

## PART I - PRELIMINARY

### 1. THE TRADING PROGRAM AND THE PARTIES INVOLVED

- 1.1 Trading Program. The "Trading Program" is a system to facilitate reciprocal Trade among its Members.
- 1.2 Exchange Company. The "Exchange Company", (Barter Traders UK Limited 11194577) is the company which operates the Trading Program. The Exchange Company acts as a third-party record keeper of Trade transactions among its Members and directs Members to each other for the purpose of facilitating Trade transactions.
- 1.3 Manager. The "Manager" (Bartercard Operations UK Limited 09009873) has been appointed under a Deed of Management to manage the Exchange Company and the Trading Program in accordance with the provisions of that Deed. The Member agrees that the Manager is a service organisation whose sole purpose is the provision of its administrative services. The Member agrees to hold the Manager and the Exchange Company harmless for the failure of other Members to abide by their agreements with the Manager and the Exchange Company.
- 1.4 Member. A "Member" of the Trading Program is a business (a sole trader, partnership, limited partnership, limited liability partnership or a limited company) that wants to exchange its goods and/or services with other members within the Trading Program, wants to subscribe to the administrative and Trade services of the Trading Program and does not include an Extraordinary Member.
- 1.5 Extraordinary Member. An "Extraordinary Member" of the Trading Program is the classification given to the Manager when it participates in the Bartercard Trading Program by buying and/or selling products and/or services with other Members.
- 1.6 Associates. An "Associate" is any entity's holding companies, subsidiaries, related companies, directors, officers, employees, contractors and agents.
- 1.7 Minimum Contract Term. The "Minimum Contract Term" is the fixed length of contract signed and agreed by the Member on the Application Form.

### 2. THE RULES

- 2.1 Purpose. The purpose of these rules (the "Rules") is to regulate the Trading Program by setting out the terms upon which Members may Trade. These Rules govern the operation of the Trading Program.
- 2.2 Legally Binding. The Manager, the Exchange Company and each Member agree to be bound by these Rules, The Rules and the Membership Agreement signed by each Member forms a contract between the Manager and the Exchange Company and all of the Members jointly, between the Manager and the Exchange Company and each of the Members severally, and between each Member and each other Member. If there is a conflict between the terms of the Membership Agreement and the Rules, the provisions of the Rules shall prevail.
- 2.3 Survival of Obligations. These Rules are binding on the Members. Obligations imposed upon Members under these Rules shall survive the suspension or termination of the right of a Member to participate in the Trading Program.
- 2.4 Binding on Successors and Permitted Assigns etc. The Rules are binding upon the Members, their heirs, successors and permitted assigns. No assignment can take place until the Manager has consented to the assignment and such person has signed up to the rules and regulations current at the time of assignment.
- 2.5 Interpretation. In these Rules, unless the context otherwise requires:
- (a) singular includes plural and vice versa;
  - (b) any gender includes every gender;
  - (c) a reference to a person includes corporations, trusts, associations, partnerships, a Government Authority, and other legal entities and, where necessary, includes successor bodies;
  - (d) references to writing include printing, typing, facsimile and emails and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, in English;
  - (e) references to signature and signing include due execution of a document by a corporation or other relevant entity;
  - (f) references to months mean calendar months;
  - (g) references to statutes and/or Statutory Instruments include statutes and/or Statutory Instruments amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;
  - (h) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
  - (i) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of these Rules;
  - (j) where any word or phrase is given a defined meaning, another grammatical form of that word or phrase has a corresponding meaning;
  - (k) a reference to an agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;
  - (l) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns
  - (m) nouns, pronouns, and verbs shall be construed as masculine, feminine, neuter, singular or plural, whichever shall be applicable; and
  - (n) Whenever the words "include", "includes" or "including" are used, they shall be deemed to be followed by the words "without limitation".
- 2.6 Terms.
- (a) The terms used in the Rules have the meanings given to them in the Rules, as set out in the Glossary of Terms.
  - (b) Terms used in these Rules which are not contained in the Glossary of Terms have the meanings given to them in the Deed of Management.
  - (c) Terms used which are not defined shall be given their ordinary meaning.

### 3. NATURE OF TRADE POUNDS

- 3.1 Nature. A "Trade Pound" is an accounting unit (notionally equivalent to one British Pound) used to record the value of goods and services traded. Trade Pounds are not legal tender, securities, debentures or commodities. In these Rules, one Trade Pound

is the equivalent of one British Pound and vice versa.

- 3.2 Credit Balance an asset of Member. The Trade Pounds recorded in a Trade Account of a Member which has a credit balance, represents an asset of that Member. Such a Member is entitled to obtain goods or services from another Member to a value equivalent to that credit balance, in accordance with these Rules but not otherwise.
- 3.3 Not a Liability of the Manager or Exchange Company. The Trade Pounds recorded in a Trade Account of a Member which has a credit balance do not constitute a liability or a debt payable by the Manager or the Exchange Company to any Member.
- 3.4 Debit Balance a Liability of Member. A Member whose Trade Account has a debit balance is liable, in accordance with these Rules, either:
- (a) to supply goods or services to an equivalent value to another Member in accordance with these Rules but not otherwise; or
  - (b) if the Member has not discharged the Member's liability by supplying goods or services to another Member in accordance with these Rules, to pay to the Exchange Company an amount in cash (British Pounds) equivalent to the amount in Trade Pounds of the debit balance in accordance with these Rules.
- 3.5 No Obligation to Redeem or Convert. Under no circumstances shall the Manager or the Exchange Company be under any obligation to any Member to redeem or convert to cash or pay any amount for or in respect of Trade Pounds. The Manager and the Exchange Company do not warrant the negotiability of Trade Pounds.
- 3.6 Restriction on use.
- (a) Trade Pounds may only be used in the manner and for the purpose set forth in these Rules.
  - (b) For the avoidance of doubt, Trade Pounds must not be exchanged between Members for any cash consideration.

## PART II - TRADING IN THE PROGRAM

### 4. ENTITLEMENT TO PARTICIPATE

- 4.1 New Businesses. The Manager shall use its reasonable endeavors to solicit new businesses having products or services it considers are appropriate to the needs of all Members. The Manager is not responsible if a Member cannot find specific products or services to buy from other Members, or other Members are not interested in buying products or services from the Member.
- 4.2 Legally Constituted Business. By joining the Trading Program, the Member warrants that as a sole trader, partnership, limited partnership, limited liability partnership or limited company, that they are a legally constituted business and registered at the appropriate body and at HMRC for tax purposes.
- 4.3 Member in Good Standing. Unless the Manager allows otherwise, only a Member which is:
- (a) up to date with payment of all fees due under the terms of this document and charges owing to the Manager and/or Exchange Company;
  - (b) is trading within its Credit Limit;
  - (c) is carrying on a business involving the provision of goods and/or services;
- and
- (d) Otherwise conducts itself in accordance with these Rules (referred to in these Rules as a "Member in Good Standing") is entitled to participate in the Trading Program.
- 4.4 Additional Cardholders. The Manager may, at the request of a Member the ("Initiating Member"), issue additional cards to any person nominated by the Initiating Member the ("Additional Cardholder") to be used subject to these Rules. Upon the issue of the additional card to the Additional Cardholder, the Additional Cardholder will be subject to these Rules as if the Additional Cardholder were a Member. The Initiating Member will be liable for the use of the Additional Cardholder's card and any of the Additional Cardholder's acts or omissions, including any breaches of the Rules and any liability created under these Rules, and by the Initiating Member signing the Additional Cardholder Application Form guarantees the Additional Cardholder's liabilities and indemnifies the Exchange Company in respect of such liabilities until the Additional Cardholder's right to use the card is withdrawn in accordance with Rule 4.5. In the event that the Additional Cardholder breaches any obligations or restrictions of a Member that are imposed on the Additional Cardholder under these Rules, the Manager may without notice suspend and/or withdraw the Additional Cardholder's and/or the Initiating Member's right to participate in the Trading Program.
- 4.5 Additional Cardholders Rights Withdrawn. A Member must give the Manager written notification of the withdrawal of an Additional Cardholder's right to use the Member's Trade Account. Upon such notification the Additional Cardholder's card must be returned to the Manager. Upon receipt of both the written notification and the Additional Cardholder's card, the Manager will withdraw the right of the Additional Cardholder to use the Member's Trade Account.
- 4.6 Staff Accounts. The Manager may, at a Member's request, issue a Staff Account to any employee of a Member for the purpose of paying normal wages and/or bonuses, subject to the completion of the Staff Account application form, and payment of any associated fees and/or charges. The Staff Account Member will immediately sign their acceptance of and be subject to the Rules and any conditions set out in the Staff Membership Agreement upon opening a Staff Account. The Member will be liable for any fees, charges, debit balance and costs payable from time to time with respect to the Staff Account. In the event that the Staff Account Member breaches any obligations or restrictions of a Member that are imposed under these Rules on a Staff Account Member, the Manager may without notice suspend or terminate the Member's Staff Account and may take such further action set out in Rule 21.4 as if the Staff Member were a Member.

### 5. TRADE TRANSACTIONS

- 5.1 Trade. A "Trade" is a transaction conducted in the manner set out in these Rules, between Members or between the Manager (as an Extraordinary Member) and any Member, involving the sale and purchase of goods (which expression includes, for the purposes of these Rules, real property or any right or title to or interest in any goods or services), which is recorded by those Members in accordance with these Rules. The party selling the goods or services, referred to in these Rules, is the "Selling Member", and the party purchasing the goods or services is the "Buying Member".

5.2 Trade Accounts. In its books of account, the Exchange Company shall establish for each Member and for the Manager, an account ("Trade Account") for recording Trades entered into by them and other transactions in Trade Pounds which relate to them.

5.3 Recording of Trades. Subject to these Rules, the Manager shall cause any Trade which has been duly entered into to be recorded in the Trade Accounts of the participants in the Trade, by:

- (a) crediting the Trade Account of the Selling Member with the Trade Pound amount of the Trade (if necessary, offsetting that amount against any debit balance in that Trade Account); and
- (b) Debiting the Trade Account of the Buying Member with the Trade Pound amount of the Trade (if necessary, offsetting that amount against any credit balance in that Trade Account).
- (c) No Agency. In conducting any Trade, Members do so as principals and not as agents of or through the Manager or the Exchange Company. Neither the Manager nor the Exchange Company is a party to any Trade and Trades shall be entered voluntarily by the Buying Member and Selling Member. Neither the Manager nor the Exchange Company is the guarantor of any Trade or Trade Pound or is otherwise liable, therefore.

## 6. TRADE PROCEDURE

6.1 Trades. All trades are to be processed electronically or forwarded to the Manager for processing within fourteen (14) days of the Trade Transaction. Proof of Transaction means an appropriate document that includes:

- (a) name of supplier or service provider;
- (b) name of buyer;
- (c) date of the supply;
- (d) goods or services supplied; and
- (e) price of the goods or services.

Examples of a Proof of Transaction include:

- (a) invoice;
- (b) point of sale receipt;
- (c) handwritten receipt;
- (d) continual supply agreement, automatic deduction agreement, or progressive payment agreement; and
- (e) Confirmation or receipt number provided for a telephone or internet transaction using Electronic Processing Services.

The Buying Member and the Selling Member shall maintain Proof of Transactions in which they are a party for 12 months.

Upon request by the Manager, the Selling Member and Buying Member shall each produce such records of the transaction. If the Selling Member or Buying Member fails to produce such records within ten (10) days after a request by the Manager, the Manager shall have the right, which it may exercise in its absolute discretion, to reverse or alter all or part of the relevant transactions.

6.2 Trade by Electronic Processing Services. Trade by Electronic Processing Services means a facility that uses telephone, mobile devices, EFTPOS terminals and/or internet communication systems including the Members Trading Portal that allow Members to perform transactions. Electronic Processing Services may include the facilitation of trades, retrieval of account balances and other services as notified from time to time by the Manager.

(a) In connection with any transaction involving the Electronic Processing Services, where the transaction is initiated by the Selling Member, the following Electronic Processing Services procedures must be utilised:

Step 1: The Selling Member must obtain the name of the Buying Member and its card number;

Step 2: The Selling Member must obtain an authorisation number from the Manager (irrespective of the Trade amount);

Step 3: Where the Buying Member and the Selling Member are present together at the point of sale, and the Buying Member's signature is required to complete the transaction, the Selling Member must obtain and verify that the Buying Member's signature conforms to the signature on the Member's card and the card has not expired.

(b) In connection with any transaction involving the Electronic Processing Services, where the transaction is initiated by the Buying Member, the following Electronic Processing Services Procedures must be utilised:

Step 1: The Buying Member must obtain from the Selling Member its account number and name;

Step 2: The Buying Member must obtain an authorisation number from the Manager (irrespective of the Trade amount).

6.3 Trade by Transaction Voucher. The procedure for conducting a Trade by a Transaction Voucher is:

(a) (Produce card) A Member in Good Standing who intends to purchase goods or services (the "Buying Member") shall produce prior to receiving the goods or services its Member's Card to the Member who intends to sell the goods or services (the "Selling Member");

(b) (Complete Transaction Voucher) Either the Buying Member or the Selling Member completes the following particulars of the proposed Trade upon a form prescribed from time to time by the Manager as the form to be completed for the purposes of a Transaction Voucher Trade ("Transaction Voucher"):

- (i) the name of the Buying Member and its card number;
- (ii) the name of the Selling Member and its account number;
- (iii) a brief description of the goods or services;
- (iv) the date upon which the Trade is entered; and
- (v) the Trade Pound amount of the Trade.

(c) (Sign Transaction Voucher) The Buying Member signs the Transaction Voucher and the Selling Member shall check that the signature on the Transaction Voucher conforms with the signature on the Member's card and the card has not expired;

(d) (Obtain authorisation) The Selling Member, where required under these Rules, obtains authorisation from the Manager for the proposed Trade;

(e) (Endorse authorisation) The Selling Member endorses the Transaction Voucher with the authorisation number issued by the Manager (if one is issued), gives the duplicate to the Buying Member and retains the triplicate copy;

(f) (Send Transaction Voucher) The Selling Member sends the original completed Transaction Voucher to the Manager within fourteen (14) days of the Trade to be recorded.

