

# Terms and Conditions

## MERCHANT SERVICES AGREEMENT

### INTRODUCTION

#### Agreement:

These terms and conditions (the “**Agreement**”) govern the supply of the Services by WorldPay (UK) Limited or WorldPay Limited and any additional parties specified in Schedule 1, as the context requires (“**we**”, “**us**”, “**our**”) to any merchant approved by us (“**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. The Application Form, Pricing Schedule the Merchant Operating Instructions and the Schedules (as each may be amended, varied, supplemented, modified or novated from time to time), are incorporated into and form part of this Agreement.

In the event of any inconsistency between the provisions of this Agreement and those of the Application Form or the Merchant Operating Instructions, the provisions of this Agreement shall prevail.

In the event of any inconsistency between the provisions of the Pricing Schedule or any other Schedule and the provisions of any other part of this Agreement, the provisions of the Pricing Schedule or other Schedule shall prevail.

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 is translated, for your convenience, into any other language, the English language text of the Agreement shall prevail. Where you are not a Large Enterprise or a Large Charity (as defined below) during the term of this Agreement, we will provide a copy of this Agreement to you as soon as reasonably practicable following your request.

#### SUPPLIERS OF THE SERVICES:

##### Subject to Schedule 1:

- (A) For all Transactions in which a Buyer uses a Card, a Card number or a Card account (including Point of Sale Transactions, Card Not Present Transactions, Mail Order/ Telephone Order Transactions and E-commerce Transactions) WorldPay (UK) Limited (which may also trade as “Streamline”) is the supplier of Acquiring Services;
- (B) For Point of Sale Transactions, WorldPay (UK) Limited is the supplier of Acquiring Services for Other Payment Methods and Technical Services and is the party from which you hire Terminals for the purposes of the Regulated Terminal Hire Terms and the Unregulated Terminal Hire Terms.
- (C) For E-commerce Transactions, WorldPay Limited is the supplier of Acquiring Services for Other Payment Methods and Technical Services, all of which are supplied from the UK, except “Corporate Gateway” (and any other Services we may specify in writing from time to time) which is supplied from the Netherlands.

#### Payment Services Regulations:

While this Agreement applies to merchants of any size, you agree that, if at the time you enter into this Agreement:

- (A) your annual turnover and/or annual balance sheet total exceeds:
- (i) £2 million, if you enter into this Agreement prior to 1 January 2012; or
  - (ii) €2 million, if you enter into this Agreement on or after 1 January 2012; or

- (B) you have more than ten (10) employees, (in which case you are a “**Large Enterprise**”), or
- (C) you are a charity with annual income of £1 million or more, (in which case you are a “**Large Charity**”) then you:

- (i) confirm that you are not a consumer, micro-enterprise or a charity within the meaning of the Payment Services Regulations;
- (ii) agree that none of the provisions of Part 5 of the Payment Services Regulations applies to this Agreement;
- (iii) 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
- (iv) 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.

#### 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,

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) above, 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 (except those relating to the hire of Mobile Terminals for 12 months or less). 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;

“**Acquiring Services**” means both:

- (A) the processing by us of Transactions, Chargebacks, Refunds, Representments and/or Retro-Charges; 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 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 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;

**"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 any jurisdiction;

**"Assessment"** means any assessment, fine, liquidated damages, fee, cost, expense or charge of any nature which a Card Scheme, Other Financial Institution or any other Third Party levies on you or us at any time, directly or indirectly, in relation to any aspect of our or any Other Financial Institution'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 Acquiring Services related to Other Payment Methods: our authorisation of a Transaction, including, where applicable, the confirmation from the relevant Other Financial Institution that adequate funds are available 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 on which banks are open for normal banking business in London, United Kingdom or, in the case of E-commerce Transactions, the Netherlands;

**"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;

**"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);

**"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"** means 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 any circumstances where Card Issuers, Card Schemes and/or any Other Financial Institutions either refuse to Settle a Transaction or demand payment from us in respect of a disputed

Transaction that has been Settled or in respect of which Remittance has been made to you, notwithstanding any Authorisation;

**"Chargeback Costs"** means our administrative charge for a processing a Chargeback and any reasonable costs, expenses, liabilities or 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; 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 or Other Financial Institutions' 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"** means the exercise, or ability to exercise or entitlement to acquire, direct or indirect control over you or us (as applicable), as defined in s.416 of the Income and Corporation Taxes Act 1988 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;

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

**"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;

**"E-commerce Transactions"** means 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;

**“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;

**“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 an inability to pay 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;

**“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;

**“Mail Order/Telephone Order Transactions”** means Transactions in which the Buyer pays using a Card concluded via the telephone or mail order, other than E-commerce Transactions;

**“Merchant Data Account”** means an electronic management information account in our systems containing Data related to your Transactions, Chargebacks, Refunds, Representments and Retro-Charges;

**“Merchant Bank Account”** means an account 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 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;

**“Merchant Operating Instructions”** means any instructions, guidance or manuals made available by us at <http://www.streamline.com/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;

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

**“Other Financial Institution”** means any third party credit or financial institution (including the RBS Account Banks) 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 Method”** means a payment method (other than Cards) specified in Schedule 2, or as otherwise approved by us in writing from time to time;

**“Other Payment Services”** means payment 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 or 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 the Application Form, Schedule 7 and/or otherwise provided by us to you from time to time;

**“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 agreed in writing and in advance between you and the Buyer for which you debit the Buyer’s Card (such as subscriptions or instalments);

