



# SPARK

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## Partnership Agreement

These terms and conditions (as amended from time to time) ("Conditions") apply to your participation in the SPARK Partner Programme to the exclusion of all other terms and conditions.

### SPARK Partner Programme Terms and Conditions

#### 1. Definitions and interpretation

"Acceptance Communication" the communication in writing from us confirming our acceptance to your participation in the Programme together with other relevant information (as appropriate);

"Affiliate" in relation to any company, that company's parent company or any subsidiary of any such parent company as defined in section 1159 of the Companies Act 2006;

"Application" the SPARK application that you are required to complete to apply to participate in the Programme;

"Commencement Date" the date we send to you the Acceptance Communication;

"Commission" is payable in accordance with clause 5 and is either (i) a single one off payment set out in the applicable Tier Description or Acceptance Communication ("One Off Commission"); or (ii) the percentage of the Revenue received by us from an Introduced Vendor, calculated on a monthly basis (excluding refunds given to the Introduced Vendor) at the rate and for the duration each as set out in the applicable Tier Description or Acceptance Communication ("Percentage Commission"). Percentage Commission is calculated from the date of first purchase of the SPARK System by the relevant Introduced Vendor and continues for the duration set out in the applicable Tier Description or Acceptance Communication provided that the Introduced Vendor continues to trade with us and provided that your participation in the Programme is not terminated in which case Commission will cease to be payable from such date. For the purposes of these Conditions "Revenue" means the sums actually received by us from an Introduced Vendor for the SPARK System as a result of your introduction (excluding any sums received by us from the Introduced Vendor in respect of ancillary fees, tax and other deductions, third party services or annual support or maintenance);

"Conditions" these terms and conditions as amended from time to time;

"Confidential Information" any information which is disclosed pursuant to or in connection with these Conditions (whether orally, in writing and whether or not such information is expressly stated to be confidential) or which otherwise comes into the hands of a party which is either proprietary to a party or would be confidential by operation of law, or which is expressly stated by the disclosing party to be confidential or sensitive information. Such information includes information which relates to administrative, structural, financial, technical



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or operational arrangements, data, know-how, intellectual property including software programs (including source, object and assembly code), strategies, lists of customers, suppliers and other contractors, trade secrets, processes, algorithms, research, specifications and any visual images or observations made while on the premises of a party. Confidential Information does not include any information which is already in the public domain except as a result of the breach of the terms of these Conditions or is already in or subsequently comes into a party's possession other than as a result of a breach of the terms of these Conditions or any other obligation of confidentiality owed to a party;

"Criteria" the minimum criteria that you are required to maintain to retain participation in a particular Tier (as described in the applicable Tier Descriptions);

"IPR" all vested contingent and future intellectual property rights including goodwill, reputation, rights in confidential information, rights to sue for passing off or unfair competition, copyright, trademarks and design rights whether registered or unregistered, logos, devices, plans, models, diagrams, specifications, source and object code materials, data and processes, patents, know-how, trade secrets, inventions, get-up, database rights and (as applicable) any applications or registrations for the protection of these rights and renewals and extensions of them, existing in any part of the world, whether now known or created in the future;

"Introduced Vendor" an individual or organisation hospitality venue or business in the United Kingdom whom you have introduced to us in accordance with

these Conditions and who is making active use of our EPOS, Reservations, CRM or related

Services excluding individuals or organisations that:  
were an existing Vendor of ours at the time of your introduction; or

- were identified to us as a potential Vendor prior to your introduction; or
- were Introduced to us by a third party prior to your introduction.