6.4 Trade by Prepaid Scrip Certificate.

(a) Prepaid Scrip Certificates. "Prepaid Scrip Certificates" are prepaid certificates obtained through the Manager or its Franchisees which enable the bearer to receive

goods and services from a named merchant to the value of the Prepaid Scrip Certificates without an Authorisation Number;

(b) Prepaid Scrip Certificates obtained from Selling Member. From time to time, the Manager and/or Franchisees may obtain from a Selling Member Prepaid Scrip Certificates in which case it shall:

(i) credit the Trade Account of that Selling Member with the relevant Trade Pound amount of the Trade;

(ii) Debit the Manager's or Franchisee's Trade Account with the relevant Trade Pound amount of the Trade.

(c) Issue of Product Vouchers. At the request of any Member, the Manager and/or its Franchisees may issue to that Member Prepaid Scrip Certificate(s) entitling the bearer to receive goods and services to the value of the Prepaid Scrip Certificate in which case it shall:

(i) Debit the Trade Account of that Buying Member with the relevant Trade Pound amount of the trade;

(ii) Credit the Manager's or the Franchisee's Trade Account with the relevant Trade Pound amount of the Trade.

(d) Selling Member's Obligation. A Selling Member must trade with the bearer of a Prepaid Scrip Certificate by supplying goods and services to the value of the Prepaid Scrip Certificate. There is no need for the Selling Member to forward the redeemed Prepaid Scrip Certificate to the Manager after the Trade has been completed.

(e) Payment of Balance in Cash. The bearer of a Prepaid Scrip Certificate may, if the Trade Pound amount of the Prepaid Scrip Certificate is insufficient to meet the purchase price of the goods or services to be sold or provided by the Selling Member, pay the balance of the purchase price to the Selling Member in cash rather than in Trade Pounds. No Change Payable. Where the Trade Pound amount of the Prepaid Scrip Certificate exceeds the purchase price of the goods or services to be sold or provided, the Selling Member is not obliged to pay any change or give any credit in favour of the bearer of the Prepaid Scrip Certificate.

(f) Supplementary or Amended Rules. The Manager may, from time to time, issue supplementary or amended rules for the use of Prepaid Scrip Certificates, which shall be endorsed thereon, and Members using Prepaid Scrip Certificates shall be bound thereby.

(g) No express or implied warranty of merchantability or fitness for a particular purpose. In respect of goods or services provided pursuant to the production of a Prepaid Scrip Certificate, the Manager or the Franchisee make no express or implied warranty including as to the merchantability or fitness for a particular purpose of any such goods or services provided by the Selling Member. For the purposes of such Trade the Member receiving the Prepaid Scrip Certificate shall be deemed to be the Selling Member.

6.5 Trade by Gift Card.

(a) Gift Cards. "Gift Cards" are cards preloaded with a Trade Pound amount, which entitles the authorised bearer to participate in the Trading Program.

(b) Issue of Gift Cards. At the request of any Member, the Manager may issue to a non-member a Gift Card in which case it shall:

(i) Debit the Trade Account of the requesting Member with the relevant Trade Pound amount;

(ii) Credit the Gift Card being issued with the relevant Trade Pound amount. The issue and the amount of Gift Cards shall be at the sole discretion of the Manager.

(c) Gift Card Use. When a Gift Card is presented to a Selling Member for the purchase of goods or services, the Selling Member must follow the trade procedure as set out in section 6.1.

(d) No express or implied warranty of merchantability or fitness for a particular purpose. In respect of goods or services, provided pursuant to the production of a Gift Card, the Manager makes no express or implied warranty including as to the merchantability or fitness for a particular purpose of any such goods and services provided by the Selling Member. For the purposes of such Trade, the Member to whom the gift card is produced shall be deemed to be the Selling Member.

(e) Expiry date. Gift cards will expire twelve (12) months from date of issue.

(f) Supplementary or amended rules for the use of Gift Cards, which shall be endorsed thereon, and Members using or accepting Gift Cards shall be bound thereby.

6.6 Trade by Gift Certificate. The procedure for conducting a Trade by way of "Gift Certificate" is:

(a) (Issue of Gift Certificate) A Member may issue a Gift Certificate entitling the bearer to participate in the Trading Program. The issuer partially completes the Gift Certificate by:

(i) inserting its name and card number (Buying Member);

(ii) the expiry date of the Gift Certificate; and

(iii) the Trade Pound amount of the Trade;

(b) (Produce Gift Certificate) The bearer who intends to purchase goods or services shall produce prior to receiving the goods or services the Gift Certificate to the Selling Member;

(c) (Selling Member's obligation) A Selling Member must trade with the bearer of a Gift Certificate as if the bearer were a Buying Member;

(d) (Complete Gift Certificate) The Selling Member completes the following particulars of the proposed Trade upon a form prescribed from time to time by the Manager as the form to be completed for the purposes of a Transaction Voucher Trade ("Transaction Voucher"):

(i) the bearer's identification and details as requested on the Gift Certificate;

(ii) the name of the Selling Member and its account number;

(e) (Sign Gift Certificate) The bearer signs the Gift Certificate and the Selling Member shall check that the signature on the Gift Certificate conforms with the identification provided;

(f) (Obtain authorisation) The Selling Member, obtains authorisation from the Manager for the proposed Trade;

(g) (Endorse authorisation) The Selling Member endorses the Gift Certificate with the authorisation number issued by the Manager (if one is issued);

(h) (Send Gift Certificate) The Selling Member sends the original completed Gift Certificate to the Manager within fourteen (14) days to be recorded;

(i) (Payment of balance in cash) The bearer of a Gift Certificate may, if the Trade Pound amount of the Gift Certificate is insufficient to meet the purchase price of the goods or services to be sold or provided by the Selling Member, pay the balance of the purchase price to the Selling Member in cash rather than in Trade Pounds;

(j) (No change payable) Where the Trade Pound amount of the Gift Certificate exceeds the purchase price of the goods or services to be sold or provided by the Selling Member, the Selling Member is not obliged to pay any

change or give any credit in favour of the bearer of the Gift Certificate.

6.7 Trade by Multi Trade Voucher. The procedure for conducting a Trade by way of "Multi Trade Voucher" is:

- (a) (Issue of Multi Trade Voucher) A Member may sell to another Member an agreed value Multi Trade Voucher entitling the bearer to participate in the Trading Program. The Selling Member completes the Multi Trade Voucher as specified including:
  - (i) inserting the Selling Member's name and address;
  - (ii) date of issuance; and
  - (iii) the Selling Members authorised signature.
- (b) (Produce Multi Trade Voucher) The bearer who intends to purchase goods or services shall produce prior to receiving the goods or services the Multi Trade Voucher to the Selling Member;
- (c) (Selling Member's obligation) A Selling Member must supply to the bearer goods and services to the value of the prepaid Multi Trade Voucher as per conditions denoted on the Multi Trade Voucher;
- (d) (Payment of balance in cash) The bearer of a Multi Trade Voucher may, if the Trade Pound amount of the Multi Trade Voucher is insufficient to meet the purchase price of the goods or services to be sold or provided by the Selling Member, pay the balance of the purchase price to the Selling Member in cash rather than in Trade Pounds;
- (e) (No change payable) Where the Trade Pound amount of the Multi Trade Voucher exceeds the purchase price of the goods or services to be sold or provided by the Selling Member, the Selling Member is not obliged to pay any change or give any credit in favour of the bearer of the Multi Trade Voucher.

6.8 Acknowledgment of Liability. The signing by or on behalf of the Buying Member of the Transaction Voucher or the providing of the Buying Member's Card details constitutes, subject to these Rules:

- (a) acknowledgment by the Buying Member that the Trade to which the transaction relates has been conducted in accordance with these Rules;
- (b) agreement on the part of the Buying Member that the Buying Member's Trade Account is to be debited in accordance with Rule 5.3(b) with the amount referred to in the Proof of Transaction; and
- (c) if the effect of debiting the Trade Account of the Buying Member with the Trade Pound amount of the Trade, after offsetting that amount against any credit balance in that Trade Account, is to produce a debit balance in that Trade Account, an acknowledgment and evidence of the Buying Member's liability as provided in Rule 3.4.

6.9 Non-Compliance with Procedure. Where the Buying Member or the Selling Member does not comply with any part of the Trade procedure set out in these Rules, the Trade is valid unless the Manager refuses to process it or, after it is processed, reverses, cancels or alters the entries in the Trade Accounts of the Members involved.

## 7. ELECTRONIC PROCESSING SERVICES

7.1 Availability. Electronic Processing Services are available for Members who register with the Manager for use of telephone, mobile devices, EFTPOS terminals and/or internet communication systems which meet the required specifications and configurations as may be specified by the Manager from time to time. Each registered Member shall procure and maintain the hardware and data connection which meet these requirements at its own expense.

7.2 Changes. The Manager may inform Members from time to time about changes for access to or operating the Electronic Processing Services. Members must comply with all changes when accessing or operating the Electronic Processing Services.

7.3 As is. The Electronic Processing Services are provided on an "as is", "as available" basis only and the time periods during which these services may be available are subject to change with minimal or no notice. The Manager is permitted at any time, at its sole discretion and without prior notice, to temporarily suspend the operation of these services for updating, maintenance and upgrading purposes or any other purpose that the Manager deems appropriate. In such event, the Manager and its Associates shall not be liable for any loss, liability, claims, actions, expenses or damage that may be incurred directly or indirectly by a Member as a result of the suspension of services.

7.4 Procedures. Members using Electronic Processing Services are responsible for compliance with the Procedures for using the Electronic Processing Services. The Manager and its Associates are not responsible for any error/omission made by Members in using these services. The Procedures may be varied by the Manager from time to time. Members undertake to be bound by, and to comply with, all Procedures as may be issued by the Manager from time to time. The Manager shall not be bound by or obligated to take any action on any Instructions that do not comply with the Procedures. The Manager may reject any non-compliant Instructions.

7.5 Members Trading Portal. The Bartercard Members Trading Portal, which is known as "MYBC", and/or associated websites and applications.

7.6 Instructions. The Manager will rely on all requests, communications, operations or transactions transmitted by Members using telephone, mobile devices, EFTPOS terminals and/or internet communication systems or by the Member's login through the Members Trading Portal, registered for Electronic Processing Services. Members must not permit or allow any unauthorised person to access their Electronic Processing Services. If a Member has reason to believe that someone else has accessed their Bartercard account(s) using the Electronic Processing Services, the Member must immediately notify and instruct the Manager in writing to revoke their access to Electronic Processing Services.

A Member will not be liable for unauthorised Instructions received by the Manager after the Member has notified the Manager to revoke its access to Electronic Processing Services. Until the Manager receives notice of revocation, all Instructions received by the Manager associated with the Member's account will be deemed to have come from the Member. The Manager shall be entitled to rely on such Instructions. The Members acknowledge that the Manager may not be able to reverse or cancel any transaction executed on Instructions received prior to the Manager's receipt of the notice of revocation. By providing Instructions to the Manager via the Electronic Processing Services, the Member providing the Instructions warrants and acknowledges that:

- (a) all details in the Instructions are true and correct and payable in Trade Pounds;
- (b) the transaction does not violate the Rules;
- (c) the Buying Member and the Selling Member have voluntarily entered into the transaction and are not disputing any part of the transaction; and
- (d) they have used reasonable care and diligence in the transaction to detect fraud or deception in connection with the transaction.

7.7 Records.

(a) The Buying Member and the Selling Member shall maintain written or electronic records to substantiate any transaction facilitated with the Electronic Processing Services. Upon request by the Manager, the Selling Member and the Buying

Member shall each produce such records. If the Selling Member or the Buying Member fails to produce such records within ten (10) days after a request by the Manager, the Manager shall have the right, which it may exercise in its absolute discretion, to reverse or alter all or part of the relevant transaction(s).

(b) The Manager's records, any records of Instructions made, performed, processed or effected through the Electronic Processing Services by a Member or any person purporting to be a Member, any record of transactions relating to the Electronic Processing Services and any record of transactions maintained by the Manager or by any person authorised by the Manager relating to or connected with the Electronic Processing Services whether stored in electronic or printed form, shall be conclusive evidence of the Instructions and transactions and the Member's liability to the Manager for the transaction save in the case of manifest error. All such records are admissible in evidence as proof of the transaction and Instructions and the Members waive any right to challenge or dispute the admissibility, reliability, accuracy or the authenticity of the contents of such records save in the case of manifest error on the basis that the records were incorporated and/or set out in electronic form or were produced by or are the output of a computer system.

7.8 Non-Compliance with Procedure. Where the Buying Member or the Selling Member does not comply with any part of the Trade procedure set out in these Rules, the Trade is valid unless the Manager refuses to process it or, after it is processed, reverses, cancels or alters the entries in the Trade Accounts of the Members involved.

7.9 Termination and Suspension of Electronic Processing Services. The Manager shall be entitled to terminate a Member's Electronic Processing Services, without notice, upon the occurrence of any of the following events:

- (a) a Member's breach of the Rules;
- (b) continued access to the Electronic Processing Services by a Member poses a threat to the security, integrity or operations of the Electronic Processing Services or the Manager, or the information systems of the Manager or the other Members;
- (c) the Member's Electronic Processing Services has remained inactive for a period of three (3) months; or
- (d) the Member's membership in the Trading Program has been terminated, or its Trade Account closed.

## 8. SPECIAL TRADE PROCEDURE

8.1 Special Trades. A special procedure applies to Trade transactions involving the sale or provision of goods or services in the form of special orders, construction jobs, provision of services over time or work-in-progress which must be paid for when work is completed or in stages and such other transactions as the Manager may from time to time determine. In this Rule, such a transaction is referred to as a "Special Trade" and the goods or services so sold or provided are referred to as a "Special Job or Order".

