

# SELLERDECK SERVICES AGREEMENT v11

This agreement (the "Agreement") is between Sellerdeck Ltd ("SDL") a Company incorporated in England and Wales (no 03221222) whose registered office is at 1 Emperor Way, Exeter Business Park, Exeter, Devon, EX1 3QS and you ("The Merchant") (together "the Parties") and governs the provision of services by SDL or SDL's supplier to The Merchant ("SDL Service(s)").

These are the terms and conditions for use of the SDL Services and constitute a legal agreement between The Merchant and SDL. In order to use any of the SDL Services the Merchant must accept clauses 1 to 28 of this Agreement in their entirety and accept clauses after 28 in so far as the particular SDL Services specified therein are provided by SDL to The Merchant. This SDL Services Agreement replaces any previous agreement for the supply of services covered under this Agreement.

The Merchant may be an individual, an organisation, a company of limited liability or otherwise, a partnership of limited liability or otherwise or a charity or any other legal entity but an individual must be acting on behalf of a business and not as a consumer.

The Merchant signifies its consent to this SDL Services Agreement by using the services or by indicating its acceptance by ticking a box at SDL's web site, and The Merchant doing so thereby also acknowledges that it is duly authorised to make this Agreement and that it has read and understood this Agreement.

## 1 PURPOSE

- 1.1 The purpose of this Agreement is to enable The Merchant to conduct business with third parties or improve internal administrative processes with the help of SDL Services.
- 1.2 In return for the payment of the relevant fees as defined below and on the SDL web site, SDL will provide SDL Services for the duration of the Agreement.
- 1.3 SDL publishes information on its web site [www.sellerdeck.co.uk](http://www.sellerdeck.co.uk) relating to the volumes and pricing of the SDL Services and these form part of this Agreement.
- 1.4 The Merchant agrees to abide by the terms of this Agreement.

## 2 DEFINITIONS

- 2.1 The SDL Services which can be included under this Agreement include but are not limited to the following types ("**Type of Service**"):
  - 2.1.1 support for SDL's software products ("**Product Support**"),
  - 2.1.2 the provision of web site hosting on a computer server connected to the Internet ("**Hosting**"),
  - 2.1.3 the provision of licensed software and Hosting bundled together ("**SaaS Service**") and also with Product Support "Desktop 365 Plus",
  - 2.1.4 the provision of a service whereby requests to take payments or make refunds or similar transactions from or to payment cards are passed to the banking network and a reply received ("Actinic Payments" or "**Sellerdeck Payments**"),
  - 2.1.5 the provision of domain name management services ("**Domain Name Registration Service**"),
  - 2.1.6 the provision of secure (SSL) certificates associated with a domain name ("**SSL Certificates**"),
  - 2.1.7 the provision of a facility for passing information on shipments to carriers and receiving information back on the status of deliveries ("**Delivery Transaction Service**"),
  - 2.1.8 the provision of information checking or look up services based on access to a database of information ("**Post or Zip Code Lookup Or Other Information Services**"),
  - 2.1.9 the provision of upgrades to previously licensed software whose rights are owned by SDL ("**Product Upgrades**"),
  - 2.1.10 the provision of an enhanced Product Support service ("**Premium Support**"),
  - 2.1.11 the provision of a service whereby requests are made from The Merchant's buyers for feedback on the products and service received ("**Independent Customer Feedback Service**"),
  - 2.1.12 the provision of a service whereby SDL provides help ("**Consultancy Advice and Implementation**") relating to gaining more visitors to The Merchant's web site (including but not limited to search engine optimisation, pay-per-click and other advertising and email marketing) and improving conversion to sales once visitors have arrived at the web site.
  - 2.1.13 Usage of all resources provided as part of the SDL Services are subject to a limitation known as "Fair Use". Fair Use means that The Merchant is limited to usage that is less than two times the standard deviation more than the mean usage of the service by other Merchants paying the same charge or where usage is greater than three times such mean usage whoever is the greater and where this measurement is made over the preceding 6 months. This equates to approximately the top 2.5% of usage or less. Resources subject to Fair Use include but are not restricted to number of email addresses with Hosting, number of domain names with Hosting, web space with Hosting, number of telephone incidents raised with Support.
  - 2.1.14 "Intellectual Property Rights": all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world

## 3 DESCRIPTION OF EACH SERVICE

- 3.1 Each SDL Service will, at the Website, have a description setting out the scope, term, pricing and Type of Service of such SDL Service ("**Service Description**"). Where the description also includes one or more of the following elements, these form part of the SDL Services Agreement in relation to such SDL Services (and these terms shall have the following meanings in this Agreement):
  - 3.1.1 the initial fee to commence using the service ("**Setup Fee**");
  - 3.1.2 the contract term when the service is first purchased ("**Initial Contract Period**");
  - 3.1.3 the contract term when the contract is renewed ("**Contract Period**"); this is also the Initial Contract Period when the Initial Contract Period is not explicitly specified;

- 3.1.4 the fee for the Initial Contract Period ("**Initial Contract Price**");
- 3.1.5 the normal fee for the Contract Period ("**Contract Price**"), this is also the Initial Contract Price when the Initial Contract Price is not explicitly specified;
- 3.1.6 the details of how the fee may vary on contract renewal ("**Loyalty Discount**");
- 3.1.7 the term of the Agreement, which is either the Initial Contract Period or, following the first renewal, the Contract Period, ("**Term**");
- 3.1.8 the minimum time over which the SDL Services must be renewed which is used when a Product Upgrade is included and The Merchant is committed to renew the contract a number of times ("**Minimum Term**"). Where no Minimum Term is specified there is no Minimum Term;
- 3.1.9 the unit of measurement of service usage for a particular service such as number of payment related transactions, or number of gigabytes of data transferred from a web server ("**Transaction Type**");
- 3.1.10 the actual service usage for a particular Transaction Type such as the actual number of payment related transactions, or the actual number of gigabytes of data transferred from a web server ("**Transactions**");
- 3.1.11 the number of free Transactions for the Initial Contract Period ("**Initial Transactions Included**");
- 3.1.12 the number of free transactions for the Contract Period ("**Transactions Included**"), this is also the Initial Transactions Included when the Initial Transactions Included are not specified;
- 3.1.13 the fee per transaction when the number of transactions consumed exceeds the Transactions Included or Initial Transactions Included as appropriate during a term ("**Transaction Fee**");
- 3.1.14 the fee associated with each user working for the benefit of The Merchant and who has access to data supplied as part of this Agreement ("**Fee Per Seat**");
- 3.1.15 the current release or its immediate predecessor of any SDL software product licensed to The Merchant under the End-user Agreement (as such term is defined in clause 5 of this Agreement) ("**SDL Product**");
- 3.1.16 a service ordered by The Merchant and provided by SDL to The Merchant under this Agreement ("**SDL Service**");
- 3.1.17 the fee for each additional user who is able to access the SDL Service for administration purposes ("**Additional User Fee**"). Where no fee is specified the Initial Contract Price and Contract Price as appropriate will be charged per additional user;
- 3.1.18 the fee for each additional web site for the SDL Service ("**Additional Per Web Site Fee**"). Where no fee is specified the Initial Contract Price and Contract Price as appropriate will be charged per additional web site;
- 3.1.19 a description encompassing both the Contract Price and Contract Period ("**Charge Band**"); and
- 3.1.20 a third party, such as (but not limited to) The Royal Mail, who own the rights to data provided under this Agreement and who provide such data to SDL under a license agreement (the "**Licensor**").