"Prospect" a third party identified by you as being a prospective Vendor for us;

"Programme" SPARK's partner programme (participation being subject to these Conditions) as described in the relevant Tier Description and other collateral we issue from time to time;

"Quarter" each period of (three) 3 consecutive calendar months ending on 31 December, 31 March, 31 June, and 30 September respectively;

"SPARK Mark" any name, trademark, logo, symbol or slogan (whether registered or not) owned or used by us or any of our Affiliates now or in the future anywhere in the world, including but not limited to the word mark "SPARK";

"Tier" a level within the Programme where minimum Criteria must



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be maintained to continue to be eligible to remain in such Tier and eligible for the benefits associated with that Tier;

"Tier Description" the description of the benefits included within each Tier of the Partnership Programme together with details of the Criteria you must achieve to be considered eligible to be included within such Tier;

"us" or "we" or "our" New Apex Ltd. t/a **SPARK powered by StreetAway®** (company registration number 08096842) whose registered office is at **i6 Charlotte Square, Newcastle upon Tyne, NE1 4XF;**

"Website" our website from time to time currently located at [www.sparkepos.com](http://www.sparkepos.com); [www.streetaway.co.uk](http://www.streetaway.co.uk) or any subdomain therein

"you" or "your" the party accepted by us to participate in our Programme;

1.2. The meaning of adequate procedures and whether a person is associated with another person is to be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act, and section 8 of that Act respectively.

1.3. A reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.

1.4. Any expressions used in these Conditions relating to the hospitality or POS industry will have the meanings commonly attributed to them in such industry.

1.5. In the event of any conflict between the Conditions, the Acceptance Communication and the Tier Description, these Conditions will prevail, followed by the Acceptance Communication followed by the Tier Description.

### **2. Appointment**

2.1. Following receipt of your completed Application we will determine whether or not to accept you onto the Programme (this may involve us contacting you to ask additional information following receipt of your completed Application).

2.2. Your Application is only accepted where we confirm this to you in writing the ("Commencement Date").

2.3. Your acceptance onto and continued participation in the Programme is conditional upon you accepting and fully complying with these Conditions.

### **3. Tiers**

3.1. We will allocate you to a Tier following your acceptance onto the Programme.

3.2. Depending on your performance as a Partner against the Criteria you may be advanced to a higher Tier or downgraded to a lower Tier by us from time to time. We will notify you when we do this.

3.3. We may introduce guidelines from time to time describing how



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we may exercise the right detailed under clause 3.2 above. Such guidelines are for assistance only and we will not be in breach of these Conditions in circumstances where we do not follow those guidelines.

3.4. Partners are only eligible to receive the benefits associated with a particular Tier whilst they remain within that Tier.

3.5. From time to time we may alter the Criteria for any Tier and / or the benefits associated with a Tier to ensure that the Programme remains current and reflects our business requirements and we'll use reasonable efforts to notify you (thirty) 30 days prior to making such change using the contact details we hold for you.

3.6. When exercising our rights under condition 3.5 we will always act fairly and in good faith toward you.

### **4. Introduced Vendors and Commission**

4.1. When you introduce Prospects we will ask you to provide us with certain information about the Prospect. If we do not receive that information it may result in our inability to process the introduction and / or credit you with the introduction. Unless we inform you otherwise, Prospects must be introduced to us by completion of the application form at the Partner Link to be considered an Introduced Vendor. Prospects will only become Introduced Vendors if you follow the aforementioned process and where we approve them. We reserve the right to reject any Prospect at our discretion. If we do not approve a Prospect as an Introduced Vendor within six (6) months of the date of your introduction, no Commission will be payable in respect of that Prospect.

4.2. Subject to the remainder of these Conditions, we will pay you Commission for each Introduced Vendor.

### **5. Payment**

5.1. We set and revise the fees and payment terms for the SPARK system from time to time at our discretion.

5.2. Subject as follows Commission will be paid to you in the Quarter following the Quarter in which we have obtained collection from the relevant Introduced Vendor as cleared funds in GBP exclusive of VAT or other applicable sales tax, duties, charges and taxes (if any) which will be paid

at the rate and in the manner for time being prescribed by law.

5.3. Commission will only be payable where we have obtained the applicable fees from the relevant Introduced Vendor and you have either:

5.3.1. submitted to us a valid VAT invoice in respect of the relevant Commission; or

5.3.2. provided us with any information we have requested to enable us to raise invoices on your behalf where you have subscribed for our self-billing option.

