

Tripartite Merchant Services Agreement

BETWEEN

- 1) **[Name of Payment Facilitator]**, a company duly incorporated and organised under the laws of [], having its registered office at [] and with company registration number [] (hereinafter **"Payment Facilitator"**); and
- 2) **[Name of Merchant]**, a company duly incorporated and organised under the laws of [], having its registered office at [] and with company registration number [] (hereinafter **"Sponsored Merchant"**); and
- 3) **PXP Financial Limited**, a company duly incorporated and organised under the laws of England and Wales, having its registered office at The Corn Mill, Stanstead Abbots, 1 Roydon Road, Hertfordshire, SG12 8XL, England and with registration number 5433326 and FCA number 504318 (hereinafter **"PXP"**).

BACKGROUND:

- A) Payment Facilitator and Sponsored Merchant have entered into an agreement (**"Sponsored Merchant Agreement"**) for the provision of certain payment services, including the processing of Merchant's payment transactions.
- B) PXP and Payment Facilitator have entered into a separate agreement (the **"Payment Facilitator Agreement"**) to enable PXP (in its capacity as Scheme principal member and UK FCA licensed payment institution) to assist Payment Facilitator in processing Payment Facilitator merchant payment transactions such as those undertaken with the Sponsored Merchant pursuant to the Sponsored Merchant Agreement.
- C) Under certain circumstances mandated by the Scheme Rules, PXP is required to enter into a direct agreement with Sponsored Merchant regarding the processing of Sponsored Merchant's payment transactions using certain Cards.
- D) This present Agreement is entered into in order to permit PXP to continue to provide its assistance and related services to Payment Facilitator and Sponsored Merchant in due accordance with Applicable Law and Scheme Rules.

Defined terms in this Background section are hereinafter defined.

THEREFORE: It is agreed as follows:

1. Definitions:

“Applicable Law” means all laws or regulations (and including the requirements of any regulatory authority) applicable to a party or to any Card transaction or refund for the time being in force in any jurisdiction including relevant data protection laws (including but not limited to the General Data Protection Regulation ((EU) 2016/679));

“Assessments” means any assessment, fine, liquidated damages, fee, cost, expense or charge of any nature which a Card Scheme levies on the Sponsored Merchant, the Payment Facilitator or PXP at any time, directly or indirectly, in relation to any aspect of PXP’s relationship with the Sponsored Merchant (whether directly or indirectly through the Payment Facilitator);

“Authorisation” means the confirmation at the time of a Card 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;

“Card” means a credit, debit, charge, purchase or other payment card issued by a Card issuer under a Card Scheme whose payments PXP is able to process (as notified by PXP to Payment Facilitator from time to time);

“Cardholder” means a person who or which is the authorised user of a Card;

“Card Scheme” means schemes governing the issue and use of Cards;

“Chargeback” means any circumstances where Card Issuers or Card Schemes either refuse to settle a transaction or demand payment from PXP in respect of a disputed transaction;

“Merchant Operating Instructions” means any instructions, guidance or manuals made available by PXP;

“Scheme Rules” means all applicable rules, regulations and operating guidelines issued by the Card Schemes from time to time relating to Cards or Card transactions (including the Merchant Operating Instructions and such rules, regulations and guidelines which as at the date of this Agreement can be found at <https://www.visaeurope.com/about-us/policy-and-regulation/veor>] and [\[https://www.mastercard.us/en-us/about-mastercard/what-we-do/rules.html\]](https://www.mastercard.us/en-us/about-mastercard/what-we-do/rules.html)] and all amendments, changes and revisions made thereto from time to time.

2. Nature of this Agreement and PXP Obligations

- 2.1 As a sponsored merchant acquiring payment services from the Payment Facilitator, Sponsored Merchant has the ability to receive payments from customers of its products and services ("Customers") which are funded through Card facilities. In certain circumstances, the Card Schemes require that Sponsored Merchant enters into a direct contractual relationship with the entity that acquires those transactions and which is a member of the Card Schemes. The terms set out in this Agreement are entered into pursuant to such

requirements and create a tripartite contractual relationship between Sponsored Merchant, the Payment Facilitator and PXP.