8.2 Procedure. The procedure applicable to a Special Trade is as follows:

- (a) (Estimate of cost) Before authorising the Selling Member to commence the Special Job or Order, a Buying Member should obtain a written estimate from the Selling Member;
- (b) (Deposit in Trade Pounds) Before commencing the Special Job or Order, if appropriate, the Selling Member should obtain a deposit or down payment in Trade Pounds. Payment of the deposit or down payment can be made by Transaction Voucher and the Manager's authorisation must be obtained if the amount exceeds the Minimum Authorised Amount. At the discretion of the Manager the deposit or down payment shall be held in escrow.
- (c) (Shortfall payable in cash) The Selling Member should include in its contract a provision that if the Buying Member does not have sufficient Trade Pounds in its Trade Account when the Manager's authorisation is requested, then the difference will be paid by the Buying Member by way of cash payment to the Selling Member;
- (d) (Special Authorisation) In order to "reserve" an amount of Trade Pounds from the Buying Member's Trade Account until a particular Special Job or Order is completed, the Selling Member must forward to the Manager a written request, signed by the Selling Member and countersigned by the Buying Member, for "Special Authorisation" for the estimated amount less any deposits or down payments. If the Manager grants Special Authorisation, it shall give a "Special Authorisation Number", and the amount so authorised will then be frozen in the Buying Member's Trade Account which will be treated by the Manager as if that amount had been debited from it;
- (e) (When complete) When the Special Job or Order has been completed or partially completed, the Selling Member shall complete a Transaction Voucher for the amount due, obtain the Buying Member's signature, endorse the Transaction Voucher with the Special Authorisation Number and forward the completed Transaction Voucher to the Manager. In the event of partial payment, the Special Authorisation shall be reduced by that amount;
- (f) (Manager to credit Selling Member) Subject to these Rules the Manager shall, upon receipt of the duly signed and completed Transaction Voucher, credit the Selling Member's Trade Account and debit the Buying Member's Trade Account.

## 9. AUTHORISATION PROCEDURE

9.1 Authorisation to be Sought. Where the Trade Pound value of a proposed Trade exceeds such amount as the Manager may specify from time to time or as endorsed on the Member's Card, (the "Minimum Authorised Amount") the Selling Member must seek the Manager's authorisation for the Trade.

9.2 Authorisation Granted. If the Manager grants its authorisation to a proposed Trade, then the Manager will issue an Authorisation Number in respect of it which shall freeze the funds in the Buying Member's Trade Account.

9.3 Refusal of Authorisation. The Manager shall be entitled to refuse to give its authorisation for any reason including, without limitation that:

- (a) the Buying Member does not have sufficient Trade Pounds or available credit in its Credit Line;
  - (b) either party is not a Member in Good Standing;
  - (c) either party is in breach of the Rules; or
- the Selling Member failed to seek or obtain the Manager's authorisation before the transaction.

9.4 Expiry of Authorisation. An authorisation granted by the Manager is valid only for a period of fourteen (14) days after the date upon which it was granted, after which it expires whereupon the Manager may treat the Trade as if no authorisation had ever been granted.

## 10. PROCESSING OF TRADE TRANSACTIONS

10.1 Posting of Authorised Trade. Where the Manager has granted its authorisation and the Authorisation Number so issued has been endorsed on the Transaction Voucher, the Manager shall, subject to these Rules, post the Trade to the Trade Accounts

of the Selling Member and the Buying Member.

10.2 Where Manager Suspects Breach, Fraud etc. The Manager is not obliged to process a Trade where it reasonably suspects a breach of the Rules, fraud and/or misleading or deceptive conduct by any party to the Trade. The Manager is not obliged to refuse to process any Trade under any circumstances.

10.3 Lost or Stolen Card. A Member is liable for all transactions processed on its own and any Additional Cardholder's lost or stolen card(s) up until the Manager receives written notification from the Member that its card or any Additional Cardholder's card has been lost or stolen. Upon making a written notification that a card has been lost or stolen, a Member must prove to the Manager's satisfaction that the Member has made all reasonable efforts to reclaim a lost or stolen card.

10.4 Where No Authorisation Number. If an Authorisation Number is not endorsed on a Transaction Voucher, the Manager may post the Trade to the Member's Trade Account but shall have no obligation to do so.

10.5 Late Receipt by Manager. The Manager, in its sole discretion, may decline to process any Electronic Processing Services Trade, Transaction Voucher, Gift Certificate or Other Voucher which is received later than fourteen (14) days after the date of the Trade, even if authorisation was granted.

10.6 Audit and Verification. All Trades are subject to final audit and verification by the Manager and, in the case of errors or inaccuracies, the Manager may at its sole discretion debit or credit a Member's Trade Account so as to correct any error without giving prior notice to the Member whose Trade Account is affected.

10.7 Copy of Transaction Voucher. A Member who requests a copy of a Transaction Voucher will be provided with a copy by the Manager subject to payment of an administrative fee which may be prescribed from time to time.

10.8 Copy of Monthly Statements. A Member who requests a copy of a statement detailing that Member's transaction/s ("Monthly Statement") will be provided with a copy by the Manager subject to payment of an administrative fee which may be prescribed from time to time.

10.9 Record Keeping. Members will be charged an administrative fee which may be prescribed from time to time for payments that are not honoured and are processed again.

## 11. TRADE CONDUCT

11.1 100% Barter. All Trades are to be conducted on a one hundred percent (100%) barter basis unless the Selling Member has before entering the Trade obtained the consent of the Manager to Trade in cash or partly in cash and partly by way of trade which consent may be given conditionally, withheld and/or later withdrawn at the sole and unfettered discretion of the Manager.

11.2 Refusal to Trade. If a Member which has been requested to enter into a Trade with a Member in Good Standing declines to enter into that Trade with that Member in circumstances where the first Member would have entered into a transaction if the second Member were willing to pay cash, then the first Member will be deemed to have breached these Rules unless an Authorisation Number has been sought and refused or the Member is on Standby. No Member in debit may refuse to accept Trade under any circumstances.

11.3 Standby.

(a) (Pre-requisite conditions) Where the credit balance of the Trade Account of a Member exceeds the greater of:

(i) £10,000 Trade Pounds; or

(ii) the equivalent of the Trade Pound amount of any line of credit in Trade Pounds that has been granted to the Member by the Manager under these Rules; then that Member may give to the Manager thirty (30) days prior written notice of its intention to temporarily suspend its participation as a Selling Member in the Trading Program (referred to as going on "Standby");

(b) (Expiry of notice period) Upon the expiration of the said period of thirty (30) days, or such shorter period as the Manager may allow, the Member will be deemed to be on Standby, and shall be entitled to refuse to Trade notwithstanding Rule 11.2;

(c) (Reverting to normal) As soon as the credit balance of the Member's Trade Account decreases below the amount referred to in Rule 11.3(a), the Member shall be deemed to be no longer on Standby;

11.4 Taxes and Duties. All tax or duty applicable on Trade transactions are to be paid in Trade Pounds at the point of purchase by the Buying Member.

11.5 Direct Trade. The following provisions of this Rule shall apply in respect of any transaction between two or more Members, which is conducted otherwise than in accordance with the provisions of these Rules:

(a) Members acknowledge and agree that all transactions taking place between them arise because of their being introduced to one another as a result of their being Members of the Trading Program;

(b) in the event that a Member for the purpose of avoiding Transaction/Service Fees engages in Direct Trade with another Member or if a third party Member makes payment on another Member's behalf ("Direct Trade"), then each Member involved in that Direct Trade shall pay a transaction fee equal to the Transaction/Service Fee of the value of that Trade which shall fall due and payable to the Exchange Company upon completion of that Direct Trade;

(c) the provisions of 11.7(b) of this Rule shall not apply where the Manager, in its absolute discretion, is satisfied that the Members entered into a Direct Trade for legitimate reasons other than the avoidance of paying Transaction/Service Fees;

(d) if the Manager has reason to believe that Members have engaged in Direct Trade, the Manager may request from any one or all of the Members it believes have engaged in the Direct Trade, a copy of the Tax Invoice relating to the transaction which must be supplied within 48 hours of the request being made;

(e) Notwithstanding the other provisions of this Rule, the Manager may suspend or terminate the right of a Member to participate in the Trading Program, if the Manager considers that the Member has entered into a Direct Trade in contravention of the spirit of these Rules.

11.6 Overpricing.

(a) A Member must not charge more for any goods or services in Trade Pounds than it would have charged if the Trade were a cash transaction. Charging Trade Pound prices in excess of the cash price is a breach of this Rule and is referred to as "Overpricing";

(b) The Manager may investigate or enquire into complaints of Overpricing by a Member.

11.7 Voucher Splitting.

(a) Where a Member avoids obtaining an Authorisation Number in accordance with Rule 9 by splitting a Transaction Voucher for an amount which would otherwise be in excess of the Buying Member's Minimum Authorised Amount, the Member is in

breach of these Rules. The practice of splitting vouchers in breach of this Rule is referred to as "Voucher Splitting";

(b) If the Manager considers that the Member has entered into Voucher Splitting in breach of this Rule the Manager may:

(i) Refuse to process the voucher, reverse, alter or cancel an entry in any

Member's Trade Account; and/or

(ii) Suspend or terminate the right of a Member to participate in the Trading Program.

11.8 Poor Service. Where in the Manager's opinion a Member fails to respond to another Member's enquiry or fails to respond to another Member in the same manner as the Member would have if the other Member were a cash customer, the Member shall be deemed to have engaged in "Poor Service" for which the Manager may suspend or terminate the right of the Member to participate in the Trading Program.

## 12. EXTRAORDINARY MEMBER TRADES

12.1 Extraordinary Member Trades. The Manager may participate in the Trading Program as an Extraordinary Member and the Manager may debit or credit the Manager's Trade Account and correspondingly credit or debit the Trade Account of the other Member participating in the Trade.

12.2 Extraordinary Member's Credit Limit. Subject to the Deed of Management, the Manager as an Extraordinary Member is entitled to a line of credit in Trade Pounds.

12.3 Warranty as to Title. Where the Manager, acting in its Extraordinary Member capacity, participates in the Trading Program as a Selling Member, the Manager warrants to the Buying Member that the Manager has title to the goods to be traded free from any charge, lien or encumbrance.

12.4 The Competition Act 1998 and the Enterprise Act 2002. The Competition Act 1998 and the Enterprise Act 2002 imply terms, conditions and warranties ("prescribed terms") into contracts for the supply of goods and services and prohibits the exclusion, restriction or modification of certain terms, conditions and warranties. In some cases, a supplier is permitted to limit its liability for a breach of the prescribed terms. In so far as not proscribed by the prescribed terms or when the negligence of the Manager causes death or personal injury:

(a) the liability of the Extraordinary Member in respect of a breach of a prescribed term or to any other term of any related agreement relating to the products or any part of the products is limited at the option of the Extraordinary Member to the replacement or repair of the products part thereof or payment of the cost of repairing or replacing the product or any part of the products;

(b) in these conditions the Member does not have under any circumstance any cause of action against or right to claim or recover from the Extraordinary Member for, or in respect of, any loss or damage of any kind whatsoever, caused directly or indirectly by:

(i) any defect in material or workmanship of, or any other defect whatsoever in, or unsuitability for, any purpose of the products or any part of the products; or

(ii) by default, or negligence on the part of the seller or of any employee, contractor or agent of the seller or of any person for whom the seller has legal responsibility relating to the supply of, or otherwise concerning products or any part of the products.

12.5 The Provisions of the Sale of Goods Act 1979. The Provisions of the Sale of Goods Act 1979 are not prescribed terms for the purpose of these rules and the Extraordinary Member hereby specifically excludes those provisions from any contract between it and the Member.

12.6 Limitations. "The limitations in clauses 12.4 and 12.5 apply to the extent permitted under the Competition Act 1998 and the Enterprise Act 2002."

12.7 Assignment of Warranty. Upon the completion of any Trade in which the Manager, acting in its Extraordinary Member capacity, participates as a Selling Member, the Manager assigns the benefit of any warranty attaching to the goods to the extent that the benefit of any warranty attaching to the goods is lawfully capable of assignment.

12.8 Retention of Title. Where the Manager, acting in its Extraordinary Member capacity, participates in the Trading Program as a Selling Member, the following provisions apply to the exclusion of the provisions of the Sale of Goods Act 1979 and any other act or law relating to the passing of title between a seller and a buyer:

(a) Risk in the Goods will pass to the Buying Member upon delivery

(b) Title to the Goods will pass to the Buying Member once the Manager has received payment in full or a debit entry in the Trade Account of the Buying Member for the Goods has been authorised and processed.

(c) Until title to the Goods has passed to the Buying Member, the Buying Member will:

(i) hold the Goods as Bailee for the Extraordinary Member;

(ii) store the Goods separately from all other material in the Buying Member's possession;

(iii) take all reasonable care of the Goods and keep them in reasonable condition;

(iv) insure the Goods: with a reputable insurer, from the date of delivery, against all risks, for an amount at least equal to the Price and noting the Extraordinary Member's interest on the policy;

(v) ensure that the Goods are clearly identifiable as belonging to the Extraordinary Member;

(vi) not remove or alter any mark on or packaging of the Goods; and

(vii) Provide the Extraordinary Member such information concerning the Goods as the Extraordinary Member may request from time to time.

12.9 Insolvency of Member. If, at any time before title to the Goods has passed to the Buying Member, the Buying Member informs the Extraordinary Member, or the Extraordinary Member reasonably believes, that the Buying Member has or is likely to become subject to any of the events specified in clause 30 or in circumstance which give the Manager or the Exchange the right to terminate this agreement and the Goods remain in the possession or control of the Buying Member, the Extraordinary Member may (without limiting any of the Extraordinary Member's other rights and remedies):

(a) require the Buying Member at the Buying Member's expense to redeliver the Goods to the Extraordinary Member;

(b) if the Buying Member fails to do so promptly, enter any premises where the Goods are stored and repossess them;

(c) the Extraordinary Member is hereby irrevocably authorised by the Buying Member to do all or any of the following things in re-

taking or attempting to re-take possession of the goods (or any part thereof), and may exercise any of the following powers through any of the Extraordinary Member's directors, officers, servants, agents, or sub-contractors; that is to say:

(i) to enter upon any land, buildings or property owned, leased or occupied by the Buying Member;

- (ii) to use force in order to obtain entry to any such land, buildings or property;
- (iii) to sever, remove and disconnect the goods (or any part thereof) from any land, building or other property to which the same have been attached or affixed, without liability for any damage or injury thereby caused to such land, buildings or other property;
- (iv) to appoint a receiver to take possession of the goods or any part of them; and
- (v) in the event that the goods (or any part of them) have been inter-mingled with goods of the same or a similar character or description, to appropriate out of the goods so intermingled such quantity or amount as in the opinion of the Extraordinary Member fairly represents the quantity or amount and the value of the goods sold by the Extraordinary Member to the Buying Member;
- (d) whilst title to any goods sold by the Extraordinary Member, to the Buying Member remains vested in the Extraordinary Member:
- (i) the Buying Member must not sell, lease, encumber, or otherwise deal with or part with possession of the goods or any part thereof until title has transferred to and become vested in the Buying Member; and
- (ii) in the event that the Buying Member does (in breach of the provisions of paragraph (d)(i) of this Rule) sell, lease, encumber, deal with or part with possession of the goods or any part thereof, all proceeds of such sale, leasing, encumbering, dealing or parting with possession of the goods must be placed by the Buying Member in a separate account, and be held by the Buying Member on trust for the Extraordinary Member until such time as title to the goods has passed to and become vested in the Buying Member in accordance with the provisions of paragraph (a) of this Rule.

