



Terms and Conditions

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MERCHANT SERVICES AGREEMENT - INTRODUCTION

Part 1 - Your Agreement

These terms and conditions (together with the other documents incorporated by reference below, the “**Agreement**”) govern the supply of the Services under this Agreement by Worldpay (UK) Limited or Worldpay Limited and any additional parties specified in Schedule 1, as the context requires (“**we**”, “**us**”, “**our**”) to the merchant(s) approved by us under this Agreement (“**you**”, “**your**”).

If there are no additional parties listed in Schedule 1 this is because you currently receive all your Services from Worldpay (UK) Limited and Worldpay Limited. If you receive Services from any additional party we will send you a revised Schedule 1 at such time to notify you of those additional parties. Any additional party specified in Schedule 1 shall be deemed to be a party to this Agreement as set out in Schedule 1.

Capitalised terms that are not otherwise defined in this Agreement have the meanings given in clause 1.

Your Agreement is made up of:

- **Your Application Form**
- **Your Pricing Schedules**
- **Your other Schedules, including the Schedules to these terms and conditions**
- **The other provisions of these terms and conditions**
- **The Customer Operating Instructions**
- **Our Privacy Policy**

In each case as may be amended, varied, supplemented, modified or novated from time to time. Each document (including any document referred to in each document) and any other document from time to time designated as such, is incorporated into and forms a part of this Agreement.

If there is any conflict or ambiguity between the terms of the documents listed above, except as expressly provided otherwise, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

This Agreement is concluded in the English language and all communications (including any notices or the information being transmitted) shall be in English. In the event that the Agreement or any part of it is translated (for any proceedings, for your convenience or otherwise) into any other language, the English language text of the Agreement shall prevail.

During the term of this Agreement, we will provide a copy of your Agreement to you upon request.

Part 2 - Key features

This Agreement contains important information you must read. You must ensure you understand and comply with the terms of the Agreement. If necessary, seek **independent legal advice**.

This section explains some of the key features of your Agreement with references to relevant clauses.

Key feature:	More information:
<p>AUTHORISATION NO GUARANTEE OF PAYMENT</p> <ul style="list-style-type: none">• What is an Authorisation? <p>Authorisation of a transaction is a confirmation from the Card Issuer (or APM Provider) that at the time the transaction is taken there are sufficient funds available to cover the transaction and (for Card payments) the Card has not been reported as lost or stolen.</p> <ul style="list-style-type: none">• Does receiving an Authorisation mean I will be paid? <p>No. Receiving an Authorisation for a Transaction is no guarantee of payment. It does not confirm the authenticity of the Card presenter or the Card, nor does it guarantee payment.</p>	<p>Customer Operating Instructions, sections 2.9, 5</p>
<p>CHARGEBACKS AND ASSESSMENTS</p> <ul style="list-style-type: none">• What is Chargeback? <p>A Chargeback is the technical term used by international Card Schemes where a transaction is disputed by a cardholder and where funds may not be settled to you or if they already have been, where you may be required to pay these back. We use the term Chargeback in the Agreement to cover similarly disputed transactions in relation to Alternative Payment Methods.</p> <p>Chargebacks allow transactions to be reversed under specified circumstances. These may include where a card is used fraudulently, or where goods are not of a satisfactory quality or you fail to deliver prepaid goods or services. These transactions tend to be referred to as “disputed transactions”.</p> <ul style="list-style-type: none">• What does this mean for me? <p>You are liable for each Chargeback and these represent a debt immediately payable from you to us.</p> <p>Please refer to the Customer Operating Instructions for further information about Chargebacks, including the process for disputing a Chargeback. It may not always be possible however for you to dispute Chargebacks successfully, even where you have provided goods or services. This is a risk of your business, which you accept.</p> <p>If you receive what we consider to be excessive levels of chargebacks, we may terminate this Agreement.</p>	<p>Clauses 6 and 12.5(G) Customer Operating Instructions, section 15</p>
<p>EXCLUSIONS AND LIMITATIONS OF LIABILITY</p> <p>This Agreement contains important exclusions and limitations on our liability to you and your liability to us. Most of these are contained in clause 15. You should ensure you have read and understood the exclusions and limitations contained in this Agreement in full (including those listed in this table) so that you can ensure that you have adequate protections (eg, insurance and business continuity arrangements) in place for your business, to cover you in cases where our liability has been limited or excluded.</p>	<p>Clause 15 Clauses 4.10, 4.12, 6.8, 11.3, 27.2, 27.3, 29.1, paragraphs 3.5 and 3.7 of Schedule 3, paragraphs 1.6, 2.5 and 4.10 of Schedule 4, and paragraph 17 of Schedule 5</p>

<p>KEEPING US INFORMED</p> <p>You must only use the Services in connection with the sale and supply of goods or services which commonly fall within the type of business you have identified to us. You must keep us informed (among other things) about changes to the nature of goods or services your business offers, and any website address through which you trade.</p> <p>Additionally, we are required by law to undertake regular customer verification exercises, and require your cooperation with these.</p>	<p>Clause 3.2(B) – (D) Customer Operating Instructions, section 2.3</p>
<p>RECORD KEEPING</p> <ul style="list-style-type: none"> • What do I need to do? <p>It is important you retain records of transactions and store these securely. You may need to provide records in order to receive or retain payments for goods or services, for example where a Chargeback is raised or potentially fraudulent activity has occurred.</p> <p>Failure to keep records will negatively impact your ability to dispute Chargebacks successfully. It may also lead to you not receiving funds for payments you have processed.</p>	<p>Clauses 18 and 2.7 Customer Operating Instructions, section 2.7</p>
<p>THIRD PARTY PROCESSING & UNAUTHORISED USE OF TERMINALS</p> <p>You must only use the Services provided under this Agreement to process payments for goods or services you are providing to a Buyer. You must not use the Services to process payments on behalf of a third party, for goods or services being provided by a third party, where no goods or services are being provided to a Buyer, or without your authorisation.</p> <p>You are responsible for controlling the use of your terminals, access codes and merchant data account. If these are used without your authorisation, you will be liable for any resulting losses.</p> <ul style="list-style-type: none"> • Who is a “third party”? <p>Third parties include is any party (eg, a limited company or an individual) who has not entered into this Agreement (eg, is not a signatory to this Agreement). This may include other persons within your business such as other companies within your corporate group or ownership, or a separate sole trader operating at the same premises.</p> <ul style="list-style-type: none"> • What about if my business changes hands? <p>This Agreement is personal to you and cannot be transferred by you to a third party. Where your business changes hands and a new legal entity owns or operates the business neither you nor the new legal entity may use the Services to process payments for goods or services being provided. Contact us well in advance of your business changing hands to let us know when this will happen and so we can explain what will be required to close your account. If the new legal entity would like to use Worldpay, we can discuss relevant steps with them but our usual account opening procedures will apply before we can agree to provide them with services.</p> <ul style="list-style-type: none"> • What does it mean if third party processing occurs? <p>If you use the Services to process payments for goods or services you are not providing as principal to a Buyer you will not receive remittance of funds from us and will also be liable for any fraud/chargebacks irrespective of the fact you have processed transactions on behalf of someone else. You may also be liable as a result of any consequent breach of this Agreement (Including Scheme Rules and related Assessments) and we will have the right to terminate your agreement with us.</p>	<p>Clauses: 3.2(A) 3.3 3.4 24.1</p>
<p>SCHEME RULES</p> <ul style="list-style-type: none"> • Why are these so important <p>The payments systems in connection with which we provide you Services under this Agreement have rules in place. Among other things, these rules are to ensure standards are maintained and adhered to by the various parties in the payments chain.</p> <p>Many of the obligations placed on you under this Agreement in part result from requirements in the Scheme Rules.</p> <ul style="list-style-type: none"> • What happens if I do not comply? <p>Failure to comply with the Scheme Rules, or provisions of this Agreement based on Scheme Rules, constitute a breach of this Agreement and may result in Services being suspended or terminated. It may also result in Assessments (eg fines or charges), which may be significant in value and for which you will be liable.</p>	<p>Clauses 3 and 6 Customer Operating Instructions</p>
<p>USE OF THIRD PARTY PRODUCTS AND SERVICE PROVIDERS</p> <p>Where you use hardware, software or services provided by a third party in connection with any Service we provide you under this Agreement, you will be solely responsible for ensuring that both you and the third party maintain the compatibility and compliance of such products with (a) any relevant data security or other payments standards and (b) the Services we provide. Third Party Products will not be maintained or kept up to date by us, under this Agreement or otherwise.</p>	<p>3.2(H) 15.5(D) Schedule 4</p>

IMPORTANT: The key features listed above are not a complete list or overview of the terms, and the clauses listed may not be the only clauses that apply to the various features. This summary is not intended to have any legal effect and is only intended as an explanation of some key features. Reading this introductory section is not a substitute for reading, understanding and complying with the terms of your Agreement.

Part 3 – Suppliers of the Services

Subject to Schedule 1, where provided to you by us under this Agreement, the following Worldpay Group Companies provide the following Services:

Worldpay Group Company	Services
Worldpay (UK) Limited provides, among other things:	(i) Card Acquiring Services (ii) Terminal Hire (iii) Other Payment Services (including My Business Dashboard) (iv) Technical Services for Point of Sale Transactions
Worldpay Limited provides, among other things:	(i) Alternative Acquiring Services (ii) Technical Services for eCommerce Transactions (including Gateway Services, CPC/DCC Services and Fraud Management Services) (iii) "Corporate Gateway" services, which are supplied from its branch in the Netherlands

Part 4 – Payment Services Regulations

This Agreement applies to merchants of any size. However, you acknowledge and agree that, if at the time you enter into this Agreement, you are a "Large Enterprise" or "Large Charity" (as defined below) then you:

- confirm that you are not a consumer, micro-enterprise or a charity within the meaning of the Payment Services Regulations;
- agree that none of the provisions of Part 5 of the Payment Services Regulations applies to this Agreement;
- agree that regulations 54(1), 55(3), 55(4), 60, 62, 63, 64, 67, 75, 76 and 77 of the Payment Services Regulations do not apply to this Agreement; and
- agree that the time period for notifying us of any unauthorised or incorrectly executed payment transaction is any such period specified in this Agreement rather than regulation 59(1) of the Payment Services Regulations.

You acknowledge and agree that you are a "**Large Enterprise**" if:

- your annual turnover and/or annual balance sheet total exceeds £2 million, if you enter into this Agreement prior to 1 January 2012; or €2 million, if you enter into this Agreement on or after 1 January 2012; or
- you have ten (10) or more employees,

You acknowledge and agree that you are a "**Large Charity**" if:

- you are a charity with an annual income of £1 million or more.

Part 5 – Terminal Hire and the Consumer Credit Act

Where you wish to hire one or more Terminals from us and you are:

- (A) an individual; or
- (B) a partnership consisting of 2 or 3 persons not all of whom are bodies corporate; or
- (C) an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership, (in each case, within the meanings give to those terms as used in the Consumer Credit Act 1974) then the hire shall be governed by Regulated Terminal Hire Terms which are separate from, and independent of, this Agreement.

If you are not within one of the categories defined in (A) to (C) overleaf, then the Terminal Hire shall be subject to the Unregulated Terminal Hire Terms in Schedule 5.

There is a Minimum Hire Period specified in each of the Regulated Terminal Hire Terms and the Unregulated Terminal Hire Terms. Please note that both Terminal Hire Agreements provide that if the rental arrangement terminates for any reason before the end of the relevant Minimum Hire Period, certain monies will be payable and the Terminal will need to be returned to us.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, the following terms shall have the following meanings (unless the context otherwise requires):

"Access Code" means each personal identification number and/or password that is necessary to enable you to access or use your Merchant Data Account and/or any Service;

"Acquirer" means a Person who supplies Acquiring Services to you under this Agreement where that Person is one of us, not an **Other Acquirer**;

"Acquiring Services" means both Card Acquiring Services and Alternative Acquiring Services;

"Alternative Payment Method" or **"APM"** mean a payment method (other than Cards) specified in Schedule 2, or as otherwise approved by us in writing from time to time;

"Alternative Payment Provider" or **"APM Provider"** mean, for each Alternative Payment Method, the provider of such payment method;

"Alternative Acquiring Services" means, for each Alternative Payment Method, both:

(A) the processing by us of Transactions, Chargebacks and Refunds; and

(B) the receipt and disbursement of related funds (except where we are acquiring Direct Debits and payment is made directly to you by the Buyer's bank), arising from the use of the non-Card payment methods specified in Schedule 2;

"Anticipated Liabilities" means amounts required to cover any sum due under: (i) the indemnity in clause 14.1 in respect of potential or expected Refunds, Chargebacks, Chargeback Costs, any liability or expected liability relating to a Transaction or Assessments; or (ii) any liability or potential liability of yours under this Agreement;

"Applicable Law" means all laws or regulations (and including the requirements of any Regulatory Authority) applicable to a Party (including a Party's rights or obligations) or to any Transaction or Refund for the time being in force in any jurisdiction;

"Application Form" means each application form that we ask you to submit when applying for the provision of Services, any attached Pricing Schedule, and any attached addendum (eg, a Worldpay Total Addendum);

"Arrangement" means a Voluntary Arrangement under the Insolvency Act 1986 or the Insolvent Partnerships Order 1994 or a Scheme of Arrangement under sections 895 to 901 of the Companies Act 2006, or similar or analogous event in relation to you in this or any other jurisdiction;

"Assessment" means any assessment, fine, liquidated damages, fee, cost, expense or charge of any nature which a Card Scheme, Other Financial Institution, APM

Provider or any other third party levies on you or us at any time, directly or indirectly, in relation to any aspect of our or such third party's relationship with you;

"Authorisation" means:

- (A) in the case of the Acquiring Services related to Cards: the confirmation at the time of a Transaction from the relevant Card Issuer that the Card used to pay for the Transaction has not been blocked for any reason or listed as lost or stolen or as having had its security compromised and that there are sufficient funds available for the relevant Transaction; and
- (B) in the case of Alternative Acquiring Services: authorisation of a Transaction, including, where applicable, the confirmation from the relevant Other Financial Institution or APM Provider that adequate funds are available at the time of the Transaction to pay for the relevant Transaction,

(and **"Authorise"** and **"Authorised"** shall be construed accordingly);

"Authorisation Request" means a request for Authorisation;

"Authorised User" means an individual authorised by you to access your Merchant Data Account;

"Business Day" means a day other than a Saturday, Sunday or public holiday in England on which banks are open for normal banking business in London, United Kingdom;

"Buyer" means a Person who or which has ordered goods and/or services from you and has initiated a Transaction in respect of that order, including a Cardholder;

"Capture" means, in relation to Card Acquiring Services, our transmission of a payment instruction in relation to a Transaction to a Card Scheme for onward transmission to a Card Issuer to enable the earmarking of funds by a Card Issuer in a Cardholder's account for Settlement;

"Capture Request" means, in relation to Gateway Services, the submission by you to the Acquirer, Other Acquirer or APM Provider via the Gateway Service of Data relating to a specific Transaction after receipt of the Authorisation for the purposes of executing a payment instruction in respect of a Transaction;

"Card" means a credit, debit, charge, purchase or other payment card issued by a Card Issuer under a Card Scheme whose payments we are able to process (as notified by us to you from time to time);

"Card Acquiring Services" means the Authorisation, Capture and Settlement by us of a Card related Transaction, and the processing by us of Chargebacks, Refunds, Representments and/or Retro-Charges in respect of Cards;

"Cardholder" means a Person who or which is the authorised user of a Card;

"Card Issuer" means a Person which issues Cards;

"Card Not Present Transaction" or **"CNP"** mean a Point of Sale Transaction in which the Buyer uses a Card but is not present at the point of sale;

"Card Schemes" means schemes governing the issue and use of Cards listed in Schedule 6, or as may be approved and notified by us to you in writing from time to time;

"Centre of Main Interests" means the place where you maintain your registered office or if different, where you conduct the administration of your interests on a regular basis;

"Chargeback" means either: (i) any circumstances where Card Issuers, Card Schemes and/or Other Financial Institutions either refuse to Settle a Transaction or demand payment from us in respect of a Transaction that has

been Settled and/or in respect of which Remittance been made to you; or (ii) any circumstances where any APM Providers or Other Financial Institutions either refuse to make a payment to us (including a Payment as defined in Schedule 2 or otherwise) or demand payment from us in respect of a disputed Payment or other payment made to us in respect of a Transaction, or in respect of which Payment or other payment has been made to you; in each case notwithstanding any Authorisation;

"Chargeback Costs" means our administrative charge for processing a Chargeback and any (i) reasonable costs, expenses, liabilities, and (ii) Assessments that we may incur as a result of or in connection with a Chargeback;

"Claim" means any action, proceedings, cost, claim, demand, charge, expense (including legal fees and expenses), Assessment, loss, damages, whether arising in tort, contract, for breach of statutory duty or otherwise;

"Commencement Date" means the date on which you are notified by us (in our sole and absolute discretion) that your application for provision of Services has been accepted;

"Confidential Information" means information that is designated as "confidential" or which by its nature is clearly confidential including any information relating to: this Agreement (any information concerning Fees or your Pricing Schedule); a Buyer or a Buyer's use of a Card; any one of the Card Schemes; your and our respective technology, technical processes, procedures, business affairs, finance, security procedures; or the layout of our, Other Financial Institutions', Other Payments Organisations or (as the case may be) your premises, lists of suppliers and customers and other proprietary knowledge, however any such information is conveyed or presented, including text, information, technical specifications, unpublished patent specifications, data, drawings, plans, processes, photographs, databases, computer software in disk, cassette, tape or electronic form and items of computer hardware on any medium including all electronic, optical, magnetic and tangible media, oral descriptions, demonstrations or observations;

"Contract Year" means each successive 12 month period commencing on the Commencement Date;

"Control" or **"Controlled"** mean the exercise, or ability to exercise or entitlement to acquire, direct or indirect control over you or us (as applicable), as defined in ss.449 and 450 of the Corporation Tax Act 2010 and a **"Change of Control"** shall be deemed to have occurred if any Person or Persons who control(s) you or us at the Commencement Date subsequently cease to control you or us, as the case may be;

