

Terms and Conditions of Straal Payment Gateway Service

(valid from 14.03.2020')

1. Definitions

Technical Documentation

Documentation specifying the functionalities of the Technical Solution and instructions of its implementation in the Merchant's system.

Acquirer

Payment services provider or payment institution within the meaning of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, which was granted an authorization to perform such activity in one of the Member States of the European Union and concluded cooperation agreement with Straal.

PISP

Payment initiation service provider within the meaning of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, which was granted an authorization to perform such activity in one of the Member States of the European Union and concluded cooperation agreement with Straal; the following entity acts as PISP: Token io Ltd., a company registered in England and Wales under number 10143662 whose registered office is at 10 John St. London WC1N 2EB

Business Day

Means each day from Monday to Friday, with the exception of public holidays in Poland or other days indicated by Straal.

Material Breach

Means:

1. Delay in payment for the Services by the Merchant lasting more than 2 (two) months;
2. Use of the Technical Solution provided by Straal contrary to its purpose;
3. Aggregation or resale by the Merchant of the Technical Solution to the third parties;
4. Situation in which publicly available information about the Merchant indicate Merchant's difficult financial situation, what significantly increases the risk of its insolvency;
5. Termination of agreements between Straal and the Acquirers with whom Straal had signed agreements on handling of payments of a given Merchant;
6. Termination of agreement / agreements between the Merchant and the Acquirer for the reason attributable to the Merchant.

Information Template

All forms of providing information by the Merchant to Straal before conclusion of the Agreement, containing all information necessary to the proper provision of Services, in particular used for registration of the Merchant in the Technical Solution, in Straal's systems and in the systems of the Acquirers, including data submitted through on-boarding form available on Straal's website.

Client

Entity which makes payment for goods or services to Merchant using electronic payments provided by Straal.

Merchant's Account

Means individual account of the Merchant in the Straal's application, including in particular a website in the Straal's application dedicated to the Merchant, which is used to manage the payments and to order the Services, allowing also to administrate of transactions, check payment statuses and sales reports.

Merchant

Entrepreneur, being a natural person, a legal person or an organizational unit without legal personality

which has a legal capacity, which concluded the Agreement with Straal, using electronic payments in the course of its activity.

Fees

Fees payable to Straal for its Services as set forth in the Agreement.

Personal Data Protection Regulations

Act on Personal Data Protection of 29 August 1997, Directive 95/46/WE of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

Terms and Conditions

These Terms and Conditions of Straal Payment Gateway Service available under <https://www.straal.com/downloads>

Technical Solution

Technical solution offered by Straal to the Merchant, including manner of integration between systems of the Merchant and Straal and enabling to receive payments by the Merchant from the Clients using services performed by the Acquirers and enabling exchange of information and statements between the Clients and the Merchant, including the Merchant's Account.

Straal

seat in Warsaw, 00-844, Plac Europejski 1, entered into Register of Entrepreneurs maintained by the District Court in Warsaw, XII commercial division of the National Court Register under the number 0000694017, with share capital of 2 183 000 PLN, tax identification number: 527-282-05-82, REGON number 368238452.

Party

Straal or Merchant, jointly referred to as the Parties.

Agreement

Master Agreement regarding Straal Payment Gateway Services concluded between Straal and Merchant together with these Terms and Conditions.

Services

Straal Payment Gateway Services and other services offered by Straal to Merchant, including antifraud services referred to in section 4 below.

Payment Gateway Service

Means a service of providing technical means for accepting electronic payments made to Merchant using the Technical Solution, within the methods of payment handled by the Acquirers.

Transaction

Payment transaction made by the Client to Merchant with the use of electronic payments and the Straal Payment Gateway Service.