## 4 SERVICE PROVIDED

- 4.1 SDL warrants that the SDL Services provided materially comply with the Service Description at the Website, as amended from time to time, subject to the terms of this Agreement. Where there is any conflict between the Service Description and the terms of this Agreement the terms of this Agreement take absolute precedence. No other warranties are given except as expressed in this Agreement.
- 4.2 The provision of the SDL Services is for a single web site only and for a single individual representing The Merchant to use at any one time only, except where an Additional Per Web Site and/or Additional User Fee is paid.
- 4.3 SDL shall provide one or more user ids and passwords to allow The Merchant to access their account for SDL Service across the Internet. SDL shall provide a telephone number for contacting SDL as specified from time to time on the Website for the relevant SDL Service.
- 4.4 SDL reserves the right at any time to revise and modify its software (the "**Software**"), release subsequent versions thereof and to alter features, specifications, capabilities, functions, and other characteristics of the Software or minor aspects of the SDL Services, without notice to The Merchant. SDL shall, as soon as reasonably practicable, notify The Merchant via its Website of any such amendments to the Software or the SDL Services.
- 4.5 SDL will make reasonable efforts to provide a telephone service for 24 hours a day 365 days a year (details of which will be provided on the SDL web site) in order for The Merchant to report outages that they experience with any of the following technical SDL Services: Hosting, Sellerdeck Payments, Independent Customer Feedback Service, Post or Zip Code Lookup or Other Information Service, Delivery Transaction Service.
- 4.6 When any of the following individual services contracted by The Merchant and encompassing Sellerdeck Payments, Hosting, Independent Customer Feedback or Delivery Transaction Service, are not available for a period of time to The Merchant ("**Outage**") SDL shall make a refund on the following terms:
  - 4.6.1 The Outage has been for more than one continuous hour, and its length is deemed to be the nearest whole hour,
  - 4.6.2 The Merchant makes a claim for a refund relating to the Outage through the mechanism made available by SDL on the SDL web site,
  - 4.6.3 The claim for the refund is made not later than 6 weeks after the Outage ended,
  - 4.6.4 Provided that the Outage is solely caused by malfunction of software or equipment managed by SDL or its supplier and not due to actions or failures of third parties not related to SDL,
  - 4.6.5 The refund shall be four times the proportion of the monthly or annual charge that the duration of the Outage represents of the month or year and for the purposes of this clause every month has 30 days and every year 365 days (for example, if the monthly fee was A and period of outage B hours, the refund due will be  $A * 4 * B / (24 * 30)$ ),
  - 4.6.6 SDL shall issue a credit note and make the refund within 30 days of the claim being lodged,
  - 4.6.7 The total of all refunds to a Merchant under this clause 4.6 shall not exceed the total monies paid by The Merchant to SDL in the preceding 12 months,
  - 4.6.8 Any claim under this clause will be the sole remedy available to The Merchant under this Agreement.

## 5 END-USER AGREEMENT

- 5.1 This Agreement is additional to the end-user agreement between SDL and an end-user set out in the relevant SDL Product as amended from time to time ("End-user Agreement").
- 5.2 Where The Merchant is licensed to use an SDL Product under an End-user Agreement they are known as an "End-user".
- 5.3 Where relevant to software licensing, terms shall have the same meaning given to them in this Agreement as in the relevant End-user Agreement, unless specifically defined in this Agreement.
- 5.4 If there is any conflict between this Agreement and the End-user Agreement, the End-user Agreement takes precedence.

## 6 TAX AND OTHER DUTIES

All prices quoted are always exclusive of VAT and any other applicable tax, import, and all other duties which may be levied as required by law and SDL may add VAT or such applicable tax to any fees it charges The Merchant.

## 7 COMMENCEMENT AND RENEWAL OF SERVICE

The Agreement will commence on the date The Merchant or a duly authorised representative of The Merchant agrees to the terms of this Agreement or commences using any of the services covered by the Agreement. This Agreement shall continue for the Term and renew automatically at the end of the Term and shall then remain in force until terminated by either Party in accordance with this Agreement.

## 8 PAYMENT

- 8.1 The Merchant shall pay the fees published on the Website from time to time or communicated otherwise by SDL in relation to the relevant SDL Service which may include:
- 8.1.1 the Initial Contract Price (if any);
- 8.1.2 the Contract Price;
- 8.1.3 Setup Fee;
- 8.1.4 Fee Per Seat;
- 8.1.5 Additional User Fee;
- 8.1.6 Additional Per Web Site Fee;
- 8.1.7 and will take into consideration any Loyalty Discount and any taxes payable in accordance with clause 6.
- 8.2 Payments shall be due and payable in advance of delivery of the SDL Service, by direct debit or payment card.
- 8.3 SDL shall have no obligations under this Agreement until it has received cleared funds to cover such fees.
- 8.4 It is The Merchant's responsibility to ensure that appropriate credit levels or account balances are available to meet all such fees and it is The Merchant's responsibility to ensure that the payment card or bank account details are valid at the time of payment and it is The Merchant's responsibility to inform SDL of any changes to payment card details or bank account details using the prevailing method published by SDL to do so. Any changes to payment details must be given to SDL 14 days before the next due payment date.

## 9 VOLUME CHARGES

- 9.1 Associated with some SDL Services are one or more Transaction Types. An additional fee to those set out in clause 8 above is payable as specified on the Website from time to time as "Transaction Fee" in respect of each transaction of the relevant Transaction Type in excess of the specified number of Transactions Included.
- 9.2 This charge or charges are due and payable after the transactions have been executed, and such charges are payable on demand and will be taken automatically by SDL using the prevailing payment method.

## 10 SERVICE AVAILABILITY

- 10.1 SDL will make reasonable endeavours to provide the SDL Services for 24 hours a day and 365 days a year except for example, but not limited to where, as with Product Support, more restricted hours of availability of a particular SDL Service are published on the Website.
- 10.2 SDL shall pro-actively monitor server availability out of hours, where servers constitute part of the SDL Service.
- 10.3 The SDL Service will occasionally be unavailable due to routine maintenance and will sometimes be unavailable due to technical failure or other problem.

## 11 SUPPORT

- 11.1 Support is only provided for the use and operation of SDL Products where a SDL Service incorporating Product Support has been agreed and relevant fees have been paid for such support.
- 11.2 SDL may not provide such support where it reasonably determines (in its sole discretion) that:
- 11.2.1 The Merchant's enquiries relate to business practice, application consulting or training;
- 11.2.2 The Merchant's use of the SDL Product is outside that set out in the documentation provided with the Software (the "Software Documentation");
- 11.2.3 The Merchant's use of the Support is excessive, abusive or fraudulent;
- 11.2.4 The Merchant is not using the current release of the SDL Product or its immediate predecessor; and/or
- 11.2.5 The Merchant has breached the End-user Agreement.

## 12 REFUNDS/RIGHTS TO WITHDRAW

- 12.1 The Merchant may cancel this Agreement without cause during the first 14 days from the date it accepts this Agreement or this Agreement is renewed, subject to the following charges:
- 12.2 If the service has been used, the full amount is due and no refund will be given; or
- 12.2.1 If the service has not been used, the proportion of the Contract Price represented by one month of the total contract value; or
- 12.2.2 where the SDL Service includes a Product Upgrade and The Merchant has requested such an upgrade, the full cost of the Setup Fee added to the Contract Price for the Minimum Term.