#### 12.10 Competition Act 1998.

To the extent permitted under the Competition Act 1998 or any other applicable law the Manager and the Exchange Company exclude all conditions and warranties implied into the Rules and the Manager and the Exchange Company shall not be liable for any consequential, special or indirect loss or damage (including but not limited to loss of opportunity, loss of revenue or loss of profits). To the extent that the Manager or the Exchange Company is able to limit the remedies available under the Rules, the Manager and the Exchange Company expressly limit their liability for breach of a non-excludable statutory guarantee to supplying the trading services again or the payment of the cost of having the trading services supplied again.

### PART III - ADMINISTRATION OF THE PROGRAM

#### 13. EXCHANGE COMPANY'S ROLE

13.1 Provision of Services. The Exchange Company shall use its best efforts to cause the Manager to provide to Members in Good Standing the following services (the "Exchange Company Services"):

- (a) maintenance of current lists of all Members and Members in Good Standing;
- (b) provision to Members of access to non-confidential authorised details of current information on Members in Good Standing and goods or services available under the Trading Program;
- (c) publication from time to time of news bulletins and the making available of advertising space in such news bulletins to Members in Good Standing for goods or services they may offer through the Trading Program, for a fee;
- (d) operation and maintenance of a procedure by which Members may obtain Authorisation Numbers in accordance with these Rules;
- (e) administration and enforcement of the Rules;
- (f) ongoing review and, where necessary, amendment of the Rules;
- (g) processing of properly completed Transaction Vouchers, Gift Certificates and Other Vouchers;
- (h) carrying out of the duties and functions of the Manager as contained in these Rules and the Deed of Management; and
- (i) Carrying out of the duties and functions of the Exchange Company as are required to be carried out by the Manager on behalf of the Exchange Company under these Rules and the Deed of Management.

13.2 No Liability. The Exchange Company and the Manager will not be liable to any Member for failure to provide, or for the manner of providing the Exchange Company Services from time to time, including those services set out in Rule 13.1.

#### 14. MANAGER'S ROLE

14.1 Monitor and Recover Debit Balances. The Manager shall take all reasonable steps to:

- (a) monitor all Trade Accounts which have a debit balance and that the Members holding those accounts maintain them in accordance with these Rules;
- (b) in the name of the Exchange Company, pursue recovery of debit balances where the Rules provide that they are recoverable and where the Manager is satisfied that the debit balance is commercially viable to pursue.

14.2 Regulate and Control. The Manager has the right and power to regulate and control the number of Trade Pounds within the Trading Program.

14.3 Issue. The Manager shall, on behalf of the Exchange Company, make available to Members in Good Standing, blank Transaction Vouchers and Gift Certificates and any other recognise vouchers or certificates that may be prescribed from time to time by the Manager for use in connection with any Trade Transaction.

14.4 Evidence. The Member acknowledges and agrees that the Manager's records and any records of its Instructions made or performed, processed or effected through the Electronic Processing Services by it or any person purporting to be the Member, or any record of transactions relating to the Electronic Processing Services and any record of transactions maintained by the Manager or by any relevant person authorised by the Manager relating to or connected with the Electronic Processing Services whether stored in electronic or printed form, shall be binding and conclusive on the Member for all purposes whatsoever and shall be conclusive evidence (save in the case of manifest error) of the Instructions and transactions and the Member's liability to the Manager. The Member hereby agrees that all such records are admissible in evidence and that it shall not challenge or dispute the admissibility, reliability, accuracy of the authenticity of the contents of such records merely on the basis that such records were incorporated and/or set out in electronic form or were produced by or are the output of a computer system (save in the case of manifest error) and the Member hereby waives any of its rights (if any) to so object.

14.5 Gift Certificate. The Manager may, on behalf of the Exchange Company, upon request or in accordance with Rule 21 of these Rules, issue to any Members, Gift Certificates for amounts in Trade Pounds as specified therein, which can be used by that Member to participate in a Trade in accordance with Rule 6.6.

14.6 Member's Card.

- (a) The Manager shall, on behalf of the Exchange Company, issue from time to

time to Members in Good Standing, a Member's Card (the "Member's Card/Bartercard Card") which shall, upon its production by the Member named on the card to another Member be prima facie evidence that the Member is a Member in Good Standing, but only in respect of purchases up to the amount specified on the Member's Card, provided that any expiry date endorsed thereon has not passed;

- (b) The Member's Card shall remain at all times the property of the Manager and may not in any way be defaced or altered;
- (c) The Member's Card shall promptly be cut in half and returned to the Manager by the Member:

- (i) upon cancellation of the right to use the Member's Card;
- (ii) where the Member requests the Manager to cancel the Member's Card;
- (iii) upon its expiry (although the Member's Card need not be returned to the Manager);
- (iv) where a Member's Card has been previously reported lost or stolen, upon it subsequently being found.

(d) In these circumstances an agent of the Manager may call on the Member to obtain possession of the Member's Card and the Member shall return the Member's Card to that agent upon sight and proof of authority to collect the Member's Card.

14.7 Periodic Statements. The Manager shall make available Monthly Statements to Members reflecting activity in their Trade Account and amounts that are due and owing to the Manager.

14.8 Deemed Accurate. Statements issued by the Manager are deemed to be accurate unless a Member notifies the Manager in writing of any discrepancy within fourteen (14) days of the Monthly Statement date.

14.9 Interim Account. A Member who requests an interim account particularising activity in that Member's Trade Account will be provided with it by the Manager.

14.10 Manager to act on behalf of Exchange Company. The Manager has the full and unfettered management and control of the affairs of the Exchange Company relating to the conduct and operation of the Trading Program. Save that where these Rules provide that any act, matter or thing is to be done or caused to be done or may be done by the Exchange Company, the Manager may do or cause to be done that act, matter or thing on behalf of the Exchange Company.

#### 15. DIRECTORY, ADVERTISING AND PROMOTIONS

15.1 Authorisation. The Member authorises and requests the Exchange Company and the Manager to notify and advertise to other Members the availability in the Trading Program of that Member's goods or services for the purpose of:-

- providing services
- enhancing customer service
- answering queries
- client research
- facilitating Trade transactions

The Member authorises the Exchange Company, the Manager and its agents, contractors, authorised employees and any related party:

- (a) to send to it commercial electronic messages for the purpose set out in this Rule 15.1, and
- (b) not to include in the commercial electronic message a functional unsubscribe facility.

Electronic messages shall have the same meaning in these Rules as in the Privacy and Electronic Communications Regulations 2003.

15.2 Directory - Publication & Distribution. The Exchange Company shall cause the Manager from time to time to publish and distribute a Directory, either in print or electronic format (the "Directory"), that contains the names and such other information concerning Members that the Manager from time to time determines.

15.3 Directory. A Member in Good Standing shall be permitted to have its name published in the Directory. A Member in Good Standing shall (unless the Manager otherwise determines) be entitled to place a brief description of its business, goods or services in the next Directory after payment by the Member of its Directory Fee. The Exchange Company and the Manager will not be liable for a failure to include a Member's name in the Directory.

15.4 Member's Listing. A Member's listing in the Directory shall be classified according to the classification system determined by the Manager from time to time. No Warranty as to Accuracy of Directory etc. The Exchange Company and the Manager shall be indemnified from any claims, loss or damages by the Member who provided the inaccurate information and The Exchange Company, and the Manager give no warranty as to and will not be responsible for or liable for:

- (a) the accuracy of the information in relation to any Member in the Directory;
- (b) any promotional or other material provided by the Exchange Company or the Manager or any Franchisee or servant or agent to Members; and
- (c) any error or omission therein.

#### 16. TRANSACTION, SERVICE, MARKETING AND SUPPORT, AND DIRECTORY FEES

16.1 Transaction/Service Fee. Each Member shall pay a fee in respect of each and every Trade in which it participates (a "Transaction/Service Fee") which shall be equal in amount to such percentage of the value of the Trade (inclusive of any tax) as the Manager from time to time determines, payable, at the election of the Manager, in cash or in Trade Pounds or both. The Trade Pound amount of any Transaction/Service Fee may, at the election of the Manager, be debited to the Trade Account of either or both of the Members participating in the Trade at the Manager's discretion.

16.2 Marketing and Support/Service Fee. Each Member must pay to the Manager a monthly fee (the "Marketing and Support/Service Fee") which in the discretion of the Exchange Company will be payable entirely in cash or partly in cash and partly in Trade Pounds, or entirely in Trade Pounds.

16.3 Directory Fees and Display Advertising Fees. The Exchange Company is entitled to charge each Member a Directory Fee and a Display Advertising Fee either in cash or in Trade Pounds or partly in cash and partly in Trade Pounds which shall be paid by each Member in the manner prescribed by the Manager from time to time.

16.4 Payment.

- (a) Each Member must pay to the Manager the full amount of all fees and charges owing by it within seven (7) days of the date of the Monthly Statement or within such other period as may be notified in that statement unless the Member has agreed with the Manager in writing that payment is to be sent and received together with the Transaction Voucher to which the fee relates, in which case the Member, (in these Rules called a "Fees with Voucher Member") must forward such fee together with that Transaction Voucher;
- (b) All fees mentioned in paragraph 16 of these Rules are detailed in the

Membership Agreement or elsewhere in these Rules. Members will be notified in writing of any changes to the fees.

16.5 Sales Requirement, Debit Balance Accounts. Members who during the month maintained a debit balance in their account are required to transact sales during that month equivalent to six percent (6%) of their debit balance, which will be calculated on the opening balance or the closing balance whichever is the lesser amount.

16.6 Prepayment. The Manager in its sole discretion may require a prepayment of Transaction/Service Fees payable on transactions in excess of Ten Thousand (£10,000) Trade Pounds, any real estate transaction or any investment transaction or any other transaction which the Manager determines before the transaction is processed.

## 17. OVERDUE FEES OR OTHER MONIES

17.1 Late Fee Payment. In the event that a Member fails to pay:

(a) any fees or charges within the period referred to in Rule 16.4 or, in the case of a Fee with Voucher Member, when the Transaction Voucher to which the fee relates is forwarded to the Manager; and/or

(b) any other monies which become payable under these Rules, by the date upon which it became payable; then the Member must pay each month to the Exchange Company a Late Fee Payment in cash of £25.00.

17.2 Arrears. If a Member is in arrears of payment of any Transaction/Service Fees, Marketing and Support Fee/Service Fee or Directory Fees or any other fees or charges for more than ten (10) days after the date of the Monthly Statement or, in the case of a Fees with Voucher Member, when the Voucher is forwarded to the Manager, then the Manager may cancel any Trade Pound Credit Line granted to the Member and/or freeze the Trade Pound balance and prevent that Member from participating as a buyer in any Trade until satisfactory arrangements are made with the Manager for payment of any monies in arrears.

17.3 Credit Line Reassessment Fee.

If after the payment in full of any arrears the Manager approves a line of credit for a Member whose Trade Pound Credit Line was cancelled, the Member will be charged a Trade Pound Credit Line Reassessment Fee in cash of £25.00.

17.4 Manager's election to take Trade Pounds.

(a) (Manager may elect) Where any fees payable by a Member in cash remain outstanding for longer than sixty (60) days after they fell due, the Manager may, in its sole discretion and upon giving notice in writing to the Member, elect to convert the Member's cash indebtedness into a Trade Pound obligation of three times the Trade Pound equivalent of the cash amount outstanding, and thereupon debit the Member's Trade Account with the Trade Pound amount and credit the Manager's Trade Account with that amount.

(b) (Member may pay cash) A Member whose liability in cash for outstanding fees has been converted to Trade Pounds in accordance with Rule 17.4(a) may, at any time within thirty (30) days after receiving a notice under Rule 17.4(a), satisfy its newly converted obligation in Trade Pounds by paying to the Exchange Company the amount of the cash fees that was payable immediately before the conversion, whereupon the Manager shall reverse the Trade Pound debit referred to in Rule 17.4(a).

17.5 Debit Balance, Not Enough Trade. In the event that a Member fails to transact sales during the month equivalent to six percent (6%) of its debit balance, which will be calculated on the opening balance or the closing balance whichever is the lesser amount referred to in Rule 16.5, the Member may be charged a cash fee at such rate as calculated on the opening balance or the closing balance whichever is the lesser amount.

17.6 Electronic Processing Fee. The electronic processing fee means the charge that may be imposed and varied from time to time by the Manager, subject to the Manager having first provided thirty (30) days' notice of such variation to the Members.

## 18. BREACH OF RULES

18.1 Investigate Complaints. The Manager is entitled but shall not be compelled to enquire into and investigate complaints of breaches of these Rules by a Member.

18.2 Fair Dealings. The Manager may suspend and/or restrict a Member's right to participate in the Trading Program and take such other action as it is empowered to pursuant to these Rules, in order to promote or ensure fair dealings between Members. The Manager may from time to time issue Fair Trading Guidelines, which Members must comply with.