2. General provisions

1. The subject of the Terms and Conditions is to determine rules of cooperation between Merchant and Straal in the scope of the use of the Services by Merchant through the Technical Solution.
2. Conclusion of the Agreement requires it to be signed by Merchant and Straal in the same document or signing the Agreement in an electronic form by Merchant's authorized representative.
3. The condition of commencement of provision of Straal Payment Gateway Service is integration with Technical Solution and conclusion by Merchant of an agreement / agreements with the Acquirers.
4. Merchant is obliged to conclude agreement with one or more Acquirers, pursuant to which all payments made by Merchant's Clients will be processed by Acquirer or Acquirers with the use of Straal's Technical Solution.
5. The obligations stipulated in sections 2(3) and 2(4) shall not apply to Straal Direct services, as defined in the Agreement.

3. Payment Gateway Service

1. Straal Payment Gateway Service is based on making Technical Solution in the SaaS model (Software-as-a-Service) available by Straal to Merchant i.e. in the model in which an application is stored and executed on the provider's server and made available to Merchant via the Internet.
2. Straal Payment Gateway Service will be performed on the continuous basis, 24 hours a day, 7 days a week, 365 days a year.
3. In the scope of the Straal Payment Gateway Service, Straal offers to Merchant:

1. various Services to enable Merchants acceptance of payments and receiving funds from the Clients using different payment channels, as indicated in the Agreement;
2. and other Services defined by Technical Solution's functionalities made available to Merchant.
4. The Merchant hereby authorises Straal to make available to the Acquirer and/or PISP, on behalf of Merchant, any data and documents provided by the Merchant which are necessary for the purpose of assessment of the Merchant by the Acquirer or PISP and which are required for the purpose of conclusion of the agreement between the Merchant and the Acquirer or initiating payments by PISP.
5. The Merchant asserts that any data or documents made available to Straal are true, up to date and accurate and that making them available to Straal does not infringe any third-party rights.

4. Antifraud Services

1. Apart from the Straal Payment Gateway Services, Straal may provide the Merchant with certain global trust intelligence, transactional data analytics, device identification, attribution, and scoring services of users of the Merchant, in a SaaS model, based on subscription ("Antifraud Services").
2. As result of the Services, Straal provides the Merchant with a real-time recommendation and certain parameters regarding the transaction initiated by Merchant's customers (the "Recommendation"). The Merchant acknowledges and agrees, that the result provided as a result of Antifraud Services will only constitute a recommendation for the Merchant. The decision whether to proceed with a transaction will be made solely by the Merchant and Straal is not responsible for any consequences of such a decision.
3. The Merchant understands that the quality of Antifraud Services is largely dependent on the quality, accuracy and quantity of data provided to by the Merchant. The data is required for the machine learning of the software used for provision of the Antifraud Services and constant improvement of accuracy of Recommendations.
4. In order to ensure proper performance of the Antifraud Services the data provided by the Merchant must comply with the guidelines contained in the project documentation provided to the Merchant at api-reference.straal.com. Provision of Antifraud Services requires full and proper integration of the Merchant with Straal or its subcontractor, in accordance with documentation available at api-reference.straal.com or documentation provided by the subcontractor.
5. In providing Antifraud services, Straal is entitled to use third party subcontractors, and is liable for their acts and omissions, without prejudice to provisions of section 14 below.

5. Access to Services

1. Straal reserves that the access to Services may be modified, partially or completely suspended to the necessary extent in cases justifying such actions, which is *inter alia* to ensure security and stability of the Services' environment, in connection with the change of applicable law, for the purpose of repairs, maintenance, introduction of necessary adaptations, modifications and extensions of the software or the application, taking actions aimed at locating and removing malfunctions in the functioning of the Services. Interruptions and limitations in performing of Services in the cases indicated above are deemed to be compliant and admissible under the Agreement and do not give rise to Straal's liability. Excluding cases of suspension of Services resulting from unplanned and unpredictable Service disruptions, Straal will notify Merchant of the suspension of Services at least 7 days in advance.
2. Straal reserves the right to suspend provision of Services to the Merchant in the event that the Merchant is overdue with payments for more than one VAT invoice. Access to the Services will be restored by Straal on condition that the full amount of overdue payments is credited to Straal's bank account.