"CPC/DCC Services" means the Cardholder Preferred Currency Direct and Dynamic Currency Conversion Services, as described in Schedule 4;

"Customer Due Diligence" means the measures prescribed by the Money Laundering Regulations 2007 or any other Applicable Law;

"Customer Operating Instructions" or **"Merchant Operating Instructions"** mean any instructions, guidance or manuals made available by us at:

- <http://www.worldpay.com/uk/support/sme-support> and
- <http://www.worldpay.com/support/>

that include information and requirements relating to the Scheme Rules and the Services, as amended from time to time;

"CYB Account Bank" means Clydesdale Bank PLC (which also trades as Yorkshire Bank) and any bank that is a subsidiary or holding company of Clydesdale Bank PLC from time to time or a subsidiary of any such holding company;

“Data” means documents, data and records of any kind relating to Transactions, Chargebacks, Representments, Retro-Charge or Refunds (including, for the avoidance of doubt, data relating to Cards and Buyers) and shall include Transaction Personal Data and Sensitive Authentication Data;

“Data Controller” means any Person who alone or jointly or in common with other Persons determines the purposes for which and the manner in which Personal Data are, or are to be, processed;

“Data Processor” means a Person (other than an employee of the Data Controller) who processes Personal Data on behalf of the Data Controller;

“Documentation” means any documents we supply to you from time to time, whether in physical or electronic form and whether in the form of text, graphics or still or moving images;

“eCommerce Transactions” or "E-commerce Transactions" mean Transactions which are sales in which the payment order is given via the internet, and excludes Mail Order/Telephone Order Transactions;

“EEA” means the European Economic Area;

“Europe Region” means those countries and territories defined as being within the UK or Europe areas by the Card Schemes from time to time;

“Exchange Rate” means the reference currency exchange rate we may notify to you from time to time. Our prevailing standard reference exchange rate is sourced from Bloomberg or an equivalent leading provider. The reference rate will fluctuate and is therefore indicative only;

“Fees” means the fees specified in the Application Form or Pricing Schedule;

“Floor Limit” means any monetary limit (of which we notify you from time to time) above which you must obtain our Authorisation prior to completing a Transaction;

“Fraud Management Services” has the meaning given to that term in Schedule 4, part 3;

“Gateway Services” means the provision by us of an online portal that (among other things, and pursuant to the provisions of Schedule 4) supports the processing of Authorisation Requests and Capture Requests and the transmission of Data by us between you and the Buyer and/or between you and an Acquirer or Other Acquirer to enable a Transaction, Representment or Retro-Charge or making a Refund over the internet. We do not enter into the possession of any funds in the course of providing the Gateway Services (or at all where the Gateway Services are provided and you are using an Other Acquirer);

“Group Company” in respect of a Party means: (i) any undertaking which, directly or indirectly, Controls or is Controlled by such Party; and (ii) any other undertaking which, directly or indirectly, Controls or is Controlled by any such undertaking;

“Initial Term” means a period of twelve (12) months commencing on the Commencement Date;

“Insolvent” means:

in respect of a person, that that person is unable to pay its debts as defined in s.123 (1) or (2) Insolvency Act 1986

EXCEPT THAT in the interpretation of this definition:

- (A) the words “it is proved to the satisfaction of the court that” in subsections (1)(e) and (2) of section 123 shall be deemed to be deleted; and
- (B) a Party shall not be deemed to be unable to pay its debts if any demand under section 123(1)(a) or section 268(1)(a) is being contested in good faith by

such Party and such Party has adequate funds to discharge the amount of such demand or if any such demand is satisfied before the expiration of 21 days from the date on which it is made;

(where you are an individual) you are the subject of a bankruptcy petition or order;

(where you are an individual) you are deemed either unable to pay your debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986;

(where you are a partnership) you have any partner to whom any of the foregoing apply;

(where you are an individual) you die or, by reason of illness or incapacity (whether mental or physical), you are incapable of managing your own affairs or become a patient under any mental health legislation;

“Intellectual Property Rights” means any and all intellectual property rights of whatever nature and includes patents, inventions, know-how, proprietary knowledge, trade secrets and other confidential information, copyrights, database rights (including rights of extraction), design rights (registered or unregistered), copyright, trade marks, service marks, logos, internet domain names, business names, trade names, rights protecting goodwill and reputation, moral rights, all registrations or applications to register any of the aforesaid items, and all rights and forms of protection of a similar nature of any of the aforesaid items or having equivalent effect in any country or jurisdiction, rights in the nature of unfair competition rights and rights to sue for passing off;

“Losses” means any liabilities, losses, damages, charges, fines, costs and/or expenses (including reasonable and properly incurred legal fees and/or expenses);

“Mail Order/Telephone Order Transactions” or **“MOTO”** mean Transactions, which are Card Not Present Transactions, in which the Buyer pays using a Card concluded by telephone or mail order, other than eCommerce Transactions;

“Merchant Bank Account” means an account in your name with a duly authorised credit institution acceptable to us that is maintained by you for the purposes of receiving Remittances and paying your Fees due to us in accordance with clause 4.1;

“Merchant Data Account” means an electronic management information account in our systems containing Data related to your Transactions, Chargebacks, Refunds, Representments and Retro-Charges, and which may be provided through Other Payment Services from time to time such as My Business Dashboard;

“Merchant Material Adverse Change” means any circumstance, event or series of events that we have reasonable grounds to believe materially adversely affects or may materially adversely affect your liabilities or potential liabilities; or your ability fully and promptly to perform and comply with any one or more of your obligations under this Agreement, including:

- (A) a material change in the nature of your business or the goods and/or services supplied by you;
- (B) a material positive or negative fluctuation month-on-month in your Transaction volumes or the average value of your Transactions;
- (C) a material increase in your Chargeback levels relative to expected volume;
- (D) the occurrence of material Assessments;

- (E) a Change of Control in respect of you, or a sale or other disposal of any substantial division or part of your business;
- (F) the withdrawal, removal, termination or unenforceability of any security in relation to you which we or any Other Financial Institution rely upon;
- (G) the withdrawal or termination of any licence, permission or authorisation required to operate your business;
- (H) instructions from a Regulatory Authority which you do not, or you are unable or unwilling to, comply with;
- (I) you grant to a third party any security or charge over all or a significant proportion of your assets; or
- (J) a material deterioration in your profits or your financial or trading position,

PROVIDED THAT, in respect of events set out in sub-paragraphs (B), (C) and (J) only, account shall be taken of historical figures and trends including seasonality of sales and yearly sales growth;

"Mobile Terminals" means a Terminal that enables Transactions to be submitted via a mobile telecommunications network;

"Other Acquirer" means a third party which has an agreement with you to provide you with services the same as or similar to the Acquiring Services in connection with Services (other than Acquiring Services) being provided to you by us under this Agreement;

"Other Financial Institution" means any third party credit or financial institution (including the RBS Account Banks, the CYB Account Banks and Card Issuers) which may be involved, or which we in our sole and absolute discretion involve, in the course of our provision of any of the Services;

"Other Payments Organisation" means any third party service provider (including APM Providers, providers of Third Party Products and Card Schemes) which may be involved, or which we in our sole and absolute discretion involve, in the course of our provision of any of the Services;

"Other Payment Services" means payment or payment related services other than Acquiring Services provided by us from time to time (if any) specified in Schedule 3 and/or any Application Form;

"Other Personal Data" means Personal Data, other than Transaction Personal Data;

"Party" means each party to this Agreement (as the context may require) and includes the successors and permitted assigns of each such party;

"Payment Service Regulations" means the UK Payment Services Regulations 2009 (Statutory Instrument 2009 No. 209), as amended from time to time;

"PCI SSC Standards" means the Payment Card Industry Data Security Standard, Payment Application Data Security Standard and the PIN Transaction Security Standard as updated from time to time and published by the PCI Security Standards Council at <https://www.pcisecuritystandards.org>;

"Person" means any individual, company, body corporate, corporation sole or aggregate, government, state or agency of a state, firm, partnership, association, organisation or trust (in each case, irrespective of the jurisdiction in or under the law of which it was incorporated, formed or otherwise exists);

"Personal Data" means data which relates to a living individual who can be identified from those data or a combination of those data and other information in the possession of, or likely to come into the possession of, the Data Controller;

"Personnel" means employees, agents, consultants, contractors and sub-contractors and their employees, agents, consultants and sub-contractors;

"Point of Sale Transactions" means Transactions in which the Buyer's payment instruction is issued via a Terminal;

"Pricing Schedule" means the document(s) setting out the relevant fees payable by you in connection with the Services, whether attached to or included within the Application Form, Schedule 7 and/or otherwise provided by us to you from time to time;

"Privacy Policy" means collectively our "layered" privacy policies from time to time, the up to date versions of which can be accessed at www.worldpay.com and/or including at <http://www.worldpay.com/uk/comprehensive-privacy-policy>;

"Processing" means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, and **"process"** or **"processed"** shall be construed accordingly;

"RBS Account Bank" means each of The Royal Bank of Scotland plc, National Westminster Bank Plc, Ulster Bank Limited, Ulster Bank Ireland Limited or any other bank that is a subsidiary (as defined in the Companies Act 2006) of The Royal Bank of Scotland Group plc, or any one of them, as the context requires;

"Reason Code" means a code used by any Card Scheme to classify a specific activity, act or omission, including any code in the Visa Merchant Alert Service and Merchant Alert to Control High-Risk Merchants;

"Recurring Transaction" means a repetitive periodic Transaction for which you charge the Buyer's Card or Alternative Payment Method account (eg, subscriptions or instalments);

"Recurring Transaction Authority" means a Buyer's prior written authority (taken during the check-out process) for you to establish a Recurring Transaction, setting out: (a) the amount of the Recurring Transaction and whether this amount is fixed or variable; (b) the dates on which the Recurring Transaction will be charged to the Buyer's Card or Alternative Payment Method account and whether the dates are fixed or variable; (c) the method of communication for all correspondence with the Buyer; and (d) a statement that the Buyer may cancel the Recurring Transaction Authority at any time;

"Refund" means a Transaction, in respect of an initiating Transaction, made wholly or partially to reverse that initiating Transaction;

"Regulated Terminal Hire Terms" means a hire agreement for Terminals that is regulated under the Consumer Credit Act 1974 (as amended or replaced);

"Regulatory Authority" means any governmental or regulatory authority, and/or any self-regulatory authority, governmental department, agency, commission, board, tribunal, crown corporation, or court or other law, rule or regulation making entity having jurisdiction over any of the Parties and/or their businesses or any part or subdivision thereof in any territory in which the Services are made available or any local authority, district or other subdivision thereof (including, in respect of the United Kingdom, the Financial Conduct Authority, the Office of Fair Trading, the Office of the Information Commissioner) and any body which succeeds or replaces any of the foregoing;

"Remittance" means any payment we make to you under this Agreement in the course of Card Acquiring Services (and **"Remit"** will be construed accordingly);

"Remittance Date" means the Business Day (notified to you by us from time to time) on which Remittance occurs;

“Representative” means, in respect of the Parties, any Person that a Party may notify to the others from time to time as being authorised to act on that Party’s behalf;

“Representment” means a Transaction to reverse a Chargeback by the re-execution of the original Transaction, where you have successfully challenged the Chargeback;

“Restricted Person” means a person that is (i) listed on, or owned or controlled by a person listed on any Sanctions List; (ii) located in, incorporated under the laws of, or owned or controlled by, or acting on behalf of, a person located in or organised under the laws of a country or territory that is the target of country-wide Sanctions; or (iii) otherwise a target of Sanctions;

“Retro-Charge” means a Transaction initiated by you to reverse a Refund to which the Buyer was not entitled;

“Sanctions” means any economic sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by: (i) the United States government; (ii) the United Nations; (iii) the European Union; (iv) the United Kingdom; or (v) the respective governmental institutions and agencies of any of the foregoing, including without limitation, the Office of Foreign Assets Control of the US Department of Treasury (**“OFAC”**), the United States Department of State, and Her Majesty’s Treasury (together **“Sanctions Authorities”**)

“Sanctions List” means the “Specially Designated Nationals and Blocked Persons” list issued by OFAC, the Consolidated List of Financial Sanctions Targets issued by Her Majesty’s Treasury, or any similar list issued or maintained or made public by any of the Sanctions Authorities.

“Schedules” means each of the schedules attached to, and forming part of, this Agreement;

“Scheme Rules” means all applicable rules, regulations and operating guidelines issued by the Card Schemes or any APM Provider from time to time relating to Cards, Transactions, Alternative Payment Methods and any payments or processing of Data relating thereto (including those communicated to you in the Customer Operating Instructions and such rules, regulations and guidelines posted on Card Scheme or APM Provider websites from time to time including:

- www.visaeurope.com;
- <http://www.mastercard.co.uk/>; and
- http://www.mastercard.com/us/merchant/pdf/BM-Entire_Manual_public.pdf,

and such other URLs as we may notify you about from time to time); and all amendments, changes and revisions made thereto from time to time and any current waivers or exceptions agreed with the Card Schemes or any APM Provider;

“Sensitive Authentication Data” means security related information used to authenticate Cardholders and authorise Card transactions. Sensitive Authentication Data elements include magnetic stripe data (PAVE, CVV, CVC, CID) PINs, PIN blocks and the three or four digit number security code found either on the front or on the back of a card (eg, MasterCard CVC2/ Visa CVV2);

“Services” means any or all of the Acquiring Services, the Technical Services, the Other Payment Services and/or the Terminal Hire that are provided to you by us under this Agreement;

“Settlement” means the crediting to us, our agent or an Other Financial Institution (as applicable) of the value of a Transaction as determined by the relevant Card Scheme or Other Financial Institution as the case may be (and **“Settle”** and **“Settled”** shall be construed accordingly);

“Technical Services” means:

- (A) Gateway Services;
- (B) CPC/DCC Services;
- (C) Fraud Management Services;
- (D) management information services; and
- (E) such other services as we may specify from time to time in our Documentation or Schedule 4, in each case excluding Acquiring Services;

“Terminal” means an authorised point-of-sale payment order acceptance terminal and associated equipment or device(s);

“Terminal Hire” means arrangements for the hire of terminals by us to you under the Terminal Hire Agreements;

“Terminal Hire Agreements” means the Regulated Terminal Hire Terms and the Unregulated Terminal Hire Terms;

“Third party” means a Person who is not a Party to this Agreement;

“Third Party Product” means a product (whether hardware, software or services) supplied to you by a third party;

“Trading Limit” means the maximum aggregate value of one or more Transactions that you may complete in respect of any specified period as notified to you from time to time;

“Transaction” means any payment by a Buyer for goods and/or services purchased by a Buyer from and provided by you, using either:

- (A) a Card, a Card number or otherwise to debit or credit the applicable Card account; or
- (B) an Alternative Payment Method,

in accordance with the terms of this Agreement and in relation to which we supply any of the Services to you, or a reversal of the same. Unless the context requires otherwise, a reference to “Transaction” shall include a reference to a Refund, a Representment, a Retro-Charge, a Recurring Transaction and a series of connected Transactions;

“Transaction Personal Data” means Personal Data which it is necessary to provide or to Process in connection with Transactions, Chargebacks, Refunds, Representments or Retro-Charges in the course of providing the Services;

“Unregulated Terminal Hire Terms” are the terms applicable to unregulated hire arrangements for Terminals, specified in Schedule 5; and

“Worldpay Customer Payments Account” means an account with any Other Financial Institution in which we hold the proceeds of Transactions, net of any amounts due to us.

1.2 Any reference to:

- (A) a clause shall be to the relevant clause of this Agreement; and
- (B) a part or paragraph shall be to the relevant part or paragraph of the relevant Schedule.

1.3 The use of the term “including” and inflections thereof, or of the abbreviation “eg” mean “including without limitation,” “include without limitation” or “includes without limitation”.

- 1.4 References to a Person include a reference to that Person's successors or assigns.
- 1.5 Words importing the singular include the plural and vice versa where the context so requires.
- 1.6 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.7 Any references to a law or regulation is to the law or regulation from time to time in force.
- 1.8 Any reference to the Financial Conduct Authority includes any body taking over its functions.
- 1.9 To avoid doubt, as regards (i) your obligations and (ii) our rights and remedies (and strictly for our benefit only) any reference in the Agreement to a Transaction, Refund, Representment or Retro-Charge shall include activity purporting to constitute a Transaction, Refund, Representment or Retro-Charge and/or which would (save for any breach by you of this Agreement, or any unauthorised, fraudulent or criminal activity) have constituted a Transaction, Refund, Representment or Retro-Charge.

2. OUR OBLIGATIONS

Provision of the Services

- 2.1 **Acquiring Services:** In return for the Fees related to Acquiring Services, we shall supply you with the Acquiring Services in accordance with this Agreement, with reasonable care and skill, and in compliance with Applicable Law and the Scheme Rules.
- 2.2 **Other Payment Services:** In return for the Fees related to any Other Payment Services, we shall supply you with any such Other Payment Services in accordance with this Agreement (including any specific terms and conditions contained in Schedule 3), with reasonable care and skill and in compliance with Applicable Law.
- 2.3 **Technical Services and Terminal Hire:** In return for the Fees related to the Technical Services and Terminal Hire, we shall supply you with, respectively, the Technical Services and Terminal Hire in accordance with this Agreement (including any specific terms and conditions contained in Schedule 4 and/or the Terminal Hire Agreements, as applicable), with reasonable care and skill, and in compliance with Applicable Law.

Where we provide Technical Services only

- 2.4 In respect of the Technical Services when we are not providing the Acquiring Services and/or related Other Payment Service(s) to you, you acknowledge and agree that the relevant Other Acquirer (or, where applicable, the relevant Other Financial Institution or Alternative Payment Provider providing related payment services to you) shall be solely responsible for authorising and settling Transactions and paying to you any sums due in respect of Transactions, Representments and Retro-Charges.
- 2.5 In view of the nature of Technical Services, you acknowledge and agree that in circumstances where we provide only Technical Services, we may not be able to ascertain whether there are any errors in the transmission of Data and accordingly you shall be responsible for notifying us in the event that there are any discrepancies between the amount of any payments you actually receive in connection with Transactions, Representments and Retro-Charges and the amount you expect to be paid. Such notice must be given to us in writing within thirty (30) days following the date of the relevant Transactions, Representments or Retro-Charges.