**“Recurring Transaction Authority”** means a Buyer’s prior written authority (in a form approved by us) for you to debit the Buyer’s Card or Other Payment Method account in relation to a Recurring Transaction;

**“Refund”** means a payment made to wholly or partially reverse a 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 Services 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 Acquiring Services;

**“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;

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

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

**“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 Other Financial Institution from time to time relating to Cards, Transactions, Other Payment Methods and any payments or processing of Data relating thereto (including those communicated to you in the Merchant Operating Instructions and such rules, regulations and guidelines posted on [www.visaeurope.com](http://www.visaeurope.com) and [http://www.mastercard.com/us/merchant/pdf/BM-Entire\\_Manual\\_public.pdf](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 Other Financial Institution;

**“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 (e.g. MasterCard CVC2/Visa CVV2);

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

**“Settlement”** means the crediting to us, our agent or 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) management information services;
- (B) arrangements for the hire of Terminals;
- (C) professional services;
- (D) the transmission of Data by us between you and the Buyer and/or between you and an Acquirer via our technical systems to enable a Transaction, Representation or Retro-Charge or making a Refund, in circumstances where we do not enter into the possession of any funds (also known as “gateway services”); and
- (E) such other services as we may specify from time to time in our Documentation or Schedule 4, and exclude Acquiring Services;

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

**“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 you, using either:

(A) a Card, a Card number or a Card account; or

(B) an Other Payment Method,

in relation to which we supply any of the Services to you and (unless the context otherwise requires) a reference to “Transaction” shall include a reference to Recurring Transactions and 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 “e.g.” 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.

## **2. OUR OBLIGATIONS**

2.1 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 In return for the Fees related to the Technical Services, we shall supply you with the Technical Services in accordance with this Agreement (including any specific terms and conditions contained in Schedule 4), with reasonable care and skill, and in compliance with Applicable Law.

2.3 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.

2.4 In respect of the Technical Services when we are not providing the Acquiring Services or related Other Payment Service(s) to you, you acknowledge and agree that the relevant Acquirer (or, where applicable, the relevant Other Financial Institution 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.

2.6 For the term of this Agreement, we grant to you a non-exclusive, non-transferrable, 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 credit the amount of each Transaction to your Merchant Data Account following our receipt of the corresponding funds.

## **3. YOUR OBLIGATIONS**

3.1 You shall at all times comply with:

(A) the provisions of this Agreement;

(B) the Scheme Rules;

(C) 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 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.

3.2 You shall:

(A) in relation to Transactions involving Cards, only accept payments from and/or make Refunds to Buyers in connection with goods and/or services which you have sold and supplied 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 Other Payment Methods using any of the Services (such notification to be made before you accept any such payment);

- (E) in relation to any Recurring Transaction:
- (1) obtain a Recurring Transaction Authority from the Buyer;
  - (2) notify the Buyer that his Recurring Transaction Authority is subject to cancellation by the Buyer at any time;
  - (3) not debit or attempt to debit the Buyer's Card or Other Payment Method account after being notified of the cancellation of the Recurring Transaction Authority;
  - (4) notify the Buyer in writing of the amount to be debited and the due date of debit, at least 14 days prior to:
    - (a) the first debit; and
    - (b) each subsequent debit (unless the Recurring Transaction Authority specifies the amounts payable and the due dates and none of these has changed or other objective criteria are agreed with the Buyer for calculating the due dates); and
  - (5) retain the Recurring Transaction Authority for a period of 18 months after the final payment that is made pursuant to it, and produce the Recurring Transaction Authority to us on demand;
- (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 Merchant 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 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;
- (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;
- (I) offer your Buyers a documented complaints procedure and customer service contact point accessible by e-mail 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 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 specified in Schedule 8. We will use reasonable endeavours to prevent unauthorised use of your Merchant Data Account upon receiving such notification.
- 3.4 You acknowledge that 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.
- 3.5 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 2.5.
- 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 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 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).
- 3.10 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.
- 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, 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, 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 Merchant Operating Instructions applicable to the type of Refund. Where a Refund is not authorised in accordance with this clause 4.6 and you notify us under clause 4.13, then (subject to any investigation we may make in relation to the unauthorised Refund), we will refund the amount of the unauthorised Refund to you and refund any charges made by us in respect of the unauthorised Refund not later than:
- (A) the same day that we receive a notification from you in accordance with clause 4.13 in relation to the unauthorised Refund; or
- (B) if such notification is received by us after 16.00 (CET), not later than the next Business Day.
- 4.7 Where you are not a Large Enterprise or a Large Charity, your liability in respect of unauthorised Refunds where you have breached clause 3.3 will be limited to a maximum of £50 unless you have acted fraudulently or you have breached clause 3.3 and/or clause 4.13 intentionally or with gross negligence.
- 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:
- (A) the end of the third Business Day after you submit the Refund, until 31 December 2011; and
- (B) from 1 January 2012, 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 (unless prohibited by law) of the refusal and, if possible, the reasons for such refusal and 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 each 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 (e.g. direct debit) as opposed to through you (e.g. 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 and, in any event, not later than 13 months after becoming aware of any unauthorised or incorrectly executed Transactions, Refunds, Representments or Retro-Charges in your Merchant Data Account.