6. Technical specification and integration of Technical Solution

1. Technical specification of the Technical Solution and instruction of Technical Solution's integration is included in the Technical Documentation available under <http://docs.straal.com/>.
2. Straal may amend the Technical Documentation in accordance with the procedure indicated in section 17 of the Terms and Conditions. As a rule, the amendments introduced by Straal to Technical Documentation will be aimed at the development and implementation of improvements in the functionality of the Technical Solution or will take into account the requirements of the Acquirers.

7. Straal's obligations

1. Straal undertakes:
 1. to ensure Merchant's access to the Services through the Technical Solution for the duration of the Agreement;
 2. not to collect or accrue any fees paid by the Merchant's Clients;
 3. to make the processing of the electronic payments received by Merchant from the Clients technically available through the use of the Technical Solution via the Acquirers or PISP;
 4. to ensure the highest level of security of the payment transactions and confidentiality of personal data and Merchant's data in accordance with the Payment Card Industry Data Security Standards and section 11 of the Terms and Conditions;

5. to provide Merchant with all necessary information to enable effective integration of the Merchant's system with the Technical Solution.

8. Merchant's obligations:

1. Merchant undertakes:

1. to use the Services in accordance with the applicable law, the Agreement and the Terms and Conditions;
2. to use Services to handle Transactions on the websites and in IT environments previously approved by Straal;
3. to offer possibility of concluding Transactions within payment methods which have been covered by the Agreement and agreements with Acquirers;
4. to place and maintain on its website, for the duration of the Agreement, Straal's logo made available in the tab <https://straal.com/newsroom>;
5. to grant Straal irrevocable consent to use Merchant's logo for marketing and commercial purposes for the duration of the Agreement;
6. to comply with Straal's guidelines in the scope of conducting actions to ensure the security and consistency of the Services indicated in the Technical Documentation;
7. to immediately inform Straal on any changes regarding the Merchant in particular changes regarding its legal form, address, bank data, significant changes in the privacy policy or terms and conditions of delivery of goods or provision of services or other data provided on the Information Template;
8. to handle electronic payments in accordance with requirements of the Acquirers or PISP, especially by including in its regulations information provided by the Acquires, PISP or Straal within the time indicated by Straal;
9. to customize its payment website in accordance with the guidelines provided by Acquirers, PISP or Straal;
10. to grant the Acquirer or PISP an irrevocable consent (for the duration of the Agreement) to provide Straal with information regarding Merchant's transactions made through the Technical Solution.

2. Merchant is obliged to keep sales channels integrated with the Technical Solutions and in case of the website, to maintain the following information on it:

1. privacy policy (Clients' personal data protection policy), including information on the transfer of personal data of the Clients to Straal in connection with the performance of the Transaction;
2. information on settlement currency, any fees, including those for delivery, packaging, taxes;

3. after ordering by the Client and successful authorization of the Transaction – Merchant should inform the Client about it in written or electronic form in accordance with the information received from Straal;
4. any other information required by the provisions of law, in particular regarding provision of services by electronic means, distance sale and consumer law.

9. Prohibited actions

1. Merchant is not authorized:

1. to use Straal's Services in a way that infringes applicable provisions of law, good practices or rights of third parties; in particular Services are not to be used to sell goods or services, which sale is prohibited by the law, or which sale is prohibited by the policy of Straal or policies of Acquirers or PISP;
2. to reverse engineer, disassemble or decompile the Technical Solution, unless expressly permitted by the applicable provisions of law;
3. to decompile, disassemble the Technical Solution or any of its parts, identify or attempt to identify any source codes, algorithms, methods or techniques used or reflected in the Technical Solution;
4. to modify, translate, remake, adapt, develop the Technical Solution or otherwise create derivative works in relation to the Technical Solution;
5. to distribute, disclose, sell, rent, lease, assign, sublicense, set pledge or transfer in other way the Technical Solution, fully or in part, to the third parties;
6. to erase or modify any references to copyrights, trademarks or other annotations, legends, symbols or signs that appear on the Services or the Technical Solution;
7. to provide information which are false, inaccurate or misleading;
8. to refuse or evade from confirmation of its identity or any other information provided by Straal;
9. to conduct activity or use the Services in a way that may result in complaints, disputes, charges, penalties and other burdens to Straal or third parties;
10. to take actions or omissions that may expose Straal to credit risk, risk of fraud, breach of duties related to anti-money laundering and terrorist financing or other statutory obligations or to a sudden increase of risk (assessed pursuant to the procedures adopted by Straal based on the information available);
11. to take any actions, as a result of which Straal's system or any part of Straal's infrastructure will be charged in an unreasonable or disproportionate manner.