## 13 THE MERCHANT'S RIGHT TO TERMINATE

- 13.1 In addition to The Merchant's rights at clause 12, The Merchant shall have the right to terminate this Agreement for any reason at any time using the

prevailing method communicated by SDL (this will normally be achieved by changes to The Merchant's online account provided by SDL) or by giving 14 days notice to SDL by email to [cancellations@sellerdeck.com](mailto:cancellations@sellerdeck.com).

- 13.2 Should The Merchant terminate the Agreement such that termination occurs prior to the end of the Minimum Term, then full payment as though the Agreement had been in place up to the end of the Minimum Term is due immediately to SDL.
- 13.3 If The Merchant terminates the Agreement more than 14 days after renewal then the full amount is due immediately to SDL.

## 14 SDL'S RIGHT TO VARIATION AND TERMINATION

- 14.1 Subject to clause 4, SDL may vary the material terms of this Agreement relating to SDL Services or withdraw any SDL Service on one calendar month's written notice by email to the email address given by The Merchant on registration or as updated by The Merchant in accordance with SDL's prevailing stated method for doing so.
- 14.2 Whenever such notice is given The Merchant shall have the right to terminate this Agreement provided it notifies SDL in writing of its intention to terminate before the end of the notice period.
- 14.3 Continued use of any SDL Service 7 days after the date of SDL's notice will constitute The Merchant's affirmative acknowledgement of the varied terms and agreement to them.
- 14.4 SDL has the right, without notice to The Merchant (although notice must be given as soon as reasonably possible), to terminate this Agreement immediately or suspend provision of any part or all of the SDL Service where SDL reasonably believes that:
- (a) The Merchant has failed to timely pay SDL any amount due to SDL under this Agreement or
- (b) The Merchant has materially breached any term or condition of this Agreement or
- (c) The Merchant has entered into any form of insolvency or administration or
- (d) The Merchant has performed, or threatened to perform, any act which might undermine the technical, commercial or other viability or integrity of any of the SDL Services provided by SDL or SDL's suppliers or
- (e) a third party is abusing the facilities made available by The Merchant across the Internet using SDL Services so as to undermine the commercial, technical or other viability or integrity of any of the SDL Services provided by SDL or SDL's suppliers or
- (f) The Merchant's use of the SDL Service adversely affects the use of the SDL Service by other parties or (g) SDL's supplier has terminated or suspended provision of any part or all of the SDL Service or
- (h) the operation of the SDL Service is being driven automatically by a computer where it is designed to be driven by a human operator or
- (i) the use of the SDL Service is excessive or outside of the scale of usage indicated by The Merchant to SDL. Such termination shall not prejudice any of SDL's rights or claims.

## 15 EFFECTS OF TERMINATION

- 15.1 Upon the expiration and non-renewal or termination of this Agreement for any reason, The Merchant's access to, and use of, the SDL Services and those of SDL's suppliers shall terminate.
- 15.2 Following termination SDL reserves the right to delete from its and its suppliers servers any and all information associated with the SDL Service provided to The Merchant without liability for any loss, costs, expense or damage suffered by The Merchant.
- 15.3 The termination of this Agreement shall be without prejudice to the rights and remedies of either Party which have accrued up to the date of termination.

## 16 TRANSFERABILITY

- 16.1 SDL Services are for use by The Merchant only.
- 16.2 The Merchant is not permitted to transfer, assign, charge for or give away the SDL Services without the prior written agreement of SDL.

## 17 EXCLUSION AND LIMITATION OF LIABILITY

- 17.1 Nothing in this Agreement shall exclude or limit the liability of either Party for death or personal injury resulting from the negligence of that Party or in respect of fraud or of any statements made fraudulently by that Party, or arising under Part 1 of the Consumer Protection Act 1987 in respect of any defect in an SDL Product.
- 17.2 Subject to the exception set out above and to the fullest extent permissible by law, SDL will not be liable to The Merchant whether in contract (including under any indemnity or warranty), in tort (including negligence), under statute or otherwise for any (whether direct or indirect) of: (a) loss of profit; (b) loss of revenue; (c) loss of sales; (d) loss of anticipated savings; (e) loss or corruption of data; (f) loss of contract or opportunity; (g) loss of goodwill; (h) costs incurred in modifying, testing, implementing or configuring SDL Products or SDL Services (whether in accordance with the Software Documentation and other instructions and training or not); (i) unreasonable costs in remedying any loss; or (j) indirect or consequential loss.
- 17.3 Subject to the exception set out in the paragraph above and to the extent permissible by law, in the event that SDL is liable to The Merchant in contract (including under any indemnity or warranty), in tort (including negligence), under statute or otherwise its liability shall be limited to a claim or series of claims in aggregate for the fees paid to SDL during any single consecutive 12 month period after The Merchant's acceptance of this Agreement for any one event or series of connected events.
- 17.4 For purposes of this section, "SDL" includes its employees, sub-contractors and suppliers.
- 17.5 The Merchant acknowledges that given the price paid for the SDL Products and the SDL Services, the short commitment required of The Merchant, the complicated nature of the software involved, the numerous software and hardware environment combinations in which the SDL Products and the SDL Service must operate, the fact that SDL cannot anticipate the particular purpose for which The Merchant is using the software and the availability of insurance for any loss that the above limitations and exclusions are reasonable in all the circumstances.
- 17.6 Other than as expressly set out elsewhere in this Agreement all representations, warranties, conditions and terms express or implied whether statutory or otherwise are expressly excluded by SDL and by SDL's suppliers to the fullest extent permitted by law.

## 18 INTELLECTUAL PROPERTY RIGHTS

- 18.1 All Intellectual Property Rights relating to the provision of the SDL Services and SDL Products or created by SDL or SDL's Suppliers on behalf of The Merchant are the property of SDL or SDL's suppliers or the Licensor or other third parties that have licensed the use of such rights to SDL. Where a Licensor has licensed rights to SDL with stated restrictions on sub-licensing these restrictions will apply to The Merchant and the Licensor shall have the right to enforce these restrictions on The Merchant through the courts.
- 18.2 The Merchant acknowledges and agrees that content available from SDL or SDL's suppliers or the Licensor or other third parties that have licensed the use of such rights to SDL, including but not limited to text, software, music, sound, logos, trade marks, service marks, photographs, graphics, or video, is protected by copyright, trade mark, patent, or other proprietary rights and laws, and may not be used in any manner other than on the same restricted basis as specified for the purposes of this Agreement.
- 18.3 The Merchant will respect the intellectual property and copyrights of all third parties.
- 18.4 SDL, SDL's suppliers or the Licensor grant The Merchant a non-transferable and non-exclusive right and licence for the duration of this Agreement to use the SDL Service in accordance with the documentation and any limitations imposed by the Licensor and use relevant support materials and documentation only as required to use the SDL Service. Any use of the Intellectual Property Rights relating to any SDL Service other than as authorised under this Agreement is prohibited including copying, disassembling, decompiling or reverse engineering software, interfaces or other intellectual property owned by SDL or SDL's supplier except to the extent explicitly permitted by statutory UK law. All rights not expressly granted are reserved.
- 18.5 Nothing in this Agreement shall prevent or restrict SDL or SDL's Suppliers from using and exploiting any intellectual property rights, techniques, tools, ideas or know-how created, used or developed during the provision of the SDL Service or the SDL Product for any purpose whatsoever.
- 18.6 SDL will keep The Merchant fully indemnified against all reasonable costs, claims, expenses, judgments and liabilities suffered by The Merchant howsoever arising through SDL's or SDL's supplier's infringement of third party intellectual property rights which have not been caused by actions of The Merchant provided that The Merchant notifies SDL in writing of the claim or action immediately that The Merchant becomes aware of it; that The Merchant grants sole control of the defence of the claim or action to SDL or SDL's supplier at SDL's sole discretion; and The Merchant gives SDL or SDL's supplier complete and accurate information at the time of disclosure and full assistance in enabling SDL or SDL's supplier to settle or defend the claim or action.
- 18.7 The Merchant will keep SDL and SDL's suppliers fully indemnified against all reasonable costs, claims, expenses, judgments and liabilities suffered by SDL or SDL's suppliers howsoever arising through The Merchant's infringement of third party intellectual property rights which have not been caused by the actions of SDL or SDL's suppliers.
- 18.8 The Merchant will keep SDL and SDL's suppliers fully indemnified against all reasonable costs, claims, expenses, judgments and liabilities suffered by SDL or SDL's suppliers howsoever arising through any claim or action by The Merchant's customers or prospects and arising out of use of the SDL Service or the SDL Product.
- 18.9 All Intellectual Property Rights created during the provision of any SDL Services are the property of SDL. The Merchant hereby assigns all right, title and interest in any such intellectual property rights and agrees to provide any assistance that SDL may require to perfect its title to such rights. SDL grants a royalty free perpetual license to the rights to The Merchant to use solely for its immediate benefit and solely in connection with its ecommerce business.

