

# Terms & Conditions

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These Terms & Conditions govern your commercial use of the services provided by NinjasPay, and constitute the legal relationship between you and us.

Capitalised terms in these Terms & Conditions are defined in the Schedule entitled “Definitions - Terms & Conditions” which is located at the end of these Terms & Conditions.

BY USING ANY OF OUR SERVICES DESCRIBED IN THESE TERMS & CONDITIONS USE, YOU ARE AGREEING TO BE BOUND BY THESE TERMS & CONDITIONS. PLEASE DO NOT USE ANY OF OUR SERVICES IF YOU DO NOT ACCEPT THESE TERMS & CONDITIONS. THESE TERMS & CONDITIONS ARE A LEGALLY BINDING AGREEMENT BETWEEN YOU AND US.

## 1. OVERVIEW

1.1 The Services. We operate a proprietary Payment Platform that utilises PSD2 & Open Banking to initiate payments from a user’s bank account, with settlement of funds directly into your nominated bank account; instantly, on a daily or weekly basis, at your option (the “Services”).

Prior to such settlement, we may hold the funds on your behalf of and for your exclusive benefit (or, where applicable, shall arrange for the funds to be held in such a manner) and we will keep (and where appropriate shall ensure that our agents and sub-contractors will keep) sufficient records of the funds in such a manner that the assets are appropriately distinguished with respect to applicable legislation regarding matters of bankruptcy and general insolvency.

Your use of the Services, including without limitation your access to the Payment Platform, is subject to and governed by these Terms & Conditions, our operating procedures, and our SLA (service level agreement). If you are entering into a Commercial Agreement directly with us, then in the event of any conflict or inconsistency between these Terms & Conditions and the Commercial Agreement, these Terms & Conditions shall prevail except in relation to any fees or charges payable under the Commercial Agreement which shall prevail in such cases.

## 2. USE OF THE PAYMENT PLATFORM AND THE SERVICES

### 2.1 Ownership and Use.

NinjasPay owns all rights, title and interest in the Payment Platform and our proprietary technology, including our software (in source and object forms), algorithms, user interface designs, architecture, and documentation (both printed and electronic), network designs, know-how, and trade secrets, and including any modifications, improvements, and derivative work thereof (the “NinjasPay Technology”).

NinjasPay has the right, at any time, to amend our operating procedures and SLA, effective immediately following notification of such amendments to you, , subject to such changes not materially adversely affecting the services we provide to you. These Terms &

Conditions do not transfer from us to you any license or ownership rights in the Payment Platform or the NinjasPay Technology. You may only use the Payment Platform for the receipt and use of the Services and in a manner consistent with these Terms & Conditions, our operating procedures, and our acceptable use policy. You shall not interfere with, disrupt, or cause damage to users of the Services, the Payment Platform, or any of our equipment.

## 2.2 Security.

It is your responsibility to ensure that the Payment Platform is only accessed by you or your Authorised Persons and that you, including your Authorised Persons, employees and agents, keep your login details, passwords, or other security features associated with your access safe and secure. If you have any knowledge or any suspicion that any of these security features have been stolen, misappropriated, improperly disclosed to a third party or used without authorisation or otherwise compromised you must contact Client Support provided in your SLA immediately.

## 2.3 Suspension of Access.

We are entitled to suspend your or Authorised Persons' access to the Payment Platform and/or otherwise restrict functionality if you are in breach of these Terms & Conditions. In all such cases we will, to the extent permitted under Applicable Law, provide you with reasonable notice in advance of taking these steps. However, we may suspend your or Authorised Persons' access to the Payment Platform and/or otherwise restrict functionality without notice if you are using the Services in a manner that could cause us legal liability or disrupt other users' ability to access and use the Services or if any of the events set out in Section 10.3 occur. Any suspension or restriction shall continue for such a period as we shall reasonably determine to be necessary.

## 2.4 Equipment.

You must provide and/or obtain any equipment or telecommunications lines and links that may be necessary for you to use the Payment Platform, and you acknowledge that certain software and equipment used by you may not be capable of supporting certain features of the Payment Platform. For the avoidance of doubt, we are not responsible for providing you with any equipment or telecommunications lines and links that may be necessary for you to use the Payment Platform.

## 2.5 Principal Only.

You hereby (i) confirm, represent and warrant to us at all times that you are acting either on your own account or, where applicable, for the benefit of your End Customer, and not on behalf of any other person, and (ii) acknowledge that we shall not be a principal to any transaction or be responsible for or otherwise guarantee the performance of any transaction entered into by you with an End Customer.