18.3 Suspension and Show Cause. If the Manager suspects that a Member has breached these Rules, the Manager:

(a) may give notice of the breach in writing to the Member and request the Member to show cause in writing within seven (7) days as to why its Membership should not be terminated;

(b) may immediately, and without notice suspend and/or otherwise restrict, at the Manager's absolute discretion, the Member's right to participate in the Trading Program.

18.4 Termination. If, at any time after the expiry of seven (7) days from the date upon which a notice under Rule 18.3(a) was sent to a Member, the Manager considers in his absolute and unfettered discretion that the right of any Member to participate in the Trading Program should be terminated, the Manager may terminate the Member's right to participate in the Trading Program immediately and shall thereupon notify the Member accordingly, which termination shall have immediate effect.

18.5 Suspension. If the Manager suspends a Member's right to participate in the Trading Program, all activity in the Member's Trade Account must cease until such time as the Manager has made its determination under Rule 18.4.

18.6 Manager's Decision Conclusive. A decision of the Manager to suspend or terminate a Member's Trade Account will be final and conclusive and can only be reconsidered, reversed, revoked or altered by the Manager in its absolute discretion.

18.7 Payment of Costs. In the event of a breach of the Rules by a Member, that Member must pay to the Manager all reasonable legal costs of the Manager and/or the Exchange Company in enforcing these Rules on an indemnity basis together with interest at the rate of ten percent (10%) per annum (or as ordered by the court) from the date upon which such costs are paid by the Manager until the date on which the Member makes payment.

## 19. TRADE OUT AND CESSATION OF PARTICIPATION

19.1 Manager may require Pre-Payment. If:

(a) the Manager reasonably believes that a Member is spending the credit balance in the Member's Trade Account or reducing the debit balance in the Member's Trade Account in anticipation of ceasing future participation in the Trading Program; or

(b) a Member has given notice to the Manager or the Exchange Company or has,

by its actions, in the opinion of the Manager indicated that it intends to cease participation in the Trading Program; or

(c) a Member's right to participate in the Trading Program has been terminated but the Manager allows the Member to finalise its Trade Account by entering into Trades as a Selling Member only; then the Manager is entitled to require immediate pre-payment in cash of the Transaction Fees and Service Fees which will become payable on the debit or credit balance of the Member's Trade Account.

19.2 No Trading Unless Fees Pre-Paid. Where the Manager requires a Member to pre-pay fees under Rule 19.1 that Member is not permitted to enter any Trades until those fees are paid.

## 20. REVERSAL OF TRANSACTIONS

20.1 Manager may reverse certain Transactions. The Manager may reverse, alter or cancel an entry in any Member's Trade Account in relation to a Trade if:

(a) both the Buying Member and the Selling Member request the Manager in writing to do so;

(b) the Transaction Voucher in respect of the Trade was not or does not appear to have been signed by an authorised signatory or was not signed at all; or

(c) there was, in the Manager's opinion, some breach of these Rules or a fraudulent act in connection with the conduct of the transaction; or

(d) the Manager has reason to believe that the transaction is fraudulent.

20.2 Member may Show Cause. Before reversing, altering or cancelling any entry by reason of the Manager believing that there has been a breach of any of these Rules in connection with any transaction, the Manager shall give the Buying Member and the Selling Member notice requiring them to show cause within seven (7) days as to why the transaction/s should not be reversed, altered or cancelled.

20.3 Where Cause Not Shown. If the Members do not, to the Manager's satisfaction, show cause, the Manager in its absolute and unfettered discretion is entitled to reverse, alter or cancel the entry or entries in the Trade Account of the Buying Member and/or the Selling Member in respect of which the Manager considers there to have been non-compliance with these Rules in which event it shall be the responsibility of the Selling Member to seek payment of the consideration for the goods, services or other items of value from the Buying Member.

20.4 Transaction Frozen until Good Cause Shown. At any time until the Manager has made a determination under Rule 20.3 the Manager may freeze the entry in question, in the Trade Accounts of the Buying Member or the Selling Member or both, until such determination is made.

20.5 Consequence of Reversal of Transaction. If such reversal, alteration or cancellation of any entry in the Selling Member's Trade Account results in a failure of the consideration in whole or in part for the Trade then the Selling Member will have, as against the Buying Member the usual rights exercisable by the Selling Member but shall have no rights against the Manager or the Exchange Company. The Buying Member and the Selling Member hereby indemnify the Manager and the Exchange Company in respect of any exercise or purported exercise of its powers under this Rule.

20.6 No Obligation to Reverse. Notwithstanding Rules 20.1 to 20.4 (inclusive), the Manager has no obligation, in any case, to:

(a) reverse, alter or cancel any entry;

(b) call upon any Member to show cause why any entry should not be reversed, altered or cancelled;

(c) freeze or unfreeze any entry; or

(d) make any determination under this Rule.

20.7 Breach of Rules. The Manager has the right, but not the obligation, to enquire into complaints of breaches of these Rules by a Member. The Manager grants to Bartercard the right to take any actions which, in The Manager's absolute discretion, are deemed necessary to ensure fair dealings between Members. Breaches of these Rules may result in termination of a Member's account and/or immediate adjustment to the Trades between Members involved.

## 21. TERMINATION

21.1 Termination by Member. A Member must give a minimum of thirty (30) days' notice from the expiration of the Minimum Contract Term in writing of its intention to cease to participate in the Trading Program.

21.2 Termination by Manager. Notwithstanding Rule 18.3, the Manager may in its absolute and unfettered discretion suspend or terminate or suspend and then terminate a Member's right to participate in the Trading Program without notice for a breach of the Rules if:

(a) the Member breaches any of these Rules or the terms of the Membership Agreement including but not limited to engaging in unfair trading, poor service, voucher splitting, direct trading or unethical pricing;

(b) the Member has, on two (2) or on more occasions in the previous twelve (12) months been given a notice under Rule 18.3(a);

(c) the Member is in arrears of Transaction/Service Fees or any other charges for a period exceeding thirty (30) days;

(d) the Manager considers that it is not in the best interests of the Trading Program that the Member should continue to participate in it.

21.3 Member's Breach Causes Loss. The Members acknowledge and agree that a breach of these Rules by a Member will cause loss and damage to the Exchange Company or the Manager which may include, but are not limited to:

(a) administrative costs in dealing with the breach;

(b) financial loss due to loss of cash revenue of the Exchange Company, Service Fees, and any other fees and charges payable to the Exchange Company;

(c) expenditure of funds in obtaining legal advice, and in instituting and prosecuting recovery actions;

(d) loss of the goodwill of Members towards the Trading Program and the Exchange Company;

(e) loss of trading volume; and

(f) loss of Members.

21.4 Damages for Breach Payable on Termination. If a Member's right to participate in the Trading Program is terminated by the Manager for a breach of these Rules, that Member must pay to the Exchange Company as a genuine pre-estimate of damages and not as a penalty £250.00 cash plus VAT within twenty eight (28) days of the date of notice of termination of the right to participate. The provisions of this Rule apply in addition to and not in derogation from the provisions of the Rules applicable in the event that a Member ceases to be a Member of the Trading Program including Rule 21.5.

21.5 Consequences of Termination. Upon the termination of a Member's right to participate in the Trading Program:

(a) (Return cards etc.) The Member must immediately return to the Manager all

Member's Cards, additional cards and used or unused Trade Transaction Vouchers, or other documents and property of the Exchange Company or the Manager;

(b) (Fees debited) All cash and Trade Pound Transaction/Service Fees, Directory Fees, Display Advertising Fees and any other fees and amounts payable by it under these Rules shall be immediately debited from the Member's Trade Account;

(c) (Where credit balance) If after debiting the amounts referred to in Rule 21.5(b), the balance in the Member's Trade Account is a credit balance:

(i) that Member must immediately pay to the Exchange Company the amount of cash and Trade Pound Transaction/Service Fees that would have become payable by it in the ordinary course of the Trading Program if that Member had entered into a Trade as a Buying Member in an amount sufficient to spend the amount of Trade Pounds standing to its credit;

(ii) if the Member fails to pay the cash Transaction/Service Fees the Manager, on behalf of the Exchange Company, may debit the Member's Trade Account with an amount of Trade Pounds equivalent to three (3) times the cash Transaction/Service Fees so payable;

(iii) if after receipt of the cash Transaction/Service Fees, (or if the fees are not paid in cash, the debiting of the Member's account) the Exchange Company shall issue to the Member a replacement Member's Card or Gift Certificates expiring one hundred and twenty (120) days from the date of issue, having a Trade Pound value equivalent to the remaining credit balance (if any) of the Member's Trade Account;

(d) (Where debit balance) If after debiting the amounts referred to in Rule 21.5(b), the balance in the Member's Trade Account is a debit balance:

(i) that Member must immediately pay to the Exchange Company the amount of cash and Trade Pound Transaction/Service Fees that would have become payable by it in the ordinary course of the Trading Program if that Member had entered into a Trade as a Selling Member in an amount sufficient to bring its Trade Account to a nil balance;

(ii) the Member has thirty (30) days within which to Trade as a Selling Member and in so doing reduce, so far as it can, the debit balance of its Trade Account;

(iii) at the expiration of the thirty (30) day period, the Member must immediately pay the Exchange Company the amount of cash equivalent to the remaining debit balance in Trade Pounds of its Trade Account;

(e) (No refund of fees) No fees or charges paid to the Manager will under any circumstances be refunded.

(f) (Staff Accounts) All terminated Staff Accounts will be dealt with in accordance with this Rule 21.5 and, upon termination, the Member that is associated with the Staff Account will be liable in respect to any debit balance, fees and/or charges in respect of the termination of the associated Staff Account.

21.6 Certificate as Evidence. A certificate signed by a director or secretary or other person authorised by the Manager is prima facie evidence and, in the absence of evidence to the contrary, is conclusive evidence:

(a) that an amount stated in that certificate is due and payable by the Member to the Exchange Company in accordance with Rule 21.5 hereof;

(b) that any other sum stated in the certificate is due and payable by the Member to the Exchange Company in accordance with these Rules;

(c) of the amount of any interest payable by the Member to the Exchange Company in accordance with the provisions of these Rules; and

(d) of any other fact, matter or circumstance whatsoever relevant to the dealings between the Member and the Exchange Company, or between the Member and the Manager, or between the Member and another Member, in relation to the provisions of these Rules.

21.7 Enforcement Expenses. If a Member is in default or in breach under these Rules, the reasonable amount of any enforcement expenses reasonably incurred or expended by the Manager or the Exchange Company in exercising any right under these Rules or arising from the default or breach are immediately payable by the Member with effect from the date on which the enforcement expenses are incurred or expended by the Manager or the Exchange Company.

21.8 Monies Due for Payment. Termination for whatever reason shall not affect the right of the Manager under these Rules to enforce any provision relating to the payment of any fees, charges and any other monies due.

21.9 Notification. Upon termination of a membership by the Manager, the Manager may in its sole discretion communicate the termination of the membership to the Members of the Exchange by whatever means it deems appropriate.

#### **PART IV - CREDIT LIMITS AND DEBT RESERVE FUND**

##### **22. TRADE POUND CREDIT LINES**

22.1 Credit Line. The Manager may grant or withdraw from any Member a line of credit in Trade Pounds, as an advance on a Member's future sales in an amount and on terms consistent with that Member's creditworthiness and ability to repay and may take the following matters into consideration:

(a) the financial position of the Member;

(b) any credit references supplied by the Member;

(c) the Member's trading history;

(d) the nature of the Member's business; and

(e) the period of time during which the Member has operated its business.

22.2 Security. The Manager may require security and/or a guarantee to support a Credit Line and also may require the Member to contribute a further non-refundable amount to the Debt Reserve Fund as an initial lump sum payment or as a monthly payment or both.

22.3 Approval. The grant of a Credit Line shall be subject to the approval of the Manager, which may withhold or grant its approval conditionally or unconditionally.

22.4 Credit Reference Check. The Manager grants to the Manager the right and power to make a search with a credit reference agency, which will keep a record of that search and will share that information with other businesses. The Manager may also make enquiries about you and your business partners with a credit reference agency.

22.5 Credit Reference Records. The Manager will monitor and record information relating to your Trade Account performance and such records will be made available to credit reference agencies, who will share that information with other businesses in assessing applications for credit and fraud prevention.

22.6 Condensed Guide. A condensed guide to the use of your personal and business information is available in Appendix 1.

22.7 Transfer of Trade Balance. If a Member has more than one Trade Account or is the sole owner/s of more than one trade account the Manager shall have the right to transfer credit balances from a Member's Trade Account or associated Trade Account to balance a Member's Trade Account or associated Trade Account in debit in the satisfaction of any liabilities and or indebtedness to the Manager whether such liabilities

be actual, contingent, primary, collateral, several or joint, and to transfer a debit balance from a Member's Trade Account or associated Trade Account to any other Trade Account of the Member or associated Trade Account of the Member which is in debit. That increased debit balance shall be recoverable from the Member in accordance with these Rules.

22.8 Trade Balance beyond Credit Limit. Where:

(a) in the case of a Member to whom the Manager has not granted a line of credit, that Member's Trade Account is in debit, by any amount; there will be payable to the Exchange Company by that Member:

(i) on demand the cash equivalent of that Trade Pound amount in debit; and

(ii) an additional monthly charge in cash of £25.00 while the Trade Account balance remains in debit;

(b) in the case of a Member to whom the Manager has granted a line of credit, that Member's Trade Account exceeds that line of credit, there will be payable to the Exchange Company by that Member:

(i) on demand the cash equivalent of that Trade Pound amount in excess of the line of credit; and

(ii) if the Trade Pound amount exceeds the line of credit by an amount which is greater than (a) ten percent (10%) of the line of credit approved amount or (b) £1,500 Trade Pounds, whichever is the lesser an additional monthly charge in cash of £25.00 while the Trade Account balance remains in excess of the approved line of credit.

##### **23. DEBT RESERVE FUND**

23.1 Purpose. A fund of Trade Pounds ("Debt Reserve Fund") shall be maintained and applied in accordance with the Deed of Management for the purpose of injecting Trade Pounds into the Trading Program where Members are or may be unable to honour their obligations under the Trading Program. The Debt Reserve Fund is for the exclusive protection of the "Bartercard Trade Exchange" which is made up of all Members. The fund is not accessible to an individual Member who remains unpaid or is in dispute with another member. When a membership is terminated for whatever reason, and a trade debit balance remains, The Manager will pursue recovery of the outstanding balance for and on behalf of the Exchange. When all recovery methods have been exhausted, the remaining balance is offset against the Debt Reserve Fund.