## 19 CONFORMANCE WITH THE LAW AND GENERAL STANDARDS OF DECENCY

- 19.1 SDL reserves the right to refuse to provide the SDL Service to The Merchant where SDL believes, in its sole discretion, The Merchant: (a) makes available goods or services, or uses or displays materials, that are illegal, immoral, obscene, vulgar, offensive, dangerous, or are otherwise inappropriate; (b) has received two or more complaints for failing to be reasonably accessible to The Merchant's customers or timely fulfil customer orders or adequately deal with customers' complaints or warranty or service requirements; (c) The Merchant has become the subject of a government complaint or investigation; (d) The Merchant is the subject of public adverse comment of a nature that SDL's continued involvement in providing the SDL Service to The Merchant might cause damage to SDL's business.
- 19.2 The Merchant agrees that it is solely responsible for all goods and services sold, rented, leased, licensed or otherwise made available to other businesses, organisations or individuals by The Merchant and utilising SDL Services or SDL Products in order to supply them.
- 19.3 The Merchant agrees that it is responsible for conforming to all laws and will obey all laws regarding the use of the SDL Service and the SDL Products in the jurisdictions where it conducts business.

## 20 TRADEMARKS

- 20.1 "Sellerdeck" is a registered trade mark of SDL Software Ltd or its wholly owned subsidiaries in the United Kingdom, USA, EU, Canada, Australia and Japan.
- 20.2 The Merchant may not use the SDL trademarks or those of any of SDL's suppliers in any way without SDL's prior written consent, nor will it challenge the validity or ownership of such trade marks.

## 21 FORCE MAJEURE

- 21.1 SDL shall not be liable for any failure in performing its obligations under this Agreement due to circumstances beyond its reasonable control.
- 21.2 Neither Party shall be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, riots, acts of government, or any other cause beyond the reasonable control of such Party; provided that the Party whose performance is affected by any such event gives the other Party notice thereof within ten (10) business days of such event or occurrence where such event has not made it impossible to do so.

## 22 COMMUNICATION

- 22.1 The Merchant's name, phone, fax number, address, email address and other data related to the provision of the SDL Service (the "Merchant's Data") will be stored in SDL's database and processed by SDL in servicing the relationship with The Merchant, including disclosure to third party suppliers and consultants.
- 22.2 SDL will communicate with The Merchant using The Merchant's Data in connection with the provision of the SDL Service and this may include, but is not limited to, SDL's provision of information or updates about the SDL Products and the SDL Service, and information concerning payments, renewals and changes to this Agreement.
- 22.3 By submitting The Merchant's Data to SDL The Merchant agrees to SDL's storage, use and disclosure of that data. Both parties agree that the instructions and authorisations given through any SDL Service shall be treated as satisfying any legal requirements for communication in writing.
- 22.4 Any information provided by SDL to The Merchant as part of any SDL Service shall not be taken as conclusive evidence of the accuracy and completeness of any information thus given. Any such information may be adjusted at any time. In the event of any dispute regarding The Merchant's use of any SDL Service the records kept by SDL or SDL's supplier shall be prima facie proof for the purposes of resolving such a dispute.

## 23 DATA PROTECTION, PRIVACY AND GDPR

- 23.1 The purpose of the processing of data by SDL Services run by SDL is to enable The Merchant to run The Merchant's ecommerce web site business.
- 23.2 SDL will act as The Merchant's processor in processing Personally Identifiable Information ("PII") and at all times act in accordance with the GDPR.
- 23.3 SDL will act on The Merchant's or The Merchant's employees instructions as communicated through SDL Services or otherwise to SDL by The Merchant in their role as data controller. It is The Merchant's responsibility as the controller to inform The Merchant's customers and employees whose PII is being processed of their rights, and to conform with the GDPR as this contract does not relieve The Merchant of that responsibility.
- 23.4 The Merchant will control how long Personally identifiable information ("PII") is retained through their use of SDL's software.
- 23.5 The use of the PII will be as explained in The Merchant's Privacy Notice.
- 23.6 SDL will use sub-processors as explained in SDL's Privacy Notice and that comply with GDPR and where the contract between SDL and the sub-processor complies with GDPR. The Merchant gives permission for such sub-processing. Each sub-processor will agree to keep the data controller's PII confidential as does SDL except where either are required otherwise by law.
- 23.7 SDL will assist in meeting The Merchant's GDPR responsibilities including fulfilling all valid requests coming from data subjects where SDL holds the data and passing such requests to sub-processors where necessary.
- 23.8 SDL will submit to audits and inspections including of SDL's processing records and co-operating with the ICO and informing The Merchant of PII data breaches or breaches of the GDPR regulations. SDL will also explain on request their obligations and actions in relation to security measures and provide help as required with data protection impact assessments conducted by The Merchant in relation to data processed by SDL..
- 23.9 The Merchant will endeavour to ensure that no PII relating to race, religion, political affiliation, trade union membership, sexual orientation, medical or genetic history is provided to the SDL Services.

## 24 SDL'S SUPPLIERS

- 24.1 SDL Services are provided by a combination of SDL staff, equipment and software together with bought-in services from third party suppliers. SDL uses this approach in order to achieve economies of scale and The Merchant acknowledges this fact and accepts that this a reasonable approach given the low cost of the services provided. SDL may from time to time decide to use different suppliers to fulfil its obligations.
- 24.2 No contractual relationship shall exist between The Merchant and SDL's suppliers other than as stated in this Agreement.

## 25 CLAIMS AND INFORMATION

- 25.1 Either Party will notify the other Party promptly of any claim or potential legal claim in connection with this Agreement and provide reasonable details and give the other Party reasonable assistance in connection with the investigation or defence of such a claim.
- 25.2 The Merchant agrees to promptly provide such reasonable information as SDL may request from time to time, in order that SDL can comply with its obligations to its suppliers.
- 25.3 The Parties agree that they will keep confidential (except as required by law and as required for them to take professional advice, or as required by them to perform their obligations under this Agreement) all confidential information about this Agreement and the other Party's customers and suppliers, unless that information was already known to them or has entered the public domain by means other than the breach of this clause of the Agreement.