## 2.6 End Customer Responsibilities.

We shall not treat End Customers as our client for the purposes of providing the Services. You are solely responsible and liable for all acts and omissions of End Customers including without limitation (i) all Know Your Customer ("KYC") and/or customer due diligence ("CDD") requirements relating to End Customers and the on-boarding of End Customers, (ii) all operational matters relating to End Customers including inputting any manual End Customer's payment details, chasing End Customers for payment details, any late arrival of funds, settlement with End Customers, (v) all sales, marketing and account management in relation to End Customers, and training End Customers on the use of the Platform Services.

### **3. DATA PROTECTION LEGISLATION**

#### **3.1 Personal Data.**

By asking us to provide you with the Services, you will be providing us with information which includes Personal Data. In relation to such Personal Data, we shall act as: (i) a Data Controller in respect of our use of such Personal Data to (a) conduct KYC, CDD and other checks as part of our process of accepting you as a Client (as detailed in Section 7.1), (b) comply with any legal and/or regulatory requirements to which we are subject from time to time, (c) determine how best to provide the Services and our risks in doing so, and (d) prevent fraud or financial crime.

#### **3.2 Privacy Policy.**

Details on how we collect, use, and share Personal Data, and the steps we take to protect Personal Data are set out in our "Privacy Policy".

#### **3.3 Identity.**

We may conduct searches through an identity-referencing agency and through other sources of information and use scoring methods both to allow us to provide you with the Services and to assess our risks in doing so, including credit standing and compliance with all KYC/CDD requirements. A record of this process will be kept and may be used to allow our Group Companies to similarly provide you with services and to assess our risks in doing so. Information may also be passed to other organisations or persons to prevent fraud. Additionally, information may be passed to governmental, regulatory or judicial organisations to prevent fraud or financial crime where we consider it appropriate. The foregoing use of Personal Data may render us a Data Controller.

#### **3.4 Data Lawfully Obtained.**

You confirm to us that (i) all Personal Data which you or any of your officers, employees, agents or sub-contractors supply to us at any time has been lawfully obtained and will be lawfully supplied to us in accordance with Data Protection Legislation, and (ii) all notices have been provided and relevant consents have been obtained (or an alternative legal ground for processing Personal Data has been relied on) as may be required under the Data Protection Legislation for us to process the Personal Data as contemplated by these Terms & Conditions and/or the Commercial Agreement.

#### **3.5 Responsibility for Data.**

You are solely responsible for the content, quality, accuracy and completeness of any Personal Data, any End Customer data, and any other data provided or transmitted by you or on your behalf via or in connection with the use of the Payment Platform and the Services.

#### **3.6 Record Keeping.**

Each party shall maintain records of all processing operations under its responsibility that contain at least the minimum information required by the Data Protection Legislation and shall make such information available to any DP Regulator on request.

#### **3.7 Complaints, Notices or Communications.**

If either party receives any complaint, notice or communication which relates directly or indirectly to the processing of Personal Data or to either party's compliance with the Data Protection Legislation, it shall as soon as reasonably practicable notify the other party and provide the other party with commercially reasonable co-operation and assistance in relation to any such complaint, notice or communication.

### 3.8 Independent Controllers

3.8.1 Each party acts as an independent Data Controller for the Personal Data they hold in accordance with this Terms & Conditions, and the parties are not joint data controllers under Data Protection Legislation. Where acting as a Data Controller, each party shall:

3.8.1.1 comply at all times with its responsibilities and obligations under the applicable Data Protection Legislation, more specifically as set out in art. 5 of the GDPR, including but not limited to fair and lawful processing, data retention and deletion and safeguarding data subjects' rights, having appropriate regard to the related guidelines and guidance notes issued from time to time by the European Data Protection Board and all other relevant regulatory bodies;

3.8.1.2 co-operate with each other to set out the requirements to meet relevant obligations of Data Protection Legislation (for example in respect of data portability, subject access, lawful access requests and requests for rectification, amendment and disposal);

3.8.1.3 each party shall not perform any of its obligations under these Terms & Conditions in such a way as to cause the other party to breach any of its obligations under Data Protection Legislation; and

3.8.1.4 ensure that it has taken adequate security safeguards, including by implementing appropriate technical, physical and organizational safeguards, to ensure the confidentiality, integrity and availability of Personal Data.

3.8.2 In the event either party becomes aware of an actual or suspected breach to the security, confidentiality or integrity of the Personal Data of the other party when those data are being Processed both parties agree to notify the other affected party within 24 hours of identification of the breach and to consult with one another about such steps as may reasonably be necessary or appropriate to investigate, mitigate and remediate the breach and otherwise to discharge their respective obligations under applicable Data Protection Legislation.

