

BETWEEN

- (1) **PAYRIX PTY LTD** (ABN 63 135 196 397) of Level 1, 2 Clunies Ross Court, Eight Mile Plains, QLD 4113, ("**Payrix Aus**") and **PAYRIX NZ LIMITED** (NZBN 942903066095) whose registered office is Quigg Partners, Level 7, 36 Brandon Street, Wellington 6011 New Zealand ("**Payrix NZ**"); each the "**PayFac**" under this Agreement;
- (2) **[MERCHANT]** (Company No. []), a company incorporated under the laws of [] and whose registered office is at [] (the "**Merchant**"); and
- (3) **WORLDPAY (UK) LIMITED** (Company No. 07316500), **WORLDPAY LIMITED** (CompanyNo. 03424752) and **WORLDPAY AP LTD** (Company No. 05593466) all of which are incorporated under the laws of England and Wales and all of whose registered offices are at The Walbrook Building, 25 Walbrook, London EC4N 8AF and **WORLDPAY PTY. LTD** (ACN 603 950 287), a private limited liability company incorporated in Australia and whose registered office is at TMF Corporate Services (Aust) Pty Limited, Level 16, 201 Elizabeth Street, Sydney, NSW 2000 and **WORLDPAY (NZ) LIMITED** (6800755) and whose registered office is at TMF Group, Level 11, 41 Shortland Street, Auckland, 1010, New Zealand (together "**Worldpay**");

RECITALS

- (A) The Merchant desires to accept Cards as payment for goods and services. The PayFac and Worldpay are the suppliers of, inter alia, acquiring and associated services for all transactions in which a buyer uses a credit, debit, charge, purchase or other card payment method.
- (B) The PayFac and the Merchant have entered into an agreement for the provision of certain services, including the processing of Transactions (the "**Client Services Agreement**"). Worldpay is the service provider with which PayFac has entered into a separate agreement to assist PayFac in processing Merchant's Transactions on a domestic basis in Australia and New Zealand (the "**PayFac Agreement**").
- (C) In certain circumstances mandated by the Network Rules, Worldpay is required to enter into a direct agreement with the Merchant regarding the processing of Merchant's Transactions.

IT IS AGREED AS FOLLOWS**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement the following capitalised terms have the following meanings:

"Acquiring Services": the Authorisation, Capture and Settlement by Worldpay of a Card related Transaction;

"Assessment": any assessment, fine, or similar charge of any nature that a Card Scheme levies on the Merchant, the PayFac or Worldpay at any time, directly or indirectly in respect of the Acquiring Services or any Transaction;

"Authorisation": Worldpay's provision to the PayFac at the time of the Transaction of confirmation from the relevant Card Issuer as to whether or not the Card used to pay for the Transaction has sufficient funds available for the relevant Transaction and has not been blocked for any reason or listed as lost, stolen or as having had its security compromised;

"Buyer": a person who has ordered goods and/or services from the Merchant and who has initiated a Transaction in respect of that order and where payment for such order is to be received by the PayFac (for onward payment to the Merchant);

"Capture": Worldpay's 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;

"Card": a credit, debit, charge, purchase or other payment card issued by a Card Issuer under a Card Scheme whose payments Worldpay is able to process (as notified by Worldpay to the PayFac from time to time);

"Cardholder": the authorised user of a Card;

"Card Issuer": an organisation which issues a Card to a Cardholder;

"Card Scheme": a scheme governing the issue and use of Cards, as may be approved and notified by Worldpay to the PayFac in writing from time to time;

"Chargeback": a Transaction that is partially or fully returned by a Card Issuer, resulting in a financial liability to Worldpay, including any circumstances where a Card Issuer or a Card Scheme:

- (a) refuses to settle a Transaction;
- (b) demands payment from Worldpay in respect of a disputed Transaction that has been settled; or
- (c) demands payment from Worldpay in respect of a disputed Transaction,

in each case notwithstanding any Authorisation;

"Claim": any action, cause of action, dispute, controversy, complaint, suit, litigation, proceeding, claim, demand or assessment, fine or similar charge whether arising in contract, tort (including negligence or breach of statutory duty) or otherwise;

"Client Services Agreement": the agreement between the PayFac and a Merchant pursuant to which the PayFac agrees to provide, amongst other things, the Services. A Client Services Agreement may also be known as a Merchant Agreement.