5.4. Unless you have subscribed for the self-billing option, you will submit invoices for Commission to us in a timely manner after Commission



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becomes due but no later than three (3) months following the date the Commission becomes due.

5.5. Where you have subscribed for the self-billing option, we will raise appropriate invoices on your behalf in a timely manner after Commission becomes due but no later than three (3) months following the date the Commission becomes due. If you are entering into these Conditions in the UK, to assist you in calculating and / or verifying your Commission and, where appropriate, raising invoices, we will endeavour to provide you with access to view your Commission reports.

5.6. We will pay Commission within thirty (30) days of receipt of your invoice in accordance with clause 5.3.1 or the date we raise a valid invoice for you in accordance with clause 5.3.2. All payments will be made by one of our standard payment methods from time to time, including by BACS transfer.

5.7. Unless you have signed up for the self-billing option, you must submit your invoice in accordance with clause 5.4, otherwise we will not be obliged to pay Commission in respect of the relevant period and any defective invoices will be returned to you unpaid.

5.8. If you dispute the Commission paid or payable by us, you must notify us of your dispute in writing within (ten) 10 days of us making the relevant Commission statement available to you in accordance with clause 5.4. We will then investigate your dispute and, following our investigation, we will notify you of our decision and that decision will be final. If you do not notify us of any dispute in accordance with this clause 5.8, you are deemed to have agreed that the Commission set out in the applicable Commission statement is accurate and complete.

5.9. You are only entitled to Commission as set out in these Conditions and so we reserve the right to correct any inaccuracies in Commission statements we produce from time to time. If at any time we have paid to you Commission in excess of the Commission actually due to you, you will immediately repay that Commission to us on receipt of notice from us to do so.

5.10. We reserve the right at any time to set-off any amounts you owe to us against any amounts we owe to you whether under these Conditions or otherwise.

### **6. Your obligations**

6.1. You agree not to actively encourage any Introduced Vendor to leave us and transfer their custom to a third party who offers the same or similar services to the SPARK System.

6.2. You agree to actively promote the SPARK System.

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6.3. You warrant that whilst we permit you to participate in the Programme you will:

6.3.1. perform your obligations under these Conditions and promote the SPARK System in compliance with all applicable





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laws, rules, regulations and codes of practice, including but not limited to those applicable to data protection and marketing;

6.3.2. not participate in any practices which may be detrimental to the SPARK System, us or our business and reputation (or of any of our Affiliates);

6.3.3. not make any promises or representations or enter into contracts on our behalf in respect of the SPARK System;

6.3.4. make it clear to Prospects that they are entering into a contract for the provision of the SPARK System with us and not you and that you are not our agent;

6.3.5. discharge your obligations under these Conditions using personnel of required skill, experience and qualifications and with all due skill, care and diligence including in accordance with best industry practice.

### **7. Integration**

7.1. Where you provide integration services to Introduced Vendors, it is entirely your responsibility to decide how you integrate the SPARK System on behalf of those Introduced Vendors for whom you perform services.

7.2. From time to time we update our protocols and integration methods for SPARK. Accordingly, we may withdraw support for older versions of our software and integration methods in line with our then current end of life policy. It is your sole responsibility to ensure that you use supported versions of our software and integration methods where you integrate the SPARK system on behalf of Introduced Vendors. Regardless, we advise you to always use the latest version of our software when integrating the SPARK system for Introduced Vendors.

7.3. Where we continue to make older unsupported software available your continued use of such software and is entirely at your own risk.

### **8. Duration and Termination**

8.1. Your participation in the Programme will commence on the Commencement Date and, subject to earlier termination in accordance with these Conditions, will continue in force until terminated by either party giving to the other three (3) months' prior written notice.

8.2. Your right to participate in the Programme will terminate automatically without notice to you if you:

8.2.1. are under formal investigation by an acquirer or an issuer or a payment scheme; or

8.2.2. have failed to comply with any Scheme Rules.