3.8.3 For the purpose of these Terms & Conditions, "Data Protection Legislation" shall mean all applicable laws, rules and regulations which relate to the protection of individuals with regards to the processing of Personal Data including, without limitation and to the extent applicable from time to time: (i) national laws implementing the Electronic Communications Data Protection Directive 2002/58/EC; (ii) the General Data Protection Regulation (2016/679) (the "GDPR"); and (iii) any other laws, regulations and rules, relating to the processing of Personal Data, and any guidance or code of practice relating to the processing of Personal Data issued by a relevant regulatory authority or other relevant competent authority. The terms "Data Controller" and "Personal Data" shall have the meaning given in the GDPR.

## 4. FEES AND AMOUNTS TO BE PAID

### 4.1 Fees.

All fees for the Services shall be as set out in the Commercial Agreement.

### 4.2 Taxes.

All Fees are stated exclusive of all taxes and similar fiscal charges now in force or enacted in the future, all of which you will be responsible for and must pay in full.

#### 4.3 Default Interest, Suspension, and Reconnection.

If you do not promptly pay any amount properly due to us under these Terms & Conditions, we may after the expiry of 7 days following notice informing you of the amount outstanding and requesting payment charge interest on the overdue amount at the rate of 2% per annum above the base rate of EU Central Bank from time to time which interest will accrue daily. If the amount due remains unpaid for thirty (30) calendar days or more following the serving of the notice described above, suspend, interrupt, or terminate your access to the Payment Platform and/or your use of the Services. In the event of suspension, you may be required to pay us a reconnection fee in an amount determined by us prior to reactivation of access to the Payment Platform in addition to full payment of all amounts due under these Terms & Conditions (including interest).

#### 4.4 Set Off.

You agree that we may set off any amount you owe us against any sums owed by us to you, provided we have given you 10 (ten) days prior written notice of such intention and document the amount to be deducted and the reasons for the same.

### **5. CLIENT HELP CENTRE AND SERVICE LEVELS**

#### 5.1 Payment Processing Compliance.

In accordance with the PSD2 Regulations communicated to you, NinjasPay will satisfy the maximum execution time for a payment, the charges payable by you in respect of a payment, the cut-off time for the payment system we use to transmit your payment, and (where applicable) will provide a breakdown of the amounts of any charges. In all cases, the maximum execution time to process payment instructions (as opposed to currency conversions) shall be five (5) Business Days. However, in many cases and where required by the Regulations, NinjasPay may process a payment much faster.

#### 5.2 Telephone Conversations.

Any telephone conversations we have with you or Authorised Persons may be monitored and recorded by us and we may also maintain records of emails sent by or to you and your Authorised Persons. You agree that we may use these telephone recordings and any transcripts or email records for training and quality control purposes or to resolve any disputes, and also in the prevention and detection of crime. However, we may not make or maintain such recordings or records for you or be able to make them available to you.

#### 5.3 Service Levels.

We shall use our best endeavours to ensure that the Payment Platform is available 99.9% of the time during each calendar month ("Availability"). Availability excludes unavailability due to scheduled maintenance or a force majeure event (described below in section 11.10). In any case, we will promptly inform you if the Services or the Payment Platform becomes unavailable.

#### 5.4 Help Desk.

You may report incidents requiring our help by contacting Client Support by telephone or by sending an email which will be acknowledged by email or telephone during office hours within one (1) hour of the incident report. Reported incidents will be assigned to a Client Support representative, who shall coordinate support efforts with you through

resolution of the reported problem. We will use all reasonable endeavours to resolve any incidents or problems relating to the Services as soon as is reasonably possible.

#### 5.5 Limits on Support Services.

We will have no obligation under these Terms & Conditions to provide support services in respect of any fault or error caused by (a) the improper use of the Payment Platform, or (b) use of the Payment Platform otherwise than in accordance with these Terms & Conditions.

#### 5.6 Scheduled Maintenance.

We may suspend access to the Payment Platform outside of EU Business Hours for no more than fifteen minutes to upgrade the Payment Platform. We will, to the extent practicable, provide you with advance notice of any other scheduled maintenance, including details of the expected Payment Platform downtime. Payment Platform downtime during scheduled maintenance carried out by us in accordance with this section shall not be counted as downtime for the purposes of Availability.