"Data Controller": any person who alone or jointly or in common with others determines the purposes for which and the manner in which Personal Data is, or is to be, Processed;

"Data Protection Authority": each person having regulatory or supervisory authority over Worldpay, the PayFac and/or the Merchant in the area of protection of Personal Data;

"Data Protection Legislation": all Law applicable to the protection of Personal Data, including the General Data Protection Regulation ((EU) 2016/679) and, to the extent applicable, the data protection or privacy laws of any other country;

"Data Subject": an identified or identifiable natural person whose Personal Data is processed under this Agreement;

"EEA": the European Economic Area;

"Insolvent": in respect of a person, any of the following events:

- (a) an execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the relevant person that is returned unsatisfied in whole or in part;
- (b) the relevant person is unable to pay its debts as they fall due, or the value of the relevant person's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities;
- (c) the relevant person agrees to a moratorium, or a moratorium is agreed or declared in respect of all or a material part of (or a particular type of) its debts or otherwise proposes, seeks or agrees to defer, reschedule or readjust any of its debts;
- (d) the relevant person proposes or makes: (i) a general assignment of any of its debts; or (ii) an arrangement or composition with, or for the benefit of, some or all of its creditors in respect of all (or all of a particular type of) its debts in each case other than a solvent re-financing in the normal course of business;
- (e) the relevant person is the subject of: (i) a petition for an administration order or an application for an administration order, or if an administrator is appointed to it, or if a notice of intention to appoint an administrator is filed at any court; or (ii) 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 the relevant person's assets or undertaking, including the appointment of a receiver, administrative receiver, manager or similar officer to enforce that security;
- (f) the relevant person passing a resolution for its winding up, a court of competent jurisdiction making an order for its winding up or the presentation of a petition for the relevant person's winding up which is not dismissed within seven (7) days; or
- (g) the relevant person suffers or is subject to any equivalent event, circumstance or procedure to those set out above in this definition in any other jurisdiction;

"Law": all laws and regulations in force and applicable to a Party in respect of its rights and

obligations under this Agreement, or to any Transaction (in respect of the Merchant), including any order of a court of competent jurisdiction and the rules or directions of any Regulatory Authority;

"Losses": any liability of any kind, loss, claim, damage, interest, fine, penalty, fee, charge, cost and/or expense (including reasonable and properly incurred legal and other professional fees, costs and/or expenses);

"Merchant": a business domiciled in (a) for the purposes of the Services provided by Payrix AUS, Australia only, or (b) for the purposes of the Services provided by Payrix NZ, New Zealand only, and with respect to both (a) and (b), a business that is a bona fide seller via the internet of goods or services or both and which has satisfied the Merchant Programme Standards to the PayFac's satisfaction and to whom the Services are provided by the PayFac or Worldpay as applicable;

Merchant Operating Instructions": any instructions, guidance or manuals made available by Worldpay including at <http://www.worldpay.com/support/> and http://info.worldpay.com/legal_docs, that include information and requirements relating to the Network Rules and the Services, as amended from time to time;

"Network Rules": those third party rules which apply in respect of the Acquiring Services, including those rules applying to the Visa Europe and MasterCard Card Schemes;

"Party": a party to this Agreement and their successors and permitted assigns;

"PCI SSC": those standards of the PCI Security Standards Council (or its replacement body or successor) in force from time to time, including the Payment Card Industry Data Security Standard, Payment Application Data Security Standard and the PIN Transaction Security Standard, as updated from time to time;

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

"Recurring Transaction": a repetitive periodic Transaction for which the Merchant charges the Buyer's Card (e.g. subscriptions or instalments);

"Recurring Transaction Authority": a Buyer's prior written authority (taken during the check-out process) for the Merchant 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 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": a Transaction made to wholly or partly reverse a payment from a Buyer;

"Regulatory Authority": any governmental, regulatory authority or law enforcement department, agency, commission, board, tribunal, crown corporation or other law, rule or regulation making entity (including any stock exchange or central bank) that any of the Parties and/or their Group Companies thereof submit to or are subject to the jurisdiction of in respect of this Agreement, and any successor or replacement of any of the foregoing;

"Representment": a transaction to reverse a Chargeback by the re-execution of the original Transaction, where the Merchant has successfully challenged the Chargeback;