Merchant Data Account and related terms

- 2.6 For the term of this Agreement, we grant to you a non-exclusive, non-transferable, worldwide licence to access and use:
 - (A) the Data that we make available via your Merchant Data Account; and
 - (B) the Documentation,
 solely for the purpose of receiving the Services in accordance with the provisions of this Agreement.
- 2.7 While we may display your Transactions in your Merchant Data Account and otherwise supply certain information to you in accordance with Applicable Law, you are responsible for maintaining your own records related to the Services, Transactions, Refunds, Representments, Chargebacks and Retro-Charges, and for reconciling these with your own bank account data and other accounting records. Upon the termination of this Agreement for whatever reason, we will have no obligation to retain, store or make available to you any Data, records or other information in connection with any of the Services or Transactions, Refunds, Representments, Chargebacks and Retro-Charges.
- 2.8 We will show the amount of each Transaction in your Merchant Data Account following or conditional upon our receipt of funds.
- 2.9 **Interchange reporting:** At your request to our customer services team (see contact details at Schedule 8), we will make reference data available to you on a monthly basis for each of your Transactions, showing the value of each Transaction in the same currency in which we have credited your account and the level of interchange payable on each Transaction displayed separately from the rest of your Fees. (Interchange is the fee passed through to Card Issuers.) The data will be provided to you on a monthly basis following your request. We reserve the right to charge for this provision and no historic or backdated data will be available.

3. YOUR OBLIGATIONS

- 3.1 **You shall at all times comply with:**
 - (A) the provisions of **this Agreement;****the Scheme Rules**, including any reflected in this Agreement, provided to you from time to time, or made publicly available by a Card Scheme;
 - (B) all **Applicable Law**, including those requirements which apply to the sale of goods and/or services by you in connection with the Transactions and the execution and performance by you of;
 - (C) your obligations under this Agreement; and
 - (D) **your obligations** relating to the sale and/or supply of goods and/or services by you **to Buyers**.

Your use of the Services

- 3.2 **You shall:**
 - (A) **only accept payments from and/or make Refunds to Buyers in connection with goods and/or services which you have sold and supplied as principal to those Buyers and only pay such Refunds to the Buyer using the payment method used by the Buyer for the original Transaction;**
 - (B) only accept payments and/or make Refunds in respect of goods and/or services the sale and supply of **which commonly falls within your business as identified to us;**

- (C) notify us in writing before you make any change to the nature of the goods and/or services the sale and supply of which fall within your business as identified to us;
 - (D) notify us in writing of the URL of any website where you accept or state that you will accept payments by Card or Alternative Payment Methods using any of the Services (such notification to be made before you accept any such payment);
 - (E) (where we have agreed in writing that you may accept Recurring Transactions) in relation to any Recurring Transaction:
 - i. obtain a Recurring Transaction Authority from the Buyer for such Recurring Transaction and confirm, within two (2) working days of the date of the Recurring Transaction Authority, to the Buyer via the agreed method of communication that a Recurring Transaction Authority has been established;
 - ii. notify the Buyer via the agreed method of communication at least seven (7) working days prior to a Recurring Transaction payment being charged to the Buyer's Card if:
 - (i) the payment amount has changed; (ii) the payment date has changed; (iii) more than six (6) months have elapsed since the last Recurring Transaction payment;
 - or (iv) a trial period, introductory offer or promotional activity has expired;
 - iii. not effect (or seek to effect) a Transaction under the Recurring Transaction Authority once the Recurring Transaction Authority has expired, or once the Buyer has notified you that the Buyer wishes to cancel such Recurring Transaction Authority; and
 - iv. retain securely the Recurring Transaction Authority for at least a period of eighteen (18) months after the date of final Transaction effected under it, and produce each Recurring Transaction Authority to us on demand.
- To avoid doubt, you may not accept Recurring Transactions unless we have previously agreed with you in writing that you may do so.
- (F) only accept payments and submit Data to us in respect of Transactions which a Buyer has authorised in accordance with Applicable Law, this Agreement (including the Customer Operating Instructions), the Scheme Rules and any other information or instructions provided by us to you from time to time;
 - (G) ensure that you prominently and unequivocally inform Buyers of (i) your identity at all points of interaction with a Buyer (including prominently displaying your company name and any trading name on any website through which you conduct Transactions), so that the Buyer can readily identify you as the counterparty to the relevant Transaction; and (ii) (in respect of eCommerce Transactions) your location, which must be clearly identified on the home and payment page of any relevant website;
 - (H) only submit Data to us directly from your own staff or systems, or via a Third Party Product which has been expressly approved by us in writing as one you are entitled to use to submit Data to us, and in respect of which you shall ensure that appropriate compliance standards, licences and clearances are obtained (and the correct licence fees or royalties paid) for the use of all such Third Party Products used in connection with the Services;
 - (I) offer your Buyers a documented complaints procedure and customer service contact point accessible by email and/or telephone; and
 - (J) refrain from doing anything which we reasonably believe to be disreputable or capable of damaging the reputation or goodwill of us, or any Other Financial Institution, Other Payments Organisation or the Card Schemes.
- 3.3 You shall ensure that the Access Codes are not made known to any other person. You shall use all reasonable endeavours to ensure that there is no unauthorised use of the Access Codes, Terminals or of any other confidential material or information used in the provision or use of our Merchant Data Account. However, if you suspect that there may be or has been or are aware that there has been unauthorised use of the Access Codes or of any other confidential material or information used in the provision or use of your Merchant Data Account you shall notify us immediately by contacting us by telephone, with confirmation of such notification in writing, using the relevant contact information (see Schedule 8). We will use reasonable endeavours to prevent unauthorised use of your Merchant Data Account upon receiving such notification.
- Access Codes, Merchant Data Account, Documentation and related security measures**
- 3.4 You acknowledge and agree that:
- 3.4.1 You are solely responsible for establishing and applying adequate security systems and procedures:
 - (A) to comply with the provisions of clause 3.3;
 - (B) for monitoring all use of or access to your Access Codes, Terminals and Merchant Data Account in order to ensure that any Authorised User is using or accessing your Merchant Data Account within the limits of their authority and that no transactions have been effected which would indicate that unauthorised persons are in possession of your Access Codes; and
 - (C) in relation to Data after it has been accessed via, or printed or downloaded from, your Merchant Data Account.
 - 3.4.2 You are responsible for all losses resulting from any unauthorised activity in connection with your Merchant Data Account (including use of Access Codes and Terminals). You acknowledge and agree that without limitation we may suspend the Services and/or at your cost take such other steps as we consider necessary if you have acted fraudulently or you have either intentionally or not, and whether or not through negligence, failed to comply with the provisions of this Agreement (including failing to protect your Access Codes under clauses 3.3 or 3.4, or failing to notify us of the unauthorised transaction under clause 4.13).
 - 3.4.3 If any action or proceeding is brought:
 - (A) against us by a third party; or
 - (B) by us against a third party,
 in relation to any Transaction or dealing with or for you, you shall co-operate with us to the fullest extent possible in the prosecution or defence of such action or proceeding.
- 3.5 You shall only access and use:
- (A) the Data that we make available via your Merchant Data Account; and
 - (B) the Documentation, solely in accordance with the licence granted to you by us under clause 2.6.

- 3.6 You shall notify us as soon as you terminate the authority of an Authorised User.
- 3.7 Except as expressly permitted under this Agreement, you must not copy, download, disclose or make available to any third party any Data from your Merchant Data Account or the Documentation in whole or in part for any purpose whatsoever.
- 3.8 **Customer Due Diligence:** You will comply promptly with all requests for information that we make for the purpose of meeting our operational and legal requirements to carry out Customer Due Diligence in relation to you (including providing personal information about your directors and beneficial owners).
- 3.9 **Costs:** Unless otherwise agreed by us in writing, you acknowledge and agree that you shall (at your own cost) be solely responsible throughout the duration of this Agreement for the provision of all equipment, software, systems and telecommunications facilities which are required to enable you to receive the Services (including any adjustments pursuant to clause 22.1). This includes any integration related costs, incurred prior to, on or after the Commencement Date.
- 3.10 **Registered office and COMI:** Unless otherwise agreed by us in writing in advance, where we provide you with Acquiring Services in the Europe Region, you agree to maintain your registered office and Centre of Main Interests within a member state of the European Union (excluding Denmark) for the duration of this Agreement and provide us with prior written notice of any change to the details of either.
- 3.11 **Sanctions:**
- (A) You shall comply with all laws to which you may be subject and shall comply in all respect with all Sanctions.
- (B) You undertake that you are not and will procure that none of your directors, officers, agents, employees or persons acting on behalf of the foregoing is, a Restricted Person and do not act directly or indirectly on behalf of a Restricted Person.
- (C) You shall to the extent permitted by law promptly upon becoming aware of them supply to us details of any claim, action, suit, proceedings or investigation against you or the persons listed in (B) above with respect to Sanctions by any Sanctions Authority.
- 4. FEES, CHARGES, REFUNDS AND OTHER PAYMENTS DUE FROM YOU**
- 4.1 In return for us providing you with the Services, you shall pay the Fees and all other sums payable by you in accordance with the provisions of this Agreement and terms of the invoices that we issue to you in respect of such payments due from you.
- 4.2 Unless stated otherwise, all Fees, charges and other payments to be made by you under this Agreement are exclusive of VAT and any other applicable taxes under any Applicable Law or governmental decree, for which you shall also be liable.
- 4.3 You shall pay sums due under any invoice from us in respect of:
- (A) Acquiring Services, Terminal Hire and My Business Dashboard within eighteen (18) days of the date of receipt of such invoice or such time period as applies to any direct debit;
- (B) Technical Services within fourteen (14) days of the date of receipt of such invoice or such time period as applies to any Direct Debit; and
- (C) Other Payment Services other than My Business Dashboard, within fourteen (14) days of the date of receipt of such invoice or such time period as applies to any Direct Debit.
- 4.4 We may from time to time vary the Fees and/or introduce new charges in addition to the Fees, in accordance with clause 22.
- 4.5 You shall maintain and disclose to Buyers at the time of purchase a fair policy for the return of goods or cancellation of services. You shall not give a cash refund to a Buyer for a payment made using a Card, unless required by Applicable Law, nor accept cash or other compensation for making a refund to a Card.
- 4.6 The form and procedure for making Refunds is specified in the Customer Operating Instructions applicable to the type of Refund. A Refund only arises in circumstances where there is an originating Transaction which is being reversed or partially reversed. You must ensure the amount of any Refund does not exceed the amount of the initiating Transaction. You are solely liable for any misuse of your facility or any Service to process Refunds, including where there is no originating Transaction.
- 4.7 Not used.
- 4.8 Subject to the provisions of this Agreement, where we are providing Acquiring Services the value of any Refund will be credited to the Buyer's payment service provider's account by no later than the end of the Business Day after you submit the Refund, unless you submit the Refund after 16.00 (CET), in which case, the Refund will be deemed to have been submitted on the next Business Day. The time periods in this clause 4.8 shall not apply where the Buyer's payment service provider is located outside the EEA.
- 4.9 We may refuse to execute a Refund if it does not meet the conditions in this Agreement or is prohibited by law. If we do refuse to execute a Refund, within the time for processing the Refund we will notify you (i) (unless prohibited by law) of the refusal, (ii) (if possible) the reasons for such refusal, and (iii) (where it is possible to provide reasons for the refusal and those reasons relate to factual matters) the procedure for correcting any factual mistakes that led to it. Any payment order that we refuse will be deemed not to have been received for the purposes of execution times and liability for non-execution or defective execution.
- 4.10 Where we execute a Transaction or Refund in accordance with details provided by you, the Transaction or Refund will be deemed to have been correctly executed by us and any Other Financial Institution involved. Where the details provided by you are incorrect, we are not liable for the non-execution or defective execution of the Transaction or Refund, but we will make reasonable efforts to recover the funds involved in such a Transaction or Refund and we may charge you for any such efforts.
- 4.11 Subject to the provisions of clause 4.10 and **where you are not a Large Enterprise or a Large Charity**, we are liable for:
- (A) the correct execution of Refunds unless we can prove to the Buyer and, where relevant, the Buyer's payment service provider that the Buyer's payment service provider received the amount of the Refund in accordance with clause 4.8. Where applicable, on your request, we will make immediate efforts to trace a non-executed or defective Refund and notify you of the outcome and without undue delay refund to you the amount of the non-executed or defective

Refund and, where applicable, restore your Merchant Data Account to the state it would have been in had the non-execution or defective execution not taken place; and

(B) any:

- (1) charges for which you are responsible; and
- (2) interest you must pay, as a consequence of the non-execution or defective execution.

4.12 Subject to the provisions of clause 4.10, **where you are not a Large Enterprise or a Large Charity** and a Transaction is initiated by you as a payee (eg direct debit) as opposed to through you (eg, a Point of Sale Transaction), we are liable for the correct transmission of the payment order in accordance with Applicable Law. If we become aware of the non-execution or defective execution of a Transaction in circumstances where we are liable, we will immediately re-transmit the payment order in question and make immediate efforts to trace the Transaction and notify you of the outcome. Where we can prove to you and, where relevant, to the Buyer's payment service provider that we are not liable in respect of a non-executed or defectively executed Transaction, the Buyer's payment service provider is liable to refund to you the amount of the non-executed or defective Transaction and, where applicable, restore your Merchant Data Account to the state it would have been in had the non-execution or defective execution not taken place.

4.13 You must notify us promptly after becoming aware (and in any event within 13 months of the Transaction) of any Refund which has not been correctly executed. You shall also notify us promptly of any unauthorised Transactions.

5. PAYMENTS TO YOU

5.1 After we show and value date Transactions to your Merchant Data Account in accordance with clause 2.8, subject to clauses 5.2 to 5.7 (inclusive), we shall initiate or procure the initiation of each Remittance by bank transfer to your Merchant Bank Account on the later of the following:

- (A) the Remittance Date; and
- (B) the expiry of any period of deferment pursuant to clause 5.4 in respect of the relevant Transactions.

5.2 In respect of any sums specified in clause 5.3 below, we may at our option (which we may exercise in our sole and absolute discretion):

- (A) deduct or withhold such sums from, or set-off such sums against, any amount we are otherwise obliged to pay you; and/or
- (B) send you an invoice for any or all such sums, which invoice shall be payable in accordance with its terms and within the relevant period specified in clause 4.3;

5.3 The sums referred to in clause 5.2 are:

- (A) any Refunds;
- (B) any Chargebacks;
- (C) any Assessments;
- (D) any Chargeback Costs;
- (E) any Claims;
- (F) any Anticipated Liabilities;
- (G) any Fees; and
- (H) any other charges or amounts due from you to us under this Agreement or otherwise.

5.4 In addition to our rights under clauses 5.2 and 5.3, we may defer any amount we are obliged to pay you:

- (A) if, following any deductions pursuant to clause 5.2, such amount is less than the minimum Remittance threshold that we reasonably determine in our sole and absolute discretion (of which we will notify you from time to time), until the total Remittance payable reaches that threshold;
- (B) where we reasonably believe that a Transaction (including activity which would otherwise have constituted a Transaction) may be fraudulent or involves other criminal activity, until the satisfactory completion of our investigation and/or that of any Other Financial Institution, Regulatory Authority, Card Scheme or Alternative Payment Provider or any other third party; or
- (C) without limit in amount or time, if we become aware or reasonably believe that you are in breach of or likely to be in breach of your obligations under this Agreement.

5.5 We may suspend the processing of all or any Transactions, Refunds, Representments or Retro-Charges where we reasonably believe that a Transaction, Refund, Representation or Retro-Charge (including activity which would otherwise have constituted a Transaction, Refund, Representation or Retro-Charge) may be fraudulent or involves any criminal activity, until the satisfactory completion of our investigation and/or that of any, Other Financial Institution, Regulatory Authority, Card Scheme or APM Provider, or any other third party.

5.6 In the event that we exercise our rights under this clause 5 we shall notify you of any such action and the reasons for it, unless we are prohibited from doing so under the Applicable Law. Subject to reasonable security measures and Applicable Law, we will notify you before any suspension of processing under clause 5.5 if we are able to do so, or otherwise immediately after such suspension.

5.7 Remittance shall be paid in the currency or currencies agreed between you and us as set out in the Application Form, or as otherwise agreed in writing by you and us from time to time. Where we apply a currency conversion to Remittance, we use our prevailing Exchange Rate of the day which is applied on: (a) the date of Settlement, in the case of Point of Sale Transactions (including Mail Order/Telephone Order Transactions and Card Not Present Transactions); and (b) the date on which the Transaction is sent to the Acquirer, in the case of eCommerce Transactions.

5.8 In circumstances where we receive Transaction funds, you hereby unconditionally instruct and authorise us or any Other Financial Institution to remit such funds to one or more Worldpay Customer Payments Accounts for the purpose of holding the funds received in respect of Transactions you have processed (net of any amounts due to us) on your behalf, prior to making each Remittance to you. You shall not be entitled to receive interest, if any, paid by our bank service provider in connection with funds held in the Worldpay Customer Payments Account and any such interest may be retained by us.

6. CHARGEBACKS AND ASSESSMENTS

6.1 Each Chargeback and each Assessment represents a debt immediately due and payable by you to us.

6.2 You acknowledge and agree that you may be required to reimburse us for Chargebacks in circumstances where you have accepted payment in respect of the relevant Transaction, even if you are under no legal liability in

respect of the supply of the goods or services concerned. To the extent permitted by Applicable Law, we shall notify you as soon as reasonably practicable of any applicable Chargebacks and Chargeback Costs which have occurred or been incurred. Such notification may be given via a link to a URL which we may provide to you.