## 5. PAYMENTS TO YOU

- 5.1 Following the value dating and crediting of 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 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 processed since the previous Remittance Date (or, in the case of the first Remittance Date, since the Commencement Date);
- (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 clause 5.2, 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 may be fraudulent or involves other criminal activity, until the satisfactory completion of our investigation or that of any Other Financial Institution or any third party; or
- (C) without limit in amount or time, if we become aware or reasonably believe that you are in breach or likely to be in breach of your obligations under this Agreement.
- 5.5 We may suspend the processing of any Transaction, Refund, Representation or Retro-Charge where we reasonably believe that the Transaction may be fraudulent or involves any criminal activity, until the satisfactory completion of our investigation or that of any, Other Financial Institution or any third party.
- 5.6 In the event that we exercise our rights under this clause 5 as a result of any matters referred to under clauses 5.3(E), 5.3(F), 5.3(H), 5.4(B) or 5.5, we shall notify you of any such action, the reasons for it and the procedure for rectifying any factual errors that led to the refusal, 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. If you are a Large Enterprise or a Large Charity, we may charge you the reasonable costs of any such notification.
- 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. In circumstances 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 E-commerce Transactions. Our prevailing exchange rate is based on the standard reference rate of The Royal Bank of Scotland plc or such other reference rate as we notify to you. The reference rate will fluctuate and is therefore indicative only.
- 5.8 In circumstances where we receive Transaction funds, you hereby unconditionally instruct and authorise us or any Other Financial Institution to remit Transaction funds to one or more WorldPay Customer Payments Accounts for the purpose of holding your Transaction proceeds (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 which is based on the standard reference rate of The Royal Bank of Scotland plc for Settlement purposes on the day the Chargeback is processed or such other reference rate as we notify you from time to time.
- 6.4 In the event that you wish to dispute a Chargeback, it is your responsibility to prove to our reasonable satisfaction (or that of the relevant Card Scheme, Card Issuer or Other Financial Institution, as the case may be) that the debit of the Buyer's account was authorised by such Buyer, in addition to providing us with such other evidence as we or any Card Issuer, Other Financial Institution or Card Scheme may require you to provide in support of your claim.
- 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 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 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.
- 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 may be required to maintain with your bank an instruction to authorise us to directly 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 and 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 mandate maintained by you under clause 8.1.
- 8.3 If your Merchant Bank Account is held with an RBS Account Bank then you agree that that RBS Account Bank shall be entitled to debit your Merchant Bank Account with any amounts owed by you under this Agreement.
- 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.
- 8.5 If you pay to the relevant RBS Account Bank any amount payable by you under this Agreement, or if that RBS Account Bank debits your Bank Account in respect of that amount, then your obligation to pay that amount to both us and the RBS Account Bank will be satisfied.
- 8.6 The rights granted to 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 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

Subject to the provisions of clauses, 5.8, 11 and 15.2, 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.

## 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 or any Other Financial Institution will not be repayable, or capable of being disposed of, charged or dealt with by you until your liabilities 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. 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 set-off 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

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.

## 12. TERM AND TERMINATION

- 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, until 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 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 We may terminate this Agreement or any Service, or suspend the provision of any Service with immediate effect by giving written notice 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 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;
- (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 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 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 or Other Financial Institution; or
  - (2) to be detrimental to our systems, business or that of any Card Scheme 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; or
- (5) may affect your ability or willingness to comply with all or any of your obligations or liabilities under this Agreement; 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 any Service, or suspend the provision of any Service with immediate effect by 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, any third party or any Other Financial Institution ceases to provide us with any 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 that you have previously informed us will be where the Terminals shall be installed;
- (F) if we reasonably consider that any act or omission of yours falls within a Reason Code;
- (G) if the ratio of Chargebacks to Transactions exceeds one (1) % or we otherwise consider in our sole and absolute discretion that the total 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 Where any Party serves notice to terminate this Agreement pursuant to clause 12.2, we shall during the relevant period prior to termination provide reasonable assistance to you, or use our reasonable endeavours to ensure that you are provided with reasonable assistance, for you to make arrangements for the processing of the relevant transactions by another service provider. We may charge you for providing such assistance and if so you shall be liable to pay us for any costs reasonably incurred in so doing.
- 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, 17.4, 17.8, 18, 19, 20, 23, 29, 30 and 31); 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

14.1 You shall hold us harmless from and against, and indemnify us in respect of any losses, damages, costs or expenses which we may suffer or incur or other amounts for which we are liable (including any penalty, fine, surcharge or costs related thereto) in connection with any Claims brought against us by a Buyer, Card Scheme, Card Issuer, Other Financial Institution, 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, Recurring Transaction (including the failure to retain or produce a Recurring Transaction Authority), Refund, Representation, Retro-Charge, Assessment, Chargeback and/or Chargeback Cost;

(B) the Scheme Rules;

(C) any security breach as described in clause 17.7, compromise or theft of Data held by you or on your behalf;

(D) the enforcement or attempted enforcement of this Agreement;

(E) a failure by you to comply with the requirements of a Regulatory Authority or Applicable Law; and

(F) any reasonable steps taken in the protection of our interests in connection with:

(1) any actual 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));

(2) any breach of the requirements of a Card Scheme, the Scheme Rules, a Regulatory Authority or Applicable Law; or

(3) any allegation of fraud made in relation to you or your business,

except, if and to the extent such Claim is caused by our fraud or any breach of this Agreement by us.

14.2 We shall indemnify and hold you indemnified from and against all Claims which you may suffer or incur to the extent arising out of or in connection with:

(A) any actual security breach or security breach reported to you by a Card Scheme, Acquirer, Card Issuer or us relating to Data which is directly attributable to our failure to comply with any PCI SSC Standards (but not including any claims made by a Regulatory Authority);

(B) any reasonable costs, charges, expenses (including reasonable legal fees and expenses) or liabilities incurred by you to any third party and to the reasonable cost to you of your own internal resources which become utilised and are attributable to steps taken in the protection of your interests in connection with any of the following aspects of your relationship with us:

(1) any actual security breach or a security breach reported to you by a Card Scheme, Acquirer, Card Issuer or us relating to Data (whether or not you have complied with PCI SSC Standards) which is attributable to our negligence; or

(2) the requirements of a Card Scheme, the Scheme Rules, a Regulatory Authority or Applicable Law which are attributable to our negligence; or

(3) any allegation of fraud made in relation to your business which is caused by our negligence.