## 26 UNRELIABILITY OF COMMUNICATION SYSTEMS

- 26.1 The Merchant acknowledges that due to the nature of the Internet where service is accomplished by inter-connecting many different networks supplied by many different parties and where software used to provide service is hugely complex and subject to bugs and where access to the Internet is not provided by SDL, it is inevitable that at times some SDL Services will be unavailable to The Merchant or The Merchant's customers and that this will include but not be restricted to the availability of web servers, the resolution of domain names and the availability of payment services.
- 26.2 In addition, The Merchant acknowledges that at times it will not be possible to contact SDL by telephone due to the occasional malfunction of the public switched telephone network, SDL's connection to it, and failure of equipment used for telephony.

## 27 USE OF THE SERVICE

- 27.1 It is The Merchant's sole responsibility to provide computer equipment and Internet connectivity in order to avail itself of SDL Service and to determine which of their employees or representatives is granted access to the SDL

- Services and SDL does not accept any liability for failures in the relevant SDL Service caused by such computer equipment and Internet connectivity. The Merchant agrees that all logins, passwords, transactions keys, hash keys and similar involved in the use of the SDL Service will be kept confidential and each user id will be used by one person only. The Merchant agrees that all acts or omissions that occur in connection with the SDL Service involving The Merchant's logins, passwords, transactions keys, hash keys and similar are the sole responsibility of The Merchant.
- 27.2 The Merchant agrees that appropriate security measures will be taken in relation to the SDL Service such as logging off from all accounts when it is no longer necessary to remain logged in, locking the computer when left logged on but unattended and maintaining up to date anti-virus software.
- 27.3 It is The Merchant's responsibility to conform with the Payment Card Industry Data Security Standard (PCI DSS) in relation to payment cards of all types and SDL makes no warranties about PCI DSS conformance other than as stated in this Agreement.
- 27.4 In connection with any SDL Service, The Merchant will report to SDL as soon as practicable after it becomes aware of any: a) abuse or threatened abuse of the SDL Services; b) loss of service; c) factors affecting the performance of the SDL Services; d) failure, bug or data corruption in the SDL Services; e) unauthorised use or access to the SDL Services; f) known or suspected fraud; g) The Merchant must immediately notify SDL if it becomes aware that there has been a breach of security connected in any way with logins, passwords, transaction keys, hash keys or similar techniques used to validate use of the SDL Service and SDL or SDL's supplier may act upon any such notification without further enquiry as to the identity or authority of the caller and block access to the SDL Service and take any other action deemed necessary. The Merchant agrees to provide all reasonable assistance to SDL and/or SDL's suppliers in any investigation into these matters.
- 27.5 The Merchant irrevocably and unconditionally authorises SDL or SDL's suppliers to act upon all authorisations and instructions sent by The Merchant through any SDL Service and agrees that the use of logins, passwords, transactions keys, hash keys and similar techniques is sufficient evidence for SDL and SDL's suppliers to act on such authorisations or instructions.
- 27.6 The Merchant undertakes not to disconnect or interfere with the operation of any aspect of the SDL Service except where explicitly agreed in writing between the Parties and to use its best endeavours to prevent such disconnection or interference by any other party.
- 27.7 The Merchant is solely responsible for ensuring the accuracy of any data supplied to the SDL Service and proper use of the SDL Service.
- 27.8 The Merchant agrees that they will not attempt to rely on any terms and conditions in this Agreement if to do so would be an attempt to repudiate the validity of any instructions supplied by The Merchant to the SDL Service.
- 28 CHOICE OF LAW AND JURISDICTION AND GENERAL**
- 28.1 This Agreement shall be governed by and construed in accordance with English and Welsh law and the parties hereby submit to the exclusive jurisdiction of the English and Welsh courts. This Agreement contains the whole agreement between the parties in relation to all SDL Services and supersedes any prior written or oral agreements relating to the same other than the End-user Agreement referred to elsewhere in this Agreement.
- 28.2 If any provisions of this Agreement are held to be invalid under any applicable statute or rule of law, they are to that extent omitted from the Agreement without affecting the validity or enforceability of the remainder.
- 28.3 The failure or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or a waiver of other rights or remedies.
- 28.4 No single or partial exercise of a right or remedy provided by this Agreement or by law prevents further exercise of the right or remedy or the exercise of another right or remedy.
- 28.5 Any action against SDL must be brought within 2 years after the cause of action arises.
- 28.6 This Agreement does not confer the right on any third party (other than as expressly provided for herein) to enforce any provision of this Agreement under the Contracts (Rights of Third Parties) Act 1999 or otherwise. Any rights conferred on any third party hereunder may be altered or extinguished by the written agreement between the parties without the consent of the third party.
- 28.7 Where the context so admits words denoting the masculine gender shall include the feminine or the neuter and vice versa and words denoting the singular shall denote the plural and vice versa.
- 28.8 Sub-headings are solely to aid the reading of the Agreement and do not form part of the Agreement.
- 28.9 Although SDL makes all reasonable efforts to ensure that the SDL Service provided is secure, The Merchant acknowledges that the Internet is inherently insecure and subject to attacks whose nature cannot be predicted or fully protected against. SDL gives no warranties and makes no claims about the security of the SDL Service other than explicitly stated in this Agreement.
- 28.10 Parts of servers providing SDL Services are designed for administration of the service and not for access by The Merchant. The Merchant agrees not to access such areas, accepts liability for such access if performed by an employee or agent of The Merchant and acknowledges that actual or attempted access to these areas may be subject to prosecution.
- 28.11 Parts of SDL Service are protected so that differing fees may be payable for differing functionality or service levels. The Merchant agrees: not attempt to circumvent such protection; to advise SDL if such protection can be circumvented; to accept liability for circumvention if performed by an employee or agent of The Merchant in contravention of the relevant user documentation; and acknowledges that actual or attempted access to functionality or service levels not available for the fee paid may be subject to prosecution.
- 29.1 Where SDL Services including Product Support are provided to The Merchant, the terms below shall apply in addition to those set out in clauses 1-28 inclusive of this Agreement.
- 29.2 SDL will supply telephone based advice on the use and operation of the SDL Product which has been licensed by The Merchant and where The Merchant has purchased the appropriate SDL Service for Product Support for that product.
- 29.3 Subject to clause 11 above, The Merchant may obtain assistance with any technical difficulty that may arise in connection with Merchant's utilisation of an SDL Service by calling or sending an email to SDL's technical support team.
- 29.4 SDL will provide such support for the SDL Service on weekdays between the hours of 9.00am and 5.00pm (support centre local time). SDL will not provide such support on support centre local public holidays or where it reasonably determines, in its sole discretion, that systems and server maintenance is necessary or its staff occasionally require training or team building.
- 29.5 SDL reserves the right to limit each telephone call to one single support issue or question and to a duration of thirty minutes (an "Incident"). SDL further reserves the right to limit The Merchant's support to an average of one incident per month.
- 29.6 Such support calls may be recorded to maintain quality of service and for training purposes.
- 29.7 All intellectual property rights and any analogous rights of any nature created during the provision of the Support are the property of SDL.
- 29.8 The Merchant acknowledges that due to the multiple hardware and software environments into which the SDL Product may be put, SDL cannot guarantee that every enquiry or connectivity issues between third party services, service providers, hardware or software will be resolved. Subject to and in accordance with the terms of this Agreement, SDL's sole support obligation is to provide reasonable and good faith efforts to resolve The Merchant's enquiries arising from The Merchant's use of the SDL Product in accordance with the Software Documentation. This is the end of the terms relating solely to Product Support.
- 30 PRODUCT UPGRADES**
- 30.1 Where SDL Services which include SDL Product Upgrades are provided to The Merchant, the terms below shall apply in addition to those set out in clauses 1-28 inclusive of this Agreement:
- 30.2 During the Term, The Merchant will be entitled to all Software upgrades for the relevant SDL Products licensed to The Merchant without further charge.
- 30.3 In the event that The Merchant purchases an upgrade from one SDL Product to another (for example, SDL Catalog to SDL Business) but does not elect to pay any further fees necessary to upgrade the Product Support under this Agreement to match the upgraded SDL Product, the Product Support will terminate. The Merchant will be entitled to a refund of a proportion of the fees paid which are attributable to the unexpired complete months before the end of the Term, taking into consideration any discount that has been given on the upgrade fee related to Product Support.
- 30.4 This is the end of the terms relating solely to Product Upgrades.
- 31 DESKTOP 365 PLUS**
- 31.1 SDL will supply Services including the supply of software, Product Support and Hosting are provided to The Merchant ("Desktop 365 Plus"), the terms below shall apply in addition to those set out in clauses 1-28 inclusive of this Agreement.
- 31.2 SDL will supply The Merchant with a licence to use the latest version of The Software, the opportunity to access future Product Upgrades and additional licence keys without incurring an upfront licence key cost; instead the Desktop 365 Plus contract will be upgraded to the relevant level to reflect the appropriate recurring charge for the Sellerdeck product and licence key.
- 31.3 Upon receiving the licence key(s) The Merchant must continue to maintain the Desktop 365 Plus contract to access the licence key(s).
- 31.4 On termination of the Desktop 365 Plus contract, The Merchant must stop using the licence key or keys which have been made available via the Desktop 365 Plus service.
- 31.5 This is the end of the terms relating solely to Desktop 365 Plus service.
- 32 DOMAIN NAME REGISTRATION SERVICE**
- 32.1 Where SDL Services which include Domain Name Registration Services are provided to The Merchant, the terms below shall apply in addition to those set out in clauses 1-28 inclusive of this Agreement:
- 32.2 SDL's Domain Name Registration Service will be provided through a supplier which is an accredited registrar with the Internet Corporation for Assigned Names and Numbers ("ICANN") for Top Level Domain Names ("TLDs") (such as .com, .net, .org, .de, co.uk, etc.) ("Domain Name Registrar"). ICANN oversees registrations and other aspects of the TLDs. Domain name registrations are only for limited terms, which end on the expiration date. For domain names which are created as a new registration out of the available namespace, the term begins on the date the domain name registration is acknowledged by the applicable registry; for domain name registrations which were not returned to the available namespace, the term begins on the date the previous registrant's domain name registration was acknowledged by the applicable registry.
- 32.3 SDL's sole responsibility will be to liaise with the Domain Name Registrar on The Merchant's behalf and SDL does not accept responsibility for the actions and/or omissions of the Domain Name Registrar. SDL does not make any warranty that the domain name requested by The Merchant will be accepted for registration in the register of the Domain Name Registrar, nor will it be liable for any costs of The Merchant incurred if the application for registration is unsuccessful. SDL does not accept responsibility for any liability to third parties for breach of their intellectual property rights in relation to the domain name requested by The Merchant.
- 32.4 SDL warrants that it will make no charge for any request to transfer a domain name registered to The Merchant from SDL's control and will not to be obstructive to such a request and will respond in a timely manner to such a request.