10. Payments

1. In respect to the Services provided to Merchant, Straal charges fees on the terms and in the amount and pursuant to the manner of fees calculation set forth in the Agreement.
2. All fees and commissions charged by Straal are confirmed by an invoice issued by Straal at the end of each month of duration of the Agreement, providing that the amount of the invoice exceeds the amount of 30 PLN, 15 EUR, 15 USD, 15 GBP. Merchant grants its consent to obtain electronic invoices from Straal. The invoices will be sent to the Merchant's e-mail address indicated in the Information Template.
3. The payment of invoices is due within 14 days from the issuance of the invoices by Straal.
4. Any repayment of funds to Clients for the execution of the Transaction are subject to the following terms:
 1. Merchant is solely responsible for repayment of funds, on the terms indicated in the agreement (if applicable);
 2. commissions and fees charged by Straal in relation to execution of the Transaction, which were then subject to a refund or a complaint (chargeback) procedure, are not to be returned to the Merchant.
5. For the purposes of invoicing, Straal's remuneration calculated in a currency other than PLN, USD, EUR or GBP will be converted into PLN at the average monthly exchange rate of this currency to PLN in the given settlement period published by the National Bank of Poland.
6. For the purpose of provision of Straal Direct services, a settled payment as referred to in the Agreement shall mean a successfully initiated transaction.
7. All cost relating to transfer fee to Straal account will be covered by Merchant.

11. Technical support

1. Straal ensures support in the scope of functioning of the Technical Solution from Monday to Friday between 9 and 17 via e-mail: itsupport@straal.com and telephone: +48 22 263 03 09.
2. Straal ensures that Straal's consultants will respond without undue delay. Usually, the response occurs within two Business Days from the receipt of the notification.

12. Personal data protection

1. Merchant attests that it is the controller of personal data within the meaning of the Personal Data Protection Regulations („Data Controller”).
2. Merchant agrees to receiving commercial and marketing information from Straal.

3. Data Controller entrusts to Straal the processing of personal data within the meaning of the Personal Data Protection Regulations for and on behalf of the Data Controller.
4. Personal data processing shall be entrusted to Straal for a period of the performance of the Agreement and for the purpose of its performance.
5. The types of personal data which will be processed by Straal include i) Client's name, (ii) password, (iii) e-mail address, (iv) name and surname or company's name, (v) postal address, (vi) country, (vii) data concerning payments.
6. In the event that the Merchant uses Antifraud Services, the scope of the entrusted data will be defined in separate appendices to the Agreement.
7. Categories of personal data which will be processed by Straal include only Client's data.
8. The scope of personal data processing shall include the following operations performed on the personal data: collecting, recording, storing, transferring, preparing, amending, making the data available, profiling with the use of personal data, deleting personal data both in paper form, as well as in the IT systems.
9. The processing party shall be entitled to further entrust the processing of personal data to subcontractors. The processing party shall inform the Data Controller of any intended changes concerning the addition or replacement of other processors, thereby giving the Data Controller the opportunity to object to such changes within 7 days of being informed about such changes.
10. The processing party undertakes to ensure the security of personal data entrusted for personal data processing, and in particular:
 - The processing party undertakes to process personal data in accordance with the Personal Data Protection Regulations, in particular, to formulate and apply appropriate documentation and procedures for personal data processing, as well as technical, informational and legal security measures, as required by the provisions of the Polish and European Union law, including *inter alia*:
 - the pseudonymisation and encryption of personal data;
 - the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - the ability to restore the availability and access to personal data in a timely manner in the event of technical problems or any other incident;
 - a process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of personal data processing.
 - The processing party undertakes to take measures, before starting to process personal data, for securing the personal data, as referred to in the Personal Data Protection Regulations.