### 6. CONFIDENTIAL INFORMATION

Each party agrees that it (i) will neither use in any way, for its own account or the account of any third party, except as expressly permitted by, or required to enable it to perform its obligations under these Terms & Conditions, nor disclose to any third party (except as required by Applicable Law or to that party's advisors as reasonably necessary, provided in all cases that such third party recipients are bound by confidentiality undertakings at least as strict as those set out herein), any of the other party's Confidential Information, and (ii) will take reasonable precautions to protect the confidentiality of such information, which precautions shall be at least as stringent as those it takes to protect its own Confidential Information. In addition, each party may reveal the other party's Confidential Information to its agents, representatives and employees who have a "need to know" such information in connection with these Terms & Conditions, who are informed of the confidential nature of such Confidential Information, and who shall agree in writing to act in accordance with the terms and conditions of this section. Each party agrees that the obligations under this section will survive any expiration or termination of these Terms & Conditions.

### 7. OUR AGREEMENT WITH YOU

#### 7.1 Our Acceptance of You as a Client.

Our obligations under these Terms & Conditions are conditional upon our acceptance of you as a client which is at our sole discretion. We reserve the right to decline to accept you as a client without specifying a reason. You acknowledge that all regulatory requirements need to be met before any Services are provided by us. Before we agree to provide Services to you and at all times during the term of the Commercial Agreement, you agree to cooperate with us and provide any information and documents and do all such acts we require (i) by law, regulation or according to our internal policies, (ii) to comply with requests of local and foreign regulatory, governmental, and law enforcement authorities, (iii) to check your identity or the identity of an End Customer, and its activities and objectives, and (iv) to explain the reasons for the (intended) use of a Service, the origin of funds used for a service or transaction, and the economic nature of (the use of) a service or transaction. You hereby agree to promptly notify us in writing of any change in Client or End Customer information and to provide us with any further information which is required from time to time for the purposes of our general policies or the provision of the Services. Any information or documents that you provide to us may be provided to us

directly by you. For the avoidance of doubt, no Services shall commence until (i) we have completed our compliance checks, (ii) you have agreed to be bound by the terms of a commercial agreement with us, and (iii) you have agreed to be bound by these Terms & Conditions.

#### 7.2 Your Representations and Warranties.

You hereby represent, warrant, and covenant to us at all times that (i) you will comply with these Terms & Conditions and all Applicable Law, rules and regulations regarding your use of the Payment Platform and End Customer data and the Services, and you shall procure that all Authorised Persons, agents and employees comply with these Terms & Conditions and all applicable laws, rules and regulations regarding your use of the Payment Platform and End Customer data and the Services, (ii) you are compliant at all times with all Applicable Law, rules and regulations in all jurisdictions in which you operate, (iii) you will and shall procure that all Authorised Persons, agents and employees use the Payment Platform and the Services only for lawful purposes, (iv) you have full power and authority to enter into and comply with these Terms & Conditions, (v) title to all money and assets transferred to us under these Terms & Conditions is not (as far as you are aware) subject to any charge or other rights of third parties, (vi) you hold all required licences, registrations and permissions to carry out your business, (vii) all information supplied to us by you is complete, accurate, up to date, and truthful in all material respects and (ix) you shall not use the Services other than in accordance with such operating processes and procedures as we may prescribe from time to time, whether through NinjasPay or otherwise.

#### 7.3 Our Representations and Warranties.

We hereby represent and warrant to you at all times that (i) we will comply with these Terms & Conditions and all Applicable Law, rules and regulations regarding our provision of and your use of the Payment Platform and End Customer data and the Services; (ii) the Payment Platform and the Services when used in accordance with these Terms & Conditions shall not infringe the intellectual property rights of any third party; (iii) we have full power and authority to enter into and comply with these Terms & Conditions; (iv) we are and shall remain compliant with all Applicable laws in all jurisdictions in which we operate; (v) the Services shall be provided by us using reasonable skill and care in accordance with good industry practice; and (v) we shall comply with your and your Authorised Persons' prior written instructions (including e-mail and instructions via our website) in relation to your payments.

### 8. RELIANCE ON INSTRUCTIONS

NinjasPay is authorised and entitled to rely upon, and act in accordance with, any instruction which may from time to time be, or purport to be, given by Authorised Persons. NinjasPay is entitled to treat any instruction as fully authorised by, and binding upon you, and entitled (but not bound) to take any steps in connection with, or in reliance upon that instruction which NinjasPay in its absolute discretion may consider appropriate, and notwithstanding any error or misunderstanding or lack of clarity in the terms of that instruction. If NinjasPay receives what it considers to be conflicting or ambiguous instructions from any Authorised Person, NinjasPay may, in its absolute discretion and without any liability on its part, decline to act whilst seeking clarification of that instruction, as NinjasPay in its discretion deems appropriate. For the avoidance of doubt, a payment instruction shall be regarded as having been authorised by you for the purposes of the Payment Services Regulations 2009 if an Authorised Person has given his/its consent.