"Restricted Person": 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": a transaction initiated by the Merchant or the PayFac to reverse a Refund to which the Buyer was not entitled;

"Sanctions": 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 Treasuries (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;

"Settlement": the crediting by the relevant Card Scheme to Worldpay or its agent (as applicable) of funds equating to the net value of a Transaction as determined by that Card Scheme (and **"Settle"** will be construed accordingly);

"Transaction": any transaction between the Merchant and a third party permitted under the Client Services Agreement where a Card is used as the method of payment and in relation to which the Acquiring Services are supplied;

"Transaction Personal Data": Personal Data relating to a specific Transaction and which it is necessary to Process in connection with the provision of the Services; and

"Worldpay's Privacy Statement": the Worldpay privacy statement available on Worldpay's corporate website.

1.2 In this agreement:

- (a) the use of the term "including" and derivations thereof will not limit the sense of the words following that term;
- (b) references to a person include a natural person, corporate or unincorporated body (whether or not having separate legal personality) and include reference to that person's successors or assigns;
- (c) references to an undertaking means a body corporate or partnership, or an unincorporated association carrying on a trade or business, with or without a view to profit;.
- (d) words importing the singular include the plural and vice versa where the context so requires; and
- (e) any reference to Worldpay in this Agreement shall be a reference to the entity providing the relevant Services.

2. NATURE OF THIS AGREEMENT

Worldpay's obligations under this Agreement are limited exclusively to the processing of Merchant Transactions in Australia and New Zealand and the receipt and disbursement of related funds to the Merchant on the PayFac's behalf for the purpose set out in Recital C. All other obligations relating to the provision of the services under the Client Services Agreement are the responsibility of the PayFac and any claim, issue, dissatisfaction, dispute and/or service dispute of the Merchant relating to any services provided to the Merchant should be notified to and brought against the PayFac.

3. MERCHANT'S OBLIGATIONS

3.1 The Merchant must at all times comply with the provisions of this Agreement, all Laws, all Sanctions and all Network Rules.

3.2 Without prejudice to clause 3.1, the Merchant will not do nor omit to do anything that Worldpay reasonably believes to be disreputable, or which is otherwise capable of damaging the reputation or goodwill of Worldpay or any applicable Network Rules making body.

3.3 The Merchant will:

- (a) comply with the Merchant Operating Instructions;
- (b) submit Transactions to Worldpay promptly and in any event within two (2) days of entry into them;
- (c) honour all valid Cards in accordance with the relevant Network Rules without discrimination when properly presented by a Buyer for payment and not establish a minimum or maximum Transaction amount as a condition for honouring all Cards;
- (d) not add any surcharges to Transactions, unless expressly permitted under Law. Any surcharge applied, if allowed, must be included in the Transaction amount and not collected separately;
- (e) unless the Network Rules specifically state otherwise in relation to particular industry sectors, or unless otherwise agreed between the Parties in writing, not request the Capture of a

payment before the relevant goods have been shipped or before a service is delivered in respect of the relevant Transaction. Unless otherwise agreed by Worldpay, requests for Authorisation which do not lead to a request for Capture within fourteen (14) days after Authorisation will automatically expire and can no longer be the subject of a Capture request;

- (f) throughout the term of this Agreement display prominently on each of its premises, trading venues and/or websites where the Merchant accepts Card Transactions, all applicable Card and Card Scheme identification, as required by and in accordance with, the Merchant Operating Instructions and/or Network Rules;
- (g) only accept Transactions in respect of goods and/or services the sale and/or supply of which commonly falls within the Merchant's business as notified by the Merchant to the PayFac and are in accordance with Law;
- (h) unless otherwise agreed in writing between the Parties, only accept Transactions in respect of goods and/or services that the Merchant itself supplies;
- (i) notify the PayFac in writing of the URL of any website in respect of which the Merchant accepts or states that it will accept payment by Card, such notification to be made before the Merchant accepts any such payments;
- (j) upon Worldpay's request, at all times throughout the term of this Agreement (and following termination of this Agreement) promptly disclose to Worldpay such information as Worldpay reasonably requires in order to enable Worldpay to perform its obligations, or assess its financial and insurance risks in connection with any Services provided;
- (k) take all reasonable steps to assist Worldpay in handling any claim or query raised by a third party in relation to the Services or any Transaction or Chargeback, Retro-Charge or Representment; and
- (l) not submit Transactions to Worldpay that are contrary to applicable Law; and
- (m) not submit Transactions to Worldpay in respect of Transactions from Buyers located in jurisdictions in which it is illegal to receive the services offered by the Merchant.