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

15.1 Subject to the provisions of clauses 15.2 to 15.8 inclusive, each party shall only be liable for loss or damage directly arising out of or in connection with its own breach of this Agreement, negligence or wilful misconduct, provided that nothing in this Agreement shall operate to exclude or limit a Party's liability:

(A) for losses suffered by the innocent Party arising out of the other Party's (or its Personnel's) fraud, fraudulent misrepresentation or wilful misconduct;

(B) for death or personal injury resulting from a Party's negligence or that of its Personnel;

(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) for losses suffered by us in respect of any Chargebacks or Assessments recoverable under clause 6 and/or 14; or

(E) any other liability to the extent which it cannot be lawfully excluded or limited.

15.2 Subject to clause 15.1, 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 for 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 (including as a consequence of the non-execution or defective execution of a Transaction), in which case interest accrues on a daily basis until the date of payment calculated at the rate specified in clause 9.

15.3 Each of the following shall apply in respect to our liability:

(A) We shall not be liable for any delay or failure to carry out any of our obligations under this Agreement if and to the extent that such failure is due to:

(1) circumstances beyond our reasonable control;

(2) any cessation or interruption of any part of the Services which are due to any act or omission of a Card Scheme, Acquirer or Other Financial Institution and is not caused by our breach of this Agreement;

(3) us complying with any relevant requirement under the Scheme Rules or any Applicable Law;

(4) your failure to provide complete and/or correct Data to us or Other Financial Institution and/or your breach of this Agreement (provided that we may make reasonable efforts to recover any funds paid by us as a result of such failure and may make a reasonable charge to you for doing so); or

(5) a suspension of Services by us under clause 12.

(B) 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 an amount equivalent to the Fees (excluding Anticipated Liabilities and any fees imposed on us by any third party) due to the relevant Party in the twelve (12) months immediately preceding the first event giving rise to such Claim in the Contract Year or, where the date of such event arises during the first period of twelve (12) months from the Commencement Date, an amount equivalent to the average monthly Fees due to us in the period from the Commencement Date to the first event giving rise to such Claim, multiplied by twelve (12).

- 15.4 Each of WorldPay (UK) Limited and WorldPay Limited and any other Party providing the Services:
- (A) 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) shall be only severally liable in respect of its own obligations under this Agreement; and
  - (C) shall not be liable in connection with the Services provided by the other Parties, whether jointly, jointly and severally or at all.
- 15.5 The following additional exclusions and limitations apply in relation to the Services:
- (A) We will not 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.
  - (B) 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.
  - (C) 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.
  - (D) We do not warrant that the Data available via your Merchant Data Account is accurate, up-to-date, reliable or error-free.
  - (E) 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) 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 suitable for your use or will deliver any specific result.
- 15.6 You are responsible for all losses resulting from any unauthorised activity in connection with your Merchant Data Account if you have acted fraudulently or you have either intentionally or 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 4.8).
- 15.7 For the avoidance of doubt, if you are a partnership, each of your partners shall be jointly and severally liable with the other(s) to perform your obligations under this Agreement.
- 15.8 You acknowledge and agree that, given the nature of the Services, the availability to you of suitable alternative payment methods for the Buyers and your ability to choose other providers of services similar to the Services before entering into this Agreement, the

limitations on liability contained in this clause 15 are reasonable in all the circumstances and that the Fees have been calculated taking into account such limitations (which would be higher but for such limitations) and accordingly you have accepted the risk of any losses which you may suffer because of the limitation on our liability under this clause 15.

- 15.9 No Party shall be liable to any other Party for any loss of profits, loss of data, loss of customer business or goodwill, losses incurred by third parties or any indirect or consequential loss or damage, howsoever arising. Subject to clauses 15.1 and 15.3, we shall have no liability to you for any inaccuracy in the information we or any Other Financial Institution provide to any third parties pursuant to clause 19.

## 16. MATERIALS

You shall only use such materials identifying the Services, us, any of our Group Companies, any Card Scheme or any Other 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 Other Payment Methods for payment, the Card and Card Scheme identification or Other Payment Method identification, as required by the Scheme Rules.

## 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).
- 17.3 The Parties agree that:
- (A) You shall be a Data Controller and we or Other Financial Institution (as the case may be) shall be a Data Processor in respect of Transaction Personal Data; and
  - (B) Each Party shall be a Data Controller in respect of its Processing of 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; and
  - (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.
- 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 Other 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, and remains unremedied on, the date on which this Agreement was signed by the Parties. 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 take such other steps as we, any Card Scheme, Regulatory Authority or any Other Financial Institution reasonably consider 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.

## 18. RETENTION OF RECORDS

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.