## 9. LIABILITY

### 9.1 Unauthorised or Incorrectly Executed Payments.

Under the Regulations you may be entitled to redress for any unauthorised or incorrectly executed payments. In the case of an executed payment not authorised by you or an Authorised Person, we will refund the amount of the unauthorised payment to you, and where applicable, restore the debited payment account to the state it would have been in had the unauthorised payment not taken place. If we fail to execute, or incorrectly execute, a payment, unless we can establish that the beneficiary's payment service provider received the amount of the payment transaction, we will refund to you the amount of the non-executed or defective payment transaction promptly after becoming aware of the error, and, where applicable, restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place. We will also refund to you any direct charges for which you are responsible and any interest which you must pay as a consequence of the non-execution or defective execution of the payment transaction. Beyond this, we have no further liability to you for any unauthorised or incorrectly executed payments.

### 9.2 Incorrect Information or Payee/Beneficiary Bank Failure.

We will not be liable to you for the nonexecution of a payment or for the defective execution of a payment if the information you provide is incorrect. We will not be liable for errors, mistakes, or non-performance arising from the payee/beneficiary bank if the payee/beneficiary bank fails to process the payment correctly. In either case, we will make reasonable efforts to recover the funds involved in the payment. You will be responsible for the costs incurred by us for any such recovery.

### 9.3 Our Negligence.

If a Loss is incurred due to our negligence or breach of contract, we will promptly attempt to correct the error. Subject to Section 9.5, we will be liable for any direct losses such as bank fees and interest incurred as a result of our negligence or breach of contract. In no circumstances will we be liable for any indirect, unforeseeable or incidental losses incurred, such as loss of opportunity.

### 9.4 Non-Exclusion.

Nothing in these Terms & Conditions excludes either party's liability for any Loss to the extent it is caused by fraud, dishonesty or deceit, death or personal injury caused by a party's negligence or the negligence of its employees or agents or any other liability that cannot be excluded by law.

### 9.5 Aggregate Liability.

Except for liabilities arising in connection with: a breach of Section 3 (Data Protection Legislation); a breach of Section 6 (Confidential Information); Section 9.1 (Unauthorised or Incorrectly Executed Payments) (but only up to the amount of the refund due); Section 9.4 (Non-Exclusion); Section 9.6 (Your Indemnities); and Section 9.7 (Our Indemnities), each party's aggregate liability to the other party (either directly or as a third party defendant in any action or proceeding) with respect to these Terms & Conditions and all Commercial Agreements shall not exceed the amount of fees paid or payable by you to us under or in relation to these Terms & Conditions within one year preceding the date that the cause of action arises.

For the avoidance of doubt, the foregoing limitation shall not limit our liability in respect of any obligation of ours to make a remittance, payment or settlement hereunder.

Subject to Section 9.4. (Non-Exclusion), in no event shall either party be liable to the other for any loss of data, loss of profits. or any special, incidental, indirect or consequential loss, howsoever arising.

#### 9.6 Your Indemnities.

You agree to fully defend us on demand from and against any third-party claim (i) alleging that your actions in connection with your use of the Payment Platform or the Services violates any third party's rights of privacy or violates any privacy laws; and (ii) arising from or relating to End Customer data. You will, in either case, indemnify us (and our directors, employees and officers) against all damages awarded against us or agreed to in a written settlement agreement signed by you arising out of such claim. We shall: (a) promptly notify you in writing of any such claim; (b) authorise you to control the defence and all related settlement negotiations; (c) provide you with the assistance and information reasonably necessary to defend and/or settle any such claim; (d) in no event jeopardise, settle or admit liability with respect to any such claim without your prior written consent, and (e) use reasonable endeavours to mitigate any such claim.

#### 9.7 Our Indemnities.

We agree to fully defend you on demand against any third-party claim alleging that the use of our Services in accordance with these Terms & Conditions infringe the intellectual property rights of a third party. We will indemnify you in full and on demand against all damages awarded against you or agreed to in a written settlement agreement signed by us arising out of such claim. You shall (a) promptly notify us in writing of any such claim; (b) authorise us to control of the defence and all related settlement negotiations; (c) provide us with the assistance and information reasonably necessary to defend and/or settle any such claim; (d) in no event jeopardise, settle or admit liability with respect to any such claim without our prior written consent, and (e) use reasonable endeavours to mitigate any such claim.