3.4 The Merchant must, at or before entering into a Transaction with a Buyer, prominently and unequivocally inform the Buyer of the:

- (a) Merchant's identity at all points of interaction with the Buyer (including prominently displaying its registered name and any trading name on any website through which the Merchant accepts Transactions), so that the Buyer can readily identify the Merchant as the Transaction counterparty and whose name will appear on the Buyer's Card statement;
- (b) complete description of the goods or services offered;
- (c) terms and conditions of sale (and the length of any trial period) including the Merchant's delivery policy, returns and cancellation policies relevant to the supply of goods and services which are the subject of the Transaction. Such policies shall be reasonable and otherwise comply with Law;
- (d) date on, and currency in which, any charges will commence;
- (e) Merchant's complaints procedure, customer service email and telephone contact details; and
- (f) the location (physical address) of the Merchant to enable the Cardholder to easily determine whether the Transaction will be a domestic transaction or a cross-border Transaction.

3.5 Where the Merchant offers goods or services for sale over the internet the Merchant must additionally display the following on its website:

- (a) the Merchant's consumer data privacy policy, security capabilities and policy for transmission of payment card details;
- (b) any legal and export restrictions (if known); and
- (c) the Merchant's address of its fixed place of business.

3.6 Where Worldpay has agreed in writing that the Merchant may accept Recurring Transactions, the Merchant will:

- (a) 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;

- (b) 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;
- (c) 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 the Merchant that the Buyer wishes to cancel such Recurring Transaction Authority; and
- (d) 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 Worldpay on demand.

3.7 The Merchant accepts that an Authorisation is not a guarantee that the person submitting the Transaction is, in fact, the Cardholder, nor is an Authorisation a representation from Worldpay or PayFac that the Transaction will not be subject to Chargebacks.

4. PAYMENT OF FUNDS DUE TO THE MERCHANT.

4.1 Subject to the terms of this Agreement, Worldpay will initiate a payment to the designated account (as made known to Worldpay by the PayFac) of an amount equal to the value of Transactions processed by Worldpay for the Merchant under this Agreement (less deductions for Refunds, Assessments, Chargebacks, Chargeback costs, fees or other Merchant liabilities (whether actual or anticipated) under this Agreement or the Client Services Agreement). Any obligation of Worldpay to remit funds under this Agreement is subject to any rights of Worldpay under the PayFac Agreement.

4.2 The Merchant acknowledges and accepts that Worldpay shall not have an obligation to make any remittance or payment direct to the Merchant. The Merchant agrees that any remittance or payment made to the PayFac by Worldpay under this Agreement will be deemed good receipt by the Merchant of the sums due from Worldpay to the Merchant in relation to Worldpay's liability to the Merchant under this Agreement. The Merchant shall indemnify (and will keep indemnified) on demand, defend and hold harmless Worldpay from and against any Losses (including any re-settlement obligations under the Network Rules) arising from or relating to the payment of funds by Worldpay into an account in the name of the PayFac in accordance with the terms of this Agreement.

4.3 Throughout the term of this Agreement and after its termination for any reason, Worldpay shall be entitled to defer (for such period as it shall in its reasonable discretion consider appropriate) the date upon which the payment of funds in respect of Transactions would (but for this clause) be due in order to protect its position with respect to actual or reasonably expected Chargebacks, Assessments, Refunds, Chargeback costs, fees, fraud, illegal activity or any other liability of the Merchant or relating to any Transactions or under this Agreement or the Client Services Agreement, whether actual or reasonably expected. Amounts so deferred may be set-off against any actual Chargebacks, Assessments, Refunds, Chargeback costs, fees or any other liability of the Merchant.

4.4 The Merchant understands and acknowledges that during the term of this Agreement and after its termination for any reason whatsoever, the Merchant shall continue to bear total responsibility for all Chargebacks, Chargeback costs, Refunds, Assessments, fees, fraud and illegal activity resulting in any way from Transactions processed pursuant to this Agreement and all other amounts then due or which thereafter may become due under this Agreement.