23.2 Levy of Contribution. The Manager may, in its absolute discretion, but subject to the Deed of Management, levy an amount of T£1250 in Trade Pounds at the discretion of the Manager, from each Member for the monthly Debt Reserve Fund contribution.

#### **PART V - MISCELLANEOUS**

##### **24. FRANCHISEES OF MANAGER**

24.1 Grant of Franchises. The Manager may grant Franchises to Members ("Franchisees") providing such Franchisees with rights to conduct businesses involved in the facilitation of Trade transactions in the Trading Program between Members.

24.2 Role of Franchisees. The role of a Franchisee is to recruit new Members to the Trading Program and to stimulate and facilitate Trade between Members. In consideration for these services, the Franchisee may receive a commission from the Manager.

24.3 Independent Contractors. Franchisees are independent businesses and in their capacity as Members in Good Standing may participate in Trades but do so solely on their own behalf and do not represent or act as agent for or otherwise on behalf of the Exchange Company or the Manager.

24.4 Not a Party. The Exchange Company and the Manager are not parties to, and are not responsible for, any Trades or other transactions or dealings between Franchisees and Members.

##### **25. DISPUTES BETWEEN MEMBERS**

25.1 Disputes between Members. Any dispute that may arise between the Buying Member and the Selling Member shall be settled by the parties themselves. The Exchange Company and the Manager are not obliged to resolve, arbitrate or mediate any disputes between Members. The Exchange Company or the Manager may at its discretion offer the service of mediation or resolution of disputes between Members involving trades between Members.

25.2 Disputes over Trades. Disputes over Trades are between the Selling Member and Buying Member only and shall be settled by those parties themselves. The Manager has no responsibility in connection with any such disputes other than recording the Trade in the ordinary course of business. The Manager is not responsible for use of Trade Pounds by unauthorised persons nor for Trades that do not comply within these Rules. The Manager is not a Selling Member or Buying Member unless it so states in writing.

##### **26. CONFIDENTIAL INFORMATION AND RESTRAINT AGAINST COMPETITION**

26.1 Access to Confidential Information. From time to time whilst participating in the Trading Program, a Member may have access to certain trade secrets or proprietary information of the Exchange Company and/or the Manager consisting of technical information, methods, processes, trade secrets, formulae, compositions, systems, techniques, computer programs, research projects, business information, customer lists, pricing data, sources of supply, financial data and marketing, training, production or merchandising systems and plans and other information relating to the Trading Program confidential to the Exchange Company (the "Confidential Information").

26.2 Not use Confidential Information. A Member must not, whilst a Member or at any time within 10 years after ceasing to be a Member, make use of the Confidential Information either:

(a) for the financial advantage or benefit of the Member or any other person; or

(b) to the detriment or disadvantage of the Exchange Company or the Manager.

26.3 Restraint. A Member may be or may become a Member of any other trade exchange, and may participate in that trade exchange, but otherwise must not, without the prior written consent of the Manager:

(a) whilst continuing to be a Member, work for, engage in, or participate in any business competitive with the business of the Exchange Company or the Manager; or

(b) remain a Member whilst any of its directors, shareholders, partners, proprietors or any other related party/family member associated now or in the past with the Member works for, engages in, is or becomes a member of, or participates in any business competitive with the business of the Exchange Company or the Manager; or

(c) at any time during any of the periods referred to hereunder, whether directly or indirectly and whether solely or jointly with or as director, manager, agent or servant of any person or corporation, carry on or engage in or be interested in or participate in any business which is competitive with the business of the Manager or the Exchange Company, at any place within fifty (50) miles from a place at which the Manager or the

Exchange Company or any subsidiary or franchise or sub-franchise carries on business as appearing from the most recent Directory published by the Manager prior to the time of the Member ceasing to be a Member; that is to say, at any time prior to the date being six (6) months after the Member ceases to be a Member; or at any time between the date referred to in Rule 26.3(c) hereof and the date six (6) months thereafter.

26.4 Intellectual Property. Members in good standing may only use the Bartercard current logo in accordance with the Rules and only to denote their membership in Bartercard. Members must not use Bartercard trademarks, intellectual property, copyrighted materials or logos (collectively "Bartercard intellectual property") in any way that injures or diminishes the goodwill associated with the Bartercard intellectual property or in any way which indicates that the Manager endorses the Member's goods or services. If the Bartercard intellectual property is used by a Member on any internet website, the following disclaimer must appear on the website and in any hyperlink to the website in a prominent and highly visible position:

"Barter Traders Limited 11194577 is not the originator or host of this website and makes no representations about the content and suitability for any purpose of the information contained in this website and gives no express or implied warranty of any kind. Barter Traders Limited 11194577 disclaims (to the full extent allowable by law), all warranties with regard to the information on the website, including any advertisements, including all implied warranties as to merchantability or fitness for use. Barter Traders Limited 11194577 shall not be liable for any damages whatsoever including any special, indirect or consequential damages resulting from loss of use, data or profits, whether in an action in contract or negligence, arising out of or in connection with access to the website or the use or performance of information contained in it." Misuse of the Bartercard intellectual property is prohibited. Members shall immediately cease using the Bartercard intellectual property upon request by the Manager.

## 27. TAXES

27.1 Collect. Selling Members shall charge any appropriate tax applicable to the transaction (e.g. VAT, excise or similar tax) and collect, record and remit the taxes as required by law.

27.2 Exchange Company and Manager not Liable. Under no circumstances will the Exchange Company and/or the Manager be responsible to pay any tax applicable (e.g. VAT, excise or similar tax) on behalf of any Member.

27.3 Taxable Event. A Trade may be treated as a taxable event for the purposes of national and local government tax purposes and the obligation to declare, report and account for all national and local government tax purposes resulting from Trades rests with the Members participating in the Trade Transaction. Each Member hereby indemnifies the Exchange Company and the Manager in respect of any loss or damage incurred by the Manager or any penalty, charge or cost which may be imposed or incurred in respect of any failure by the Member to comply with national or local government tax laws in respect of any Trade in which that Member participates.

27.4 Reporting of Transactions. Members acknowledge and agree that the Exchange Company and the Manager may be required from time to time to make disclosure to the HM Revenue and Customs, the police and to other national and local government authorities in relation to Trades. The Exchange Company and the Manager are authorised to provide any information to and to co-operate in any way with such authorities, in such manner as they in their absolute discretion determine, and whether or not the Exchange Company and the Manager are obliged by law to furnish such information or to provide such co-operation. The Exchange Company and the Manager are not liable to any Member in respect of information furnished to or co-operation with such authorities, in any circumstances whatsoever.

## 28. LEGAL LIABILITY OF MANAGER AND EXCHANGE COMPANY

28.1 No Liability to procure New Members. Whilst the Manager shall use reasonable endeavors to procure new Members to the Trading Program, the Manager and the Exchange Company shall, under no circumstances, be liable for failure to procure new Members or retain existing Members.

28.2 No Warranty as to availability of particular Goods or Services. The Manager and the Exchange Company do not warrant the availability of any particular goods or services under the Trading Program. The Manager and the Exchange Company shall not be responsible or in any way liable if a Member cannot obtain particular goods or services from other Members or if other Members do not buy goods or services from a Member.

28.3 Compliance with Laws. All Members shall observe and comply with all applicable national and local laws and regulations when engaging in Trades.

28.4 Exchange Company and Manager not Liable. The Exchange Company and the Manager shall not be responsible or in any way liable for or in respect of any failure of the part of any Member or Members to comply with such laws.

28.5 Disclaimer of Liability. The Exchange Company and the Manager make no representation or warranty either express or implied and to the fullest extent permitted by law disclaim all liability arising out of or in connection with any Trade between Members, including, without limitation, any liability for the fitness, quality, delivery date, merchantability, prices or any term of the Trade, and exclude any implied warranties on their part as to the fitness, quality or merchantability of any goods or services. In no event shall the Manager or the Exchange Company be liable to the Member for any indirect, incidental, special or consequential loss or damage, loss of use, revenues, profits, goodwill, bargain or loss of opportunities, anticipated savings, loss of or corruption of data from any cause, whether arising from breach of contract, negligence or any other tort, in equity or otherwise and whether or not even if the Manager or the Exchange Company was aware of the possibility of such loss or damage.

28.6 Unauthorised use of Vouchers etc. The Exchange Company and the Manager will not be responsible for:

- (a) the use of Member's Cards, Transaction Vouchers, Gift Certificates, Gift Cards, or other authorised forms by unauthorised persons; or
- (b) transactions that are not conducted in accordance with the Rules.

28.7 Member's Indemnity for Failure to Perform. Member's Indemnity for Failure to Perform. Each Member agrees to indemnify and keep indemnified the Exchange Company and the Manager and each of their directors, officers, employees, agents, independent contractors, subcontractors, and Franchisees in respect of any failure by that Member to perform its obligations under these Rules.

28.8 Member's Indemnity for Claim, Debt or Liability. Each Member agrees to indemnify and hold the Exchange Company and the Manager and each of their directors, officers, employees, agents, independent contractors, subcontractors and Franchisees harmless with respect to any claim, debt, or liability whatsoever arising out of or in connection with any Trade in respect of which that Member is or purports to be

the Buying Member or the Selling Member.

28.9 Not bound by representations of others. The directors, officers, employees, agents, independent contractors, subcontractors and Franchisees of the Manager shall have no right to make any representation or commitment on behalf of the Exchange Company and the Manager without written authorisation of the board of directors of each respective company or entity.

28.10 For the avoidance of doubt, the Members agree that all provisions in the Rules relating to the Manager and/or its Associates' liability, including without limitation, qualifications, exclusions and limitations apply to the Electronic Processing Services. Additionally, the Members acknowledge and agree that the availability and proper functioning of the Electronic Processing Services are dependent on many variables, including without limitation, usage licenses with third parties, location, mobile and internet network availability and signal strength, proper functioning of hardware, software and mobile phone and/or computer. The Manager and its Associates are not liable for any loss, claim, expense, liability or damage caused directly or indirectly howsoever by any unavailability or improper functioning of the Electronic Processing Services for any reason.

28.11 The Members agree to Indemnify and compensate the Manager and its Associates for any damages, claims, actions, loss, expense or liability incurred by such entities as a result of any breach by a Member of the Rules. In addition, any breach of the Rules may result in the Manager exercising its rights under the Rules that may include, without limitation, termination of membership.

## 29. WAIVER

29.1 No Waiver. Any failure or delay by the Exchange Company or the Manager in exercising any right shall not operate as a waiver thereof, and any single or partial exercise of a right shall not preclude any other further exercise of any right.

29.2 Cumulative Remedies. The Manager's and the Exchange Company's rights and remedies are cumulative and are not exclusive of any remedies provided by law. Where a Member is a company, the company and individuals signing for the Member on the Membership Agreement and the Member hereby assume joint and several responsibilities for all purchases and fees outlined in the Membership Agreement and the Rules.

## 30. INSOLVENCY OF MEMBER

30.1 Grant of Charge. Each Member grants to the Exchange Company security over all Trade Pounds credited to that Members Account for the amount of all unpaid Transaction, Service Fees, and other fees and charges owed to the Exchange Company from time to time.

30.2 Where Insolvent Administration. If a Member commits an act of bankruptcy, has a receiver, liquidator, provisional liquidator, administrator or controller appointed to it or any of its assets, makes any arrangement or composition with its creditors or becomes insolvent or bankrupt, then all cash Transaction/Service Fees, Directory Fees and other fees and charges shall immediately become due and payable in full. The Exchange Company has the option in lieu of continuing as a creditor, of treating the Trade Pound balance in the Trade Account as equal in value to the amount of cash Transaction, Service Fees and Marketing and Support Fees, Directory Fees and other fees and charges owing, and terminating the Trade Account.

## 31. DISSOLUTION OF TRADING PROGRAM

31.1 Events Triggering Dissolution. Events Triggering Dissolution. The Trading Program shall be dissolved in accordance with this Rule if an order is made that the Exchange Company be wound up (other than for the purpose of reconstruction or amalgamation).