- 6.3 Any Chargebacks for which you are required to reimburse us shall correspond to the whole or part of the Settlement value in the currency of the original Transaction. With your written consent (not to be unreasonably withheld or delayed) the amount may be converted to the Settlement currency from the currency of Chargeback at the Exchange Rate quoted to us.
- 6.4 In the event that you wish to dispute a Chargeback, it is your responsibility (i) to prove to our reasonable satisfaction (which shall, subject to clause 6.5 and without limitation, be conditional upon the relevant Card Scheme, Card Issuer, Other Financial Institution, or Alternative Payment Provider, as the case may be, confirming it is satisfied) that the debit of the Buyer's account was authorised by such Buyer; and (ii) (additionally) to provide us with such other evidence as we or any Card Issuer, Other Financial Institution, APM Provider or Card Scheme may require you to provide in support of your claim. The evidence required to be provided will depend on, among other things, the nature of the Chargeback, and may vary accordingly.
- 6.5 Subject to the Scheme Rules, neither we nor any Other Financial Institution shall be obliged to investigate the validity of any Chargeback or Assessment. You acknowledge and agree that any decision or determination of the relevant Card Scheme or APM Provider as to the validity and extent of any Chargeback and/or Assessment shall be final and binding.
- 6.6 As Chargebacks may arise a considerable period of time after the date of the relevant Transaction, you acknowledge and agree that, notwithstanding any termination of this Agreement for whatever reason, we shall remain, without prejudice to Clause 8, entitled to recover Chargebacks and Chargeback Costs from you (and, where relevant, from any Person who has provided us with a guarantee or security relating to your obligations under this Agreement) in respect of all Chargebacks that occur in relation to Transactions effected during the term of this Agreement.
- 6.7 Subject to clause 6.8, you shall not be liable for any Chargebacks, Chargeback Costs or Assessments to the extent that they are caused by our breach of our obligations under this Agreement.
- 6.8 We will in no circumstances be liable for the payment of any sums in respect of any Chargeback or Chargeback Costs arising out of or in connection with Transactions in respect of which we supply Technical Services only.

7. FLOOR AND TRADING LIMITS

- 7.1 In respect of the Acquiring Services and/or Other Payment Services, we may from time to time notify you of a Trading Limit and/or a Floor Limit.
- 7.2 You shall not exceed the Trading Limit or complete a Transaction in excess of the Floor Limit without our prior written approval (to be given in our sole and absolute discretion). For the purposes of this clause 7.2 we may give such written approval via an electronic authorisation that you may not be able to store. Such Trading Limit or Floor Limit shall continue to apply unless we notify you otherwise in writing.
- 7.3 Unless otherwise agreed by us or notified by us in accordance with clause 7.1 or 7.2, the monetary value of the Floor Limit shall be zero.

8. BANK ACCOUNT AND PAYMENTS

- 8.1 You shall open and maintain in your name a Merchant Bank Account throughout the term of this Agreement and for such period as may be required thereafter for the purposes of any applicable provisions of this Agreement. You are required to maintain with your bank a Direct Debit instruction to authorise us to Bacs Direct Debit from the Merchant Bank Account all sums that become due and payable by you to us under or in connection with this Agreement.
- 8.2 In addition to, and without prejudice to the exercise of any rights under clauses 5.2 to 5.4, we may debit the Merchant Bank Account, at our option, for all sums that become due and payable by you to us under or in connection with this Agreement, in accordance with the terms of the Direct Debit instruction maintained by you under clause 8.1.
- 8.3 Without prejudice to the requirement in clause 8.1 for you to provide and maintain a Direct Debit instruction, if your Merchant Bank Account is held with an RBS Account Bank or CYB Account Bank then at our option and subject to agreement by the applicable RBS Account Banks or CYB Account Bank you agree that that RBS Account Bank or CYB Account Bank shall be entitled to debit your Merchant Bank Account with any amounts owed by you under this Agreement. We will notify you in advance if we have been collecting amounts owed under this clause 8.3 and will instead start collecting these under the Direct Debit instruction you are required to provide under clause 8.1.
- 8.4 Subject to clause 8.6, but notwithstanding any other provision of this Agreement, all amounts payable by you under this Agreement are payable to both us and the relevant RBS Account Bank or CYB Account Bank.
- 8.5 Not used.
- 8.6 The rights granted to us, the CYB Account Bank and the RBS Account Bank in clause 8.3 shall not limit or affect any of your or our other rights or obligations under this Agreement, including the requirement for you to provide and maintain a Direct Debit instruction under clause 8.1, and shall not have the effect of increasing any amount payable by you under this Agreement.
- 8.7 You will ensure that the Merchant Bank Account shall at all times have a credit balance sufficient to meet any sums due and payable to us under or in connection with this Agreement.
- 8.8 We shall, if practicable, notify you in advance of any sums payable by you to us which we intend to debit by Direct Debit.
- 8.9 You shall notify us in writing in advance of any changes proposed by you or any third party in respect of the Merchant Bank Account (including the location of the branch at which such account is held) and shall not implement such changes without our prior written consent (such consent not to be unreasonably withheld or delayed). If any changes in the Merchant Bank Account details are imposed on you, you shall notify us in writing immediately, giving full details of such changes and the reasons for them.
- 8.10 This clause 8 shall not prejudice your rights under Applicable Law or the UK Direct Debit Guarantee Scheme to recover payments made to us by Direct Debit.

9. INTEREST

- 9.1 Subject to the provisions of clauses, 5.8, 11 and 15.3, if any Party (the defaulting party) fails to pay any amount under this Agreement when due, then the other Party shall be entitled to charge the defaulting party interest at a rate equal to three (3)% per annum above the base rate that is published by The Bank of England from time to time.

9.2 The Parties agree the provisions of this clause 9 provide a substantial contractual remedy and that the Late Payment of Commercial Debts (Interest) Act 1998 is excluded from this Agreement.

10. SET-OFF

10.1 You hereby irrevocably authorise each of us and any Other Financial Institution, from time to time without notice and both before and after demand, to set off by whatever means the whole or any part of your liabilities to us or any Other Financial Institution (as appropriate) under this Agreement or any other contract (whether such liabilities are present, future, actual or contingent or potential, liquidated or unliquidated and irrespective of the currency of their denomination) against any Remittance due to you or against any sums (whether or not related to the Transaction that gave rise to the liability) held by us or any Other Financial Institution or owed to you under this Agreement or any accounts referred to in clause 11. Any credit balance with us and/or any Other Financial Institution will not be repayable, or capable of being disposed of, charged or dealt with by you until such liabilities of yours to us and any Other Financial Institution have been met. Neither we nor any Other Financial Institution allowing you to make withdrawals from any account you hold with us or any Other Financial Institution will waive this restriction or our or such Other Financial Institutions rights under this clause 10. We will notify you as soon as reasonably practicable upon exercising our rights, and/or upon us or any Other Financial Institution exercising our or its rights, under this clause 10.1.

10.2 You are not entitled to any form of set-off in respect of any of our or any Other Financial Institution's liabilities under this Agreement or any other Agreement (whether such liabilities are present, future, actual, contingent or potential) against any amounts due to us or any Other Financial Institution from you.

10.3 Any exercise of our or any Other Financial Institution's rights under this clause 10 shall be without prejudice and in addition to any other rights or remedies available to us or any Other Financial Institution under this Agreement or otherwise.

11. SECURITY

11.1 We may at any time require that you procure, within thirty (30) days (or such longer period as we may determine is reasonable) after receiving our written request, that a Person or Persons reasonably satisfactory to us provide us with a guarantee, indemnity or other security (including the replacement of any existing security) in such form and over such assets as we may reasonably require (including your Merchant Bank Account) to secure to our reasonable satisfaction the performance of your obligations (including contingent or potential obligations) from time to time under this Agreement. No interest is payable in respect of any security arrangements entered into in connection with this Agreement. Any security granted to us in accordance with this clause shall be held on trust to secure your obligations under this Agreement to each of us, including Worldpay (UK) Limited, Worldpay Limited and each additional party listed in Schedule 1.

11.2 In connection with this clause 11, we may from time to time request your reasonable assistance (at your cost) with our credit assessment. This assistance may involve the provision by you of your financial and trading information.

11.3 We may charge you for our reasonable external costs (including legal fees) incurred in obtaining the guarantee, indemnity and/or security referred to in this clause 11, and shall not be liable for any of your costs.

12. TERM AND TERMINATION

The term of your Agreement

12.1 This Agreement shall come into force on the Commencement Date and, unless otherwise terminated earlier in accordance with any provision of this Agreement, continue thereafter until:

(A) **(if you are a Large Enterprise or a Large Charity)** it is terminated in accordance with clause 12.2, such notice not to expire prior to the end of the Initial Term; or

(B) **(if you are not a Large Enterprise or a Large Charity)** it is terminated in accordance with clause 12.2.

12.2 For the purposes of termination by notice under clause 12.1:

(A) we shall give you two (2) months' prior written notice; and

(B) you shall give us one (1) month's prior written notice.

12.3 **Your other termination rights:** You may terminate this Agreement or any Service with immediate effect by giving written notice to us if any of us:

(A) commits a material breach of this Agreement which, if capable of remedy, is not remedied to your reasonable satisfaction within twenty-one (21) days of service of a notice requiring such remedy;

(B) is Insolvent;

(C) is the subject of a petition, order, or resolution or any step in connection with winding up (whether solvent or insolvent).

12.4 **Our other termination and related rights:** We may terminate this Agreement or any Service, or suspend the provision of any Service with immediate effect, to be notified to you in writing, if you:

(A) commit a material breach of this Agreement which:

(1) is not, in our reasonable opinion, capable of remedy; or

(2) if capable of remedy, is not remedied to our reasonable satisfaction within twenty-one (21) days of service of the notice requiring such remedy;

(B) are Insolvent;

(C) are the subject of a petition, order, or resolution or any step in connection with winding up (whether solvent or insolvent);

(D) cease or threaten to cease to carry on all or a material part of your business, except for the purpose of a bona-fide reconstruction, amalgamation, reorganisation, merger or consolidation;

(E) begin negotiations or proceedings, or propose or agree to defer, reschedule or readjust your debts;

(F) propose or make a general assignment of any of your debts or an arrangement or composition with or for the benefit of some or all of your creditors in respect of all or all of a particular type of your debts;

(G) agree to a moratorium, or a moratorium is agreed or declared in respect of all or a material part of (or a particular type of) your debts or you otherwise propose, seek or agree to defer, reschedule or readjust any of your debts;

(H) are the subject of a petition for an administration order or an application for an administration order, or an administrator is appointed to you or notice of intention to appoint an administrator to you is filed or given, or any other step is taken by any person with a view to the administration of you under the Insolvency Act 1986 including the passing of any resolution by your directors or shareholders approving

the presentation of any such petition, the making of any such application or appointment or the giving of any such notice;

- (I) are the subject of any step for an execution or other process issued on a judgment, decree or order of any court in favour of a creditor of yours that is returned unsatisfied in whole or in part, or any step to enforce security over, or a distress, execution or other similar process is levied or served against, the whole or a substantial part of your assets or undertaking, including the appointment of a receiver, administrative receiver, manager or similar officer to enforce that security;
 - (J) suffer or are subject to any equivalent event, circumstance or procedure to those set out above in this clause 12.4(B) to (I) (inclusive) in any other jurisdiction;
 - (K) undergo a Merchant Material Adverse Change;
 - (L) breach any applicable Trading Limit or Floor Limit;
 - (M) fail to comply with clauses 17.5 and 17.7;
 - (N) act in a manner, or if anything happens to you or comes to our attention in relation to you or arising from or incidental to your business or the conduct of your business (including trading practices or any individual's activity), that we in our reasonable discretion consider:
 - (1) to be disreputable or capable of damaging the reputation of us or that of any Card Scheme, Other Payments Organisation or Other Financial Institution; or
 - (2) to be detrimental to our systems, business or that of any Card Scheme, Other Payments Organisation or Other Financial Institution; or
 - (3) may or does give rise to fraud or any other criminal activity or suspicion of fraud or any other criminal activity; or
 - (4) may or does give rise to increased risk of loss or liability to any of us;
 - (5) may affect your ability or willingness to comply with all or any of your obligations or liabilities under this Agreement; or
 - (6) to be or to be for a purpose contrary to Applicable Law and/or any policy of ours in relation to Applicable Law; or
 - (O) fail to perform any of your obligations under clause 11 (strictly in accordance with the timeframe set out therein).
- 12.5 We may terminate this Agreement (or terminate or suspend the provision of all or part of any Service under this Agreement) with immediate effect, giving written notice, if:
- (A) we or any Group Company of ours becomes entitled to terminate any other agreement with you;
 - (B) we or any Other Financial Institution becomes entitled to enforce any guarantee or security from or in relation to you;
 - (C) we are required to do so by any Card Scheme or Regulatory Authority or under the Scheme Rules or Applicable Law;
 - (D) a Card Scheme, Other Payments Organisation, Other Financial Institution or any other third party or any ceases to provide us with any Service or service necessary for us to provide a Service to you;
 - (E) you install and/or use the Terminal(s) at a place other than the premises at which you have previously informed us the Terminals shall be installed and used;

- (F) we reasonably consider that any act or omission of yours falls within a Reason Code;
- (G) the ratio of Chargebacks to Transactions exceeds one per cent (1%) by number or value, or we otherwise consider in our sole and absolute discretion that the total volume or value of Refunds, Chargebacks and/or declined Authorisation Requests is excessive; or
- (H) any of the above provisions of clauses 12.4(B) to (J), 12.4(O) and clauses 12.5(A) to (D) applies to a Person who provides any security under clause 11.

- 12.6 You shall inform us upon becoming aware of any of the events set out in the following clauses: clauses 12.4(A) to (J) and clauses 12.5(A), (B), (E) and (G).
- 12.7 Where any additional party specified in Schedule 1 serves you notice to terminate this Agreement under this clause 12, such termination shall only relate to the Services provided by that additional party. This shall not limit any other Party's right to terminate this Agreement or any other Services.
- 12.8 Not used.

13. CONSEQUENCES OF TERMINATION

- 13.1 Upon termination of this Agreement all rights and obligations of any Party shall cease to have effect immediately, save that:
- (A) the clauses which expressly or by implication have effect after termination will continue to be enforceable notwithstanding such termination (including, for the avoidance of doubt, clauses 4, 5, 6.6, 8, 9, 10, 13, 14, 15, 17.3, 17.4, 17.8, 17.9, 18, 19, 20, 21, 23, 24, 29, 30 and 31, paragraphs 5 and 7 to Schedule 2, paragraph 3.2 to Schedule 3, paragraphs 1.7, 1.8, 3.2, 3.5, 4.6, 4.9 and 4.10 to Schedule 4, and the paragraphs listed in paragraph 29 to Schedule 5); and
 - (B) termination shall not affect accrued rights and obligations of any Party under this Agreement as at the date of termination.
- 13.2 Upon termination of this Agreement, you shall immediately pay to us all amounts owed by you to us under this Agreement and we shall immediately pay you all amounts owed to you by us under this Agreement, subject to the provisions of clauses 5, 6 and 10.

14. INDEMNITY

IMPORTANT NOTE: You must read these indemnity provisions carefully. They provide important protections for you and for us. The indemnities in this clause are in addition to and do not affect any other indemnity under or in connection with this Agreement, including without limitation in connection with clause 11, the Terminal Hire Agreements, the Technical Services or the Other Payment Services.

- 14.1 **How you indemnify us:** You will indemnify us and hold us harmless and indemnified from, against and in respect of all and any Losses in relation to any Claims brought against us by a Buyer, Card Scheme, Card Issuer, Other Financial Institution, Other Payments Organisation, Acquirer, Other Acquirer, Regulatory Authority or any other third party, to the extent such Claims arise out of or in consequence of or in connection with:
- (A) a Transaction (including the failure to retain or produce a Recurring Transaction Authority), Refund, Representment, Retro-Charge, Assessment, Chargeback and/or Chargeback Cost (including any activity which would otherwise constitute a Transaction, Refund, Representment, Retro-Charge);

- (B) any breach of the requirements or failure by you to comply with:
 - (i) the requirements of a Card Scheme;
 - (ii) the Scheme Rules;
 - (iii) a Regulatory Authority; or
 - (iv) Applicable Law,

and any reasonable steps taken in the protection of our interests in connection with such breach;

- (C) any security breach as described in clause 17.7, compromise or theft of Data held by you or on your behalf, or any other security breach or a security breach relating to Data (whether or not you have complied with PCI SSC Standards as defined in clause 17.5) and any reasonable steps taken in the protection of our interests in connection with such breach;
- (D) the enforcement or attempted enforcement of this Agreement;
- (E) any reasonable steps taken in the protection of our interests in connection with any allegation of fraud made in relation to you or your business; and/or
- (G) any breach by you of the provisions of clause 23; except if and to the extent such Claim is caused by our fraud or any breach of this Agreement by us.

14.2 **How we indemnify you:** We shall indemnify and hold you indemnified from and against any Losses in relation to any Claims brought against you by a third party, to the extent such Claims arise out of or in connection with:

- (A) any actual security breach or security breach reported to you by a Card Scheme, Acquirer, Other Acquirer, Card Issuer or us relating to Data which is directly attributable to our failure to comply with any PCI SSC Standards or to our negligence (but not including any claims made by a Regulatory Authority), and any reasonable steps taken in the protection of your interests in connection with such breach;
- (B) any reasonable steps taken in the protection of your interests in connection with any allegation of fraud made in relation to your business which is caused by our negligence; and/or
- (C) any breach by us of the provisions of clause 23; except if and to the extent caused by or contributed to by your negligence or any breach of this Agreement by you.

15. EXCLUSION AND LIMITATION OF LIABILITY

IMPORTANT NOTE: This clause 15 contains important exclusions and limitations on our liability. You must read this clause carefully.

15.1 Matters not excluded or limited by this Agreement:

Nothing in this Agreement shall exclude or restrict liability for:

- (A) losses suffered by a Party arising out of the other Party's fraud, fraudulent misrepresentation or wilful default;
- (B) death or personal injury resulting from a Party's negligence;
- (C) any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
- (D) losses suffered by us in respect of any Chargebacks or Assessments recoverable under clause 6 and/or 14;
- (E) any Fees or other amounts due by you to us;

- (F) (except in respect of the types of Losses listed under clause 15.2) for any indemnity provided hereunder; or
- (F) any other liability to the extent it cannot be lawfully excluded or limited,

and each of the following provisions of this clause 15 is subject to this clause 15.1.