5. PAYMENT CARD INDUSTRY DATA SECURITY STANDARD (PCI)

5.1 The Merchant will comply with all PCI DSS rules, regulations and/or standards as required of it, directly or indirectly, by the Card Schemes. Furthermore the Merchant will meet all costs associated with achieving compliance and is solely responsible for any fines, costs or charges arising from not being compliant or for data held by the Merchant being used for fraudulent or unauthorised purposes.

5.2 The Merchant will not "store" (as such term is used in the PCI SSC standards), at any time: (a) a Card's verification value in the Card's magnetic stripe, on the Card, in or next to its signature panel, or in the Card's magnetic stripe image in a chip application; (b) a PIN verification value in a Card's magnetic stripe; (c) the full contents of any track from a Card's magnetic stripe (on the Card, in a chip

or elsewhere); or (d) any other data (including any Sensitive Authentication Data) that any of the Card Schemes mandate from time to time as data that cannot be stored.

6. USE OF TRADEMARKS

The Merchant's use of Card Scheme trademarks must fully comply with the Network Rules. The Merchant's use of Card Scheme promotional materials will not indicate directly or indirectly that the Card Scheme endorses any goods or services other than their own and Merchant may not refer to any Card Scheme in stating eligibility for Merchant's products or services. Merchant's use of Card Scheme trademarks shall terminate immediately on termination of the PayFac Agreement or the PayFac/Client Services Agreement or as directed by the Card Schemes.

7. TERMINATION

- 7.1 This Agreement comes into force on the date set out at the head of this Agreement and, unless otherwise terminated (in whole or in part) earlier in accordance with its terms, will continue for such period as the PayFac Agreement and the Client Services Agreement remain in force but shall automatically terminate without notice on termination of the PayFac Agreement or the Client Services Agreement for any reason.
- 7.2 Upon termination of this agreement all rights and obligations of any Party will cease to have effect immediately, save that the clauses that expressly or by implication have effect after termination will continue to be enforceable notwithstanding such termination; and termination will not affect accrued rights, obligations and liabilities of any Party under this Agreement as at the date of termination.
- 7.3 Without prejudice to any other rights and remedies available to it under this Agreement, the Merchant may at any time immediately terminate this Agreement by written notice to Worldpay if Worldpay commits a material breach of this Agreement that is not capable of remedy.
- 7.4 Without prejudice to any other rights and remedies available to it under this Agreement, Worldpay may at any time, without incurring any liability to the Merchant, immediately terminate this Agreement:
- (a) in accordance with the PayFac Agreement;
 - (b) following a breach of any of the Merchant's obligations under this Agreement or the Client Services Agreement;
 - (c) the Merchant becomes Insolvent;
 - (d) the Merchant ceases or there is a reasonable likelihood of it ceasing to carry on all or a material part of its business, except for the purpose of a bona-fide reconstruction, amalgamation, reorganisation, merger or consolidation;
 - (e) upon a breach of the Network Rules by Merchant or as directed by the Card Schemes.
 - (f) the Merchant uses, or permits the use of, any of the services or Worldpay's systems for any purpose contrary to Law;
 - (g) Worldpay is required to do so under Law or reasonably believes (in its sole discretion) that a Transaction or this Agreement or the performance of it may be contrary to Law or Sanctions;
 - (h) there is a withdrawal or termination of any licence, permission or authorisation required to operate the Merchant's business; or
 - (i) if any Regulatory Authority or court of competent jurisdiction (an "Authority") has taken action or made statements, requests, directives or demands regarding the activities of the Merchant or another person operating in the same industry ("Actions or Communications") and Worldpay determines in its sole and absolute discretion that the Actions or Communications of any Authority may harm or otherwise adversely affect, directly or indirectly, the reputation or goodwill of Worldpay or any applicable Network Rules making body if Worldpay continues to process Transactions under this Agreement.
- 7.5 Notwithstanding clauses 9.3 and 7.4:
- (a) Worldpay may terminate this Agreement for convenience at any time by giving two (2) months' prior notice in writing to the Merchant; and
 - (b) the Merchant may terminate this Agreement for convenience at any time by giving one (1) month's prior notice in writing to Worldpay.