## SPECIFIC CLAUSES RELATING TO SPECIFIC SERVICES

### 29 PRODUCT SUPPORT

- 32.5 Domain names expire and can be lost. Where The Merchant has failed to pay on time SDL will not pay third party fees in order to secure domain names and the loss of the domain name will result.
- 32.6 If The Merchant requires SDL to transfer the registration and management of the Domain Name there will be a minimum transfer fee equal to either the cost of the time spent on the transfer at the normal rates or £50 plus VAT, which ever is higher.
- 32.7 This is the end of the terms relating solely to Domain Name Registration Service.

### 33 HOSTING

- 33.1 Where SDL Services which include Hosting are provided to The Merchant, the terms below shall apply in addition to those set out in clauses 1-28 inclusive of this Agreement:
- 33.2 For Hosting, a Transaction is one gigabyte of data transferred from any web site that is hosted. Although SDL makes all efforts to ensure the Service provided is secure, SDL gives no warranties and makes no claims about this security. Should any third party gain unauthorised access to The Merchant's account, SDL shall not be held responsible in so far as such unauthorised access does not relate to a breach of the terms of this Agreement by SDL.
- 33.3 The Merchant remains wholly responsible for the accuracy and completeness of the content provided on the hosted web site and, notwithstanding SDL's rights under clause 19 of this Agreement, The Merchant shall ensure that such content is compliant with all applicable laws and regulations and does not infringe the rights of any third party.
- 33.4 The Merchant shall indemnify SDL against all damages, losses, expenses arising as a result of any action or claim that the content on the hosted web site infringes laws or regulations or is in anyway obscene, offensive, defamatory, or in breach of any third party intellectual property rights.
- 33.5 All intellectual property in content provided to SDL for Hosting shall remain the property of The Merchant but The Merchant hereby grants SDL a non-exclusive worldwide licence to use such content for the purpose of Hosting.
- 33.6 This is the end of the terms relating solely to Hosting.

### 34 SSL CERTIFICATES

- 34.1 Where SDL Services which include SSL Certificates are provided to The Merchant, the terms below shall apply in addition to those set out in clauses 1-28 inclusive of this Agreement:
- 34.2 SDL's SSL Certificate service will be provided through a supplier which is an accredited and recognised provider of SSL certificates. SDL's sole responsibility will be to liaise with such supplier on The Merchant's behalf and SDL does not accept responsibility for the actions and/or omissions of such supplier.
- 34.3 SDL does not accept any responsibility for the SSL certificate or any losses which are caused by a deficiency in the SSL certificates that are issued by the third party supplier.
- 34.4 SSL Certificates expire and can be lost. Where The Merchant has failed to pay on time SDL will not pay third party fees in order to secure the SSL certificate and the loss of the SSL certificate will result.
- 34.5 SSL certificates apply to a particular IP address. If any service is moved to another web server, the SSL certificate will not operate and a new one must be purchased.
- 34.6 This is the end of the terms relating solely to SSL Certificates.

### 35 DELIVERY TRANSACTION SERVICE

- 35.1 Where SDL Services which include Delivery Transaction Service are provided to The Merchant, the terms below shall apply in addition to those set out in clauses 1-28 inclusive of this Agreement:
- 35.2 SDL's Delivery Transaction Service will be made available from a supplier who can pass order data electronically and receive delivery status back electronically for the majority of UK carriers by market share when configured to do so
- 35.3 SDL and its supplier reserve the right to amend or improve the Delivery Transaction Service at any time and in any way.
- 35.4 The Merchant will provide the Delivery Transaction Service Supplier with accurate information about their orders which are due for delivery ("Delivery Details") using the prevailing method.
- 35.5 The Merchant agrees to hold harmless and indemnify SDL and the Delivery Transaction Service supplier against any and all claims arising as a result of inaccurate, misleading, fraudulent or other wrong Delivery Details supplied by The Merchant to the Delivery Transaction Service Supplier.
- 35.6 The Delivery Transaction Service Supplier reserves the reasonable right to make the Delivery Transaction Service unavailable at any time for the purposes of maintenance and upgrades.
- 35.7 Where The Merchant directly contracts with SDL's Supplier to provide a full delivery service including carriage, all of The Merchant's payments for the Delivery Transaction Service shall cease and all SDLs related obligations shall cease.
- 35.8 This is the end of the terms relating solely to the Delivery Transaction Service.