In addition, we shall defend and hold harmless you, your assignees, employees, officers and directors from and against any and all claims, penalties, demands, losses, costs, expenses, liabilities and damages, including reasonable legal fees, that arise, result from, or relate directly or indirectly (a) to any acts or omissions, negligence, wilful misconduct or default or fraud of ours or our assignees, agents, employees, officers or directors, (b) any claims by third parties resulting from or in connection with our products or services, (c) any breach of or failure by us in respect of any of its representations, warranties, covenants or agreements in these Terms & Conditions, (d) any infringement or alleged infringement of the intellectual property rights of a third party, or (e) any allegation and/or suspicion raised against you by any third party with respect to any suspected and/or erroneous and/or intentional circumvention or breach by us or our agents of Applicable Law.

## **10. TERMINATION**

### 10.1 Term.

These Terms & Conditions shall remain in effect so long as our Commercial Agreement with you is in force, or for so long as we are providing any Services to you. You may

terminate these Terms & Conditions (including the Commercial Agreement) at any time without cause on 30 days prior written notice.

#### 10.2 Termination for Cause.

Either of us may terminate these Terms & Conditions if: (i) the other party commits any material breach of these Terms & Conditions and fails to cure such breach within thirty (30) days after receipt of written notice of the same, (ii) the other party becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing.

#### 10.3 Additional Grounds for Termination.

You or we may suspend Services and/ or terminate these Terms & Conditions at any time without prior notice if: (i) a financial regulator, regulatory or government agency, or law enforcement agency posts a warning with regard to you or us; (ii) any governmental, regulatory, or judicial authority directs or requests us or you to suspend or terminate these Terms & Conditions or any Commercial Agreement; or (iii) a banking partner of ours or yours requests that we or you terminate these Terms & Conditions or any Commercial Agreement. We may suspend Services and/or terminate these Terms & Conditions at any time without prior notice where we have reason to believe that you or an End Customer is engaged in fraud, money laundering, or terrorist financing or where we have reason to believe that you or an End Customer may cause us to breach our internal risk policy.

#### 10.4 Effect of Termination.

Termination of these Terms & Conditions shall automatically terminate the Commercial Agreement and termination of the Commercial Agreement shall automatically terminate these Terms & Conditions. Upon the effective date of termination: (i) you will immediately cease all use of the Payment Platform and return any and all copies of any documentation, notes and other materials comprising or regarding the Payment Platform; (ii) all of your and our payment obligations under these Terms & Conditions, or under our Commercial Agreement with you will immediately become due and payable; (iii) we will promptly return any funds of yours which we hold to you; and (iv) within thirty (30) days of such termination of these Terms & Conditions, each party will return all Confidential Information of the other party in its possession and will not make or retain any copies of such Confidential Information except as required to comply with any applicable legal or accounting record keeping requirements. For the avoidance of doubt, termination by either party shall not affect any Contract previously entered into and shall not relieve either party of any outstanding obligations arising out of these Terms & Conditions, nor shall it relieve you of any obligations arising out of any Contract entered into prior to such termination.

#### 10.5 Survival.

The following provisions will survive any expiration or termination of these Terms & Conditions and the Commercial Agreement: sections 3, 6, 9, and 10, and any other provision that by their nature are intended to survive termination of the Commercial Agreement. Any sums owed by you to us under these Terms & Conditions shall become immediately due and payable on the expiration or termination of our Commercial Agreement with you.

## **11. MISCELLANEOUS**

### 11.1 Relationship between the Parties.

No provision of these Terms & Conditions creates a partnership between the parties or makes a party the agent of the other party for any purpose. A party has no authority to bind, to contract in the name of or to create a liability for the other party in any way or for any purpose and neither party shall hold itself out as having authority to do the same.

### 11.2 Changes to the Payment Platform.

We reserve the right to modify and make changes to the Payment Platform at any time as we deem necessary to comply with Applicable Law and regulations or business needs, provided that such modification shall not in our reasonable opinion degrade or materially alter the functionality of the Payment Platform. Where possible, we shall notify you of such modification as soon as is reasonably practicable following our determining to make the modification.

### 11.3 Assignment.

Neither party may assign or transfer its rights or obligations hereunder (in whole or part) under these Terms & Conditions without the other's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

11.4 These Terms & Conditions (and any non-contractual obligations arising out of or in connection with the same) shall be governed by and interpreted in accordance with the laws of an EU member state, as selected by us. The courts of the same EU member state selected by us shall have exclusive jurisdiction to settle any dispute or claims which may arise in connection with these Terms of Use and/or the Services provided hereunder (including in relation to any non-contractual obligations)."