8. INDEMNITY

The Merchant indemnifies (and will keep indemnified) on demand, defends and holds harmless Worldpay from and against any Losses that Worldpay suffers or incurs in relation to any Claim brought against Worldpay by a third party where such Claim is caused by the Merchant or arises as a result of or in connection with:

- (a) any breach by the Merchant of clause 3.1 (in respect of Network Rules only);
- (b) any security breach, compromise or theft of Transaction data held by the Merchant or on the Merchant's behalf (other than by Worldpay); or
- (c) any Transaction, Representation, Retro-Charge, Assessment and/or Chargeback or resulting from the Merchant's failure to comply with the PCI SSC.

9. DATA

9.1 The Parties agree that, for the purposes of Data Protection Legislation, it is their mutual understanding that the Parties shall not constitute joint controllers.

9.2 Each Party acknowledges that, for the purposes of Data Protection Legislation, it is an independent Data Controller in relation to the Transaction Personal Data and that it determines the purposes for which and the manner in which the Transaction Personal Data, or is to be, processed.

9.3 The Merchant shall ensure that in respect of all Transaction Personal Data provided to the PayFac and Worldpay under this Agreement, and in respect of the use of that Transaction Personal Data under this Agreement:

- (a) all necessary fair processing notices have been provided to and consents obtained from Data Subjects by the Merchant, including to specify Worldpay as a Data Controller in respect of the Data Subject's Personal Data and to provide a link to Worldpay's Privacy Statement or to include a statement that Worldpay's Privacy Statement can be found on Worldpay's corporate website; and
- (b) all necessary steps have been taken to ensure that Transaction Personal Data has been collected and Processed in accordance with the principles set out in Data Protection Legislation, including in particular those relating to:
 - (i) lawful, fair and transparent Processing;
 - (ii) specified, legitimate and explicit purposes of Processing; and
 - (iii) adequate, relevant and not excessive Processing.

9.4 If the Merchant receives any complaint, notice or communication from a Data Protection Authority which relates directly to:

- (a) Worldpay's Processing of the Transaction Personal Data; or
- (b) a potential failure by Worldpay to comply with Data Protection Legislation in respect of the activities of the Parties under or in connection with this Agreement,

the Merchant shall, to the extent permitted by Law, promptly notify Worldpay and provide such information as it shall reasonably request in that regard.

9.5 Worldpay may make periodic searches of, and provide information about the Merchant to credit reference, market research, customer feedback and fraud prevention agencies, and Worldpay's Group Companies and agents. The PayFac acknowledges that any information provided to credit reference agencies may be used by other credit providers to take decisions about the Merchant. Further information about how Worldpay uses this information can be found in Worldpay's Privacy Statement.

9.6 If a Data Subject makes a written request to either Party to exercise any of their rights under Data Protection Legislation in respect of Transaction Personal Data, the receiving Party shall respond to that request in accordance with Data Protection Legislation. To the extent the request concerns processing of Transaction Personal Data undertaken by the other Party, the receiving Party shall:

- (a) promptly and without undue delay forward the request to the other Parties; and
- (b) cooperate and provide reasonable assistance in relation to that request to enable the other Parties to respond in accordance with Data Protection Legislation.

9.7 The Merchant acknowledges that Worldpay may disclose Transaction Personal Data to any Data

Protection Authority, law enforcement authority or regulator.

10. **AUDIT**

- 10.1 The Merchant will: (a) permit Worldpay and/or its duly authorised representatives to access during business hours such premises or systems on which the Merchant's business trades or where the Merchant's records or stock are located and to take and retain copies of all such records to ascertain if the Merchant is performing its obligations hereunder; and (b) provide all reasonable cooperation in relation to such audit.
- 10.2 Where such audit is undertaken at the specific request of a Card Scheme, the Merchant shall pay any costs and charges incurred by Worldpay in respect of such audit.

11. **ASSIGNMENT**

- 11.1 This Agreement may not be assigned by the Merchant or the Payfac without the prior written consent of Worldpay. Worldpay may assign its rights under this Agreement without the Merchant's or the PayFac's consent.
- 11.2 Worldpay shall be entitled to novate any or all of its rights and obligations (as appropriate) under this Agreement to a third party at any time on giving the Merchant and PayFac at least two (2) months' notice. If Worldpay does this the Merchant or the PayFac shall be entitled to terminate the Agreement within two (2) months of receiving the notice of the novation. The Merchant and the PayFac will be deemed to have accepted the novation of the Agreement two (2) months from receipt of the notice if no such notice of termination is served.