15.2 Limitations and exclusions of liability for you and us:

Each Party shall only be liable for direct Losses arising out of or in connection with its own breach of this Agreement or negligence **EXCEPT THAT neither Party will be liable to the other Party under or in connection with this Agreement or its subject matter for any of the following types of Losses arising under or in connection with this Agreement (whether arising out of breach of contract, misrepresentation (whether tortious or statutory), tort (including but not limited to negligence), breach of statutory duty, liability under indemnities or otherwise):**

- (A) loss of profits, revenue or anticipated savings (including those anticipated or forecast);**
- (B) loss of goodwill (or any other damage to reputation);**
- (C) loss connected with or arising from business interruption;**
- (D) loss of opportunity, business or contracts;**
- (E) loss of bargain;**
- (F) lost or corrupted data (or loss associated with the same); and/or**
- (G) any special, incidental, punitive, consequential or indirect: loss, damage, cost and/or expense whatsoever, in each case whether such losses are direct, indirect or consequential, and even if that Party was aware of the possibility that such losses might be incurred by another Party.**

15.3 **Interest:** Subject to clause 15.2, you shall not be entitled to any interest or any other compensation whatsoever in respect of any sums held by us in accordance with this Agreement prior to Remittance being made to you for any period during which payment may be:

- (A) deducted, withheld, deferred or not paid under clause 5;
- (B) set-off under clause 10; or
- (C) not paid due to a suspension of Services (or part thereof) under clause 12, unless you demonstrate that such non-payment results from our breach of our obligations under this Agreement, in which case interest accrues on a daily basis until the date of payment calculated at the rate specified in clause 9.

15.4 **Worldpay's excluded liability:** We shall not be liable for any failure to perform (nor any defective or delayed performance of) any of our obligations under this Agreement if and to the extent that such failure is due to:

- (A) circumstances beyond our reasonable control;
- (B) any cessation or interruption of any part of the Services which are due to any act or omission of a third party (including, but not limited to, Other Acquirers, Other Financial Institutions, Other Payments Organisations (including APM Providers, Card Schemes, and Third Party Product providers)) and is not caused by our breach of this Agreement;
- (C) us taking steps (in our reasonable and honest belief or view) to comply with any relevant requirement under the Scheme Rules or any Applicable Law or the requests of any Regulatory Authority;

- (D) your failure to provide complete and/or correct Data to us, any Other Financial Institution, Card Scheme or Other Payments Organisation) and/or your negligence and/or breach of this Agreement;
- (E) a suspension of Services by us under clause 12;
- (F) your breach(es) of this Agreement, negligent, wrongful or bad faith acts or omissions; or
- (G) any deferment/withholding of any Remittance otherwise due to you effected pursuant to the provision of this Agreement.

Additionally, we shall have no liability to you for any inaccuracy in the information we or any Other Financial Institutions provide to any third parties pursuant to clause 19.

15.5 Limitation of Liability: The aggregate liability of each of Worldpay (UK) Limited, Worldpay Limited and each of the additional parties listed in Schedule 1 to you in relation to all Claims arising out of, or in connection with the Services or this Agreement during each Contract Year shall be limited to:

- (A) in the first Contract Year, a sum equal to the average monthly Fees paid under this Agreement, less any fees incurred by us under the Scheme Rules in respect of Transactions, in each case in the period between the Commencement Date and the first event giving rise to the first such Claim, multiplied by twelve (12); and
- (B) in each Contract Year thereafter, a sum equal to the Fees paid under this Agreement, less any fees incurred by us under the Schemes Rules in respect of Transactions, in each case in the twelve (12) months immediately preceding the first event giving rise to the first such claim in the relevant Contract Year.

15.6 Additional exclusions and limitations: In addition to any other exclusion or limitation of liability contained in this Agreement, the following additional exclusions and limitations apply in relation to the Services:

- (A) We accept no responsibility, and shall not be liable for (a) the accuracy or reliability of any data you send to us; (b) our interpretation of that data; or (c) the consequences or accuracy of our interpretation of that data or any subsequent interpretation or risk assessment you undertake in relation to that data.
- (B) The Data available via your Merchant Data Account is supplied to you on an "as is" basis for your information only and is not intended to be relied upon by you for any purpose whatsoever.
- (C) We do not warrant that the Data available via your Merchant Data Account is accurate, up-to-date, reliable or error-free.
- (D) We accept no responsibility, and shall not be liable for any Third Party Product you use in connection with the Service and any reference by us to a Third Party Product (including in any technical specification we provide to you), or approval by us in connection with clause 3.2(H), shall not constitute any recommendation or endorsement by us of that Third Party Product, or any warranty or representation that such Third Party Product will be or remain compatible, compliant and/or suitable for your use and/or with the Services, or will deliver any specific result.

15.7 Basis of exclusions and limitations: You acknowledge, represent and agree that, given the nature of the Services:

- (A) other suitable alternative payment methods for the Buyers are available to you;
- (B) you were able to choose other providers of services similar to the Services before entering into this Agreement;

- (C) you acknowledge and accept the risk of any Losses which you may suffer and be unable to claim for because of the exclusions and limitations on our liability under this clause 15, and the importance of insuring against such Losses;
- (D) the Fees have been calculated by us taking into account the exclusions and limitations contained in this Agreement (which would be uneconomical but for such exclusions and limitations); and
- (E) we would not be in a position or willing to enter into this Agreement (or any similar agreement) with you or other merchants but for these exclusions and limitations of liability.

16. MATERIALS

16.1 You shall only use such materials identifying the Services, us, any of our Group Companies, any Card Scheme or any Alternative Payment Method if such materials have previously been approved by us in writing (such approval not to be unreasonably withheld).

16.2 You shall display prominently on each of your premises, trading venues or website where you accept or state that you accept Cards or Alternative Payment Methods for payment, the Card and Card Scheme identification or APM identification:

- (A) as required by the Scheme Rules; and
- (B) as notified to you from time to time (whether to inform you of such Scheme Rules (including amendments to Scheme Rules) or otherwise).

17. DATA

17.1 Whenever we request it, you shall give us reasonable assistance to facilitate the successful collection and delivery of all Data. We shall assist you, upon your request, where we are reasonably able to gain access to the Data, but reserve the right to make reasonable charges for doing so. You shall promptly pay such reasonable charges to us on demand.

17.2 You shall comply with all Applicable Law in any relevant territory governing the use, storage and/or Processing of Personal Data (including by obtaining all consents that may be necessary to provide Personal Data to us or Other Financial Institution, Card Scheme or Other Payments Provider).

17.3 The Parties acknowledge and agree that:

- (A) You are the Data Controller of Transaction Personal Data. We (or any Other Financial Institution) are a Data Processor of Transaction Personal Data and any Other Personal Data that we (or any Other Financial Institution) Processes as Data Processor on your behalf. You also acknowledge and agree that we (or any Other Financial Institution) will be a Data Controller in relation to Personal Data where we (or that Other Financial Institution) determine the purposes and manner of the Processing, including for the purposes of:
 - (1) conducting fraud monitoring, prevention, detection and prosecution;
 - (2) conducting anti-money laundering, financial crime and other screening checks;
 - (3) complying with any rule, regulation or law imposed upon us (or any Other Financial Institution or Other Payments Organisation);
 - (4) anonymising or encrypting Personal Data, including in aggregated format to facilitate analysis and our (or any Other Financial Institution's or Other Payments Organisation's) comparisons;

- (5) to assess and/or mitigate financial, information security, sector, credit and insurance risks arising in connection with this Agreement; and
 - (6) to manage our (or any Other Financial Institution's or Other Payments Organisation's) relationship with you, and related obligations under this Agreement, including the recovery of debt or in relation to your insolvency; and
- (B) Each Party shall be a Data Controller in respect of the Processing of its Other Personal Data.
- 17.4 We shall, to the extent that we are a Data Processor:
- (A) take appropriate technical and organisational measures against unauthorised or unlawful processing of, and accidental loss or destruction of, or damage to Transaction Personal Data;
 - (B) only Process Transaction Personal Data as necessary for the purpose of performing our obligations under this Agreement and as otherwise envisaged in this Agreement; and
 - (C) ensure that all such Personnel have undergone training in relevant data protection legislation and in the care and handling of Personal Data.
- 17.5 You acknowledge and agree that you (and your agents, sub-contractors or any third parties used by you) shall abide by any data security standards of the Payment Card Industry Security Standards Council (or any replacement body notified to you by us) and the Card Schemes and Alternative Payment Method schemes, including the PCI SSC Standards. We may charge you an annual management fee (specified in the Pricing Schedule) for administering the system through which you report your PCI SSC Standards compliance status to the Card Schemes, and a PCI SSC Standards non-compliance fee (also specified in the Pricing Schedule) for each month in which you are not compliant with the PCI SSC Standards.
- 17.6 You represent, warrant and undertake that no security breach relating to Data processed by or on behalf of you has occurred before the date on which this Agreement was signed by the Parties and/or the Commencement Date. If you breach the foregoing representation, warranty and undertaking, you acknowledge and agree that we may suspend the Services (including as required under the Scheme Rules) and/or (if unremedied) take such other steps as we, any Card Scheme, Regulatory Authority or any Other Financial Institution or Other Payments Organisation reasonably considers necessary to remedy the breach.
- 17.7 You shall notify us immediately if you become aware of or suspect any security breach relating to Data (whether or not you have complied with the PCI SSC Standards). As soon as reasonably practicable, you shall also (and without prejudice to any other remedy we have in respect thereof) immediately identify and resolve the cause of such security breach and take any steps that we may require of you to do so, including but not limited to the procurement (at your cost) of forensic reports from third parties recommended by us.
- 17.8 You shall not store (as such term is used in the PCI SSC Standards), at any time:
- (A) Card verification value in the magnetic stripe;
 - (B) Card verification value printed on the Card in or next to the signature panel;
 - (C) Card verification value contained in the magnetic stripe image in a chip application;
 - (D) PIN verification value contained in the magnetic stripe;
 - (E) the full contents of any track from the magnetic stripe (on a Card, in a chip or elsewhere); or
 - (F) any other Data that the Card Schemes mandate from time to time as Data that cannot be stored.
- 17.9 You consent to our transfer of Transaction Personal Data to the Card Schemes, Card Issuers, Other Financial Institutions, Other Payments Organisations (where applicable), or equivalent institutions as necessary and appropriate for the processing of each Transaction and you agree that a transfer to such institution will not impose obligations on us for the acts or omissions of such independent third parties and that such institutions are not subcontractors acting on behalf of or controlled by us.
- 18. RETENTION OF RECORDS**
- 18.1 In addition to complying with all record retention provisions under Applicable Law, and subject to the requirements of the PCI SSC Standards, you shall retain legible copies of Data for a minimum period of eighteen (18) months from the date of each Transaction.
- 18.2 Nothing in this Agreement (including this clause 18) affects or limits your own requirement to have in place adequate record retention policies and procedures as necessary and appropriate for your own business purposes, which are and remain your responsibility.
- 19. PROVISION AND DISCLOSURE OF DATA AND INFORMATION**
- This clause 19 contains important information about the provision and disclosure of data and information in connection with the Services. It should also be read alongside our Privacy Policy.**
- 19.1 We may, from time to time, request you to provide copies of Data, in which event you shall provide such copies to us, in such format specified by us, within ten (10) days of such request being received.
- 19.2 Upon our request, you shall at all times throughout the term of this Agreement (and for such subsequent period as may be necessary thereafter):
- (A) promptly disclose to us or any Other Financial Institution, Card Scheme or Other Payments Organisation such accurate, complete and reliable information as we or such third party reasonably require(s) relating to the performance of the Services or obligations under this Agreement, the Scheme Rules or Applicable Law;
 - (B) take all reasonable steps to assist us and/or any Other Financial Institution, Card Scheme or Other Payments Organisation in handling any Claim or query raised by a Buyer, a Card Issuer, a Card Scheme or any other third party in relation to the Services or any Transaction, Chargeback, Refund, Representment or Retro-Charge;
 - (C) co-operate in providing any Other Financial Institution Card Scheme or Other Payments Organisation with all information requested by it in order for you or your Transactions to be accepted by such third party or otherwise to enable us to provide you with any of the Services (or any part thereof);
 - (D) to enable us to assess your financial position throughout the term of this Agreement, provide us with your latest audited accounts and any other accurate, complete and reliable information we may reasonably require (including but not limited to your management accounts).

19.3 You hereby authorise:

- (i) us;
- (ii) any Other Financial Institution;
- (iii) any Other Payments Organisation (including APM Providers and Card Schemes); and
- (iii) any credit institution at which you maintain the Merchant Bank Account,

to use, share and release Data and any other information relating to you, including information relating to you which is held in connection with the provision of the Services and/or by the Card Schemes, Other Financial Institutions or Other Payments Organisations (or, if instructed by us, you shall provide such Data or information or procure that such Data or information is provided), to any Person, including our Group Companies and their respective officers, Card Issuers, APM Providers, Card Schemes, Regulatory Authorities, law enforcement agencies, fraud prevention agencies and credit reference agencies and third parties:

- (A) for the purpose of fulfilling our or any Other Financial Institution's obligations under the Agreement or the Scheme Rules or requirements of an Other Payments Organisation (including a Card Scheme or APM Provider) or otherwise as required by Applicable Law;
- (B) to assess financial and insurance risks;
- (C) in relation to any breach of, or to enforce, this Agreement;
- (D) to recover debt or in relation to your insolvency;
- (E) to maintain and develop customer relationships, services and systems;
- (F) to prevent and detect fraud or crime;
- (G) in the course of any investigation by us, any Other Financial Institution, Regulatory Authority, Card Scheme, Other Payments Organisation or any third party into any suspected criminal activity;
- (H) regarding information security, the risk of fraud, sector risk and credit risk; and
- (I) to enable the Card Schemes to assign a Reason Code to any undesirable act or omission.

Where you have been referred to us through a third party, whether under an affiliate, partnership marketing or other introducer type arrangement, you authorise us to release Data to relevant third parties as necessary for the operation of such arrangement and/or to fulfil our reporting obligations to such third parties.

19.3A Without prejudice to Clause 19.3, you hereby authorise us to share and release Data and any other information relating to you, including information relating to you which is held in connection with the provision of the Services and/or by the Card Schemes, Other Financial Institutions or Other Payments Organisations to Clydesdale Bank PLC (or its Group Companies) and you agree that Clydesdale Bank PLC (or its Group Companies) may use the Data and other information for the following purposes:

- (A) to monitor and assess the Services we provide to you under the terms of this Agreement including (without limitation) the Fees payable by you, the level of Chargebacks and the performance of your obligations under Clause 4.1);
- (B) to provide any services to you in connection with this Agreement which you have requested from Clydesdale Bank PLC (or its Group Companies), including (without limitation) providing a Merchant Bank Account; and
- (C) for the purposes listed in Clause 19.3 (A) to (H).

19.4 You shall advise us in writing as soon as you become aware of any:

- (A) other agreement that you enter into concerning your acceptance of Transactions;
- (B) act, omission or error which does or may cause material loss or damage to us or any Other Financial Institution, Card Scheme or Other Payments Organisation) (including damage to the reputation of us or any such third party, which for the avoidance of doubt shall be deemed to be material in every instance in which it occurs);
- (C) actual or suspected violation or compromise of the security or integrity of any Data or any other information relating to the Services or the Card Schemes or any of our Confidential Information at any time obtained or held by you.

19.5 If you contact us electronically, we may collect your electronic identifier (for example, Internet Protocol (IP) address or telephone number) supplied by your service provider.

19.6 A link between you and anyone with whom you have a joint account or similar financial association will be recorded at credit reference agencies, creating a "financial association". All such associated parties' information will be taken into account in future applications until you or one of them successfully file a "notice of disassociation" at the credit reference agencies.

19.7 We may make periodic searches of and provide information about you to credit reference agencies, fraud prevention agencies, Card Issuers, Card Schemes and our Group Companies to manage and take decisions about their relationship or prospective relationship with you. Such information may be used by other credit providers to take decisions about you and your financial associates. We may also review you and your business activities (including by electronic means) to monitor your compliance with the Agreement.

19.8 We may:

- (A) disclose information concerning you and your Data to third parties where we aggregate data to facilitate cross-industry analysis and comparisons; and
- (B) (without limitation) use and/or disclose Confidential Information and Transaction Personal Data for preparing and furnishing compilations, analyses, and other reports of aggregated information and anonymised information,

PROVIDED THAT in each case such compilations, analyses or other reports do not identify (i) you (other than where Worldpay prepares the compilation, analysis or other report either for and to you or on your behalf) or (ii) any Cardholder whose Transactions were the subject of or involved in the preparation of any such compilation, analysis or other report.

19.9 The information which we, and/or any Other Financial Institution or Other Payments Organisation, collect from you may be transferred to, processed and/or stored at, a destination outside the EEA.

19.10 In the event that we consider that any act or omission of yours falls within a Reason Code, details of any such act or omission shall be advised to you and shall also be available on request. In addition, the fact of termination for cause (if any) under clause 12.4 or 12.5 and the Reason Code forming the grounds for termination shall be notified to (and may be recorded by) the Card Schemes, and thereafter be maintained by them in accordance with their normal practice. The aforementioned database

records are available for enquiry by any Acquirer and Card Issuer. In certain circumstances, they are also made available to crime enforcement authorities.

20. RIGHT OF AUDIT

20.1 Subject to the rest of this clause 20, upon our request, you shall:

- (A) permit or procure us or our duly authorised representatives to have access to all or any of your premises where, or systems on which, your business trades or where your records or stock are located, during business hours, to examine all or any such premises, systems, records or stock and those of any other business which we consider is or may be connected to you; and
- (B) permit or procure us or our duly authorised representatives to take and retain copies of all or any such records; and
- (C) provide to us or our duly authorised representatives or procure that we or they are provided with honest and comprehensive answers to any enquiries we may make in relation to you and your business, for the purpose of ascertaining whether or not you are performing your obligations in accordance with all the provisions of this Agreement.