## 19. PROVISION AND DISCLOSURE OF DATA AND INFORMATION

- 19.1 We may, from time to time, request you to provide copies of Data, in which event you shall provide such copies, in such format specified by us, to 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 such accurate, complete and reliable information as we or the Other Financial Institution 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 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, Representation or Retro-Charge;

(C) co-operate in providing any Other Financial Institution with all information requested by it in order for you or your Transactions to be accepted by such Other Financial Institution 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 **(i)** You hereby authorise us and any Other Financial Institution (including the credit institution at which you maintain the Merchant Bank Account) to use, share and release Data and any other information relating to you, the Services or the Card Schemes (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, Card Schemes, Third Parties, Regulatory Authorities, law enforcement agencies, fraud prevention agencies and credit reference agencies:
- (A) for the purpose of fulfilling our or any Other Financial Institution's obligations under the Agreement or the Scheme Rules or requirements of a Card Scheme 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 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 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.
- 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 (including damage to the reputation of us or any Other Financial Institution, 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 disclose information concerning you to third parties where we aggregate data to facilitate cross-industry analysis and comparisons.
- 19.9 The information which we and/or any Other Financial Institution collect from you may be transferred to, processed and 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 (if any) under clause 12.4(H) 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 No more than once annually during the term of this Agreement, within twenty-eight (28) days written notice from us, 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) to take and retain copies of all or any such records; and
- (C) to provide to us or procure that we 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.

## **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 trade marks, 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 adjust the content and interfaces of the Services, make changes to the Services which are necessary to comply with any Applicable Law or Scheme Rule, or make changes which do not materially affect the nature or quality of the Services. 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 Subject to clause 22.4, 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. If we do this, 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 receiving the notice of variation. Otherwise, you will be deemed to have accepted any variation of the provisions of this Agreement two (2) months from receipt of the notice.
- 22.4 We may vary the interest referred to at clause 9 without notice and with immediate effect, where such variation is due to a change in The Bank of England base rate or is more favourable to you.

## **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 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.

## **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 and 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 27.2, 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**
- 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 delivering it personally or sending it by post (or registered airmail in the case of an address for service outside the United Kingdom) or by email or by facsimile to the postal address, email address or fax number 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 Unless otherwise agreed in writing, notice from you to us to terminate the Agreement must be delivered by post.
- 26.3 Any notice given in accordance with clauses 26.1 or 26.2 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;
- (E) in the case of registered airmail, seven (7) Business Days from the date of posting; and
- (F) in the case of facsimile, on the date it is transmitted subject to confirmation of uninterrupted transmission by a transmission report, 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.
- 26.4 A Party may specify (by giving notice to the other Parties in accordance with this clause 26) a particular individual or office holder to whom any notices to be served are to be addressed, in which case a notice shall not be validly given unless so addressed.
- ## **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 No Party shall have any claim for innocent or negligent misrepresentation based upon any statement in this Agreement.

27.3 Nothing in this clause 27 shall operate to exclude any liability for fraud.

## **28. SEVERABILITY**

28.1 If any provision of the Agreement or any part of it is held by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable:

(A) the legality, validity and enforceability of the remainder of the Agreement shall not be affected; and

(B) if such provision would cease to be illegal, invalid or unenforceable 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 and enforceable.

## **29. MISCELLANEOUS**

29.1 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.

29.2 This Agreement is not intended to confer any benefit on any third party other than any Other Financial Institution and any RBS Account Bank to the extent expressly provided, and no Person who is not party to the Agreement shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any provisions of the Agreement, except any such Other Financial Institution and any RBS Account Bank 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.

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 by writing to the Financial Ombudsman Service at South Quay Plaza, 183 Marsh Wall, London E14 9SR or by telephone on 0845 080 1800. Further information is available on [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk).

### **33. REGULATORY INFORMATION**

- 33.1 WorldPay (UK) Limited is authorised and regulated as a Payments Institution by the Financial Services Authority, its registration number is 530923.
- 33.2 WorldPay Limited is authorised and regulated as a Payments Institution by the Financial Services Authority, its registration number is 504504.

**SCHEDULE 1: ADDITIONAL PARTIES**

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**SCHEDULE 2: ACQUIRING SERVICES**

**PAYMENT METHODS SUPPORTED BY WORLDPAY  
(UK) LIMITED:**

(A) Cards

**PAYMENT METHODS SUPPORTED BY WORLDPAY  
LIMITED:**

(A) Cards

(B) Bank transfers

(C) Direct debits

(D) Giropay

(E) Cheque

**SCHEDULE 3: OTHER PAYMENT SERVICES**

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## SCHEDULE 4: TECHNICAL SERVICES

### Part 1: Cardholder Preferred Currency Direct ("CPC")/ Dynamic Currency Conversion ("DCC")

Where we enable you to offer CPC/DCC to your Buyers, the following additional provisions in this part 1 apply:

1. In addition to clause 1.1, for the purposes of this part 1, the following capitalised terms shall 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 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 the currency in which you generally quote the prices of the goods or services you offer to potential Buyers;
  - "**Qualifying Card**" means a Card issued under either MasterCard or Visa Card Schemes, or such other Card Schemes of which we may notify you from time to time;
  - "**Qualifying Currencies**" means Sterling, Australian Dollar, Euro, Yen, US Dollar and Canadian Dollar or any other currency of which we notify you from time to time.
2. Where an Eligible Cardholder opts to use CPC/DCC to pay in the Card Currency rather than the Local Currency:
  - 2.1 the price will be converted into the 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;
  - 2.2 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
  - 2.3 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.
3. You shall:
  - 3.1 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;
  - 3.2 not knowingly misrepresent any aspect or feature of CPC/DCC; and
  - 3.3 comply with the provisions of the Merchant Operating Instructions and Scheme Rules that apply to the provision of CPC/DCC.