- 2.2 While this Agreement establishes a direct contractual relationship between Sponsored Merchant and PXP, this Agreement does not operate to make PXP responsible for the payment services Sponsored Merchant receives, product and service support or any related services, which are supplied to it directly by the Payment Facilitator and are governed by the Sponsored Merchant Agreement.
- 2.3 **PXP's obligations are limited exclusively to acting as an acquirer of Merchant's Card payment transactions on Payment Facilitator's behalf and for the benefit of Sponsored Merchant for the purpose set out in Background Section C.** In providing its acquirer services, PXP agrees that it shall perform using all due skill and care and in compliance with (a) the provisions of this Agreement; (b) the Scheme Rules; (c) PCI DSS and (d) all Applicable Law relevant to its performance or services. **All other obligations relating to the provision of the services under the Sponsored Merchant Agreement are the responsibility of the Payment Facilitator and any issue, dissatisfaction, dispute and/or service dispute of the Sponsored Merchant relating to any services provided to the Sponsored Merchant should be notified to and brought against the Payment Facilitator in the first instance.**

3. Sponsored Merchant Obligations and Warranties

- 3.1 Sponsored Merchant shall at all times comply with: (a) the provisions of this Agreement; (b) the Scheme Rules; and (c) all Applicable Law, including those requirements which apply to the sale of goods and/or services by the Sponsored Merchant in connection with the Card transactions. It is Sponsored Merchant's obligation to familiarise itself with any Scheme Rules, including as may be updated, amended or varied during the period in which it uses the applicable Card payment services.
- 3.2 Sponsored Merchant shall:
- a. in relation to transactions involving Cards, only accept payments from and/or make refunds to Customers in connection with goods and/or services which Sponsored Merchant has sold and supplied to those Customers, and only pay such refunds to any Customer using the payment method used by the Customer 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 Merchant's business as identified to the Payment Facilitator;
 - c. notify Payment Facilitator in writing of the URL of any website where Sponsored Merchant accepts or states that it will accept payments by Card;
 - d. only accept payments in respect of Card transactions which a customer of Sponsored Merchant has authorised in accordance with Applicable Law, the Scheme Rules and any other information or instructions provided by PXP and/or the Payment Facilitator from time to time;
 - e. ensure that it shall prominently and unequivocally inform its customers of its identity at all points of interaction, so that the customer can readily identify it as the counterparty

- to the relevant transaction;
- f. offer its Customers a documented complaints procedure and customer service contact point accessible by e-mail and/or telephone;
 - g. not submit any transactions which are or which Sponsored Merchant should have known were illegal or fraudulent; and
 - h. refrain from doing anything which PXP reasonably believes to be disreputable or capable of damaging the reputation or goodwill of PXP or any Card Scheme.
- 3.3 Sponsored Merchant accepts that an Authorisation is not a guarantee that the person submitting the transaction is, in fact, the Cardholder, nor is an Authorisation a representation from PXP or Payment Facilitator that the transaction will not be subject to Chargebacks.

4. Settlement of Sponsored Merchant Funds

- 4.1 Subject to the terms of this Agreement, PXP will initiate a payment to the designated account (as made known to PXP by the Payment Facilitator) of an amount equal to the value of Card transactions processed by PXP for the Sponsored Merchant under this Agreement (less deductions for refunds, Assessments, Chargebacks, Chargeback costs, fees or other Sponsored Merchant liabilities (whether actual or anticipated) under this Agreement or the Sponsored Merchant Agreement). Any obligation of PXP to remit funds under this Agreement is subject to any rights of PXP under its agreement with the Payment Facilitator.
- 4.2 Sponsored Merchant acknowledges and accepts that PXP shall not have an obligation to make any remittance or payment direct to Merchant. Sponsored Merchant agrees that a remittance or payment made to Payment Facilitator by PXP under this Agreement ("Sponsored Merchant Settlement Funds") will be deemed good receipt by Sponsored Merchant of the sums due from PXP to Sponsored Merchant in relation to PXP's liability to Sponsored Merchant under this Agreement. Sponsored Merchant shall indemnify PXP and hold PXP indemnified against all losses, costs, claims, demands, expenses (including legal expenses) and liabilities of any nature (including any re-settlement obligations under the Card Schemes) arising from or relating to the payment of the Sponsored Merchant Settlement Funds by PXP into an account in the name of Payment Facilitator in accordance with the terms of this Agreement.
- 4.3 Payment Facilitator shall indemnify Sponsored Merchant and hold Sponsored Merchant indemnified against all losses, costs, claims, demands, expenses (including legal expenses) and liabilities of any nature arising from or relating to the failure or breach by Payment Facilitator of its obligation to onward remit to Sponsored Merchant any payment of Sponsored Merchant Settlement Funds received by it from PXP in accordance with the terms of this Agreement. Payment Facilitator acknowledges and agrees that any such failure or breach the subject of the foregoing indemnity shall constitute a material breach by Payment Facilitator of this Agreement and the Sponsored Merchant Agreement, and entitle Sponsored Merchant to terminate this Agreement and the Payment Merchant Agreement at any time on immediate written notice to the applicable parties.