8.3. Without prejudice to any rights that have accrued under these Conditions or any other rights or remedies, either party may terminate your right to participate in the Programme immediately on written notice to the other:

8.3.1. if the other party (the "Defaulting Party") commits a material breach of these Conditions and (if such breach is remediable) fails to remedy that breach within a period of fifteen (15) days after being



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notified by the other party to do so;

8.3.2. if the Defaulting Party repeatedly breaches any of these Conditions in such a manner as to reasonably justify the opinion that

the Defaulting Party's conduct is inconsistent with the

intention or ability to give effect to these Conditions; or

8.3.3. the Defaulting Party threatens to suspend payment of its

debts or is unable to pay its debts as they fall due or admits

inability to pay its debts or is deemed unable to pay its debts

within the meaning of section 123 of the Insolvency Act 1986; or

8.3.4. the Defaulting Party makes a proposal for or enters into any

compromise or arrangement with its creditors; or

8.3.5. a petition is filed, or a notice is given, or a

resolution is passed, or an order is made, for or in

connection with the Defaulting Party's winding up; or

8.3.6. an application made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint

an administrator is given or if an administrator is appointed over the

Defaulting Party; or

8.3.7. a floating charge holder over the Defaulting Party's assets

has become entitled to appoint an administrative receiver; or

8.3.8. a person becomes entitled to appoint a receiver over the Defaulting

Party's assets or a receiver is appointed over the

Defaulting Party's assets; or

8.3.9. the Defaulting Party suspends or ceases, or

threatens to suspend or cease, to trade; or

8.3.10. any event occurs, or proceeding is taken, with respect to

the Defaulting Party in any jurisdiction that has an effect equivalent

or similar to any of the events mentioned in clauses 8.3.3 to 8.3.10

(inclusive).

### **9. Effect of termination**

9.1. Where your participation in the Programme is terminated, you will:

9.1.1. no longer be entitled to receive any benefits associated with it;

9.1.2. immediately cease promoting the SPARK System and describing or holding yourself out as connected with us;

9.1.3. discontinue use of the SPARK Mark; and

9.1.4. destroy and / or return to us (at our election) all of our materials and other documentation which you obtained in relation to or as a result of your participation in the Programme.

9.2. Any Commission payments will cease to accrue or be payable from the date of termination of your membership to the Programme.

9.3. You agree that for a period of nine (9) months after termination you will not actively solicit any Introduced Vendors to move to a different service provider for services that are the same as or similar in nature to the SPARK system (including, in particular, any services



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that we offer alongside the SPARK system for example EPOS, Reservations or Hospitality Management Software).

9.4. Except as set out in clause 9.2 above, termination of these Conditions will not affect any accrued rights or liabilities of either party or the coming into force or continuance in force of any provision of these Conditions which is expressly or by implication intended to come into force or continue in force on or after termination.

### **10. Liability**

10.1. Nothing in these Conditions limits or excludes a party's liability for death or personal injury resulting from our or your negligence or for any damage or liability incurred by you or us as a result of our or your fraud or fraudulent misrepresentation.

10.2. Subject to clauses 10.1 and 10.4, we will not be liable for:

10.2.1. loss of profits;

10.2.2. loss of business;

10.2.3. depletion of goodwill and / or similar losses;

10.2.4. loss of anticipated savings;

10.2.5. loss of goods;

10.2.6. loss of contract;

10.2.7. loss or corruption of data or information in each case whether direct or indirect or for any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses, arising

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from breach of these Conditions or any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Programme.

10.3. Subject to clauses 10.1 and 10.4, in any calendar year each party's liability to the other under or in connection with these Conditions arising from tortious act or omission including negligence, breach of contract or statutory duty, and any other liability, will not exceed the total amount of Commission paid or payable by us to you under and in accordance with these Conditions in the immediately preceding calendar year.

10.4. Nothing in this clause 10 will apply to the indemnities in clauses 11.6 and 14.2.

10.5. You acknowledge that we will have no liability to you in any circumstances where a Prospect does not purchase SPARK System from us.

### **11. Intellectual Property Rights**

11.1. We (or our licensors) or our Affiliates (as applicable) own and will continue to own our IPR, including without limit the SPARK Mark, and other than as permitted under these Conditions, you will not use, or permit any third party to use, any of our IPR, including without limit the SPARK Mark, or any mark, words, logo, device or any other branding which is similar to or mimics any SPARK Mark, without first obtaining our prior written consent.