31.2 Procedure on Dissolution. Upon the occurrence of an event referred to in Rule 31.1 the following procedure shall apply:

- (a) (Inform Members) The Manager shall inform each Member that such event has occurred and draw their attention to the requirements of these Rules;
- (b) (Balancing Period) Each Member and the Manager if permitted shall be entitled to continue to Trade for a period of up to a maximum of ninety (90) days (the "Balancing Period") for the purpose of bringing its Trade Account, as near as possible, to a zero balance, but no Member shall be obliged to Trade during this period;
- (c) (Members in credit - fees payable) Each Member having a Trade Account with a credit balance at the expiry of the Balancing Period shall immediately pay to the Exchange Company:
  - (i) an amount in cash, being the cash equivalent of the Trade Pound Transaction/Service Fees that would have become payable in the ordinary course of the Trading Program if that Member had entered into a Trade as a Buying Member in an amount sufficient to spend the amount of Trade Pounds standing to its credit at the expiry of the Balancing Period; plus
  - (ii) the cash Transaction/Service Fees that would have become payable in that event;
  - (d) (Members in debit) Each Member having a Trade Account with a debit balance at the expiry of the Balancing Period must immediately pay to the Exchange Company:
    - (i) an amount in cash, being the cash equivalent of the Trade Pound Transaction/Service Fees that would have become payable in the ordinary course of the Trading Program if that Member had entered into a Trade as a Selling Member in an amount sufficient to bring the amount of Trade Pounds standing to its Trade Account at the expiry of the Balancing Period to a nil balance; plus
    - (ii) the cash Transaction/Service Fees that would have become payable in that event; plus
    - (iii) the cash equivalent of the debit balance of the Member's Trade Account;
    - (e) (Set off against Manager's Extraordinary Member balance)
      - (i) During and at the expiry of the Balancing Period, any Trade Pound fees payable to the Manager by the Exchange Company under these Rules or otherwise, shall be either set off against any deficit balance in the Manager's Trade Account or added to any credit balance of the Manager's Trade Account;
      - (ii) Following the set off in Rule 31.2(e)(i), if the Manager's Trade Account still reflects a deficit balance, the Manager must convert any Member's cash indebtedness arising during the Balancing Period (in respect of Transaction/Service Fees) which are able to be charged to any Member during the Balancing Period, into a Trade Pound fee of three times the Trade Pound equivalent of the cash amount of such fees then outstanding, and debit the Member's Trade Account with the Trade Pound amount and credit the Manager's Trade Account with that amount. However, such cash fees will only be converted into Trade Pound fees to the extent that it is necessary to do so to ensure that the Manager's Trade Account is, at the expiry of Balancing Period, no longer in deficit and



any cash fees that are not required to be converted under this Rule may still be recovered by the Manager in cash in accordance with Rule 31.2(i). If a Member's Trade Account is debited Trade Pounds as a result of the conversion of cash fees payable into Trade Pound fees in accordance with this Rule, the Member is immediately released from any further liability with respect to those Trade Pound fees charged to its Trade Account;

(iii) In the event that the Manager's Trade Account is and remains in deficit and there are insufficient cash or Trade Pound fees generated at the expiry of the Balancing Period to set off the entire amount of any deficit balance in the Manager's Trade Account, the Manager's liability with respect to the deficit in its Trade Account is extinguished in consideration of the Manager's agreement to direct the cash fees payable in accordance with Rules 31.2(c) and (d) of these Rules into the Dissolution Fund;

(iv) If the Manager's Trade Account is in credit at the expiry of the steps required to be taken under Rules 31.2(a)-(e) (inclusive), then the Manager's credit balance will remain a credit balance of the Manager and the Manager will be eligible for any distribution made under Rule 31.2(k).

(f) (Strike accounts) The Manager shall strike delinquent accounts off the Trading Program;

(g) (Notify Members of fees payable) The Manager or any person appointed to do so by the Manager shall notify each Member of the amount of its debit balance and demand payment of the amount required to be paid under Rules 31.2(c) and 31.2(d);

(h) (Dissolution Fund) If the Manager receives any cash monies under Rules 31.2(c) or 31.2(d), it shall hold those cash monies in a separate bank account ("The Trading Program Dissolution Fund") on trust subject to this Rule 31, for the Members whose Trade Accounts are in credit and for the Extraordinary Member if its Trade Account is in credit;

(i) (Manager to recover fees) After the giving of notice under Rule 31.2(g), the Manager shall use its best endeavours to recover on behalf of the Exchange Company all amounts owing under Rules 31.2(c) and 31.2(d) and it shall be no defence for any Member from whom payment is sought to be recovered, to contend that, by reason of any conduct of the Exchange Company, the Manager or any other person, it was difficult or impossible to bring the Member's Trade Account to a zero balance during the Balancing Period or at any previous time. In the event that such cash fees remain due and owing for 60 days, the Manager may elect to rely upon Rule 17.4 in respect of those cash fees;

(j) (Legal action by Manager) The Manager shall have no obligation to take or continue any legal action on behalf of the Exchange Company in respect of any amount owing by any Member where:

(i) the Manager perceives legal or practical difficulty in recovering the amount owing;

(ii) it appears to the Manager that the amount that would or may be recovered will or might be exceeded by the cost of recovery;

(iii) the Manager, in its discretion considers that there is sufficient reason to not take action.

(k) (Distribution of Dissolution Fund) The Manager will distribute the Trading Program Dissolution Fund, after deduction of its proper costs and outlays, to the Members whose Trade Accounts were in credit and who are in Good Standing after the expiry of the steps required to be taken under Rules 31.2(a)-(e) (inclusive) and to the Extraordinary Member if its Trade Account is in credit at either time mentioned in Rule 31.2(e)(iv), on a pro rata basis in accordance with the amounts by which those accounts were in credit after the finalisation of the steps required to be taken under Rule 31.2(e);

(l) (Receiver's powers) Any power or discretion exercisable by the Manager under this Rule may be exercised by any receiver or receiver and manager appointed to the Manager or the Exchange Company.

### 32. SEVERANCE.

If any part or provision of these Rules should be judged or found to be void or unenforceable, it shall not affect the validity and enforceability of all other parts and provisions of these Rules and shall be severable from every other part and provision of these Rules, to the extent that these Rules shall continue in force and effect to the fullest extent possible after severance of the part or provision which is void or unenforceable.

### 33. JURISDICTION

33.1 Construction. These Rules are to be construed and applied in accordance with the laws of England.

33.2 Submit. In the event of any dispute or any action for enforcement of rights or obligations arising out of or in connection with these Rules, the Members shall submit to the jurisdiction of the courts of competent jurisdiction of England.

### 34. AMENDMENT OF RULES.

These Rules may be amended by the Manager as follows:

(a) the Manager shall notify the Members of any amendment of the Rules as soon as is reasonably practicable after the amendment has been promulgated;

(b) a Member may give notice of its intention to withdraw permanently from the Trading Program within seven (7) days after receiving such notification;

(c) a Member who has not given written notice to the Manager of its intention to withdraw permanently from the Trading Program within seven (7) days after receipt of such notification or who participates in any Trade in accordance with the Trading Program following the amendment shall be deemed to have accepted the amendments and waived any objection to the amendment of the Rules. The amendment shall have effect and the Rules as amended shall constitute a contract:

(i) between the Manager and all the Members jointly;

(ii) between the Manager and each Member severally; and

(iii) between the Manager and each other Member.

### 35. NOTICES.

Notices given under these Rules and the Membership Agreement shall be in writing and may be given by:

(a) delivery; or

(b) prepaid post; or

(c) facsimile transmission; or

(d) email transmission;

to the address set out in the Membership Agreement of the party to whom the notice is given or by publication by the Manager in the Rules and Regulations within the Members Trading Portal. Every notice shall be deemed to have been received and given 48 hours after the posting, or if delivered, on the date of the delivery, or if sent by facsimile transmission or email transmission in the normal course of transmission or if published in the Rules and Regulations Tab within the Members Trading Portal/Bartercard Online on the Bartercard website 48 hours after publication.

## 36. GLOSSARY OF TERMS

TERM	RULE IN WHICH TERM IS DEFINED
Additional Cardholder	1.3
Associates	1.6
Authorisation Number	6.3
Balancing Period	31.2
Buying Member	5.1
Confidential Information	26.1
Debit Balance, Not Enough Trade	17.5
Debt Reserve Fund	23.1
Deed of Management	1.3
Direct Trade	11.7
Directory	15.2
Directory Fee	16.3
Electronic Message	15.1
Electronic Processing Services	7
Exchange Company	1.2
Exchange Company Services	13.1
Extraordinary Member	1.5
Fair Trading Guidelines	18.2
Fees with Voucher Member	16.4
Franchisees	24.1
Gift Card	6.5
Gift Certificate	6.6
Credit Line	22.1
Instructions	7.6
Manager	1.3
Marketing and Support/Service Fee	16.2
Member	1.4
Member in Good Standing	4.3
Member's Card/Bartercard Card	14.6
Members Trading Portal	6.2
Minimum Authorised Amount	9.1
Monthly Statement	10.8
Multi Trade Voucher	6.7
Other Voucher	10.5
Overpricing	11.8
Poor Service	11.10
Procedures	6.2
Prepaid Scrip Certificate	6.4
Proof of Transaction	6.1
Recording of Trades	5.3
Rules	2.1
Sales Requirement, Debit Balance Accounts	16.5
Selling Member	5.1
Special Authorisation	8.2
Special Authorisation Number	8.2
Special Job or Order	8.1
Special Trade	8.1
Staff Account	4.6
Standby	11.5
Trade	5.1
Trade Account	5.2
Trade Pound	3.1
Trading Program	1.1
Trading Program Dissolution Fund	31.2
Transaction/Service Fee	16.1
Transaction Voucher	6.3
Voucher Member	16.4
Voucher Splitting	11.7

### APPENDIX 1

A condensed guide to the use of your personal and business information by ourselves and at Credit Reference and Fraud Prevention Agencies

- When you apply to us to open an account, this organisation will check the following records about you and your business partners
  - Our own;
  - Personal and business records at credit reference agencies (CRAs). When CRAs receive a search from us they will place a search footprint on your business credit file that may be seen by other lenders. They supply to us both public (including the electoral register) and shared credit and fraud prevention information.
  - those at fraud prevention agencies (FPAs). We will make checks such as; assessing this application for membership and/or trade pound credit line facility and for verifying identities to prevent and detect crime and money laundering. We may also make periodic searches at CRAs and FPAs to manage your account with us.
  - If you are a director, we will seek confirmation, from credit reference agencies, that the residential address that you provide is the same as that shown on the restricted register of directors' usual addresses at Companies House.
- Information on applications will be sent to CRAs and will be recorded by them. Including information on your business and its proprietors and CRAs may create a record of the name and address of your business and its proprietors if there is not one already. Where you borrow from us, we will give details of your accounts and how you manage it/them to CRAs.
- If you borrow and do not repay in full and on time, CRAs will record the outstanding debt. This information may be supplied to other organisations by CRAs and FPAs to perform similar checks and to trace your whereabouts and recover debts that you owe. Records remain on file for 6 years after they are closed, whether settled by you or defaulted.
- If you give us false or inaccurate information and we suspect or identify fraud, we will record this and may also pass this information to FPAs and other organisations involved in crime and fraud prevention.
- If you have borrowed from us and do not make payments that you owe us,

we will trace your whereabouts and recover debts.

6) We and other organisations may access and use from other countries the information recorded by fraud prevention agencies.

7) Your data may also be used for other purposes for which you give your specific permission or, in very limited circumstances, when required by law or where permitted under the terms of the Data Protection Act 1998.

#### **How to find out more**

This is a condensed version and if you would like to read the full details of how your data may be used please phone 0845 219 7000 or ask one of our staff. You can contact the CRAs currently operating in the UK; the information they hold may not be the same, so it is worth contacting them all. They will charge you a small statutory fee.

- Call Credit, Consumer Services Team, PO Box 491, Leeds, LS3 1WZ or call 0870 0601414
- Equifax PLC, Credit File Advice Centre, PO Box 3001, Bradford, BD1 5US or call 0870 010 0583 or log on to [www.myequifax.co.uk](http://www.myequifax.co.uk)
- Experian, Consumer Help Service, PO Box 8000, Nottingham NG80 7WF or call 0844 4818000 or log on to [www.experian.co.uk](http://www.experian.co.uk)

## 1. Definitions and Interpretation

- 11 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:
- 111 "Agreement", means the agreement entered into by the Service Provider and the Member incorporating these Terms and Conditions (or variation thereof agreed upon by both Parties) which shall govern provision of the Services;
- 112 "Commencement Date", means the date on which provision of the Services will commence, as defined in the Agreement;
- 113 "Confidential Information", means in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with the Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
- 114 "Data Protection Legislation", means 1) unless and until EU Regulation 2016/679 General Data Protection Regulation ("GDPR") is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations, and secondary legislation (as amended from time to time), in the UK and subsequently 2) any legislation which succeeds the GDPR;
- 115 "Fees", means any and all sums due under the Agreement from the Member to the Service Provider, as specified in the Agreement;
- 116 "Member", means the party procuring the Services from the Service Provider who shall be identified in the Agreement;
- 117 "Service Provider", means Barter Traders Limited, a company registered in England and Wales (company registration number 11194577);
- 118 "Services", means the provision of an e-trading platform that facilitates trade between Members of the Bartercard exchange; and
- 119 "Term", means the term of the Agreement as defined therein.
- 12 Unless the context otherwise requires, each reference in these Terms and Conditions to:
- 121 "writing", and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
- 122 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
- 123 "these Terms and Conditions" is a reference to these Terms and Conditions as amended or supplemented at the relevant time;
- 124 a Clause or paragraph is a reference to a Clause of these Terms and Conditions or to a Clause of the Agreement, as appropriate; and
- 125 a "Party" or the "Parties" refer to the parties to the Agreement.
- 13 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 14 Words imparting the singular number shall include the plural and vice versa.
- 15 References to any gender shall include the other gender.
- 16 References to persons shall include corporations.

## 2. Provision of the Services

- 21 With effect from the Commencement Date, the Service Provider shall, throughout the Term of the Agreement, provide the Services to the Member.
- 22 The Service Provider shall provide the Services with reasonable skill and care, commensurate with prevailing standards in the trade exchange sector in the United Kingdom.
- 23 The Service Provider shall act in accordance with all reasonable instructions given to it by the Member provided such instructions are compatible with the specification of Services provided in the Agreement.
- 24 The Service Provider shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Services.

## 3. Member's Obligations

- 31 The Member shall use all reasonable endeavours to provide all pertinent information to the Service Provider that is necessary for the Service Provider's provision of the Services.
- 32 The Member may, from time to time, issue reasonable instructions to the Service Provider in relation to the Service Provider's provision of the Services. Any such instructions should be compatible with the specification of the Services provided in the Agreement.
- 33 In the event that the Service Provider requires the decision, approval, consent or any other communication from the Member in order to continue with the provision of the Services or any part thereof at any time, the Member shall provide the same in a reasonable and timely manner.
- 34 If any consents, licences or other permissions are needed from any third parties such as the Inland Revenue, landlords, planning authorities, local authorities or similar, it shall be the Member's responsibility to obtain the same in advance of the provision of the Services (or the relevant part thereof).
- 35 If the nature of the Services requires that the Service Provider has access to the Member's home or any other location, access to which is lawfully controlled by the Member, the Member shall ensure that the Service Provider has access to the same at the times to be agreed between the Service Provider and the Member as required.
- 36 Any delay in the provision of the Services resulting from the Member's failure or delay in complying with any of the provisions of Clause 3 of the Agreement shall not be the responsibility or fault of the Service Provider.