### 11.5 Advertising.

Subject to the following, we may with your prior written consent include your name, logo and contact information in directories of our service subscribers and other general promotional materials for the purpose of promoting the use of the Payment Platform generally. However, we shall immediately cease using your name, logo and contact information if you request us to do so. Neither party shall issue a press release relating to their business relationship without the written consent of the other party. Neither party may use the trademark or trade name of the other party without the written consent of such party.

### 11.6 Entire Agreement and Waiver.

These Terms & Conditions, together with each of the documents referred to herein (including the Commercial Agreement), constitute the entire agreement between you and us with respect to the subject matter hereof. All prior agreements, representations, and statements with respect to such subject matter are superseded. Any failure of either party to exercise or enforce its rights under these Terms & Conditions shall not act as a waiver of subsequent breaches.

### 11.7 Severability.

The provisions of these Terms & Conditions are severable and the invalidity or unenforceability of any provision herein shall not affect the validity or enforceability of any other part of these T Terms & Conditions.

### 11.8 Non-Solicitation.

During the term of these Terms & Conditions and the term of the Commercial Agreement and for a period of six (6) months thereafter, neither party shall solicit or hire the services

of any employee of the other party who has performed services in relation to these Terms & Conditions or a Commercial Agreement, without our prior written consent of the other party. Nothing herein shall prevent a party from recruiting or engaging any employee or subcontractor who has applied in an unsolicited manner for a role which has been advertised.

#### 11.9 Amendments.

We reserve the right to amend these Terms & Conditions (other than in relation to fees payable by you) by giving you no less than two (2) month's prior written notice and sending you revised terms and conditions by post or email or other electronic means. Such amendments will become effective on the date specified in the written notice, and unless otherwise mutually agreed by us in writing, an amendment will not affect any legal rights or obligations which may have already arisen prior to the date specified in the notice. Notwithstanding the foregoing, any amendment to these Terms & Conditions that materially and adversely impacts you must first be agreed upon in writing signed by us and you, and in the event that the parties are unable to reach agreement and we in any event implement such amendment to these Terms & Conditions, you shall have the right in your sole discretion without any liability to terminate these Terms & Conditions forthwith.

#### 11.10 Force Majeure.

In the event that either party hereto shall be delayed or hindered or prevented from the performance of any act required by reason of strikes, lock-outs, labour troubles, failure of power, riots, acts of terrorism, insurrection, war, mud-slide, fire, earthquake, tsunami, or where such act or omission is due to our obligations under provisions of European Union or national law, or other similar reasons of a like nature not the fault of the party delayed in performing work or doing acts required under these Terms & Conditions, such party shall as soon as reasonably practicable provide notice to the other party of such delay, and performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. We will not have any liability to you where we are unable to perform our obligations because of factors beyond our control. If an event of force majeure affecting a party continues for a period of more than 30 days, the other party may terminate these Terms & Conditions and all affected Commercial Agreements.

#### 11.11 Third Party Rights.

Nothing in these Terms & Conditions confers or is intended to confer a benefit enforceable by a person who is not a party to it and no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to these Terms & Conditions. Without prejudice to the generality of the foregoing you (and not any End Customer) will be the counterparty to a Contract and the recipient of the Services.

#### 11.12 Notices and Communications.

Any notice required to be given under these Terms & Conditions shall be treated as having been served on delivery if by hand, 48 hours after posting (disregarding days which are not Business Days) and on completion of transmission if sent by or e mail or other electronic means. All communications in relation to these Terms & Conditions and the services contemplated hereunder, whether verbally or in writing, must be in the English language. All communications may be made by any reasonable means, including but not limited to, telephone, letter, electronic mail or other electronic means. We reserve

the right to request that you confirm in writing any verbal communications that you may give us.

#### 11.13 Complaints.

If you feel that we have not met your expectations in the delivery of our services or if you think we have made a mistake, please let us know. We have internal procedures for handling complaints fairly and promptly. A copy of our complaints procedure is available upon request.

#### 11.14 Information.

You may request, at any time during our relationship, a copy of these Terms & Conditions and of any of your signed Commercial Agreements with us.

#### 11.15 English Text Prevails.

In the event these Terms & Conditions are translated into a foreign language, in case of any conflict or discrepancy between the English language version and the foreign language version, the English language version shall prevail.

## **SCHEDULES**

### **Payments + Bank Account Linking**

1. If the functionality is available, the Services may allow Client to link a bank account (the Linked Bank Account) to an Account. If Client chooses to do this, it will be redirected from the Services platform to the client's bank's app or website where the Client will be informed by them of the information the Client agrees with them that they may share with NinjasPay (the Shared Banking Information). The Shared Banking Information will include, but is not necessarily limited to, the Client's name, your bank account number and sort code and details of the Client's bank account transactions.

