmation will include Schedule 1 and Schedule 2 to this agreement. When the Order Confirmation is sent by Loyalty Pro, the Contract between the Trader and Loyalty Pro will come into existence on that date ("**Commencement Date**"). The Contract will relate only to the Loyalty Management Services confirmed in the Order Confirmation. An electronic signature will be required to formalise the Order.

14.7. If Loyalty Pro cannot accept the Trader's Order and are unable to supply the Loyalty Management Services for any reason, Loyalty Pro will inform the Trader by email. Loyalty Pro may require further information from the Trader and/or make changes to the Trader's Order subject to which Loyalty Pro may accept an Order. If the Trader does not provide the requested information or agree to the changes to the Trader's Order, Loyalty Pro will not process the Trader's order. If the Trader has already paid for the Loyalty Management Services, Loyalty Pro will refund the Trader the full amount.

14.8. **Cancellation and Refunds.** You may cancel the Contract formed under this clause 14, and receive a refund, if you notify us as set out in clause 14.9 within 7 days of your receipt of the Order Confirmation. You cannot cancel the Contract once Loyalty Pro has started to provide the Loyalty Management Services by setting up templates for Wallet Apps and/or logo's, equipment, even if the 7 day period is still running.

14.9. To cancel the Contract, you must complete the cancellation form on our website. A link to the website cancellation form will be included in our Order Confirmation. We will email you to confirm we have received your cancellation.

14.10. If you cancel the Contract, we will refund you the price you paid for the Services, by the method you used for payment, less an amount equivalent to the pro rata value of the Services supplied by Loyalty Pro for the period up to our receipt of a valid notice of cancellation.



**SCHEDULE 1**

**Contract Details**

<b>Initial Joining Fee (excluding VAT)</b>	£0.00
<b>Initial Set-Up Fee</b>	£0.00
<b>Fixed Monthly Loyalty Management Services Fee (excluding VAT)</b>	£20.00 per month (tablet) or £10.00 per month (Browser)
<b>Fixed Monthly Marketing Services fee (excluding VAT)</b>	On application
<b>Variable Fees</b>	<ul style="list-style-type: none"> <li>i) Transaction charge – recorded in real time – daily provided and monthly invoiced</li> <li>ii) Additional Marketing Services – as agreed from time to time or pre agreed fixed campaign programmes/plans</li> </ul>
<b>Loaned Equipment</b>	Tablets, Tablet Stands, Card Readers
<b>Services</b>	Loyalty Scheme and Marketing Portal
<b>Deliverables</b>	Loyalty cards
<b>Term</b> - this is the minimum term for the Contract. The Term begins on the Commencement Date. After the Term ends, the Contract shall renew on a monthly basis whilst the Monthly Fee continues to be paid.	From the Commencement Date up until 31 <sup>st</sup> December 2018
<b>Trader's premises</b> for the delivery and use of the Loyalty Management Services (" <b>Premises</b> ")	Trader address given at registration.