## 4. Fees, Payment and Records

- 41 The Member shall pay the Fees to the Service Provider in accordance with the provisions of the Agreement.
- 42 The Service Provider shall invoice the Member for Fees due in accordance with the provisions of the Agreement.
- 43 All payments required to be made pursuant to the Agreement by either Party shall be made within 7 days of receipt by that Party of the relevant invoice.
- 44 All payments required to be made pursuant to the Agreement by either Party

shall be made in sterling in cleared funds to such bank in the United Kingdom as the receiving Party may from time to time nominate, without any set-off, withholding or deduction except such amount (if any) of tax as that Party is required to deduct or withhold by law.

45 Where any payment pursuant to the Agreement is required to be made on a day that is not a working day, it may be made on the next following day.

46 Without prejudice to sub-Clause 9.4.1 of the Agreement, any sums which remain unpaid following the expiry of the period set out in sub-Clause 4.3 of the Agreement shall incur a monthly charge of £25. Additionally, if the Member fails to give a correct and authorised direct debit mandate to the Service Provider, a monthly surcharge of £8.50 will be levied.

47 Each Party shall:

471 keep, or procure that there are kept, such records and books of account as are necessary to enable the amount of any sums payable pursuant to the Agreement to be accurately calculated;

472 at the reasonable request of the other Party, allow that Party or its agent to inspect those records and books of account and, to the extent that they relate to the calculation of those sums, to take copies of them; and

## 5. Liability, Indemnity and Insurance

- 51 The Service Provider shall ensure that it has in place at all times suitable and valid insurance that shall include public liability insurance.
- 52 In the event that the Service Provider fails to perform the Services with reasonable care and skill it shall carry out any and all necessary remedial action at no additional cost to the Member.
- 53 The Service Provider's total liability for any loss or damage caused as a result of its negligence or breach of the Agreement shall be limited to the sum defined therein.
- 54 The Service Provider shall not be liable for any loss or damage suffered by the Member that results from the Member's failure to follow any instructions given by the Service Provider.
- 55 Nothing in these Terms and Conditions nor in the Agreement shall limit or exclude the Service Provider's liability for death or personal injury.
- 56 Subject to sub-Clause 5.3 of the Agreement the Service Provider shall indemnify the Member against any costs, liability, damages, loss, claims or proceedings arising out of the Service Provider's breach of the Agreement.
- 57 The Member shall indemnify the Service Provider against any costs, liability, damages, loss, claims or proceedings arising from loss or damage to any equipment (including that belonging to any third parties appointed by the Service Provider) caused by the Member or its agents or employees.
- 58 Neither Party shall be liable to the other or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of that Parties obligations if the delay or failure is due to any cause beyond that Parties reasonable control.

## 6. Guarantee

- 61 The Service Provider shall guarantee that the product of all Services provided will be free from any and all defects for a period that shall be defined in the Agreement.
- 62 If any defects in the product of the Services appear during the guarantee period set out in the Agreement the Service Provider shall rectify any and all such defects at no cost to the Member.
- 63 This guarantee does not cover transactions made on the Bartercard platform by members. All such transactions, involving goods and services, are undertaken at the risk of both selling and purchasing parties and the Service Provider does not accept any responsibility for these transactions aside from reasonably ensuring that such transactions are between consenting parties and as such are within the conditions of our Trading Rules

## 7. Confidentiality

- 71 Each Party undertakes that, except as provided by sub-Clause 7.2 of the Agreement or as authorised in writing by the other Party, it shall, at all times during the continuance of the Agreement and for 6 years after its termination:
- 711 keep confidential all Confidential Information;
- 712 not disclose any Confidential Information to any other party;
- 713 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of the Agreement;
- 714 not make any copies of, record in any way or part with possession of any Confidential Information; and
- 715 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 7.1.1 to 7.1.4 of the Agreement.
- 72 Either Party may:
- 721 disclose any Confidential Information to:
- 721.1 any sub-contractor or supplier of that Party;
- 721.2 any governmental or other authority or regulatory body; or
- 721.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;
- to such extent only as is necessary for the purposes contemplated by the Agreement (including, but not limited to, the provision of the Services), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under sub-Clause 7.2.1.2 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of Clause 7 of the Agreement, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and
- 722 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Agreement, or at any time after that

date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information that is not public knowledge.

73 The provisions of Clause 7 of the Agreement shall continue in force in accordance with their terms, notwithstanding the termination of the Agreement for any reason.

### **8. Force Majeure**

No Party to the Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

### **9. Term and Termination**

91 The Agreement shall come into force on the agreed Commencement Date and shall continue for a defined Term from that date, subject to the provisions of Clause 9 of the Agreement.

92 If termination is not sought by either party, as specified in sub-Clauses 9.3 thru 9.5, then the Agreement shall be deemed to have been extended for a further Term from the date of expiration.

93 Either Party shall have the right, subject to the agreement and consent of the other Party and exercisable by giving not less than 30 days written notice to the other at any time prior to the expiry of the Term specified in sub-Clause 9.1 of the Agreement.

94 Either Party may terminate the Agreement by giving to the other not less than 30 days written notice, to expire on or at any time after the minimum term of the Agreement (which shall be defined in the Agreement).

95 Either Party may immediately terminate the Agreement by giving written notice to the other Party if:

951 any sum owing to that Party by the other Party under any of the provisions of the Agreement is not paid within 7 days of the due date for payment;

952 the other Party commits any other breach of any of the provisions of the Agreement and, if the breach is capable of remedy, fails to remedy it within 30 day after being given written notice giving full particulars of the breach and requiring it to be remedied;

953 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;

954 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);

955 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Agreement);

956 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;

957 the other Party ceases, or threatens to cease, to carry on business; or

958 control of the other Party is acquired by any person or connected persons not having control of that other Party on the date of the Agreement. For the purposes of Clause 9, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.

96 For the purposes of sub-Clause 9.4.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.

97 The rights to terminate the Agreement shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

### **10. Effects of Termination**

Upon the termination of the Agreement for any reason:

101 any sum owing by the Member to the Service Provider under any of the provisions of the Agreement shall become immediately due and payable;

102 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect;

103 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement which existed at or before the date of termination;

104 subject as provided in Clause 10 of the Agreement and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and

105 each Party shall (except to the extent referred to in Clause 7 of the Agreement) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.

### **11. Data Protection**

111 All personal information that the Service Provider may use will be collected, processed, and held in accordance with the provisions of EU Regulation 2016/679 General Data Protection Regulation ("GDPR") and the Member's rights under the GDPR.

112 For complete details of the Service Provider's collection, processing, storage, and retention of personal data including, but not limited to, the purpose(s) for which personal data is used, the legal basis or bases for using it, details of the Member's rights and how to exercise them, and personal data sharing (where applicable), please refer to the Service Provider's Privacy Notice available from [www.bartercard.co.uk](http://www.bartercard.co.uk).

### **12. Data Processing**

121 In this Clause 12 and in the Agreement, "personal data", "data subject", "data controller", "data processor", and "personal data breach" shall have the meaning defined in Article 4, EU Regulation 2016/679 General Data Protection Regulation ("GDPR").

122 Both Parties shall comply with all applicable data protection requirements set out in the Data Protection Legislation. Neither this Clause 12 nor the Agreement shall relieve either Party of any obligations set out in the Data Protection Legislation and shall not remove or replace any of those obligations.

123 For the purposes of the Data Protection Legislation and for this Clause 12 and the Agreement, the Service Provider is the "Data Processor" and the Member is the "Data Controller".

124 The Data Controller shall ensure that it has in place all necessary consents and notices required to enable the lawful transfer of personal data to the Data Processor for the purposes described in these Terms and Conditions.

125 The Data Processor shall, with respect to any personal data processed by it in relation to its performance of any of its obligations under these Terms and Conditions:

1251 Process the personal data only on the written instructions of the Data Controller unless the Data Processor is otherwise required to process such personal data by law. The Data Processor shall promptly notify the Data Controller of such processing unless prohibited from doing so by law.

1252 Ensure that it has in place suitable technical and organisational measures (as approved by the Data Controller) to protect the personal data from unauthorised or unlawful processing, accidental loss, damage or destruction. Such measures shall be proportionate to the potential harm resulting from such events, taking into account the current state of the art in technology and the cost of implementing those measures. Measures to be taken shall be agreed between the Data Controller and the Data Processor and set out in the Schedule to the Agreement.

1253 Ensure that any and all staff with access to the personal data (whether for processing purposes or otherwise) are contractually obliged to keep that personal data confidential; and

1254 Not transfer any personal data outside of the European Economic Area without the prior written consent of the Data Controller and only if the following conditions are satisfied:

12.5.4.1 The Data Controller and/or the Data Processor has/have provided suitable safeguards for the transfer of personal data;

12.5.4.2 Affected data subjects have enforceable rights and effective legal remedies;

12.5.4.3 The Data Processor complies with its obligations under the Data Protection Legislation, providing an adequate level of protection to any and all personal data so transferred; and

12.5.4.4 The Data Processor complies with all reasonable instructions given in advance by the Data Controller with respect to the processing of the personal data.

1255 Assist the Data Controller at the Data Controller's cost, in responding to any and all requests from data subjects in ensuring its compliance with the Data Protection Legislation with respect to security, breach notifications, impact assessments, and consultations with supervisory authorities or regulators (including, but not limited to, the Information Commissioner's Office);

1256 Notify the Data Controller without undue delay of a personal data breach;

1257 On the Data Controller's written instruction, delete (or otherwise dispose of) or return all personal data and any and all copies thereof to the Data Controller on termination of the Agreement unless it is required to retain any of the personal data by law; and

1258 Maintain complete and accurate records of all processing activities and technical and organisational measures implemented necessary to demonstrate compliance with this Clause 12 and to allow for audits by the Data Controller and/or any party designated by the Data Controller.

127 The Data Processor shall not sub-contract any of its obligations to a sub-processor with respect to the processing of personal data under this Clause 12 without the prior written consent of the Data Controller (such consent not to be unreasonably withheld).

128 Either Party may, at any time, and on at least 30 days' notice, alter the data protection provisions of the Agreement, replacing them with any applicable data processing clauses or similar terms that form part of an applicable certification scheme. Such terms shall apply when replaced by attachment to the Agreement.

### **13. No Waiver**

No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

### **14. Further Assurance**

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Agreement into full force and effect.

### **15. Costs**

Subject to any provisions to the contrary each Party shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of the Agreement.

### **16. Set-Off**

Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under the Agreement or any other agreement at any time.

### **17. Assignment and Sub-Contracting**

The Agreement shall be personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-license or otherwise delegate any of its rights thereunder, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of the other Party, such consent not to be unreasonably withheld.

### **18. Time**

All times and dates referred to in the Agreement shall be of the essence of the Agreement.

### **19. Relationship of the Parties**

Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the Agreement.

### **20. Non-Solicitation**

201 Neither Party shall, for the Term of the Agreement and for a defined period (which shall be defined in the Agreement) after its termination or expiry, employ or contract the services of any person who is or was employed or otherwise engaged by the other Party at any time in relation to the Agreement without the express written consent of that Party.

202 Neither Party shall, for the Term of the Agreement and for a defined period (which shall be defined in the Agreement) after its termination or expiry, solicit or entice

away from the other Party any customer or Member where any such solicitation or enticement would cause damage to the business of that Party without the express written consent of that Party.

## **21. Third Party Rights**

21.1 No part of the Agreement shall confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.

21.2 Subject to Clause 21 of the Agreement, the Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.

## **22. Notices**

22.1 All notices under the Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

22.2 Notices shall be deemed to have been duly given:

22.21 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

22.22 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or

22.23 on the fifth day following mailing, if mailed by national ordinary mail, postage prepaid; or

22.24 on the tenth day following mailing, if mailed by airmail, postage prepaid.

In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

## **23. Entire Agreement**

23.1 Subject to the provisions of Clause 12, the Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

23.2 Each Party shall acknowledge that, in entering into the Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in the Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

## **24. Counterparts**

The Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

## **25. Severance**

In the event that one or more of the provisions of the Agreement and/or of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Agreement and/or these Terms and Conditions. The remainder of the Agreement and/or these Terms and Conditions shall be valid and enforceable.

## **26. Dispute Resolution**

26.1 The Parties shall attempt to resolve any dispute arising out of or relating to the Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.

26.2 If negotiations under sub-Clause 26.1 of the Agreement do not resolve the matter within 30 days of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution ("ADR") procedure.

26.3 If the ADR procedure under sub-Clause 26.2 of the Agreement does not resolve the matter within 30 days of the initiation of that procedure, or if either Party will not participate in the ADR procedure, the dispute may be referred to arbitration by either Party.

26.4 The seat of the arbitration under sub-Clause 26.3 of the Agreement shall be England and Wales and shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed between the Parties. In the event that the Parties are unable to agree on the arbitrator(s) or the Rules for Arbitration, either Party may, upon giving written notice to the other Party, apply to the President or Deputy President for the time being of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be required.

26.5 Nothing in Clause 26 of the Agreement shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief.

26.6 The decision and outcome of the final method of dispute resolution under Clause 26 of the Agreement shall [not] be final and binding on both Parties.

## **27. Law and Jurisdiction**

27.1 The Agreement and these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

27.2 Subject to the provisions of Clause 26 of the Agreement, any dispute, controversy, proceedings or claim between the Parties relating to the Agreement or these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

## **28. Trade Reference**

28.1 The Member appoints the Service Provider as their agent for the purposes of ascertaining personal information from the Member's trade credit references with respect to their credit worthiness. The Member agrees to the Service Provider obtaining from a Credit Reporting Agency, which will keep a record of that search and will share that information with other businesses, a credit report containing personal credit information about them in relation to the commercial credit line facility provided by the Service Provider.

28.2 The Service Provider may also make enquiries about the principal directors with a credit reference agency. Bartercard will monitor and record information relating to your Bartercard account performance and such records will be made available to credit reference agencies, who will share that information with other businesses in assessing applications for credit and fraud prevention.

28.3 The Service Provider may use credit reference and fraud prevention agencies to help them make decisions.

28.4 A short guide to what we do and how both we and our credit reference and

fraud prevention agencies will use your information is detailed in the Trading Rules & Regulations Appendix 1 called: A condensed guide to the use of your personal and business information by ourselves and Credit Reference and Fraud Prevention Agencies. If you would like to read the full details of how your data may be used please phone 0800 840 6333 or ask one of our staff.