### 36 SAAS SERVICE

- 36.1 Where SDL Services which include SaaS Services are provided to The Merchant, the terms below shall apply in addition to those set out in clauses 1-28 inclusive and clause 32 of this Agreement:
- 36.2 SDL hereby grants The Merchant a non-exclusive, non-transferable licence to use the Software only on a web server controlled by SDL for the sole purpose of making available goods or services for sale, lease or rental on such server ("the Service").
- 36.3 SDL shall not be required to deliver a hard copy of any software to The Merchant.
- 36.4 The Merchant shall not copy the software or use it on computers other than a server controlled by SDL and The Merchant acknowledges that the Software remains at all times the property of SDL. Without SDL's express written agreement The Merchant shall not use web pages or parts of web pages generated by means of the software, other than content that originates from and is proprietary to The Merchant, on any server other than the servers controlled by SDL.
- 36.5 The Merchant acknowledges and agrees that the software is intended for access and use by means of web browsing software. This is the end of the terms relating solely to SaaS Service.

### 37 SELLERDECK PAYMENTS

- 37.1 Where SDL Services which include Sellerdeck Payments are provided to The Merchant, the terms below shall apply in addition to those set out in clauses 1-28 inclusive of this Agreement:
- 37.2 The following definitions apply: the banking system operated by any approved bank, financial institution or other body ("**Bank System**"); the security digits encoded on a payment card, printed on a payment card signature strip or appearing elsewhere on the payment card ("**CVV, CVV2, CVC2 or PVV**"); The Merchant account facility agreed between the Customer and The Merchant Acquiring Bank ("**Merchant Account**"); the bank with which the Customer holds a Merchant Account ("**Merchant Acquiring Bank**"); each individual payment, authorisation, pre-authorisation, settlement or void processed by Sellerdeck Payments ("**Card Transaction**"); the Sellerdeck Payments web page which is provided to The Merchant to allow their customer or their agent to make payments through the Sellerdeck Payments service ("**Payment Page**").
- 37.3 For Sellerdeck Payments, a Transaction is a payment or a refund of a payment.
- 37.4 SDL warrants that Sellerdeck Payments is provided through a supplier who is Level 1 Payment Card Industry Data Security Standard (PCI DSS) certified.
- 37.5 The Merchant shall ensure that all publicity, signage and/or promotional material used or displayed in connection with Sellerdeck Payments complies in all respects with all codes of practice, rules of procedure, guidelines, directions, scheme rules and other requirements issued by the Bank System as may be specified from time to time as being applicable to The Merchant. The Merchant shall not in any publicity or other promotional activity state or imply any approval by SDL or SDL's supplier of any products or services offered by The Merchant in any way without the prior written approval of SDL.
- 37.6 The Merchant is responsible for ensuring that all necessary rights, authorisations, licences, exemptions, consents and permissions have been obtained or granted and all such requirements of law or of any other competent authority or public body have been complied with as are necessary or prudent in connection with the use of Sellerdeck Payments and that these are maintained for the duration of this Agreement.
- 37.7 The Merchant will use Sellerdeck Payments only for those services and/or products as agreed with The Merchant Acquiring Bank as notified to SDL in the online form used when applying for Sellerdeck Payments.
- 37.8 If The Merchant captures credit card details on their own web site or through a computer application operated by The Merchant, The Merchant will encrypt or obscure the Card numbers either by masking all digits except the first 6 and last 4 numbers or using the last 4 digits only or by applying a secure one way hashing algorithm such as SHA-1.
- 37.9 The Merchant agrees not to: store the full payment card number, CVV, CVV2, CVC2 or PVV information and/or any Track 2 information derived from the chip or magnetic strip on the payment card; or log the full payment card number, CVV, CVV2, CVC2 or PVV information and/or any Track 2 information for any purpose at all including debugging or auditing and nor will any other record of these elements of the card transaction be held electronically or on paper.
- 37.10 The Merchant acknowledges that it is responsible for the set up of a valid and correctly specified Merchant Account with The Merchant Acquiring Bank; and any and all set up and bank charges associated with The Merchant Account.
- 37.11 Where this Agreement is terminated or a Merchant Account is cancelled or terminated SDL shall at its sole discretion prevent access to Sellerdeck Payments and The Merchant must on request from SDL remove all links to the Payment Page within one working day.
- 37.12 The Merchant acknowledges that all risks with respect to Card Transactions processed by the Bank System lie with The Merchant and/or the relevant financial institution and SDL and SDL's suppliers shall have absolutely no liability in respect thereof to The Merchant except where a Card Transaction fails due to SDL's or SDL's supplier's negligent act or omission in which case SDL's and SDL's suppliers sole liability will be to reprocess the Card Transaction. The Merchant acknowledges and agrees that the allocation of risk contained in the preceding paragraph is reflected in the fees agreed between the parties and that the allocation of the risk was fundamental to SDL in entering into this Agreement.
- 37.13 The Merchant acknowledges that the processing of Card Transactions is not within SDL's or SDL's supplier's control once a request has been passed to the Bank System and that it is subject to the Bank System processing times and procedures.
- 37.14 The Merchant acknowledges that the Bank System is the originator of authorisation information for Card Transactions. Authorisation shall not in any way be binding on SDL as to the validity or non validity of any Card Transaction. SDL gives The Merchant no assurances that a Card Transaction will be honoured or will not be subject to dispute by The Merchant's customer or the card holder and SDL shall have no liability to The Merchant for any failure of the transaction to be honoured or for any disputed transaction.
- 37.15 Any information that originates from The Merchant's web server or the server of a third party designated by The Merchant including a web server provided under this Agreement or from a computer application using the service provided under this Agreement and which is received in the same form as sent or that is entered through a web browser into the Sellerdeck Payments system will be deemed to be authorised by The Merchant and SDL and SDL's supplier shall not be liable for any consequence of processing such information. SDL and SDL's supplier are not responsible and shall have no liability in contract or in tort for the security of data residing on The Merchant's server or the server of a third party designated by The Merchant.
- 37.16 The Merchant agrees that the collation and accuracy of all information provided by The Merchant is the responsibility of The Merchant and SDL shall have no liability for acting on such information.
- 37.17 SDL and SDL's supplier are not responsible for any loss The Merchant may incur as a result of any Card Transactions not being processed after or during the termination suspension or withdrawal of Sellerdeck Payments.
- 37.18 Card Transactions are typically submitted to the banking system between 09:00 and 09:30 each working day and later ones will not be submitted until

the following working day. SDL and SDL's supplier is not liable for any delay in a Card Transaction caused by a delay in submitting the same to the bank system.