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11.2. During your participation in the Programme you may use the relevant SPARK Mark only to promote the SPARK System in accordance with these Conditions and as otherwise prescribed by us from time to time. If requested by us, you will submit any promotional, marketing or other materials used in relation to the SPARK system to us for approval prior to using them.

11.3. You agree not to use any SPARK Mark as part of your corporate or business name and always to display your corporate or business name and the relevant SPARK Mark in accordance with our guidance.

11.4. You agree not to use, create or register (or attempt to register) any trade mark or domain name which incorporates any SPARK Mark or any similar mark, logo, words, device or any other branding, without our prior written consent.

11.5. During your participation in the Programme you grant to us a non-exclusive right to use your IPR in relation to the promotion of the SPARK System and / or the administration of any contract with Introduced Vendors, subject to our compliance with your guidance (as notified by you to us) in relation to use of those IPR from time to time.

11.6. Each party warrants to the other that its respective IPR will not infringe any IPR of a third party. Each of the parties indemnifies (the "indemnifying party") the other (the "indemnified party") harmless from and against all losses, damages, liabilities, expenses and costs (including reasonable legal costs) which the indemnified party may incur or suffer as a result of a breach by the indemnifying party of the warranty it gives under this clause 11.6 or of any dispute or contractual, tortious or other claims or proceedings brought against the indemnified party (as applicable) in any jurisdiction by a third party alleging infringement of such third party's IPR by reason of the indemnified party's (as applicable) use or exploitation of the indemnifying party's (as applicable) IPR.

### **12. Data Protection**

12.1. Both parties agree that if any data exchanged between them would be classified as personal data or sensitive personal data as such terms are defined in the Data Protection Act 1998 ("Act"), the recipient of the personal data ("Recipient") will process such data in accordance with the provisions of the Act and comply with the data protection principles set out in the Act.

12.2. If the Recipient would be classified as a data processor under the Act and the party disclosing the data classified as a data controller, the Recipient agrees to comply with the obligations placed on the data controller by the seventh principle of the Act, which are:

12.2.1. to maintain technical and organisational security measures sufficient to comply with at least the obligations imposed on the data controller by that seventh principle; and



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12.2.2. only to process personal data for and on behalf of the data controller for the purpose of performing its obligations under these Conditions

and to allow the data controller to audit the data processor's compliance with the requirements of the Act on reasonable written notice at reasonable intervals or to provide the data controller with sufficient evidence of its compliance.

### **13. Confidentiality and Publicity**

13.1. Each party agrees to treat the other's Confidential Information as confidential and will not at any time copy, use or disclose to any person the other's Confidential Information, except as permitted by these Conditions.

13.2. Either party may disclose the other's Confidential Information:

13.2.1. to that party's employees, officers, representatives or advisers (as applicable) who need to know such information for the purposes of carrying out your or our respective obligations under these Conditions. Both parties will ensure that their respective employees, officers, representatives or advisers to whom the Confidential Information is disclosed comply with this clause 13; and

13.2.2. as may be required by law, court order or any governmental or regulatory authority.

13.3. Neither party will use the other's Confidential Information for any purpose other than to perform its respective obligations under these Conditions.

13.4. You undertake not to (except as may be required by law or in order to instruct professional advisers in connection with these Conditions) disclose or permit disclosure of any details of the Programme or these Conditions to the news, media or any third party, except this does not prevent you from promoting the SPARK System in accordance

with these Conditions.

### **14. Anti-Bribery and Corruption**

14.1. You will and will procure that persons associated with you:

14.1.1. comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including the Bribery Act 2010 (the "Relevant Requirements");

14.1.2. not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

14.1.3. not do, or omit to do, any act that may lead us to be in breach of any of the Relevant Requirements;

14.1.4. promptly report to us any request or demand for any undue financial or other advantage received by you in connection with your participation in the Programme;

14.1.5. have and maintain in place throughout your participation in the Programme your own policies and procedures to ensure compliance



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with the Relevant Requirements and clause 14.1.2, and will enforce them where appropriate; and

14.1.6. if requested, provide us with reasonable assistance, to enable us to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any of the Relevant Requirements.