20.2 We shall give you a minimum of twenty-eight (28) days written notice of any exercise of our rights under this clause 20, except where the requirements of a Regulatory Authority do not permit such notice or we have immediate data security, compliance or fraud concerns, in which case we may give immediate or shorter notice.

20.3 We shall exercise our rights under this clause 20 reasonably and usually no more than once annually during the term of this Agreement unless a Regulatory Authority requires otherwise or there are immediate data security, compliance or fraud concerns, in which case we may give immediate or shorter notice. Additionally, where matters are identified as requiring remediation in a shorter period we may, acting reasonably, exercise our rights more frequently to ascertain whether such remediation has been made.

21. INTELLECTUAL PROPERTY

21.1 The Agreement does not transfer, and is not intended to transfer, to any Party any of the Intellectual Property Rights that any other Party owns at the Commencement Date or any Intellectual Property Rights that are created, acquired or developed during the term of the Agreement.

21.2 You shall not acquire any Intellectual Property Rights in any Merchant Data Account, or any Data, that we make available to you under this Agreement.

21.3 Each Party shall obtain the written consent of the other Parties prior to using or referring to any trademarks, logos, copyrighted materials, business names or other similar Intellectual Property Rights in any promotional materials or literature, agreements or on any website.

21.4 On termination of the Agreement, each Party shall remove any reference to the other Parties from any promotional materials or literature, agreements or on any websites.

22. SERVICE ADJUSTMENTS AND AGREEMENT VARIATIONS

22.1 From time to time, we may make changes to our Privacy Policy, adjust the content and interfaces of the Services or make changes to the Services which are necessary to comply with any Applicable Law or Scheme Rules, or make changes which do not materially affect the nature or quality of the Services. Such adjustments may result in changes to the Customer Operating Instructions and are not subject to prior written notice or any right of termination under clause 22.3. If such adjustments or changes lead to a change in software, interfaces or

operating procedures, we shall notify you as soon as reasonably practicable prior to the implementation of such adjustments or changes.

22.2 From time to time we may change the way we use your information (other than Transaction Personal Data). Where we believe you may not reasonably expect such a change we shall write to you. If you do not object to the change within two (2) months, you will be deemed to consent to that change.

22.3 We shall be entitled to vary the provisions of the Agreement from time to time by giving you at least two (2) months' prior written notice. Such variations may be notified by reference to materials available on our website, as set out in clause 26.5. If we make changes to the terms and conditions herein affecting your payment services, you shall be entitled to terminate the Agreement immediately by providing written notice to us, **PROVIDED THAT** such notice is served upon us within two (2) months of you being notified of the variation. Otherwise, you will be deemed to have accepted any variation of the provisions of this Agreement two (2) months from being notified of it.

23. CONFIDENTIAL INFORMATION

23.1 Except to the extent set out in this clause 23, each Party shall:

- (A) treat as confidential all Confidential Information obtained from the other Parties under the Agreement;
- (B) use the other Parties' Confidential Information solely for the specific purposes for which it was disclosed;
- (C) not publish or otherwise disclose to any person the other Parties' Confidential Information without the owner's prior written consent;

and

- (D) take all action reasonably necessary to secure the other Parties' Confidential Information against theft, loss or unauthorised disclosure.

23.2 Each Party may disclose Confidential Information that would otherwise be subject to clause 23.1 but only if it can demonstrate that the Confidential Information:

- (A) is required to be disclosed by any court of competent jurisdiction, Regulatory Authority, by the rules of a recognised stock exchange or by Applicable Law or the Scheme Rules;
- (B) was lawfully in its possession prior to disclosure to it by any other Party without an obligation restricting disclosure;
- (C) is already public knowledge or which becomes so at a future date (otherwise than as a result of breach of this clause 23);
- (D) is received from a third party who is not under an obligation of confidentiality in relation to the information; or
- (E) is developed independently without access to, or use or knowledge of, the Confidential Information.

23.3 Notwithstanding the provisions of clauses 23.1, 23.2 and 23.4, we, and/or any Other Financial Institution or Other Payments Organisation, may aggregate and anonymise your Confidential Information (including the Data), and disclose it in that form to any third party.

23.4 Other than as expressly permitted under the Agreement, on termination of the Agreement for whatever reason, each Party shall forthwith cease to use any Confidential Information of the other Parties and shall return on demand, or at the request of the other, destroy or permanently erase all copies of that Confidential Information in its possession or control, save that a Party

will be permitted to retain such part of the Confidential Information for the purposes of and for so long as required by any Applicable Law or its legitimate internal compliance requirements. Any obligation to destroy or permanently erase Confidential Information shall not be applicable to Confidential Information that forms part of an electronic back-up system which is not immediately retrievable as part of day-to-day business.

24. ASSIGNMENT, SUB-CONTRACTING AND NOVATION

- 24.1 The Agreement is personal to you and you may not assign, novate or transfer it or any of your rights or obligations under it.
- 24.2 You may only use an agent or subcontractor in relation to the performance of your obligations under the Agreement with our prior written consent. We may reasonably withdraw that consent at any time.
- 24.3 You shall be liable to us for the acts or omissions of:
- (A) any of your Personnel, whether or not used with the consent that we may give pursuant to clause 24.2;
 - (B) any of your Group Companies; and
 - (C) any Personnel of any of the foregoing,
- in the course of or relating to the performance of your obligations under the Agreement or arising out of or in connection with any Transaction, Refund, Representation, Chargeback or Retro-Charge.
- 24.4 Subject to Applicable Law and the Scheme Rules, we shall be entitled at any time to assign or transfer the Agreement or the benefit of any or all of our rights under the Agreement and/or to sub-contract our obligations under the Agreement without your consent. Without prejudice to clause 29.4, upon request, you shall execute any documents required to effect any such assignment, transfer or subcontract.
- 24.5 We shall be entitled to novate any or all of our rights and obligations (as appropriate) under the Agreement to a third party at any time on giving you at least two (2) months' notice. If we do this you shall be entitled to terminate the Agreement within two (2) months' of you receiving the notice of the novation. You will be deemed to have accepted the novation of the Agreement two (2) months from receipt of the notice.
- 24.6 With effect from the date that we novate our obligations under the Agreement to a third party (the "**Novation Date**"), you shall release and discharge us from further performance of our obligations under the Agreement and from all claims and demands against us, whatsoever arising out of or in respect of the Agreement, whether prior to, on or subsequent to the Novation Date and the third party shall perform, or procure the performance of, all such obligations under the Agreement and shall accept all liabilities arising out of or in respect of the Agreement, from the Novation Date.

25. WAIVER

- 25.1 No failure or delay by a Party in exercising any of its rights or remedies provided under the Agreement or under Applicable Law shall be construed as a waiver or release of that right or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. The Parties agree and acknowledge that the doctrine of affirmation, by which a Party is deemed to have affirmed a decision to proceed with a contract notwithstanding the enlivening of a right to terminate, shall have no application to the Agreement.

25.2 No single or partial exercise of any of a Party's rights or remedies under the Agreement or under Applicable Law shall preclude or restrict the further exercise of such right or remedy. A waiver of any breach of any provisions of the Agreement shall not constitute a waiver of any other breach, and shall not affect the other provisions, of the Agreement.

25.3 Subject to clause 27.3, the rights and remedies of a Party under the Agreement are cumulative and not exclusive of each other or of any rights or remedies provided by Applicable Law.

26. NOTICES & OTHER COMMUNICATIONS

- 26.1 Subject to clause 26.2, any notice to be given under or in connection with the Agreement shall be in writing and signed by or on behalf of the Party giving it and shall be served by (i) delivering it personally (including by commercial courier); or (ii) sending it by post (or registered airmail in the case of an address for service outside the United Kingdom); or (iii) sending it by email, to the postal address or email address of the other Party as set out in this Agreement or otherwise as notified by such Party from time to time. For the avoidance of doubt, any notice delivered by email shall not need to be signed.
- 26.2 (A) Where you provide an email address, we may send notices to and rely on the authenticity of communications we receive from that email address as being from and binding on you. You must ensure only you and persons with authority to act on your behalf have access to your email addresses, that they are kept secure and that you contact us immediately if you become aware or suspect any relevant unauthorised use or security compromise.
- (B) Unless otherwise agreed by us in writing, notice from you to us to terminate the Agreement must be delivered to us by post.
- (C) Either Party may, as an alternative to any other method of notice, give notice to the other's registered office address (where it has one). Where the registered office address is not the postal address provided by a party in accordance with clause 26.1, deemed receipt shall be calculated by adding two (2) Business Days to the period for deemed receipt under clauses 26.3(B)-(E) below.
- 26.3 Any notice given in accordance with clauses 26.1 or 26.2(A) and (B) shall be deemed to have been received:
- (A) if sent by email, on the day on which the communication is sent and no report of non-delivery is received by the sender, **PROVIDED THAT** (i) any notice despatched after 17:00 hours on any Business Day or at any time on a day which is not a Business Day shall be deemed to have been given at 09:00 on the next Business Day;
 - (B) if delivered personally, at the time of delivery;
 - (C) if sent by first class post within the United Kingdom, two (2) Business Days from the date of posting;
 - (D) if sent by second class post within the United Kingdom, four (4) Business Days from the date of posting; and
 - (E) in the case of registered airmail, seven (7) Business Days from the date of posting.
- 26.5 Notices given by us to you in hard or electronic format may refer to documents or materials made available on our website, by providing you with a website URL address where you can access the documents or materials. The full contents of these documents and materials will be deemed to be communicated and notified to you as if set out in full in the notice.

26.6 In addition to formal notices given in accordance with this clause 26, we may communicate with you from time to time in relation to your use and our provision of the Services by means of newsletters, emails and messages on our website. We may also communicate with you through products such as My Business Dashboard. Such communications may include notification of changes to the Customer Operating Instructions or Scheme Rules, or new or replacement products or services in connection with the Services.

27. ENTIRE AGREEMENT

27.1 The Agreement constitutes the entire agreement and understanding between you and us in respect of its subject matter and supersedes and invalidates all other prior representations, arrangements, understandings and agreements relating to the same subject matter, (whether oral or in writing, express or implied) other than any securities or written pledges, undertakings or assurances which you may previously have given to us as a condition precedent or in anticipation of the Agreement. Each party acknowledges that in entering into this Agreement it does not rely on any statement, representation, warranty or understanding other than those expressly set out in this Agreement.

27.2 Save to the extent expressly set out in this Agreement, we hereby exclude all warranties, conditions, terms, obligations, undertakings and representations (whether in each case express or implied by statute, common law, custom, trade usage, course of dealing or otherwise, (including but not limited to implied undertakings of satisfactory quality and reasonable fitness for purpose)) to the fullest extent permissible by Applicable Law, and you hereby waive irrevocably any rights or remedies you may otherwise have had in respect of any of the same.

27.3 No Party shall have any claim for innocent or negligent misrepresentation based upon any statement in this Agreement.

27.4 Nothing in this clause 27, or elsewhere in this Agreement, shall operate to exclude any liability for fraud.

28. SEVERABILITY

28.1 Each clause and sub-clause of the Agreement is severable. If any provision of the Agreement or any part of it is or becomes invalid under or contravenes Applicable Law, or is held to be unreasonable in the circumstances, or is held by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable:

- (A) the remaining provisions shall not be affected and shall remain in full force;
- (B) the legality, validity, enforceability and reasonableness of the remainder of the Agreement shall not be affected; and
- (C) if such provision would cease to be illegal, invalid, unenforceable or unreasonable if some part of that provision were modified or deleted, the provision in question shall apply with the least such modification or deletion as may be necessary to make the provision legal, valid, enforceable and/or reasonable.

29. MISCELLANEOUS

29.1 Status of the Parties

29.1.1 Nothing in the Agreement shall be construed as constituting a partnership, joint venture or agency (except to the extent specified in Schedule 1) between or among the Parties.

29.1.2 You agree, represent and warrant that each of Worldpay (UK) Limited and Worldpay Limited and any of our other Group Companies providing the Services (the **"Service Providers"**):

- (A) is providing its element of the Services as an independent contractor, and not as a partner or joint venturer with the other Parties;
- (B) shall be only severally liable in respect of its own obligations under this Agreement;
- (C) shall not be liable in connection with the Services provided by the other Service Providers, whether jointly, jointly and severally or at all; and
- (D) does not have any specific knowledge of the nature of your business, or knowledge of any special circumstances relating to your business, and in any event shall not be deemed to have knowledge of your business beyond the disclosure and description of the same in your Application Form.

29.1.3 Subject to clause 29.1.5 below, each Party (including each Service Provider) will be deemed to represent to the others, and warrant and agree that:

- (A) each Service Provider is providing its element of the Services as an independent contractor, and not as a partner or agent of or joint venturer with the other Parties;
- (B) each Service Provider shall be only severally liable in respect of its own obligations under this Agreement;
- (C) each Service Provider shall not be liable in connection with the Services provided by the other Parties, whether jointly, jointly and severally or at all;
- (D) it is not relying on any communication (written or oral) of any other Party as advice, or on any such communication as an assurance or guarantee;
- (E) each other Party is not acting as a fiduciary or adviser to it in respect of the subject matter of this Agreement;
- (F) the relationship between each other Party and it is not that of employee or employer, franchisee or franchisor, and/or principal or agent, and contains no similar duty; and
- (G) it is acting wholly in the course of business and not as a consumer.

29.1.4 The Services are offered to and accepted by you solely for business purposes. You represent, warrant and agree that you shall not use the Services or any part of them outside of your business.

29.1.5 If you are a partnership, each partner will be jointly and severally liable under this Agreement.

29.2 This Agreement is not intended to confer any benefit on any third party other than any RBS Account Bank, CYB Account Bank or Other Financial Institution to the extent expressly provided, and a Person who is not party to the Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of the Agreement, except any RBS Account Bank, CYB Account Bank or Other Financial Institution to the extent expressly provided. Notwithstanding the foregoing sentence, the rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any third party. Any Worldpay Group Company involved in providing any of the Services or otherwise to the extent expressly provided shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

- 29.3 The provision of the Services under this Agreement is not exclusive and accordingly:
- (A) you shall be free to submit payment transactions to any other payment service provider(s), except Transactions already submitted to us under this Agreement;
 - (B) we may process payment transactions for any other Person acting in any capacity, including merchant, seller, wholesaler, retailer, payment service provider, credit institution or financial institution; and
 - (C) we shall be free to accept Transactions from other payment service providers for processing and acquiring.
- 29.4 At any time after the Commencement Date, you shall, at our request, execute or procure the execution of such documents and do or procure the doing of such acts and things as the Party so requesting may reasonably require, for the purpose of giving effect to all the provisions of the Agreement.
- 29.5 Except as provided herein, each Party shall pay its own costs in relation to the negotiation, preparation, execution and carrying into effect of this Agreement and in carrying out any related due diligence.
- 29.6 This Agreement may be made and executed in any number of counterparts, which together constitute one Agreement.
- 29.7 This Agreement is in the English language. We are only obliged to communicate with you in English. We may provide to you a foreign language translation of this Agreement or any other communication, **PROVIDED THAT** such translation shall be for your information purposes only and in the event of any inconsistency between the English version and the foreign language version, the English version shall prevail.
- 30. DISPUTE RESOLUTION PROCEDURE**
- 30.1 Subject to the provisions of clause 32, if any dispute between you and us (each a **"disputing party"**) arises out of or in connection with this Agreement or its subject matter, formation, validity or enforceability (including non-contractual claims) (each a **"dispute"**) then, except as expressly provided in this Agreement, the Disputing Parties shall follow the dispute resolution procedure set out in this clause.
- 30.2 Either Disputing Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**"Dispute Notice"**), together with any relevant supporting documentation. Following service of the Dispute Notice, the Representatives of each of the Disputing Parties shall attempt in good faith to resolve the Dispute.
- 30.3 If the Representatives of the Disputing Parties are for any reason unable to resolve the Dispute with fourteen (14) Business Days of service of the Dispute Notice, either Disputing Party shall be entitled to commence proceedings under clause 31.2.
- 30.4 If the Dispute is resolved by the Representatives within fourteen (14) Business Days of service of the Dispute Notice in accordance with clause 30.2, the settlement shall be recorded in writing and signed by each of the Disputing Parties within seven (7) Business Days of the end of the period referred to in clause 30.2.
- 30.5 Nothing in this clause 30 shall prevent either Disputing Party making any application for injunctive relief that it considers necessary to protect its position.
- 31. GOVERNING LAW AND JURISDICTION**
- 31.1 This Agreement and any Dispute, shall be governed by and construed in accordance with English law.
- 31.2 Subject to the provisions of clause 30, the Parties irrevocably agree, for our sole benefit that, subject as provided below, the English Courts shall have exclusive jurisdiction over any Dispute. Nothing in this clause shall limit our right to take proceedings against you in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings by us in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction. You waive any objection to any proceedings in such courts pursuant to this clause 31.2 on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum. Any proceedings brought by you against us in respect of a Dispute must be brought in the English Courts.
- 31.3 **If you are a Large Enterprise or a Large Charity** and you do not have a place of business in England and Wales, Scotland or Northern Ireland, you must appoint a process agent in England or Wales and inform us of the contact details of your process agent within five (5) Business Days following execution of the Agreement. Within five (5) Business Days of the appointment of your process agent ceasing to be effective for any reason, you will appoint a replacement process agent in England or Wales for the purposes of this clause and immediately will notify us of the change in accordance with this clause 31.3.
- 32. COMPLAINTS**
- 32.1 If you are not satisfied with our Services, you must initiate our complaints handling procedure to resolve such matters. For more information about this process please telephone us or visit such URL as we notify to you from time to time.
- 32.2 If you are still not satisfied after following our complaints procedure, you can ask the Financial Ombudsman Service (subject to Applicable Law governing eligible complainants), to review the complaint.
- You can contact the Financial Ombudsman Service:
- By phone:** 0800 023 4 567, 0300 123 9 123, +44 20 7964 0500
- By email:** complaint.info@financial-ombudsman.org.uk
- By post:** The Financial Ombudsman Service, Exchange Tower, London E14 9SR
- Up to date contact details and other information on the Financial Ombudsman Service can be found at www.financial-ombudsman.org.uk.
- 33. REGULATORY INFORMATION**
- Worldpay (UK) Limited**
- Registered in England No. 07316500. Registered Office: The Walbrook Building, 25 Walbrook, London EC4N 8AF. Worldpay (UK) Limited is authorised by the Financial Conduct Authority under the Payment Service Regulations 2009 (No. 530923) for the provision of payment services and is authorised and regulated by the Financial Conduct Authority for consumer credit activities.
- Worldpay Limited**
- Registered in England No. 03424752. Registered Office: The Walbrook Building, 25 Walbrook, London EC4N 8AF. Worldpay Limited is authorised by the Financial Conduct Authority under the Payment Service Regulations 2009 (No. 504504) for the provision of payment services.