- 4.4 Throughout the term of this Agreement and after its termination for any reason, PXP shall be entitled to defer (for such period as it shall in its reasonable discretion consider appropriate but acting reasonably) the date upon which the payment of funds in respect of transactions would (but for this clause) be due in order to protect its position with respect to actual or anticipated Chargebacks, Assessments, refunds, Chargeback costs, fees, fraud, illegal activity or any other liability of Sponsored Merchant or relating to any transactions or under this Agreement or the Sponsored Merchant Agreement, whether actual or anticipated.
- 4.5 The Sponsored Merchant understands and acknowledges that during the term of this Agreement and after its termination for any reason whatsoever, the Sponsored Merchant shall continue to bear total responsibility for all Chargebacks, Chargeback costs, refunds, Assessments, fees, fraud and illegal activity resulting in any way from transactions processed pursuant to this Agreement and all other amounts then due or which thereafter may become due under this Agreement.
- 4.6 The Sponsored Merchant also acknowledges that PXP shall be entitled to retain and/or withhold payment of Sponsored Merchant Funds where the Payment Facilitator Agreement is breached as a result of Sponsored Merchant breach of its Sponsored Merchant Agreement.

5. Payment Card Industry Data Security Standard (PCI)

If Sponsored Merchant stores cardholder account numbers, expiration dates, and other personal cardholder data in a database, Sponsored Merchant must adhere to the Scheme Rules' guidelines on securing such data, in addition to Applicable Law. Sponsored Merchant confirms that it will ensure that it is fully compliant with the PCI Data Security Standards as applicable to Merchants business (set out in the website found at the following url: <https://www.pcisecuritystandards.org/>). Furthermore, that Sponsored Merchant will meet all costs associated with achieving compliance and are solely responsible for any fines, costs or charges arising from not being compliant or data held by them being used for fraudulent or unauthorised purposes.

6. Use of Trademarks

Merchant's use of Card Scheme trademarks must fully comply with the Scheme Rules. Merchant's use of Scheme promotional materials will not indicate directly or indirectly that the Card Scheme endorses any goods or services other than their own and Sponsored Merchant may not refer to any Card Scheme in stating eligibility for Merchant's products or services.

7. Termination

- 7.1 This Agreement is effective upon its signature by all parties and continues so long as the Sponsored Merchant Agreement remains in force between Sponsored Merchant and the Payment Facilitator but shall automatically terminate without notice on termination of such Sponsored Merchant Agreement for any reason, provided that those terms which by their nature are intended to survive termination (including without limitation, indemnification obligations and limitations of liability) shall survive. This Agreement may be terminated by

PXP at any time in accordance with the Payment Facilitator Agreement or based on a breach of any of Merchant's obligations under this Agreement or the Sponsored Merchant Agreement or upon the insolvency of Sponsored Merchant or a breach of the Scheme Rules by Sponsored Merchant or as otherwise directed by the Card Schemes. This Agreement may be terminated by Sponsored Merchant based on a material breach of any of PXP's obligations under this Agreement or breach of Payment Facilitator's obligations under the Sponsored Merchant Agreement.

- 7.2 PXP may terminate this Agreement without cause on giving the other parties two (2) months' written notice.
- 7.3 Sponsored Merchant may terminate this Agreement without cause on giving the other parties one (1) month's written notice.

8. Indemnification

Sponsored Merchant agrees to indemnify and hold PXP harmless from and against all losses, liabilities, damages and expense: (a) resulting from any breach of any warranty, covenant or agreement or any misrepresentation by Sponsored Merchant under this Agreement; (b) arising out of Sponsored Merchant's or its employees' negligence or wilful misconduct, (c) arising in connection with Card transactions processed by PXP under this Agreement or otherwise arising from Sponsored Merchant's provision of goods and services to Cardholders or Customers (including without limitation any Chargebacks); (d) resulting from any Assessments or arising out of any third party indemnifications PXP is obligated to make as a result of Sponsored Merchant's acts or omissions.

9. Confidentiality

Each party shall treat any confidential or proprietary information of the other parties obtained or disclosed to that party during the term of this Agreement and any period thereafter as confidential information ("Confidential Information") of that party (and shall not disclose, use or process any such Confidential Information in respect of any third party (except any employees or professional advisers of that party on a need to know basis) and in any event only for the sole purpose of performing its obligations under this Agreement or related agreement referred to herein. The foregoing non-disclosure obligations shall not apply to the extent any Confidential Information comes into the public domain (other than in breach of this Agreement) or is required to be disclosed to a competent regulatory or law enforcement body, or pursuant to a mandatory order of a court of competent jurisdiction (in which cases, the party subject to the disclosure requirement shall, unless prohibited by applicable law/court order, notify the affected party in order to permit that party to limit or avoid such disclosure).