12. **EXCLUSION AND LIMITATION OF LIABILITY**

- 12.1 Nothing in this Agreement will operate to exclude or limit a Party's liability:
- (a) for such Party's fraud or fraudulent misrepresentation;
 - (b) for death or personal injury resulting from such Party's negligence;
 - (c) (in the case of the Merchant) to pay monetary amounts due under this Agreement; or
 - (d) to the extent that it cannot be lawfully excluded or limited,
- and each of the following provisions of this clause 12 is subject to this clause 12.1.
- 12.2 Each Worldpay Party will be liable under this Agreement jointly and severally.
- 12.3 Subject to clause 12.1, under no circumstances will a Party be liable to any other Party for any of the following types of Losses arising under or in connection with this Agreement (whether arising for 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) any special, incidental, punitive, consequential or indirect: loss; damage; cost; and/or expense whatsoever; or
 - (b) any lost profits, lost goodwill (or any other damage to reputation), loss of revenue, loss of business, loss of contracts, loss of anticipated savings, business interruption, loss of opportunity, loss of bargain, or lost or corrupted data, in each case regardless of whether any of these types of Losses are direct, indirect or consequential;
- even if that Party was aware of the possibility that such Losses might be incurred by another Party.
- 12.4 Notwithstanding anything in this Agreement to the contrary, in no event shall Worldpay be liable or responsible for any delays or errors in its performance of the services caused by Worldpay's service providers or other parties or events outside of Worldpay's reasonable control, including the acts or omissions of the PayFac.
- 12.5 Notwithstanding anything in this Agreement to the contrary, Worldpay's aggregate liability for all losses, claims, damages or expenses whatsoever arising out of or related to this Agreement and irrespective of whether arising in contract, tort (including negligence) or otherwise shall not exceed the total amount of fees paid by Merchant to the PayFac under the Client Services Agreement during the immediately preceding six (6) calendar months of the event giving rise to the relevant Claim, expressed as a pound sterling amount at the then prevailing exchange rate, if applicable.
- 12.6 Save as expressly set out in this Agreement, Worldpay hereby excludes 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 Law, and the Merchant hereby waives irrevocably any rights or remedies it may otherwise have had in respect of any of the same.

- 12.7 Each Party will cooperate with the other in, and not make any admissions in relation to, the defence and any related settlement negotiations of any Claim the subject of an indemnity or liability action hereunder, and will take all reasonable steps to mitigate any Loss which is the subject of such Claim.

13. **WAIVER**

No failure or delay by a Party in exercising any of its rights hereunder or under Law will be construed as a waiver or release of that right or any other right or remedy, nor will any single or partial exercise of such rights preclude or restrict the further exercise of such rights. A waiver of any breach of any provisions of this Agreement will not constitute a waiver of any other breach, and will not affect the other provisions, of this Agreement. Any waiver must be in writing to be effective.

14. **NOTICES**

- 14.1 Subject to clause 14.3, any notice, demand or other communication given or made hereunder (a "**Notice**") must be in writing in the English language and must be delivered by e-mail, hand, courier, or prepaid second class post (air mail if posted to or from a place outside the United Kingdom). Each Notice must be sent (as applicable): (a) to the receiving Party's address as set out at the head of this Agreement and/or, where the Party does not have a place of business in the United Kingdom, to that Party's agent's address referred to in clause 14.4; or (b) to the receiving Party's e-mail address (notified by one Party to the other from time to time in accordance with this clause 14), or in each case, to such other address(es) as by the Parties may agree from time to time.

- 14.2 A Notice will be deemed received if: (a) delivered personally, at the time of delivery to the receiving Party; (b) if delivered by post within the United Kingdom, two (2) Business Days (seven (7) Business Days for air mail) after posting; or (c) sent by email, on the day on which the Notice is sent, provided no report of non-delivery is received by the sender. If any Notice would, when made in accordance with the above, be deemed to be given or made either on a non-Business Day or after 17:00 on a Business Day, such Notice will be deemed to be given or made at 09:00 on the next Business Day.

- 14.3 Notice from the PayFac to Worldpay to terminate or to bring a Claim in respect of this Agreement may not be delivered by e-mail.