SCHEDULE 1: ADDITIONAL PARTIES

Where we provide Worldpay Total Services to you, in respect of those Worldpay Total Services:

YESpay International Limited

Registered in England No. 04509853. Registered office address:
The Walbrook Building, 25 Walbrook, London EC4N 8AF.

Where the Gateway Service provided is our "High Capacity Gateway", in respect of that Gateway Service:

Payment Trust Limited

Registered in England No. 03447368. Registered office address:
The Walbrook Building, 25 Walbrook, London EC4N 8AF.

SCHEDULE 2: ACQUIRING SERVICES

Part 1 – Payment methods supported by Worldpay (UK) Limited

(A) Cards

Part 2 – Payment methods supported by Worldpay Limited

(A) Cards

(B) Bank transfers

(C) Direct Debits

(E) Cheque

Part 3 – Alternative Acquiring Services

Where we provide Alternative Acquiring Services to you in accordance with the terms of this Agreement, the following additional provisions in this part apply.

1. In addition to terms defined elsewhere in this Agreement or unless the context requires otherwise, in this Part the following capitalised terms and expressions will have the following meanings:

“Authorised Instruction” means an electronic message, in the prescribed format, containing the information and meeting the other requirements specified by us from time to time, from you to us requesting that we execute an Outward Payment.

“Inward Payment” means funds received into our bank account, either originating from a Buyer or you, with a reference identifying you as the intended recipient and beneficiary.

“Outward Payment” means a payment transaction whereby we transfer funds from the Worldpay Customer Alternative Payments Account to your designated bank account in accordance with your Authorised Instruction.

“Payments” means together, Inward Payments and Outward Payments.

“Worldpay Customer Alternative Payments Account” means an account in which we hold Inward Payments in accordance with Applicable Law.
2. When we process Payments for you in accordance with this Part, we will value date and credit the Merchant Data Account with the value of an Inward Payment on the day on which we receive the Inward Payment.
3. You accept that the payment of an Inward Payment by the Buyer shall extinguish the corresponding debt owed by the Buyer to you, and that we at no time provide the Payments Services to Buyers.
4. The submission of an Authorised Instruction constitutes your irrevocable consent and authorisation to execute the relevant Outward Payment. Following receipt of an Authorised Instruction, we will only execute the relevant Outward Payment **PROVIDED THAT** sufficient funds are available in the relevant Worldpay Customer Alternative Payment Account for the completion of the relevant transaction and the payment of the applicable Fees. You shall not be entitled to receive any interest in respect of funds held in a Worldpay Customer Alternative Payments Account.

5. **INDEMNITY:** Notwithstanding paragraph 4 above, in some cases we will make an Outward Payment on the receipt of confirmation from an Alternative Payment Provider that the Inward Payment is Authorised or in progress, but before the Inward Payment is actually received by us. **If any such Inward Payment is not actually made to us (whether because it is reversed or otherwise) but we have already made an Outward Payment against it then you will return an amount equalling the Outward Payment without delay to us, indemnifying us for the amount of the Outward Payment in full.** In addition, if we inform you that we have been informed by an APM Provider that an Inward Payment is Authorised or in progress and you then act on that information to your detriment, where the Inward Payment is not then made then you will have no claim against us and will hold us harmless against any related claims or Losses.
6. Where an Outward Payment is to a recipient within the European Economic Area, such payment will be effected within three (3) Business Days from the Business Day on which the Authorised Instruction has been received or, if such is received after 13:00 in London on a Business Day, three (3) Business Days from the next Business Day. Where the recipient bank account is located outside of the European Economic Area, we will make reasonable efforts to achieve, but cannot guarantee, this maximum execution time.
7. If we reasonably believe that a Transaction or Payment (or activity which would otherwise constitute a Transaction or Payment) may be fraudulent or otherwise contrary to Applicable Law, or if otherwise instructed by the relevant APM Provider or bank associated with the relevant Transaction or Payment or any competent court, regulator or law enforcement agency, we may: (a) debit an Inward Payment from the Merchant Data Account and return the value to the sender (and if sufficient funds are not available, you must reimburse us on demand); and/or (b) refuse to execute an Outward Payment. We will notify you of the reason for such return or refusal as the case may be and **PROVIDED THAT** it is lawful to do so.
8. If a Payment is effected other than in the designated currency of the relevant Worldpay Customer Alternative Payments Account, then in order to make the relevant credit or payment, as the case may be, we will convert the relevant value either into the currency of the relevant Worldpay Customer Alternative Payments Account (for an Inward Payment) or into the requested currency of the Outward Payment, as applicable, in each case by reference to the Exchange Rate applicable and as obtainable via the Merchant Data Account from time to time.

SCHEDULE 3: OTHER PAYMENT SERVICES

Where we agree to provide you with the following Other Payment Services, the following terms will apply in addition to the other terms of the Agreement.

Part 1: Worldpay Total

1.1 Where we provide Worldpay Total Services and Mobile Keypads (as defined below) to you in accordance with the terms of this Agreement, you will enter into a Worldpay Total Addendum to the Application Form between you and us entered into from time to time (which may act as an order form for the Worldpay Total Services), and the terms and conditions in the Worldpay Total Addendum will take effect as if set out in full in this Schedule 3, with appropriate changes.

Part 2: Supplementary terms and conditions applicable to the use of MasterPass™ from MasterCard®

If you choose to take MasterPass from MasterCard the following additional terms shall apply:

- 2.1 You acknowledge and agree that your name and/or logo may be used by MasterCard and wallets providers within MasterPass digital wallets and on the MasterPass website to indicate that you accept MasterPass payments. Any termination of this licence will result in automatic termination of your right to take transactions through MasterPass.
- 2.2 You acknowledge and agree that you will not unreasonably discriminate between accepting transactions from different MasterPass digital wallets based on the identity of the issuer/provider of the digital wallet.

Part 3: My Business Dashboard

Where we provide My Business Dashboard to you in accordance with the terms of this Agreement, the following additional provisions in this Part apply:

- 3.1 **My Business Dashboard and your Merchant Data Account:** Where My Business Dashboard is provided to you, the definition of Merchant Data Account in this Agreement shall include My Business Dashboard, such that the terms and conditions that apply to the Merchant Data Account shall apply equally to My Business Dashboard or such similar or replacement product provided to you from time to time, and any of our obligations in respect of the Merchant Data Account may be fulfilled by providing you with My Business Dashboard.

- 3.2 **Use:** Your use of My Business Dashboard is solely for your internal business purposes and you agree that you shall not publish or redistribute any content included in your My Business Dashboard account to any third party. The content of and Data contained on My Business Dashboard is Confidential Information.
- 3.3 You undertake not to delete or alter any proprietary or copyright notices or trademark(s) or trademark notices appearing on My Business Dashboard or related Documentation.
- 3.4 **Invoices:** You agree to receive your invoices in electronic format via My Business Dashboard. You may request copy paper invoices, which may be subject to availability and a charge.
- 3.5 **Non-reliance:** You hereby agree, represent and warrant that you will not place or act in reliance upon the Data or other content made available through My Business Dashboard.
- 3.6 We do not warrant that the information on My Business Dashboard is accurate, sufficient or error-free, nor that the information on our system is current and up-to-date at the time it is accessed.
- 3.7 **Transmission of Data:** The electronic transmission of Data, including but without limitation to transmission via the internet cannot be guaranteed to be secure or error-free. There is always a possibility that Data sent by electronic means could be intercepted by a third party, corrupted, lost, destroyed, delayed or otherwise adversely affected. As a result, we shall not be liable to any party in respect of any error or omission arising from or in connection with the electronic transmission of information to you or your reliance on such Data. This includes but is not limited to acts or omissions of your and/or our internet service providers. This exclusion of liability shall not apply in the event of any proven criminal, dishonest or fraudulent acts on our part.
- 3.8 **Fees:** You agree to pay any Fees for My Business Dashboard that may apply depending on the type My Business Dashboard membership type you subscribe to. If you wish to change your My Business Dashboard membership you need to tell us by the 25th of the month for this to be reflected in your following month's invoice.

SCHEDULE 4: TECHNICAL SERVICES

Where we agree to provide you with the Technical Services, the following terms will apply in addition to the other terms of the Agreement.

Part 1: Gateway Services

Where we provide Gateway Services to you in accordance with the terms of this Agreement, the following additional provisions in this Part 1 apply.

- 1.1 We do not guarantee any minimum response times in connection with on-line Authorisations or availability of a specific payment method.
- 1.2 We may adjust the content and interfaces of the Gateway Services to keep the Gateway Services up to date with market requirements. If such adjustments require you to make necessary changes in your software, interfaces or operating procedures, we will inform you as soon as reasonably practicable prior to the execution of such adjustments. You shall be responsible for your own costs with respect to such changes to your software, interfaces or operating procedures.
- 1.3 Upon receipt of an Authorisation Request or Capture Request, we will forward such request to the relevant Acquirer or Other Acquirer, or to the Alternative Payment Provider.
- 1.4 If an Other Acquirer or APM Provider requires you to be accepted by it before we can process payment instructions from Buyers, you are solely responsible for obtaining such acceptance and will co-operate in providing such third party with all requested information. Where the Other Acquirer or APM Provider requires you to have your own contract and/or connection number with it, you will apply for this. If you are not accepted and/or if the connection number is not granted to you by the Other Acquirer or APM Provider, we will not provide you with the specific payment method offered by such third party. We are not responsible for the above decision of the third party, and have no obligation under the Gateway Services also to provide Acquiring Services to you.
- 1.5 We may disconnect you from any payment method that ceases to be provided by the relevant Acquirer, Other Acquirer or APM Provider. We will promptly notify you if an APM is disconnected.
- 1.6 We will not be liable for any failure of an Other Acquirer or APM Provider to effect payment in respect of a Transaction including the remittance of any proceeds.
- 1.7 Without prejudice to clause 23, you will retain legible copies of all Data relating to Transactions for a minimum period of eighteen (18) months from the date of the relevant Transaction or disputed Transaction to which it relates. You will provide us with copies of such Data relating to any Transaction or disputed Transaction as we may request, in each case in such format as specified by us and within ten (10) days of such request.
- 1.8 You will:
 - 1.8.1 provide to us complete, accurate and timely information relating to the Gateway Services;
 - 1.8.2 ensure that all Third Party Products arranged by you in connection with the Gateway Services are delivered in a timely manner and comply with any requirements of which we notify you; and
 - 1.8.3 ensure that appropriate licences and clearances are obtained (and the correct licence fees or royalties paid) for the use of all Third Party Products used in connection with the Gateway Services.

Part 2: CPC/DCC (Cardholder Preferred Currency Direct and Dynamic Currency Conversion)

Where we enable you to offer CPC/DCC to your Buyers, the following additional provisions in this part 2 apply:

- 2.1 In addition to terms defined elsewhere in this Agreement or unless the context requires otherwise, in this Part the following capitalised terms and expressions will have the following meanings:
 - “Card Currency”** means the currency in which the Eligible Cardholder receives Card statements from the Card Issuer;
 - “Cardholder Preferred Currency Direct”** (also **“CPC”**) and **“Dynamic Currency Conversion”** (also **“DCC”**) mean the dynamic currency conversion feature that enables an Eligible Cardholder to undertake a Transaction in the currency of that Cardholder’s Card rather than the Local Currency;
 - “CPC/DCC Transaction”** means a Transaction by an Eligible Cardholder where that Cardholder has opted to pay in the Card Currency via CPC/DCC, rather than the Local Currency;
 - “Eligible Cardholder”** means a Cardholder who has been issued a Qualifying Card in a Qualifying Currency;
 - “Exchange Rate”** means the foreign exchange rate provided to us by our foreign exchange rate service provider for use in connection with CPC/DCC Transactions;
 - “Local Currency”** means, with respect to any Transaction (including a potential Transaction), the currency in which you generally quote the prices of the goods or services you offer to Buyers;
 - “Qualifying Card”** means a Card issued in a Qualifying Currency under either the MasterCard or Visa Card Schemes, or such other relevant Card Schemes from time to time, of which we shall inform you;
 - “Qualifying Currencies”** means Sterling, Australian Dollar, Euro, Yen, US Dollar and Canadian Dollar until otherwise specified, or any other currency specified, by a relevant Card Scheme from time to time, of which we shall inform you.
- 2.2 We will provide the CPC/DCC Services and enable you to offer CPC/DCC to Buyers in accordance with the terms of this Agreement.
- 2.3 Where an Eligible Cardholder opts to use CPC/DCC to pay in the Card Currency rather than the Local Currency, for each CPC/DCC Transaction:
 - (A) the price of the applicable goods or services will be converted into the applicable Card Currency of the Eligible Cardholder’s Card at the time when the relevant Transaction occurs, at the Exchange Rate provided to us by our foreign exchange service provider for the day on which the Transaction occurs plus any margin agreed with you;
 - (B) the same Exchange Rate applicable to each Transaction will be used for any Chargeback in relation to that Transaction or any Representation or Retro-Charge in relation to that Chargeback; and
 - (C) the Exchange Rate used for a Refund will be the Exchange Rate provided to us by our foreign exchange service provider for the day on which the Refund occurs.
- 2.4 You shall:
 - (A) provide your staff with all necessary training in relation to Eligible Cardholders’ use of CPC/DCC and keep your staff informed of any changes to CPC/DCC;

- (B) not knowingly misrepresent any aspect or feature of CPC/DCC; and
 - (C) comply with the provisions of the Customer Operating Instructions and Scheme Rules that apply to the provision of CPC/DCC.
- 2.5 Where we provide the CPC/DCC Services hereunder, but do not provide either any related Acquiring Service or Other Payment Service in respect of the CPC/DCC Transaction, then:
- (A) you agree that we may not be able to ascertain whether there are any errors in the transmission of data in connection with such Transactions;
 - (B) you will be responsible for notifying us if there is any discrepancy between the amount of any payment you actually receive or are debited in connection with any CPC/DCC Transaction, Representation or, Retro-Charge, Refund or Chargeback and the amount you expected to receive, and you and will notify us of any such discrepancy, in writing and within thirty (30) days following the date of the relevant CPC/DCC Transaction, Representation or, Retro-Charge, Refund or Chargeback;
 - (C) we will not be responsible for authorising and settling Transactions and paying to you any sums due in respect of CPC/DCC Transactions, Representments and Retro-Charges; and
 - (D) we will have no liability for any CPC/DCC Transaction, Representation or Retro-Charge, and you unconditionally and irrevocably waive any claims, rights and remedies which you might otherwise have had against us in relation thereto.

Part 3: Fraud Management Service (Risk Management Module and RiskGuardian)

Where we provide Fraud Management Service to you, the following additional provisions in this part 3 apply:

- 3.1 In addition to terms defined elsewhere in this Agreement or unless the context requires otherwise, in this Part the following capitalised terms and expressions will have the following meanings:
- “Fraud Management Service”** means the electronic scrutiny and undertaking by us of various risk management tests on the Transaction Data you send to us.
- 3.2 We will provide the Fraud Management Service in accordance with the terms of this Agreement.
- 3.3 You will:
- (A) provide to us complete, accurate and timely information relating to the applicable Fraud Management Service;
 - (B) ensure that all Third Party Products arranged by you in connection with the applicable Fraud Management Service are delivered in a timely manner and comply with any requirements of which we notify you; and
 - (C) ensure that appropriate licences and clearances are obtained (and the correct licence fees, royalties and other sums are paid) for the use of all Third Party Products used in connection with the Fraud Management Services.
- 3.4 You acknowledge and agree that in relation to the Fraud Management Service, we electronically scrutinise and undertake various risk management tests on the Transaction Data you send to us. The Data is provided by us to you for the purposes of making your own risk assessment. You acknowledge and agree that such risk assessment shall be entirely your own responsibility.

- 3.5 Only you may contact us directly if you are experiencing any problems with the Services. Under no circumstances must you encourage any of your customers to contact us directly, and we will not be responsible for accepting any such contacts.

Part 4: Account Updater Services

Where we provide the Account Updater Service to you in accordance with the terms of this Agreement, the following additional provisions in this part apply:

- 4.1 In this part, the following capitalised terms and expressions will have the following meanings (unless the context otherwise requires).

“Account Updater Service” means Cardholder data collected by the Merchant relating to a customer of the Merchant which is sent by Worldpay upon the Merchant’s request to Visa Europe and/or MasterCard to be checked and updated to ascertain whether this Cardholder data is out of date. Following these checks, the updated Cardholder data relating to the customer is either forwarded to the Merchant or stored by Worldpay on the Merchant’s behalf to assist the Merchant in taking recurring transactions;

“European Database” means data records held on Visa Europe’ databases relating to Cardholders with cards issued in the United Kingdom, Italy, Ireland or Greece and any other country as may be added from time to time, and/or MasterCard’s databases relating to Cardholders with cards issued in the United Kingdom or Ireland;

“Match” means the provision of updated customer Cardholder data from Visa Europe and/or MasterCard if the Cardholder data is invalid or out of date;

“Response” means informing the Merchant of a Match;

“Search” means a single enquiry by the Merchant for a Match in respect of the Cardholder data given by the Merchant;

“Search File” means a file containing Searches;

“US Database” means data records held on MasterCard’s databases relating to Cardholders with cards issued in the United States of America or Canada.