2. If the Client agrees to make the Shared Banking Information available to NinjasPay:

2.1 A representation of the Linked Bank Account will be shown in the Services Platform with the last 4 digits of the account number visible.

2.2 Any new transactions made on the Linked Bank Account will be sent to and stored by NinjasPay.

3. The Client may, at any time, revoke the NinjasPay access to the Linked Bank Account by using the Client's bank's app or website to remove NinjasPay permissions to access the Shared Banking Information. Such revocation of permission will not require NinjasPay to delete Shared Banking Information already held by NinjasPay.

4. The Client's bank (and not NinjasPay) is solely responsible for the provision, availability, security and all other aspects of the API that will be used by the Services to access the Linked Bank Account. NinjasPay use of such API will be subject to the terms and conditions issued by the Client's bank.

5. If the functionality is available, the Services may also allow the Client to initiate payments from its linked bank account directly to NinjasPay escrow account by way of payment initiation. Consent may be given in writing within the relevant section of the NinjasPay platform.

6. NinjasPay may use the OAuth Open Banking standard to authorise payment initiation consent. NinjasPay will not store the Client's bank data at any time. Payment initiation requests are deemed to have been received as soon as this consent is given and consent cannot be revoked after this point.

7. NinjasPay will always require the Client's consent for each individual payment initiation; at the time of writing the functionality is not available to authorise consent for multiple payments.

## **SCHEDULES**

### Definitions - Terms of Use

**Authorised Persons:** means the Client or any person (including any individual or entity) authorised by the Client to act on its behalf in the performance of any act, discretion or duty under this Agreement (including, for the avoidance of doubt, any officer or employee of such person) in a notice reasonably acceptable to NinjasPay.

**AISP ("Account Information Services"):** an Account Information Service Provider provides account information services as an online service to provide consolidated information on one or more payment accounts held by a payment service user with one or more payment service provider(s).

**ASPSP ("Account Servicing Payment Service Provider"):** Account Servicing Payment Service Providers provide and maintain a payment account for a payer as defined by the PSRs and, in the context of the Open Banking Ecosystem are entities that publish Read/Write APIs to permit, with customer consent, payments initiated by third party providers and/or make their customers' account transaction data available to third party providers via their API end points.

**"Applicable Law"** means all applicable legislation, regulations and any and all directives, standards and/or guidelines of any applicable regulatory, governmental or other authority, settlement, card scheme or banking or payment network (including PCI Security Standards Council) relating to a party's obligations under and/or pursuant to these Terms.

**NinjasPay Technology** means NinjasPay proprietary technology, including our software (in source and object forms), algorithms, user interface designs, architecture, and documentation (both printed and electronic), network and software designs, know-how, and trade secrets, and including any modifications, improvements, and derivative work thereof.

**Client:** means you.

**Confidential Information:** means information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the transactions processed hereunder, business, customers, products, affairs and finances of either party hereto and trade secrets including, without limitation, technical data and know-how relating to the business of either party or any of its suppliers, customers, agents, distributors, shareholders, management or business contacts.

**Customer Data:** means any customer data or other data or information collected by or on behalf of NinjasPay.

**CDD (“Customer Due Diligence”):** means any action required by NinjasPay to check the legal or financial status of its customers, for compliance with the FCA guidelines on payment processing or any other legal basis.

**Data Controller:** is a person, company, or other body that determines the purpose and means of personal data processing (this can be determined alone, or jointly with another person/company/body). For the official GDPR definition of “data controller”, please see Article 4.7 of the GDPR.

**Data Processing Policy:** the Data Processing Policy sets out how NinjasPay handles the Personal Data of our customers.

**End Customer:** means any person using the Platform Services.

**KYC (“Know Your Customer”):** means all documentation and other information about the Company and the Company Subsidiaries required under applicable “know your customer” and anti-money laundering rules and regulations.

**Linked Bank Account:** means the customer bank account connected via NinjasPay AISP services.

**Open Banking:** means the implementation of PSD2

**Payment Initiation:** means the process of initiating a payment request via NinjasPay PISP services.

**Payment Platform:** the technology solution deployed to provide payment services to the Client (including, for the avoidance of doubt, any button or web page required to direct the end user payment journey)

**Payment Service Directive 2 (“PSD2”):** means the EBA payment service directive 2 (<https://eba.europa.eu/regulation-and-policy/payment-services-and-electronic-money>).