- 37.19 Card Transactions should only be deemed to have been fully actioned when Sellerdeck Payments indicates this explicitly, not when receipt of the instruction to process a Card Transaction has been received and acknowledged.
- 37.20 SDL and SDL's supplier reserve the right to process or cancel any Card Transactions in progress on termination of this Agreement or on suspension or withdrawal of Sellerdeck Payments and is not responsible for any loss The Merchant may incur as a result of any Card Transactions not being processed after such an event.
- 37.21 SDL and SDL's supplier will not be liable in any way for any failure in any aspect of Sellerdeck Payments or for any breach of security that arises because of any virus, time bomb, corruption of data or unauthorised use of any system owned or operated by the SDL, SDL's supplier, The Merchant, The Merchant's customer or prospect or the Bank System.
- 37.22 The Merchant undertakes to ensure that no changes are made to the web site or application interfaces that will cause incompatibilities with any aspect of Sellerdeck Payments.
- 37.23 The Merchant undertakes to ensure that it incorporates a hypertext link to the Payment Page, where this is the chosen interface to Sellerdeck Payments, in such form as communicated by SDL and initially made available and will amend any hypertext link within 30 days of a request from SDL to do so.
- 37.24 Where SDL or SDL's suppliers provide The Merchant with the online facility to view and monitor its Card Transactions, The Merchant hereby grants SDL and such subcontractor the right to use such information in order to provide the Sellerdeck Payments service to it.
- 37.25 It is The Merchant's responsibility to ensure that when accessing any web sites associated with Sellerdeck Payments from countries outside of the UK that the use of any of these web sites is not prohibited by law. 128-bit encryption technology as used by these web sites may be illegal in some countries outside of the UK.
- 37.26 This is the end of the terms relating solely to Sellerdeck Payments.

#### **38 POST OR ZIP CODE LOOKUP OR OTHER INFORMATION SERVICES**

- 38.1 Where SDL Services including Post or Zip Code Lookup Or Other Information Services are provided to The Merchant, the terms below shall apply in addition to those set out in clauses 1-28 inclusive of this Agreement:
- 38.2 SDL's service will be provided in accordance with the terms and conditions of the Licensors which are in some cases the appropriate authority providing the licensing of the service and/or database and The Merchant agrees to be bound by these terms. For post codes in the UK this is the Royal Mail and such terms are available by following this link: [www.royalmail.com](http://www.royalmail.com). Licensors shall have the right to enforce the provisions of this Agreement which are for their benefit, by virtue of section 1 of the Contracts (Rights of Third Parties) Act 1999.
- 38.3 SDL does not warrant that the information provided by the Licensors is correct or that it does not infringe a third party's rights.
- 38.4 A Fee Per Seat may apply to each user or computer which has access to the data.
- 38.5 This is the end of the terms relating solely to Post or Zip Code Lookup Or Other Information Services.

#### **39 PREMIUM SUPPORT**

- 39.1 Where SDL Services including Premium Support are provided to The Merchant, the terms below shall apply in addition to those set out in clauses 1-28 inclusive of this Agreement.
- 39.2 SDL will supply telephone based advice on the use and operation of the SDL Product which has been licensed by The Merchant and where The Merchant has purchased the appropriate SDL Service for Product Support for that product and the following additional services are provided: SDL will provide The Merchant with contact details for a team drawn from the most experienced SDL Support staff these contact details to be used when The Merchant seeks telephone based advice; The Merchant will receive an initial response to the reported problem within 4 working hours; issues requiring escalation to the SDL software development team will receive priority escalation to that team.
- 39.3 This is the end of the terms relating solely to Premium Support.

#### **40 INDEPENDENT CUSTOMER FEEDBACK SERVICE**

- 40.1 Where SDL Services which include Independent Customer Feedback are provided to The Merchant, the terms below shall apply in addition to those set out in clauses 1-28 inclusive of this Agreement:
- 40.2 "Buyer" is a business or consumer who has placed an order with The Merchant; "Feedback" is text and ratings provided by Buyers containing their opinions about the service and optionally products supplied by The Merchant and aggregated information based on this material; "Independent

Customer Feedback Service" is a service whereby Buyers are solicited electronically for Feedback and supply it to the service; "Feedback Supplier" is SDL or a designated SDL Supplier who are providing the Independent Customer Feedback Service.

- 40.3 The Feedback Supplier will make available the Independent Customer Feedback Service to one Merchant web site for each contract and broadly in accordance with the prevailing description contained on the SDL web site but reserves the right to amend or improve the service at any time and in any way.
  - 40.4 The Merchant will provide the Feedback Supplier with accurate order information in a fixed and reasonable timescale consistently for all types of orders for which Feedback is solicited, using reasonable endeavours to ensure that all customers are offered the opportunity to comment. The Merchant grants the Feedback Supplier the right to use the order data to operate the Feedback Service.
  - 40.5 The Merchant will attribute all Feedback to the Feedback Supplier with a link to the Feedback Suppliers site.
  - 40.6 The Feedback Supplier will make the feedback publicly available on its web site.
  - 40.7 The Feedback Supplier will provide The Merchant with the ability to publish a response to all Feedback and will display the response along with the Feedback.
  - 40.8 The Merchant will ensure that responses are not misleading and do not contain material that could be construed as obscene, factually incorrect, illegal, defamatory or which identifies individuals.
  - 40.9 The Feedback is The Merchant's property and the Feedback Supplier will make the Feedback available to The Merchant in machine-readable form.
  - 40.10 The Feedback Supplier grants The Merchant an unlimited royalty free license to display its prevailing logos in connection with the Independent Customer Feedback Service for as long as The Merchant operates within the agreement of this contract and as long as The Merchant has not had their contract terminated"
  - 40.11 The Merchant grants a royalty free unlimited license to the Feedback Supplier to display the Feedback on its web site and disseminate the feedback on the Internet during the Agreement and for three months following termination and to store the Feedback for two years following termination.
  - 40.12 The Feedback Supplier reserves the reasonable right to make the Independent Customer Feedback Service unavailable at any time for the purposes of maintenance and upgrades.
  - 40.13 The Merchant agrees to hold harmless and indemnify SDL and the Feedback Supplier against any and all claims arising as a result of publishing the Feedback.
  - 40.14 The Merchant agrees to inform SDL in a timely manner through the designated method where in the opinion of The Merchant the Feedback is obscene, factually incorrect, illegal, defamatory or identifies individuals and to provide reasons for that opinion. SDL agrees that the Feedback Supplier will amend the Feedback where in the sole opinion of the Feedback Supplier this opinion is justified. Any changes will be identified as "Edited by Feedback Supplier" where the name of the organisation is substituted for "Feedback Supplier".
  - 40.15 The Merchant agrees to operate the Feedback Service in such a way that a true representation is always made of all of the Feedback. SDL has the right to terminate the Agreement if the Feedback Supplier believes in its sole opinion that The Merchant has been selective in sending details of orders in such a way that the Feedback presents a misleading view of The Merchant's customers' satisfaction or if the display of feedback has been altered to provide a misleading representation. There is no obligation on The Merchant to display Feedback on its web site.
  - 40.16 The Feedback Supplier will act strictly within the terms of GDPR and will not disclose any of The Merchant's order details obtained solely from the operation of the Feedback Service save as is required under other clauses in this contract, typically by law.
  - 40.17 This is the end of the terms relating solely to the Independent Feedback Service.
- #### **41 CONSULTANCY ADVICE AND IMPLEMENTION**
- 41.1 Where SDL Services including Consultancy Advice are provided to The Merchant, the terms below shall apply in addition to those set out in clauses 1-28 inclusive of this Agreement.
  - 41.2 SDL warrants that the advice and implementation provided will be such that it genuinely believes that The Merchant will increase traffic to its web site and/or increase conversion of traffic to sales.
  - 41.3 SDL explicitly does not warrant that this service will actually increase web traffic or conversion of web traffic to sales.
  - 41.4 The Merchant agrees that this is reasonable and the multiplicity of changing factors impacting acquisition of traffic and conversion to sales.
  - 41.5 This is the end of the terms relating solely to Consultancy Advice And Implementation.