- The processing party shall only admit the people for personal data processing who shall be authorized by the processing party to process personal data.
- The processing party represents that all persons authorized to process personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- The processing party shall keep records of persons authorized for personal data processing;
- The processing party shall immediately inform the Data Controller of any instance of any breach, whatsoever, of the security of personal data entrusted to the processing party and processed on the basis of this Agreement;
- The processing party shall not use the personal data entrusted to it under this Agreement for any purposes other than those provided for in this Agreement and, in particular, not to make such data available, in any form, to unauthorized third parties;
- The processing party shall grant the Data Controller, on its request, any necessary information on all personal data stored by the processing party.

11. The processing party warrants that:

- it will process personal data only on documented instructions from the Data Controller, including with regard to transfers of personal data to a third country or an international organization;
- it will respect the conditions for engaging another data processors;
- it will assist the Data Controller in ensuring compliance with the obligations imposed on Data Controller by Personal Data Protection Regulations, taking into account the nature of personal data processing and the information available to the processing party;
- it will make available to the Data Controller all information necessary to demonstrate compliance with the obligations imposed on Data Controller under Personal Data Protection Regulations, and allow for and contribute to audits, including inspections, conducted by the Data Controller or another auditor mandated by the Data Controller; it will also immediately inform the Data Controller if, in its opinion, an instruction of the Data Controller infringes provisions of the Personal Data Protection Regulations.

12. The processing party or its representative shall maintain a record (in writing or in electronic form) of all categories of processing activities carried out on behalf of the Data Controller, containing:

13. the name, surname and contact details of the processing party or its subcontractors and of the Data Controller, and, where applicable, of the Data Controller's or the processing party's representative, and the data protection officer;

14. the categories of personal data processing carried out on behalf of the Data Controller;

15. where applicable, transfers of personal data to a third country or an international organization, including the identification of that third country or international organization and including, where applicable, the documentation of suitable safeguards;
16. where possible, a general description of the technical and organizational security measures.

13. Intellectual property

1. Straal grants to Merchant a limited, revocable, non-exclusive, nontransferable, worldwide right to use the Services, including in particular the Technical Solution, solely for the Merchant's own internal business purposes and subject to the terms of this Agreement. Straal owns all right, title and interest, including all related intellectual property rights, in and to the Services and Technical Solution, any software delivered to the Merchant, any technology embodied or implemented in the Services, any computer code provided by Straal for the Merchant's particular website and computer network. Except for the limited rights granted in this Agreement, Merchant is not granted any licenses or rights in any intellectual property of Straal.
2. The name "Straal" shall not be used in connection with products or services of third parties in any way which may be confusing for clients or potential clients.
3. Straal grants to Merchant, without additional remuneration, non-exclusive, not territorially limited and non-transferable license to use Straal's name and logo to inform Clients and users of its website of cooperation with Straal and the possibility of making payments with the Straal Payment Gateway Service. The license is granted for the duration of the Agreement.
4. It is forbidden to – without written consent of Straal – sell, license, rent, modify, distribute, reproduce, transmit, publish, adapt, publically present or create works with the use of materials or content which Straal makes available on its website or as part of Services, including in particular the Technical Solution.
5. Merchant grants to Straal, without additional remuneration, for the duration of the Agreement, non-exclusive, not territorially limited license to use, present or copy Merchant's name and logo solely for the purpose of marketing of Straal's services.

14. Liability

1. In no event shall Straal bear contractual or non-contractual liability for any loss of profit or revenue by Merchant, or for any other damages incurred by Merchant related to Services rendered by Straal, even if Merchant has advised of the possibility of such loss or damages. Merchant further agrees that the total contractual and non-contractual liability of Straal for all claims of any kind arising as a result of or related to this Agreement, or to any act or omission of Straal, shall not exceed an amount equal to the amount actually paid by Merchant to Straal for Services during the last 3 (three) months period preceding the date when Straal learned about Merchant's claim.