- 14.4 If the PayFac or Merchant does not have a place of business in the United Kingdom, it must within five (5) Business Days of the date of this Agreement appoint a process agent in the United Kingdom authorised to receive notices and inform Worldpay of the agent's name, postal and email address for service of Notices. If for any reason such agent ceases to act as agent for the PayFac or Merchant or no longer has an address in the United Kingdom, the PayFac or Merchant shall immediately appoint a substitute agent within the United Kingdom acceptable to Worldpay and notify Worldpay of the new agent's name, postal and email address for service of Notices.

15. **ENTIRE AGREEMENT**

- 15.1 Save as set out in the Client Services Agreement and (as between Worldpay and the PayFac), the PayFac Agreement, this Agreement constitutes the entire agreement and understanding between the Parties in respect of its subject matter and supersedes all other prior representations, arrangements, understandings and agreements relating to the same subject matter, (whether oral or in writing, express or implied). 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.

- 15.2 No Party shall have any Claim for innocent or negligent misrepresentation based upon any statement in this Agreement.

- 15.3 In the event of any conflict between the terms of this Agreement and terms of the PayFac/Client Services Agreement in so far as they relate to the processing of Transactions, this Agreement shall have precedence.

- 15.4 Nothing in this clause 15 shall operate to exclude any liability for fraud.

16. **MISCELLANEOUS**

- 16.1 Worldpay and the PayFac (acting together and in writing) shall be entitled to vary the provisions of this Agreement from time to time by giving Merchant at least one (1) month's prior written notice. Upon receiving the notice of variation, the Merchant shall be entitled to terminate this Agreement immediately by providing written notice, provided that such notice is served within one (1) month of the date of the notice of variation. Otherwise, the Merchant will be deemed to have accepted such variation with effect from the date one (1) month from the notice of variation. Subject to the foregoing, this Agreement shall not be varied unless in writing signed by a duly authorised representative of each Party.
- 16.2 Nothing in this Agreement will be construed as constituting a partnership, joint venture or agency between or among the Parties.
- 16.3 A person who is not Party to this Agreement will not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any provisions of this Agreement except for any Worldpay group company that provides any of the services on behalf of Worldpay.
- 16.4 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall be deemed to be one and the same agreement. Delivery of an executed counterpart by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.
- 16.5 The Merchant represents and warrants as a continuing representation and warranty during the term of this Agreement that neither it, nor any of its directors, officers, agents, employees, nor any person acting on behalf of the foregoing, is a Restricted Person and none of the foregoing act directly or indirectly on behalf of a Restricted Person.
- 16.6 Worldpay is authorised and regulated by the Financial Conduct Authority (registration number 530923).

17. **GOVERNING LAW AND JURISDICTION**

- 17.1 This Agreement and any Dispute will be governed by and construed in accordance with English law and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales. The Merchant and the PayFac waives any objection to any proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum.
- 17.2 Each Party agrees that it must notify the other of any Claim it may have under this Agreement within twelve (12) months of when the asserting Party first knew or reasonably should have known of the basis of the Claim. Any service of process in relation to such Claim must also be made within that time period, otherwise the Claim is extinguished.
- 17.3 Class arbitrations, class actions, private attorney general actions, and consolidation with other arbitrations or proceedings are not permitted. PayFac and the Merchant hereby waive any right to participate in a class action against Worldpay.

AS WITNESS whereof the parties hereto have caused this Tripartite Agreement to be signed by their duly authorised representatives as of the day and year first written above.

SIGNED by)
Authorised Signatory)
For and on behalf of)
Payrix Australia Pty Ltd)

SIGNED by)
Authorised Signatory)
For and on behalf of)
Payrix NZ Limited)

SIGNED by)
Authorised Signatory)
For and on behalf of)
)

[MERCHANT]

SIGNED by)
Authorised Signatory)
For and on behalf of)
WORLDPAY (UK) LIMITED)

SIGNED by)
Authorised Signatory)
For and on behalf of)
WORLDPAY LIMITED)

SIGNED by)
Authorised Signatory)
For and on behalf of)
WORLDPAY AP LTD)

SIGNED by)
Authorised Signatory)
For and on behalf of)
WORLDPAY Pty Ltd)

SIGNED by)
Authorised Signatory)
For and on behalf of)
WORLDPAY (NZ) Limited)