## Part 2: PaymentTrust Services

Where we supply you with the Technical Services listed in this part 2, the following additional terms and conditions apply:

1. **PaymentTrust Transaction Service:** We process each transaction sent by you to us and provide a response in the format and timescales set out in our technical documentation as supplied to you by us from time to time.
2. **RiskGuardian Risk Management & Fraud Screening Service:** We electronically scrutinise and undertake various risk management tests on the transaction data you send to us. The data, as interpreted by us, is returned by us to you to assist you in making your own risk assessment in relation to that data. Such risk assessment shall be entirely your responsibility.
3. **RiskGuardian Age & Identity Verification Service:** Data collected by you relating to your customers is electronically scrutinised by us against various third party data repositories. Following these checks, data relating to those customers, as interpreted by us, is returned to you to assist you in verifying that customer's age and/or identity.
4. **PayBack Service:** We process each Payback Transaction and provide a response in the format and timescales set out in its technical documentation as supplied to you by us from time to time. For the purposes of this paragraph, a 'Payback Transaction' means, in relation to the funds transfer to a customer of yours, a single PayBack funds transfer request between PaymentTrust and any appropriate domestic or international electronic funds transfer messaging platform.
5. **IP GeoPOS Service:** You send an Internet Protocol (IP) address to us and we provide a response regarding the location of the source of the IP address at the time of your request, in the format and timescales set out in its technical documentation as supplied to you by us from time to time.
6. **Reporting and Connection:** We (i) provide you with access to certain reports regarding your transactions we process using the Technical Services in this section and certain reporting tools to assist you in your accounting activities, and (ii) establish and maintain a connection between (a) the server utilised by us to provide the Technical Services in this section to you and (b) your acquiring bank or other authorised processor (the "Connection").
  7. You will:
    - 7.1 Provide to us complete, accurate and timely information relating to the Services under this section;
    - 7.2 Ensure that all Third Party Products arranged by you in connection with the services in this section are delivered in a timely manner and comply with any requirements of which we notify you.
    - 7.3 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 services under this section.
  8. The provisions of this paragraph 8 shall apply to the Technical Services provided under this section but shall not apply to the Age & Identity Verification Service. The service levels and support applicable to the Age & Identity Verification Service are set out solely in any Age & Identity Verification Service Addendum.



For the purposes of this paragraph 8 the capitalised terms shall have the following meanings:

- 8.1 **“Business Day”** means the Office Hours during any day (other than a Saturday or Sunday) when banks are open for the transaction of normal banking business in the country of processing (e.g. UK, Canada),
- “Consecutive Hours”** means a continuous period during Office Hours. For the avoidance of doubt if there is reference to “8 Consecutive Hours” and the client notifies us of a problem at 15:00 on a Business Day the period of 8 Consecutive Hours would commence at 15:00 on such Business Day and finish at 14:30 on the next Business Day;
- “Downtime”** means the amount of time in any calendar month during which the relevant service is not available, excluding any unavailability due to scheduled maintenance;
- “Enhanced Support”** means the reporting of 8 incidents per month and 2 hour response time (Office Hours);
- “Office Hours”** means 09:00 to 17:30 during Business Days, In Canada this is 08:00 to 18:00;
- “Services”** shall mean the services provided under part 2 of this Schedule 4, save that in this paragraph 8 it shall not include the Age & Identity Verification Services;
- “Standard Support”** means reporting of 4 incidents per month and 4 hour response time (Office Hours); and
- “Uptime”** means the amount of time in any calendar month that is not Downtime. When expressed as a percentage it means the amount of Uptime divided by the total time in any calendar month.

8.2 We will provide 99.9% Uptime, with no planned outages, and be responsible for all systems hosted on our servers and data centres that are within our control. These include:

- The payment gateway system (PaymentTrust,

PayBack) and the risk management fraud screening system (RiskGuardian), as well as the PaymentTrust Secure Transaction Network Link (STLink) transaction switching servers and any other transaction based systems

- Network connectivity between the PaymentTrust servers, and the outside world, with the exception of the acquiring bank’s networks. This responsibility will terminate at the entry point interconnect of the third party supplier of network connectivity to PaymentTrust and the Internet, subject to the first bullet point above
- All merchant management administration tools and reporting subsystems.

We will not be responsible for ensuring data is delivered correctly to your acquiring bank or authorised processor in a way acceptable to the acquiring bank or authorised processor, nor for any connection difficulties that are outside our control. We accept no responsibility for service levels of your acquiring bank or any other authorised processors’ networks or any other Third Party Product supplier, such as an ISP or other bandwidth provider of any description.

- 8.3 **Direct Support:** 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.
- 8.4 **Communication and Tools:** On receipt of a non-critical incident notification, we will supply the incident resolution service selected by you and will use its reasonable endeavours to meet the service levels set out in paragraph 8.9 below. Critical incidents will be supported by us automatically in accordance with the service levels set out in paragraph 8.9.
- 8.5 **Telephone:** You should notify us of incidents initially by telephone. We will determine and notify you whether or not the problem is directly concerned with the Services, determine the severity of the problem and thereafter use our reasonable endeavours to remedy the problem within the timescale relevant to the determined severity of the problem (as detailed in paragraph 8.9 below).
- 8.6 **Email:** You may notify us of incidents via e-mail, but not severity 1 incidents (as detailed in paragraph 8.9 below), unless follow-up information has been requested by PaymentTrust support.
- 8.7 **Severity 1 or 2 incidents** (as detailed in paragraph 8.9 below) that have been notified to us by telephone should be followed up with an email notification.
- 8.8 Contact Numbers:

PaymentTrust Support Centres	Office Hours	Telephone/Fax/Email
UK & Europe	Office Hours: 09.00 – 17.30 During Business Days	Dialling from within the UK – 0845 3007567  Dialling from outside the UK – +44 (0) 1932 690237  Email: support@paymenttrust.com
	<b>Emergency/ out of hours</b>	Dialling from within the UK – 0845 3007568  Dialling from outside the UK – +44 (0) 1932 690238

8.9 **Severity and Targets:** The following definitions and targets apply for incident reporting and resolution:

Severity	Definition	Targets
Severity 1	<b>Critical</b> incident Business impact on you is critical. You are unable to use any of the Services; productivity is severely impacted. This shall include the ability to authorise and process transactions, with accuracy, within the part of the authorisation process that is within our direct control.	<ul style="list-style-type: none"> <li>Resolution within 2 hours</li> <li>Confirmation of receipt &lt;=30 mins</li> <li>Initial response indicating anticipated resolution time &lt;=30 mins</li> <li>Supported 24 x 7 x 365</li> </ul>
Severity 2	<b>High</b> incident You are unable to use certain of the Services (such as Management Admin Tools or reporting tools; productivity is affected. This shall include any material adverse effect on the speed of transaction response, which is within our direct control.	<ul style="list-style-type: none"> <li>Resolution within 3 to 8 hours following notification.</li> <li>Confirmation of receipt &lt;=30 mins</li> <li>Initial response indicating anticipated resolution time &lt;=1 hour and contingency support for affected service</li> <li>Supported 24 x 7 x 365</li> </ul>
Severity 3	<b>Normal</b> incident You are able to use the Services; minor effect on productivity.	<ul style="list-style-type: none"> <li>Resolution in accordance with support service chosen by you ("Standard" or "Enhanced"). Such support provided within 4 Office Hours response from first notification. Provided if such notification is not during Office Hours within 4 Business Hours commencing on the next Business Day following the first notification.</li> <li>Confirmation of receipt in accordance with contracted support service ("Standard" or "Enhanced")</li> <li>Initial response indicating anticipated resolution time in accordance with contracted support service ("Standard" or "Enhanced").</li> </ul>
Severity 4	<b>Low</b> incident You are able to use the Services, no impact on productivity. This also may include features that may or may not be fixed within the next revision.	<ul style="list-style-type: none"> <li>Resolution within 5 days from first notification provided if such notification is not during Office Hours within 5 Business Days commencing on the next Business Day following the first notification. Confirmation of receipt in accordance with contracted support service ("Standard" or "Enhanced")</li> <li>Initial response indicating anticipated resolution time in accordance with contracted support service ("Standard" or "Enhanced").</li> <li>Workaround or fix may or may not be included in next scheduled release</li> </ul>

The SLA targets for the delivery of these response and resolution times is 98% for any incident. 98% resolution means that we will use our reasonable endeavours to resolve 98% of Severity 1, 2, 3 or 4 (as applicable) problems within the specified time scales set out above.

8.10 **Notification:** We will notify you on resolution of an incident as to whether the reported incident is counted towards the number of incidents supported depending on your contracted support level. Severity 1 and 2 incidents are not counted towards the number of incidents supported based on client contracted support level and have no fee associated.