2. Straal shall not be liable for providing transactional data concerning Transaction to Straal servers, if the integration of Merchant's system with Straal's system is not performed in accordance with the Technical Documentation. Merchant is entirely responsible for the correctness and proper format of data sent to Straal's servers.
3. Straal bears liability for the proper performance of Services, however, due to the specification of the Services, it does not guarantee the finalization of the Transaction, unless the lack of finalization is solely due to Straal. Straal also does not guarantee that the Acquirer will finalize the Transaction or that transaction initiated by PISP will be finalized.
4. Straal is not party to an agreement between Merchant and Client nor to an agreement between Merchant and Acquirer and shall not be liable for the due performance of obligations by any of the above mentioned entities.
5. Straal shall not be liable for the damages of any third party, including Clients, if it arises in connection with a breach of any of the provisions of the Terms and Conditions or the Agreement by Merchant.
6. Neither Party shall be liable for any delay or failure to perform its obligations if they arise due to force majeure or other events which the Party concerned could not foresee or which were beyond Party's control.
7. The Merchant shall be liable for, and shall indemnify Straal from and against, any and all liabilities, obligations, losses, damages, claims, actions and suits, and any and all reasonable costs, expenses and disbursements of any kind and nature whatsoever, which may at any time be imposed on, incurred by or asserted against the Straal in any way relating to or arising out of enagement of Merchant's obligations under this Agreement.

15. Duration of the Agreement

1. Duration of the Agreement is set out in the Agreement.
2. In case the Agreement is concluded for an indefinite period of time, it may be terminated with three month notice period, with effect at the end of the calendar month. The notice of termination must be delivered to the other Party in writing, under pain of invalidity.
3. Straal may dissolve the Agreement with immediate effect, notifying the Merchant in writing or by e-mail, if
 1. Merchant commits a Material Breach;
 2. Merchant is overdue with payment of VAT invoices for at least 2 months.
4. In case the Agreement is terminated or dissolved by any Party, all Fees due to Straal under the Agreement will become payable on the date of termination of the Agreement.

16. Confidentiality

1. All information relating to Merchant or Straal that is confidential, or which is clearly marked as such, shall be held in confidence by the other Party and shall not be disclosed or used by the other Party except to the extent that such disclosure or use is necessary for the performance of Services by Straal.
2. The obligation of confidentiality shall extend for a period of 1 (one) year after the termination of this Agreement, but shall not apply with respect to information that lawfully becomes a part of the public domain, or of which the Parties gained knowledge or possession free of any confidentiality obligation.
3. Confidential information shall not include information which:
 1. is or becomes generally available to the public other than as a result of a disclosure by either Party, its agents, representatives or employees; or
 2. becomes available to either Party on a non-confidential basis from a source other than the other Party or its agents, representatives or employees which is not prohibited from disclosing such information by a legal or contractual obligation.

17. Final provisions

1. Straal has the right to amend the Terms and Conditions, develop and modify the Technical Solution in any time and without any notice, subject to section 17.3 below. This especially applies when such modifications or changes are needed to comply with applicable law.
2. If Straal amends the Terms and Conditions, it will send its new version to Merchant's e-mail indicated in the Information Template at least 14 (fourteen) days after the entry into force of the new Terms and Conditions.
3. Merchant declares that by continuing to use the Services after Straal's unilateral amendments to the Terms and Conditions, it accepts such amendments. If Merchant does not accept such amendments, Merchant has the right to object within 14 days of the date of sending the changes by Straal. Submission of an objection by Merchant results in termination of the Agreement with a 1-month notice period.
4. Merchant may not, without a prior written consent of Straal, transfer its rights and obligations under the Agreement to any third party.
5. The provisions of Polish law shall apply to matters not regulated in the Terms and Conditions and the Agreement.
6. All disputes arising out of or in connection with the Agreement shall be settled by a common court for the capital city of Warsaw.
7. The Terms and Conditions and the Agreement constitute the entire agreement between the Parties and replace any previous settlements, agreements, declarations and understandings (in relation to the subject matter of the Agreement).
8. None of the provisions of the Terms and Conditions or the Agreement create a power of attorney relationship, employer-employee relationship or joint-venture between the Parties.