14.2. You now indemnify us against any losses, liabilities, damages, costs (including legal fees) and expenses incurred by, or awarded against, us as a result of your breach of this clause 14.

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14.3. You will promptly notify us if, at any time whilst you participate in our Programme if your circumstances, knowledge or awareness changes such that you would not be able to repeat the warranties set out in clause 14.1 at the relevant time.

14.4. Breach of this clause 14 shall be deemed a material breach under clause 8.3.1.

### **15. Dispute resolution**

15.1. Other than in relation to clause 5.8, if a dispute arises between the parties in relation to any matter which cannot be resolved by local operational management within ten (10) days, either party may refer the matter to the other's senior representatives with authority to settle the dispute. Those senior representatives will meet in good faith and attempt to resolve the matter within a further ten (10) day period at a time and location agreed between the parties, or failing agreement, at a time and location nominated by us (acting reasonably).

15.2. Neither party will be prevented from, or delayed in, seeking orders for specific performance or injunctive relief or otherwise commencing legal proceedings as a result of the terms of this clause 15.

### **16. General terms**

16.1. Any notice to be given pursuant to these Conditions will be in writing and will be given by delivering the notice by hand, or by sending it by prepaid first class post to, the address of the relevant party set out in these Conditions, or such other address as that party notifies to the other from time to time. Any notice given in this way will be deemed to have been given at the time of delivery (if delivered by hand) and two working days following postage (if sent by post).

16.2. Your membership to the Programme is personal to you and you may not assign, subcontract, license, charge or otherwise deal with or dispose of (whether in whole or in part) your membership to the Programme without our prior written consent. This means for example, that if you sell the assets of your business, you cannot automatically

transfer your Programme membership to the buyer. We may assign or otherwise deal with our rights and obligations under these Conditions at any time.

16.3. We reserve the right to change these Conditions from time to time, for example, as a result of any change to the law, regulation or



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regulatory or payment industry requirement upon providing you with written notice of those changes. Subject to the foregoing and to our right to vary the Commission, these Conditions may only be varied or amended in writing, signed by an authorised officer of each party.

16.4. These Conditions constitute the entire understanding between the parties with respect to their subject matter and supersede all prior agreements, negotiations and discussions between the parties relating to them. You agree that you have not relied on any representations or statements in entering into these Conditions which are not set out expressly in it, except this does not exclude your or our liability for fraud.

16.5. If a court or similar body decides that any wording in these Conditions cannot be enforced, that decision will not affect the rest of these Conditions, which will remain binding on both parties. However, if the wording that cannot be enforced could be enforced if part of it is deleted, we and you will treat the relevant part of the wording as if it is deleted.

16.6. Each party is an independent contractor and neither party will represent itself (as applicable) as agent, servant, franchisee, joint venturer or legal partner of the other.

16.7. If circumstances beyond a party's reasonable control arise, for example, fire, war, Acts of God, industrial disputes, neither we nor you will be liable for failing to meet that party's respective responsibilities in these Conditions because of those circumstances, for as long as those circumstances continue.

16.8. If a party fails to, or delay in, exercising any rights under these Conditions, that will not mean that those rights cannot be exercised in the future.

16.9. Except as expressly set out in these Conditions, a person who is not a party to these Conditions will have no rights to enforce any terms of these Conditions.

16.10. These Conditions are drafted in the English language. If these Conditions are translated into any other language, the English language text will prevail. Any notice given under or in connection with these Conditions will be in the English language. All other documents provided under or in connection with these Conditions will be in the English language. If such document is translated into any other language, the English language text will prevail.

16.11. These Conditions and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the laws of England. Each of you and us irrevocably agrees to submit to the exclusive jurisdiction of the courts of England over any claim or matter arising out of or in connection with these Conditions or the legal relationships established by them.