Provision of service

- 4.2 You acknowledge that we provide the Account Updater Service subject to limitations imposed on us by the relevant third party suppliers and that your use of the Account Updater Service is subject to such limitations.
- 4.3 To use the Account Updater Service, you shall request a Search which is a request that is separate from the Transaction, and, subject to the terms of this part, we shall provide a Response, where there is a Match, to you.

Search volumes

- 4.4 You may submit Searches to us for (i) the European Database but only where the Cardholder’s card issuer is from the UK, Italy, Republic of Ireland or Greece; and (ii) the US Database but only where the Cardholder’s card issuer is from the United States of America or Canada. Limits as to Search volumes shall apply; You shall submit more than 20,000 Searches per Merchant ID (in no more than 10 Search Files and no Search File to exceed 10,000 Searches (inclusive)) in any day. You must submit Search Files to us: (i) for the European Database by 3pm GMT in order for the Responses (if any) to be available for collection at 4pm GMT three Business Days later; or (ii) for the US Database by 0530 PST in order for the Responses (if any) to be available for collection at noon three Business Days later.

Your obligations

- 4.5 You agree that you shall only request a Search for your internal business purpose of automatically updating Cardholder data and that you shall not request a Search or otherwise use the Account Updater Service for any other purpose whatsoever.
- 4.6 You shall not reproduce, adopt, translate, arrange, sell, transfer, distribute or otherwise make any part of the Account Updater Service or Matches (or any other data provided to you in relation to the Account Updater Service) available to, or use either of the foregoing on behalf of, any third party.
- 4.7 You shall ensure that prior to requesting a Search (or otherwise transferring a customer's Personal Data to us) you obtain from each customer in respect of whom you wish to submit a Search (or otherwise transfer that customer's Personal Data) all necessary consents to enable us and our third party suppliers to Process lawfully the customer's Personal Data ("**Customer Consent**"). You shall ensure that the Customer Consent shall expressly include the relevant customer's permission to transfer its Personal Data outside of the European Economic Area for the purpose of providing all or some of the Account Updater Services.
- 4.8 In order to ensure you compliance with paragraph 4.7, you agree that, on request from us, you shall incorporate promptly into your standard terms and conditions, privacy policy and/or any other customer facing documentation, any language required and notified to you in writing by us for the purpose of you obtaining all Customer Consents.
- 4.9 You:
- (A) acknowledge and agree that you shall not accept a Search in respect of any customer of yours for whom a valid Customer Consent has not been obtained;
 - (B) acknowledge and agree that if you breach paragraph 4.7, then we and our suppliers may be in breach of data protection legislation; and
 - (C) **INDEMNITY: hereby indemnify us and any of our Group Companies against any loss arising as a result of, or in connection with, a breach by you of paragraph 4.7.**

Limitation of liability

- 4.10 Without prejudice to any of the limitations on liability set out in clause 15 of this Agreement, you acknowledge and agree that the Account Updater Service is reliant upon data and services provided by third parties ("**Updater Data**"). Accordingly, the Account Updater Services are provided "as is" without warranties or representations of any kind, either express or implied, including, without limitation, any warranties or representations of merchantability, fitness for a particular purpose, non-infringement or capability of correctly or completely processing Matches, or that the Updater Data are complete, accurate or free from error. We do not assume, and expressly disclaim, any liability to any Person or entity for loss or damage caused by errors or omissions in the Account Updater Service and/or Updater Data, whether such errors or omissions result from negligence, accident or other cause.

Termination of Account Updater Service

- 4.11 In addition to the rights to terminate the Agreement as a whole set out in clause 12 of this Agreement, we shall be entitled to terminate the Account Updater Service:
- (A) on one months' written notice to you, at any time during the term of this Agreement; and
 - (B) immediately on written notice to you, in response to, or to ensure compliance with, the requirements of any Applicable Law, Scheme Rule or other third party rule in respect of this Service.

SCHEDULE 5: UNREGULATED TERMINAL HIRE TERMS

General Hire Terms

1. The following terms and conditions apply whenever you hire Terminals from us, except where you qualify for Regulated Terminal Hire Terms and are in addition to the terms and conditions set out in the Agreement.
2. The agreement between us relating to your hire of the Terminals from us consists of the following:
3. (A) the provisions relating to the Terminals as set out in any Application Form (including without limitation the minimum hire period and pricing) accepted by us or as otherwise agreed in writing from time to time; and
(B) the following hire terms and conditions.
(together the **"Unregulated Terminal Hire Terms"**)
4. For the purposes of these Unregulated Terminal Hire Terms: **"Installation Support"** means either:
(A) where the Terminal is supplied via a courier, remote support via web and/or telephone communication as applicable in the circumstances; or
(B) where so communicated by us to you, installation by a third party upon appointment and in accordance with the additional costs, terms and conditions as notified by us to you.

The Hired Terminals

5. **Minimum Hire Period:** We shall provide Terminals and/or Mobile Terminals (together **"Hired Terminals"**) and Installation Support, for the minimum period of hire shown in the Application Form (or if no minimum period is shown then thirty-six (36) months) (the **"Minimum Hire Period"**) and continuing thereafter for successive 18 month periods (each a **"Renewal Hire Period"**) upon the terms and conditions set out herein unless terminated earlier in accordance with paragraphs 20 or 22 below, or clause 12 of the Agreement.
6. **Commencement and delivery:** The Minimum Hire Period commences on the date of delivery of the Hired Terminals. You agree to accept delivery of the Hired Terminals within 28 days of us notifying you (which may be by email) that these are ready for delivery. If for any reason you fail to accept delivery within this timeframe then an administration fee of £100 plus VAT will be charged and be payable by you in accordance with paragraph 26(F) below.
7. You will provide all necessary power and telecommunication links for the Hired Terminals and we shall not be under any obligation to install any Hired Terminal if such links are not in place.
8. You will install and use the Hired Terminals only in your legitimate trading premises, being premises in which you have previously informed us that the Hired Terminals are installed. You will permit us, our employees, agents, sub-contractors or any other person authorised by us (each an **"Authorised Person"**) to enter your premises (and where relevant you shall obtain permission for us and any Authorised Person to enter the premises of any third party) at all reasonable times for the purpose of inspecting, repairing and/or maintaining the Hired Terminals and you will give such persons all reasonable assistance.
9. **INDEMNITY:** Until returned and received, or collected by us, each Hire Terminal shall be at your sole risk and you indemnify us against any loss or damage to each Hire Terminal howsoever caused (other than fair wear and tear in the ordinary course of usage of each Hire Terminal). You will take reasonable care of each Hire Terminal, keep it in good working order and not alter, amend or interfere with it or any sign or label affixed to it, **PROVIDED THAT**

you may, where a sign or label becomes worn, replace such sign or label with an identical one we provide you. You will report to us any damage to a Hire Terminal.

Payment

10. In return for us supplying you with the Hired Terminals, you will punctually pay any set-up fee and the initial and subsequent monthly rentals (including during any Renewal Hire Period) as set out in the Application Form or which otherwise apply from time to time, together with any additional service charges of which you are notified from time to time. Except as set out in paragraph 11 below in relation to Mobile Terminals, the monthly rental payments are payable monthly in arrears by direct debit on the 18th of each month (or the next business day) from a bank account acceptable to us. You will maintain with your bank an instruction to effect such direct debits. The charges payable under this schedule form part of the Fees, are payable in accordance with the provisions of clauses 4 and 8 of the Agreement, and are in addition to any other Fees, charges or other amounts payable under the Agreement.
11. Where you have a Mobile Terminal with a fixed hire period of three (3) months or less, the rental and additional service charges of which you are notified from time to time are payable by you at the commencement of the fixed hire period.
12. In addition to our right to debit your bank account arising elsewhere in the Agreement, we shall be entitled to debit your bank account with the following items:
(A) any other sums payable by you under this schedule; and
(B) interest as provided for in clause 9 of the Agreement.

Insuring the Terminals

13. The Hired Terminals will remain our property. You shall not sell, charge, encumber, part with possession or otherwise dispose of the Hired Terminals. You will insure against loss or damage to the Hired Terminals including without limitation for the full replacement value in the sum of £500 for each of the Hired Terminals supplied to you. If you receive any insurance monies you must hold these on trust for us.

Care and use of the Hired Terminals

14. You will operate the Hired Terminals in accordance with the provisions of any operating manuals or instructions in existence from time to time together with any instructions issued or made available by us from time to time. We may require you to accept updated software or a replacement Terminal from time to time (including due to industry changes or requirements) and you agree to provide reasonable co-operation in making such changes.
15. You will only use such equipment and materials in connection with the Hired Terminals as have previously been approved by us in writing. Damage to, or malfunction of, the Hired Terminals or any equipment or materials resulting from the use of non-approved equipment and materials will be your responsibility.
16. **Mobile interference:** The wireless nature of the Mobile Terminals means that their use is subject to the availability of wireless connectivity. No warranty or representation is, has or will be given or made by us that Mobile Terminals will be capable of use free of any interruptions. Without prejudice to paragraph 31, we shall not be responsible for any inability to use the Mobile Terminals if and to the extent caused by electrical interference, problems with telecommunications or satellite links or any other similar circumstances beyond our control.
17. You agree that any liability we may have to you in relation to all Claims arising in respect of our provision

of the Hired Terminals under these Unregulated Terminal Hire Terms during each Contract Year shall in each case be limited to (a) in the first Contract Year, a sum equal to the average monthly Terminal Hire Fees paid under these Unregulated Terminal Hire Terms, in the period between the Commencement Date and the first event giving rise to the first such claim, multiplied by twelve (12); and (b) in each Contract Year thereafter, a sum equal to the Terminal Hire Fees paid under these Unregulated Terminal Hire Terms in the twelve (12) months immediately preceding the first event giving rise to the first such claim in the relevant Contract Year.

18. Save for Mobile Terminals, you will give us three months' notice in writing of any proposed change to any electrical power supplied or to the telecommunication links in or to the premises where the Hired Terminals is located. We reserve the right to terminate these Unregulated Terminal Hire Terms upon three months' written notice if we consider the aforementioned changes would or could affect the operation of the Hired Terminals.
19. **INDEMNITY: You will indemnify us against all claims and all losses, costs, expenses, damages and liabilities whatsoever incurred by us (including the cost of repairing, replacing or removing the Hired Terminals) by reason of, or in any way attributable to, your use (including use by your agents, sub-contractors and employees) of the Hired Terminals.**

Your right to terminate these Unregulated Terminal Hire Terms

20. You have the right to terminate these Unregulated Terminal Hire Terms:
 - (A) by giving us at least one month's written notice expiring at the end of the Minimum Hire Period, or the end of the then applicable Renewal Hire Period as the case may be; or
 - (B) by one month's written notice in accordance with the provisions of paragraph 27 if a variation of these Unregulated Terminal Hire Terms gives rise to a right of termination.
21. If you give notice to terminate these Unregulated Terminal Hire Terms relating to the Hired Terminals this shall not automatically terminate the other provisions of the Agreement or the Services other than the Terminal Hire. The Agreement shall remain in place unless otherwise agreed between the Parties.

Our right to terminate these Unregulated Terminal Hire Terms

22. In addition to the provisions of paragraph 18 of this Schedule and clause 12 of the Agreement we have the right to terminate these Unregulated Terminal Hire Terms:
 - (A) by giving one month's written notice expiring on or at any time after the expiry of the Minimum Hire Period;
 - (B) at any time with immediate effect by notice to you if you fail to pay any amount due on the due payment date or if you are otherwise in default and are deemed to have repudiated these terms by breaching thereof.
 - (C) by three month's written notice if paragraph 18 applies;
23. You agree that termination of the Agreement will automatically terminate these Unregulated Terminal Hire Terms at the same time, unless we otherwise agree (at our sole discretion).

What you must pay if these Unregulated Terminal Hire Terms are terminated

24. Upon termination of these Unregulated Terminal Hire Terms:
 - (A) you will immediately return the Hired Terminals to us at such place within the United Kingdom as we reasonably require, in good order, repair and condition (fair wear and tear only excepted) or to an Authorised Person or allow us or an Authorised Person to enter your premises (and where relevant you shall obtain permission for us and any Authorised Person to enter the premises where the Hired Terminals are or where we believe them to be) to remove the Hired Terminals; and
 - (B) you will immediately pay us all amounts owed by you under these Unregulated Terminal Hire Terms.
25. Where these Unregulated Terminal Hire Terms have terminated (for whatever reason) prior to the expiry of the Minimum Hire Period or any subsequent Renewal Hire Period (as the case may be), then in addition to the provisions of paragraphs 9 and 10 above, you will pay to us:
 - (A) all arrears of rental payments outstanding at the date of termination;
 - (B) a sum equal to the aggregate of all rental payments which would, but for the termination of these Unregulated Terminal Hire Terms, have become due and payable under the Unregulated Terminal Hire Terms from the date of termination to the expiry of the Minimum Hire Period (or to the expiry of the applicable Renewal Hire Period as the case may be) less a discount of 5% of each rental. You agree that your liability under this paragraph 25(B) shall accrue prior to termination of the Unregulated Terminal Hire Terms.
 - (C) damages for any breach of the Unregulated Terminal Hire Terms and all costs, expenses and fees incurred by us in recovering possession of the Hired Terminals and/or enforcing our rights under the Unregulated Terminal Hire Terms;
 - (D) if the Hired Terminals are not recovered by us within 1 (one) week after termination of the Unregulated Terminal Hire Terms, an amount of £85 (plus VAT) in respect of each of the Hired Terminals for each week or part thereof that you retain possession of the Hired Terminals beyond such termination (such amount being the sum that we ordinarily charge where Hired Terminals are hired from us on a weekly basis); and
 - (E) if the Hired Terminals are not recovered by us within one month after termination of the Unregulated Terminal Hire Terms, an amount equal to our reasonable estimate of the market value of the Hired Terminals at the date of termination.

Other charges under the Unregulated Terminal Hire Terms

26. In addition to any third party or other installation charges that may be payable in relation to Installation Support, we may charge you and you will pay us the sum of:
 - (A) £6 (plus VAT) for a supervisor card replacement;
 - (B) £20 (plus VAT) for the repair/replacement of a missing or broken cable/printer parts;
 - (C) £75 (plus VAT) if you fail to provide us with 24 hours notice of cancellation when an installation appointment is agreed;
 - (D) £75 (plus VAT) for supplementary training on use of the Hired Terminals;
 - (E) £100 (plus VAT) per Hired Terminal to upgrade the Hired Terminal to support cardholder not present transactions;

- (F) £100 (plus VAT) administration fee if you fail for any reason to accept delivery of the Hired Terminal within 28 days of us notifying you that these are ready for delivery;
- (G) £125 (plus VAT) per Hired Terminal in the event that we are required to collect or remove (including following termination) a Hired Terminal or for the swap over of a Hired Terminal;
- (H) £175 (plus VAT) for the repair of a damaged Hired Terminal; and
- (I) up to £367 (plus VAT) for the replacement of each Hired Terminal (actual charge will vary according to the type of Terminal hired).

Variation of these Hire Terms and Conditions

- 27. On notification to you, we may from time to time vary the rental charges, other charges or payments and/or the terms and conditions of these Unregulated Terminal Hire Terms. Any such variation shall become effective upon us giving you at least one month's written notice in accordance with clause 26. In circumstances where the variation constitutes a material variation to these hire terms and conditions, you shall be entitled to terminate these Unregulated Terminal Hire Terms upon one month's written notice **PROVIDED THAT** such notice is served upon us within one month of you receiving the notice of variation.

General Provisions

- 28. You agree that we may assign, novate, transfer or subcontract any or all of our rights and obligations under this Schedule and/or ownership of the Hired Terminals to a third party at any time without your consent. You shall execute any document reasonably required by us to give effect to any such assignment, novation or subcontracting.
- 29. Paragraphs 6, 9, 10, 12, 13, 15, 17, 19, 21, 23, 24, 25, 26, 28, 30, 31 and 32 and such other clauses as by their nature are intended to survive termination will continue to apply in respect of the Hired Terminals following termination of these Unregulated Terminal Hire Terms for whatever reason.
- 30. If you are a partnership, each partner will be jointly and severally liable under the Unregulated Terminal Hire Terms.
- 31. We shall not be liable for any delay or failure to carry out any of our obligations under the Unregulated Terminal Hire Terms if such failure is due to circumstances beyond our direct control.
- 32. These Unregulated Terminal Hire Terms are personal to you and you may not assign or transfer them. If you are an individual, the Unregulated Terminal Hire Terms will be binding upon your personal representatives.

SCHEDULE 6: CARD SCHEMES

Visa Europe

Visa Inc

MasterCard Worldwide

UK Maestro

International Maestro

American Express

China UnionPay/UnionPay International

Diners Club International

Discover Financial Services

JCB

SCHEDULE 7: PRICING SCHEDULE

Please refer to the Pricing Schedule in your Application Form as amended or replaced from time to time.

SCHEDULE 8: CONTACT INFORMATION

Contact information in relation to Point of Sale Card Transactions and Terminal Hire is provided at: www.cybmerchantservices.co.uk or the address below.

Our contact information in relation to Services supplied by Worldpay (UK) Limited and Worldpay Limited are provided at: <http://www.worldpay.com/uk/about/contact-us>

Clydesdale Bank and Yorkshire Bank Merchant Services is a service provided by Worldpay (UK) Limited and other Worldpay Group Companies. Worldpay (UK) Limited (Company No: 07316500/FCA No: 530923), Worldpay Limited (Company No: 03424752/FCA No: 504504). Registered Office: The Walbrook Building, 25 Walbrook, London EC4N 8AF and authorised by the Financial Conduct Authority under the Payment Service Regulations 2009 for the provision of payment services. Worldpay (UK) Limited is authorised and regulated by the Financial Conduct Authority for consumer credit activities. Worldpay, the logo and any associated brand names are all trade marks of the Worldpay group of companies. Clydesdale Bank and Yorkshire Bank are trading names of Clydesdale Bank PLC. Registered in Scotland No. SC001111. Registered Office: 30 St Vincent Place, Glasgow, G1 2HL. Authorised and regulated as a bank by the Financial Conduct Authority No. 121873.

DU524 Dec 2015