## SCHEDULE 5: UNREGULATED HIRE TERMS

1. The following terms and conditions in this schedule:
  - (A) apply whenever you hire Terminals from us as agreed from time to time but you do not qualify for Regulated Terminal Hire Terms; and
  - (B) are in addition to the terms and conditions set out in the Agreement.
2. Subject to paragraph 13 below, we provide and install Terminals (except Mobile Terminals with a fixed hire period of twelve (12) months or less) for a rental period of thirty-six (36) months commencing on the date of delivery (the "**Minimum Hire Period**") and continuing thereafter until ended by either us or you in accordance with clause 12.1 of the Agreement. The fixed hire period for Mobile Terminals of twelve (12) months or less may also be terminated by either us or you in accordance with clause 12.1 of the Agreement. For the avoidance of doubt, such hire periods apply in relation to each Terminal or Mobile Terminal (as the case may be) from the date of its delivery.
3. In return for us supplying you with a Terminal for hire (except Mobile Terminals with a fixed hire period of three (3) months or less), you will punctually pay the monthly Terminal rental and any additional service charges of which you are notified from time to time, in arrears in accordance with the provisions of clause 8 of the Agreement. The rental and additional service charges of which you are notified from time to time in relation to Mobile Terminals with a fixed hire period of three (3) months or less are payable by you at the commencement of the fixed hire period. For the avoidance of doubt, the charges payable under this schedule shall form part of the Fees and shall be payable in accordance with the provision of clause 4 of the Agreement and are in addition to any other fees and charges payable under the Agreement.
4. You will operate the Terminals in accordance with the provisions of any operating manuals or instructions in existence from time to time together with any instructions issued by us from time to time.
5. The Terminals being installed or awaiting installation on your premises shall be at your sole risk. You will take reasonable care of the Terminals, will keep the same in a safe condition and in good working order and will not alter, amend or interfere with the same. You will report to us any damage to the Terminals upon becoming aware of it.
6. You will only use such materials in connection with the Terminals as have previously been approved by us. Damage to, or malfunction of, the equipment or materials resulting from the use of non-approved equipment and materials will be your responsibility.
7. You will provide all necessary power and telecommunication links for the Terminals and we shall not be under any obligation to install any Terminal if such links are not in place. Save for Mobile Terminals with a fixed hire period of three (3) months or less, you will give us three (3) months' notice in writing of any proposed changes to any electrical power supplied or to the telecommunication links in or to the premises where the Terminals are located. We reserve the right to terminate your hire of such Terminals upon three (3) months' notice if we consider that the aforementioned change or changes will or could affect the operation of the Terminals.
8. In addition to the provisions of paragraph 7 of this Schedule and clause 12 of the Agreement, we have the right to terminate these Unregulated Terminal Hire Terms:
  - (A) by giving one (1) month's written notice expiring at any time after the Minimum Hire Period has expired (except in respect of Mobile Terminals with a fixed hire period of twelve (12) months or less); or
  - (B) at any time with immediate effect by notice to you if you are in default and are deemed to have repudiated these terms by breaching thereof.
9. In addition, we have the right to terminate these Unregulated Terminal Hire Terms in respect of Mobile Terminals with a fixed hire period of twelve (12) months, by giving one (1) month's written notice at any time.
10. The Terminals will remain our property or that of a third party (as the case may be, e.g. in relation to Mobile Terminals). You shall not sell, charge, encumber, part with possession or otherwise dispose of the Terminals. You will insure against loss or damage to the Terminals. You will install and use the Terminals only in your legitimate trading premises, being premises in which you have previously informed us that the Terminals are installed.
11. You acknowledge and agree that the wireless nature of the Mobile Terminals means that their use is subject to availability of wireless connectivity. No warranty or representation is or has been given or made by us that the Mobile Terminals will be capable of uninterrupted use. We shall not be responsible for any inability to use the Mobile Terminals if and to the extent such inability is caused by electrical interference, problems with telecommunications or satellite links or any other similar circumstances beyond our control.
12. You will permit us, our agents, sub-contractors or any other person authorised by us to enter your premises (or, if necessary, will obtain permission for us, our agents, sub-contractors or any other person authorised by us to do so) at all reasonable times for the purpose of inspecting, repairing, maintaining or removing the Terminals and will give such persons all reasonable assistance. Upon any termination or expiry of the hiring of the Terminals you will immediately deliver them to us at such place within the United Kingdom as we may require in good order repair and condition (fair wear and tear only excepted). If you do not do so, we shall be entitled to:
  - (A) retake possession of the Terminals and for that purpose without notice to enter any premises where the Terminals are or we believe them to be without incurring liability to you or any person claiming through you;
  - (B) in addition to our rights under paragraph 15(D) of this schedule, charge You the sum that we ordinarily charge for hiring Mobile Terminals from us on a weekly basis, in respect of each Mobile Terminal for each week or part thereof that you retain such Mobile Terminal in your possession beyond such termination or expiry.
13. You acknowledge that we are not the manufacturers of, dealers in, or experts in the Terminals or similar goods. Accordingly, in consideration of us agreeing, upon your request, to assign to you and us jointly all and any rights we may then have as purchaser of the Terminals or otherwise in respect of the Terminals against any dealer or supplier of the Terminals and their manufacturer, you hereby release and discharge us from all present and future obligations and liabilities which we may have to you, or any person claiming through you, in respect of the quality or condition of the Terminals.
14. In addition to your obligations under clause 14.1 of the Agreement, you will indemnify and hold us and any other Terminal owner indemnified from and against:
  - (A) all actions, proceedings, costs, claims, demands, charges, expenses (including legal expenses), losses and damages, whether arising in tort, contract, for

- breach of statutory duty or otherwise, which we or the Terminal owner may suffer or incur (including the cost of repairing, replacing or removing the Terminals) by reason of, or in any way attributable to, your use of the Terminals; and
- (B) all losses, costs, expenses (including legal expenses), damages and liabilities whatsoever that may be caused to or by the Terminals while they are on your premises.
15. If the rental period (and thereby the hiring) terminates (for whatever reason) before the expiration of the Minimum Hire Period (or, in the case of Mobile Terminals with a fixed hire period of twelve (12) months or less, before the expiry of the applicable fixed hire period) then, in addition to your obligations under paragraph 12 above and clauses 13 and 14 of the Agreement, you will pay to us upon termination of the rental period:
- (A) all arrears of rental;
- (B) in the case of Terminals (subject to clause 15(C)), a sum equal to the aggregate of all rental payments which would have become due and payable under the Agreement from the date of termination to the end of the initial thirty-six (36) months' rental period but for termination of the Agreement, less a discount for accelerated payment calculated at the rate of five (5) % on each rental from the date of termination to the dates on which the rental would have become payable but for termination;
- (C) in the case of Mobile Terminals with a fixed hire period of twelve (12) months or less, a sum equal to the aggregate of all rental payments which would have become due and payable before the expiry of the applicable fixed hire period but for termination;
- (D) damages for any breach of the terms contained in this schedule and all costs, expenses and fees incurred by us in recovering possession of the Terminals and/or enforcing our rights under this schedule; and
- (E) if the Terminals are not recovered by us within thirty (30) days after termination of the hiring, an amount equal to our reasonable estimate of the market value of the Terminals at the date of termination of the hiring.
14. We and any other Terminal owner may assign our ownership of the Terminals without your consent.

**SCHEDULE 6: CARD SCHEMES**

Visa Europe

Visa Inc

MasterCard Worldwide

UK Maestro

International Maestro

American Express

China UnionPay

Diners Club International

Discover Financial Services

JCB

Laser Card

**SCHEDULE 7: PRICING SCHEDULE**

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**SCHEDULE 8: CONTACT INFORMATION**

1. Our contact information in relation to Services supplied by WorldPay Limited are provided at

**<http://www.worldpay.com/contactus>**

2. Our contact information in relation to Services supplied by WorldPay (UK) Limited are provided at:

**<http://www.streamline.com/contact-us>**