10. Assignment

- 10.1 This Agreement may not be assigned by Sponsored Merchant without the prior written consent of PXP. PXP may assign (on written notice to the other parties) its rights under this Agreement without Sponsored Merchant's or the Payment Facilitator's consent.
- 10.2 PXP shall be entitled to novate any or all of its rights and obligations (as appropriate) under this Agreement to a third party at any time on giving the Sponsored Merchant at least sixty

(60) days' written notice. If PXP does this Sponsored Merchant shall be entitled to terminate the Agreement within sixty (60) days of receiving the notice of the novation. Sponsored Merchant will be deemed to have accepted the novation of the Agreement to a third party by PXP sixty (60) days from receipt of the notice.

11. Warranty Disclaimer

Save as expressly set out in this Agreement, PXP disclaims all representations or warranties, express or implied, made to Sponsored Merchant or any other person, including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular purpose or otherwise of any services or any goods provided incidental to the services provided under this Agreement, to the extent permitted by law.

12. Liability

- 12.1 Notwithstanding anything in this Agreement to the contrary, in no event shall PXP, or its affiliate(s) or any of its directors, officers, employees, agents or subcontractors, be liable for 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 each of which is hereby excluded by agreement of the parties, regardless of whether such damages were foreseeable or whether the applicable party/parties has/have been advised of the possibility of such damages. Notwithstanding anything in this Agreement to the contrary, in no event shall PXP be liable or responsible for any delays or errors in its performance of the services caused by PXP's service providers or other parties or events outside of PXP's reasonable control, including the acts or omissions of the Payment Facilitator or Sponsored Merchant.
- 12.2 Notwithstanding anything in this Agreement to the contrary, PXP's aggregate liability to any party under this Agreement and for all losses, claims, damages or expenses whatsoever arising out of or related to this Agreement suffered by the relevant party and irrespective of whether arising in contract, tort (including negligence) or otherwise shall not exceed the total amount of fees paid by Sponsored Merchant to the Payment Facilitator during the immediately preceding six calendar months, expressed as a pound sterling amount at the then prevailing exchange rate, if applicable.
- 12.3 Payment Facilitator agrees to indemnify PXP for all losses, damages or expenses PXP incurs arising out of any claim or dispute brought against PXP under this Agreement.
- 12.4 Payment Facilitator shall be fully and solely responsible for the performance of its activities towards Sponsored Merchants in accordance with this Agreement, its agreement with PXP and Applicable Rules. Payment Facilitator shall indemnify, defend and hold harmless PXP and its Affiliates from third party claims – including, without limitation, all claims, actions, proceedings, losses, liabilities, damages, costs, expenses (including reasonable legal costs) and regulatory fines – arising in respect of any breach of the Payment Facilitator's obligations under this Agreement and its agreement with PXP.
- 12.5 Nothing in this Agreement shall exclude or limit any liability of any party for death or personal injury caused by negligence or fraud, deceit or fraudulent misrepresentation, howsoever caused

13. Order of Precedence

In the event of any conflict between the terms of this Agreement and terms of the Sponsored Merchant Agreement in so far as they relate to the processing of Card Scheme transactions, this Agreement shall have precedence.

14. General

- 14.1 All notices and other communications required by this Agreement to be in writing must be sent to the recipient by registered pre-paid post or email. The notice or communication will be deemed to be duly received by the recipient if sent by email, upon receipt by the sender of an acknowledgment or generated report the email was received by recipient.
- 14.2 All notices and other communications must be sent to the recipient at the address, or email address notified by any Party in writing (which shall include email) for such purpose. Any notice of termination of this Agreement shall be served by post.
- 14.3 PXP and the Payment Facilitator (acting together and in writing) shall be entitled to vary the provisions of this Agreement from time to time by giving Sponsored Merchant at least two (2) months' prior written notice. If PXP and the Payment Facilitator do this, Sponsored Merchant shall be entitled to terminate the Agreement immediately by providing written notice, provided that such notice is served within two (2) months of Sponsored Merchant receiving the notice of variation. Otherwise, Sponsored Merchant will be deemed to have accepted any variation of the provisions of this Agreement two (2) months from receipt of the notice.
- 14.4 This Agreement is not intended: to create a partnership, joint venture or legal relationship between the Sponsored Merchant, the Payment Facilitator and PXP where such relationship would impose liability upon one of them for the act(s) or failure(s) to act of the other(s); to authorise one of them to act as agent for the other(s); or to provide authority to make representations, act in the name of/on behalf or otherwise bind the other(s).
- 14.5 This Agreement and any disputes shall in all respects be exclusively governed by and interpreted in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the courts in relation to any disputes hereunder.

IN WITNESS WHEREOF, the Parties to this Agreement have executed the same on the date shown below:

**Sponsored
Merchant**

PXP Financial Limited

Name:

Name:

Title:

Title:

Place:

Place:

Date:

Date:

Signature:

Signature:

Payment Facilitator

Name:

Title:

Place:

Date:

Signature: