

MERCHANT AGREEMENT

This Merchant Agreement ("**Agreement**") is made on _____, 20__

Between:

- (1) Luxon Payments Ltd., a private limited company registered in England and Wales under company number 11462356 and whose registered office is at No.1 Berkeley Street, London, England, W1J 8DJ ("**Luxon**"); and
- (2) _____ ("**Merchant**").

Whereas:

- (A) Merchant is a provider of certain goods, services, or other activities that require payment;
- (B) Luxon is the provider of online payment services for goods, services or activities provided by Merchant and other providers;
- (C) Merchant wishes to become authorised to receive, and to remit, payments for Merchant's goods, services or other activities from individuals using Luxon's proprietary software (further defined below as the "**App**"); and
- (D) Luxon is willing to authorise Merchant to receive and remit such payments for Merchant's goods, services or other activities and to provide the related Services to Merchant, on the terms and conditions set out below.

NOW, THEREFORE, in consideration of these promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions and Interpretations.

- 1.1. The capitalised terms used in this Agreement shall have the respective meanings set out in Appendix 1 of this Agreement or as otherwise set out in this Agreement.
- 1.2. In this Agreement:
 - (i) references to "**include**" or "**including**" do not limit the generality of any preceding words and are to be construed without limitation;
 - (ii) references to a "**company**" include any company, corporation or other body corporate wherever and however incorporated or established;
 - (iii) references to a "**person**" include any individual, company, partnership, joint venture, firm, association, trust, government authority or other body or entity (whether or not having separate legal personality);
 - (iv) the table of contents and headings are inserted for convenience only and do not affect the construction of this Agreement;
 - (v) unless the context otherwise requires, words in the singular include the plural and vice versa and a reference to any gender includes all other genders;
 - (vi) references to Clauses and Appendices are to clauses and appendices of this Agreement. The appendices form part of this Agreement;

- (vii) references to any statute or statutory provision include a reference to that statute or statutory provision as amended, repealed, consolidated or replaced from time to time (whether before or after the date of this Agreement) and include any subordinate legislation made under the relevant statute or statutory provision except to the extent that any amendment, consolidation or replacement would increase or extend the liability of Luxon under this Agreement;
- (viii) references to any agreement shall be to that agreement as amended from time to time; and
- (ix) references to any English legal term for any action, remedy, method of financial proceedings, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include what most nearly approximates in that jurisdiction to the English legal term.

1.3. The parties acknowledge that Merchant may provide certain goods, services or other activities that require certain supplementary terms in addition to those set out in this Agreement and that the parties may enter into one or more addendums to supplement the terms of this Agreement. To the extent (i) the parties enter into one or more addendums, the terms of such addendum(s) will form part of this Agreement, and (ii) the terms of any such addendums conflict with the terms of this Agreement, the terms of such addendums shall supersede the conflicting terms set forth in this Agreement.

2. **Onboarding.**

Merchant will comply with the “know-your-business requirements” and account set up requirements set out in Appendix 2 (“**Onboarding Requirements**”). Merchant will provide Luxon with all information that Luxon may reasonably require in connection with such Onboarding Requirements.

3. **The Services.**

3.1. The Services may be subject to revision by Luxon from time to time during the Term to reflect changes and improvements to Luxon’s systems and/or services (including the Luxon Software) provided that such revisions shall neither change the definition of each Service nor have any material adverse effect upon the Services unless otherwise required pursuant to (i) any changes to the Applicable Laws, (ii) any changes to the local tax regime, or (iii) as may be separately agreed in writing by the parties.

3.2. The parties may from time to time agree on ancillary services to be incorporated in the Services. Any specific terms relating to the provision of such ancillary services shall be agreed between the parties and set out in an appendix or addendum to this Agreement.

4. **Transactions and Account Holder On-Boarding Procedures.**

4.1. Merchant will read and understand all Transaction procedures set out in the Documentation, as may be provided from time to time by Luxon, and Merchant will follow such procedures in connection with all aspects of each Transaction. Without limiting the Documentation, Merchant will offer its goods, services or other things of value to Account Holders in, and all Transactions will occur in, Euros.

4.2. Merchant shall independently verify the identity and identification credentials of each Account Holder such that the Merchant can adequately authenticate Transactions by each Account Holder to receive Merchant’s goods, services and other things of value. In the course of enrolling an Account Holder to establish methods of identification and

authentication, Merchant shall obtain Account Holder's Wallet credentials and a confirmation from the Wallet of the identity of the Account Holder in order to link that Account Holder's Wallet and the Transactions initiated from such Wallet to the Account Holder's account and identification credentials with the Merchant¹.

- 4.3. The rights of Luxon under this Agreement are not affected by any arrangement between any Account Holder and Merchant.

5. **Authorisation.**

- 5.1. Merchant must receive an Authorisation in advance of each Transaction for the redemption of E-Money with Merchant. Merchant acknowledges that the Authorisation: (i) indicates only the redemption of the exact amount of E-Money specified in the Authorisation, and not more E-Money, at the time of Authorisation, and (ii) is not an unconditional guarantee by Luxon that any Transaction will not be subject to a Dispute or a request for Refund.

- 5.2. If confirmation of Authorisation to redeem E-Money is not received by Merchant, or if such confirmation is withdrawn for any reason prior to Merchant dispersing any kind of value in exchange for E-Money in connection with the Transaction, Merchant shall not proceed with the Transaction.

- 5.3. Merchant is responsible for receiving proper and verifiable authorisation from Account Holders to Refund E-Money to Account Holder's Wallet and any failure to do so shall be governed by Clause 7.

6. **Presentment of Transactions.**

- 6.1. In accordance with the Documentation, Merchant will deliver electronically Transaction Data to Luxon for all Transactions and Merchant will be responsible for ensuring the accuracy and completeness of such Transaction Data.

- 6.2. In submitting Transaction Data to Luxon and with respect to each Transaction, Merchant warrants (without limiting any other warranties under this Agreement) that: (i) the Transaction represents a bona fide redemption of E-Money for value with Merchant, or other sale of goods or services, in each case not previously submitted; (ii) all statements and representations of fact contained in the Transaction Data are within Merchant's knowledge and are true and complete; (iii) the Transaction entitles Account Holder to goods, services, or other value commensurate therewith, for the amount of the Transaction; (iv) the amount charged for the Transaction is not subject to any dispute, setoff, or counterclaim; (v) the Transaction amount is only for the goods, services, or value (including taxes) sold or otherwise delivered, and, such goods, services, or value were actually delivered to or performed for Account Holder entering into the Transaction; (vi) Merchant has no knowledge or notice of any fact, circumstances or defence which would indicate that the Transaction was fraudulent or not authorised by Account Holder or which would otherwise impair the validity or enforcement of Account Holder's obligation arising from such Transaction or relieve Account Holder from liability with respect thereto; (viii) the Transaction submitted to Luxon was entered into by Merchant and Account Holder; (ix) the Transaction is not a payment for a product or service that violates any Applicable Law; and (x) the Transaction was made in accordance with this Agreement, and Applicable Law.

- 6.3. Merchant will not accept or generate any Transactions that were not created in conjunction

¹ **Note to Draft:** To be confirmed once merchant solution finalized.

with the delivery of goods, services, or other things of value between Merchant and the applicable Account Holder, or act as a payment facilitator, payment aggregator, or payment service provider (however defined), and submit any Transactions on behalf of a third party to enable such third party to (i) accept payment for goods or services that such third party provides to an Account Holder, or (ii) provide payment to Account Holder on behalf of a third party.

- 6.4. Merchant will not accept or generate any Transaction involving an Account Holder's exchange of E-Money to Merchant (and must not present for processing any Transaction Data relating to any such Transaction) if Merchant is aware that such Transaction is subject to a Dispute or a Refund to the Account Holder.

7. **Disputes and Refunds.**

- 7.1. Except as expressly agreed by all parties pursuant to Clause 7.2, Merchant will resolve any Dispute with an Account Holder without Luxon's involvement. Notwithstanding the foregoing, Merchant will at its own expense provide Luxon with all information and assistance which Luxon may reasonably require in relation to any Dispute between Merchant and the Account Holder. To the maximum extent permitted by Applicable law: (a) Merchant fully releases Luxon, its Affiliates and all of its or their Representatives for all liability in connection with such Dispute; and (b) in no event shall Luxon, its Affiliates or any of its or their Representatives be liable for, and Luxon disclaims all liability in connection with, such Disputes or any liability arising in connection therewith.
- 7.2. For an additional Fee paid by Merchant to Luxon, by election of Merchant and agreement of Luxon and the relevant Account Holder, a Dispute may be resolved in accordance with Luxon's Dispute Resolution Process with the assistance of Luxon. Merchant will indemnify and hold Luxon harmless for any Losses suffered or incurred by Luxon arising from or in connection with third party claims that may arise as a result of Luxon's Dispute Resolution Process.
- 7.3. Luxon may, in its sole discretion, withhold an amount equal to any Transaction which is subject to a Dispute from any Settlement funds due to Merchant and Luxon may use such funds to offset any amounts owed in accordance with Clause 7.4 below.
- 7.4. Merchant shall be responsible and shall immediately, upon demand, reimburse Luxon for all Dispute amounts (including all of Luxon's reasonable costs and expenses) relating to Transactions where: (i) Merchant is in breach of this Agreement or Applicable Law; (ii) the Transaction is subject to a Dispute and resolved in accordance with Luxon's Dispute Resolution Process in favour of the Account Holder; (iii) the Transaction is subject to a Dispute and Merchant determines that the Dispute should be resolved in favour of the Account Holder; (iv) Luxon determines, in good faith, that funds from the Account Holder were wrongly transferred to Merchant and should be reimbursed; or (v) a court of competent jurisdiction, Government Body or an agreed upon dispute resolution provider has determined the Account Holder should be reimbursed.
- 7.5. Notwithstanding Clause 7.4, Luxon shall not be under any obligation: (i) to notify Merchant of any defect in any Transaction Data or Luxon Data or other liability to reimburse or provide a Refund except where a Refund is in fact required to be made; or (ii) to procure or assist Merchant in procuring payment from an Account Holder where the relevant Transaction has been subject to a Dispute.
- 7.6. Merchant must not process a Refund without having completed the corresponding previous Transaction with the same Account Holder. Merchant must not reimburse any Refund in

cash, by cheque or by any other means of value (e.g. loyalty points or reward credits), nor accept money or a cheque as payment for any Refund. All Refunds must be completed via the Luxon Software. Merchant may provide Refunds to Account Holder in accordance with Clause 5.3 for the purpose of resolving any Dispute, whether in accordance with Clause 7.1 or Clause 7.2.

8. **Fees**

- 8.1. Merchant shall pay to Luxon : (i) all fees that become due and payable to Luxon set out in Appendix 3; (ii) all fees, fines, or other charges payable by Luxon to the Bank, including for any transfers of Settlement funds; (iii) the amount of any Refunds issued (if not already deducted during Settlement); (iv) the full amount of any overpayments made by the Bank in respect of Transactions, howsoever caused; (v) Third Party Fees, which shall be passed through to Merchant at actual cost and paid by Merchant on a net settlement basis; (vi) Luxon's reasonable costs (including management time) of managing Settlement if (a) Merchant is in breach of this Agreement, or (b) the activities of Merchant cause Luxon to carry out any investigation, or (c) Merchant requests Luxon's assistance in connection with transfers of Settlement funds to Merchant's accounts; and (vii) any other sums due and payable by the Merchant under this Agreement (collectively, the "**Fees**").
- 8.2. Luxon may adjust the Fees from time to time on thirty (30) days' written notice thereof to Merchant.
- 8.3. Luxon may from time to time charge interest on unpaid sums at the rate of 8% per annum above the base rate of [HSBC Bank plc] from time to time. Such interest shall accrue on a daily basis from the day following the due date until actual payment of the overdue amount has been made.
- 8.4. Merchant may access remittance statements via the Luxon Software. Merchant must check each such statement on receipt and notify Luxon within thirty (30) days of any errors in it. If Merchant notifies Luxon after such time period, Luxon may, at its discretion and at Merchant's expense, assist Merchant in investigating whether any adjustments are appropriate and whether any amounts are due to or from other parties, but Luxon will not have any obligation to investigate or effect any such adjustments. Any voluntary efforts by Luxon to assist Merchant in investigating such matters will not create any obligation to continue such investigation or any future investigation.

9. **Settlement of Transactions**

- 9.1. Unless otherwise agreed in writing among the parties, all amounts payable by Merchant to Luxon, and by Luxon to Merchant, under this Agreement shall be net settled, from Settlement funds due to Merchant, in accordance with Clause 13 and Appendix 3. Merchant shall pay all amounts owed by Merchant for Settlement in conjunction with the settlement process and ensure it has sufficient funds available for this purpose. Luxon may suspend the Services, including all processing and/or payments, immediately upon Merchant's failure to pay amounts owed in conjunction with such Settlement.
- 9.2. Luxon will not be liable for any delays in receipt of funds or errors in debit and credit entries caused by third parties, including Merchant's financial institution.
- 9.3. In the event that Luxon determines with respect to Merchant that a pattern of irregular sales, excessive Disputes or requests for Refunds or other similar circumstances occur which, in Luxon's sole discretion, may be indicative of fraud or otherwise present a financial or security risk to Luxon, then Luxon may suspend the Services, including changing the

processing or payment terms to suspend processing and/or payment to Merchant, pending investigation, assessment of the financial or security risk, and development of a risk mitigation plan.

10. **Reserve Amount**

- 10.1. Merchant expressly authorises Luxon to establish a reserve, the amount of which shall be set by Luxon in its sole discretion (the “**Reserve Amount**”). Luxon will hold the Reserve Amount in its master account with the Bank used for holding funds from Merchant and other merchants and Account Holders and Merchant’s funds held in the master account cannot be exceeded by the Reserve Amount even if Merchant is entitled to such funds in the normal course of Settlement. In instances of fraud or suspected fraud, default by or of Merchant, where there are excessive Disputes or requests for Refunds, or other similar circumstances occur, the Reserve Amount may be increased by Luxon in its sole discretion upon written notice to Merchant and Merchant may be required to pay such amounts in conjunction with Settlement in accordance with Clause 9.1 above. The Reserve Amount will be funded by any payments otherwise due to Merchant that are held in the master account with the Bank, including funds that could otherwise be withdrawn upon Settlement. If there are excessive Disputes or requests for Refunds, or other similar circumstances, such that the Settlement funds and other payments due to Merchant are insufficient to cover the Reserve Amount, Luxon may require Merchant to (i) deliver to Luxon an on-demand letter of credit addressed to Luxon in a principal amount of not less than the Reserve Amount and with an expiry date of [at least], such letter of credit to be issued by an Acceptable Bank and to be in form and substance satisfactory to Luxon (at its sole discretion); or, (ii) grant security (by way of charge or assignment or otherwise as Luxon may require) in favour of Luxon of a freely transferable and negotiable euro denominated certificate of deposit which is legally and beneficially owned by Luxon and which is in a principal amount of not less than the Reserve Amount and which matures no earlier than [] and which has been issued by an Acceptable Bank, such certificate of deposit and charge to each be in form and substance satisfactory to Luxon. Merchant acknowledges and agrees that Luxon may withhold the Reserve Amount from Settlement, and is not required to pay the Reserve Amount in conjunction with Settlement even if amounts would otherwise be credited to Merchant and subject to Settlement payment. In the event of termination of this Agreement by any party, an immediate Reserve Amount may be established without notice in the manner provided above. Any Reserve Amount will be held by Luxon for the greater of [ten (10)] months after termination or expiration of this Agreement or for such longer period as is consistent with Luxon’s liability for Merchant’s Transactions. Unless specifically required by law, Merchant is not entitled to interest on any Reserve Amount held by Luxon.
- 10.2. To secure Merchant’s obligations to Luxon and its Affiliates under this Agreement and any other agreement, Merchant will grant to Luxon, to the extent permitted under Applicable Law, a security interest, in accordance with Applicable Law, and substantially in the form set out in Appendix 11, in and to (i) the Reserve Amount and (ii) all Merchant’s funds pertaining to Transactions contemplated by this Agreement now or hereafter in Luxon’ possession, whether now or hereafter due or to become due from Merchant to Luxon. In addition to any rights or remedies available to Luxon (including any rights to set-off, counterclaim or otherwise to withhold payment) now or hereafter granted under any document or otherwise available under any Applicable Laws, and not by way of limitation of any such rights, Merchant hereby authorises Luxon to and, in any event Luxon may, at any time from time to time, without notice or demand (which Merchant hereby expressly waives), set off any sum or obligation or other liability (whether or not arising under this Agreement and/or any appendices and/or addendums hereto or any Applicable Law and whether matured, unmatured, contingent, liquidated or unliquidated and irrespective of the currency, place of

payment, booking office or situs of the sum or obligation or liability) owed by Merchant to Luxon against any sum, obligation or liability (whether or not arising under this Agreement and/or any appendices and/or addendums hereto or any Applicable Law and whether matured, unmatured, contingent, liquidated or unliquidated and irrespective of the currency, place of payment, booking office or situs of the sum or obligation or liability) owed by Luxon to the Merchant and for the avoidance of doubt, Luxon may recoup and apply any and all of the Reserve Amount and all other amounts standing to the credit of the master account and allocable to Merchant against and on account of Merchant's obligations to Luxon, whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured. Merchant covenants (a) to duly execute and deliver to Luxon such instruments as are reasonably requested to perfect and confirm the foregoing security interest, right of set off, and recoupment ; and (b) not to, during the term of this Agreement or until all amounts due hereunder have been paid in full, grant or pledge to any person or Entity any security interest or lien in the Reserve Amount, without Luxon's prior written consent.

11. **Cash Payments by and Cash Disbursements to Account Holders**

Merchant covenants that it: (i) will not accept any direct payments from Account Holders for charges of goods, services or value which have already been included in a Transaction; (ii) will include taxes on Transactions in the amount charged and will not collect such amount in cash; and (iii) will not make any E-Money or cash disbursements to an Account Holder as part of a Transaction except to the extent expressly authorised by this Agreement or any addendum hereto.

12. **Taxes**

12.1. Unless otherwise expressly stated, all consideration to be provided under this Agreement is expressed exclusive of VAT.

12.2. If VAT is chargeable by Luxon on any supply made under this Agreement by Luxon, and Luxon is required to account to the relevant tax authority for that VAT, then Merchant shall pay to Luxon (in addition to and at the same time as paying any other consideration for such supply), and Luxon may deduct from any Settlement funds payable to Merchant, an amount equal to the amount of VAT, subject to Merchant receiving a VAT invoice from Luxon. Where Merchant is required to reimburse or indemnify Luxon for any cost or expense, Merchant shall reimburse or indemnify (as the case may be) Luxon for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that Luxon is entitled to recover such VAT (whether by way of repayment or credit).

12.3. If a deduction or withholding for or on account of tax is required by law to be made by Merchant from any payment by Merchant under this Agreement, then the amount of such payment shall be increased by Merchant to an amount which ensures that, after the making of such tax deduction, Luxon receives on the respective due date a net sum equal to the amount of the payment which Luxon would have received had no such tax deduction been required. Merchant will deduct the full amount required to be withheld or deducted, and will make any payments required by law to be made to the competent tax authorities in connection with that deduction within the time allowed by law. Merchant will promptly after the making of any such payment to the competent tax authority forward to Luxon an official receipt or other documentation reasonably satisfactory to Luxon evidencing such payment to that tax authority. If Merchant makes an increased payment under this Clause 12.3 and Luxon obtains and utilises a credit or other relief from or against tax in respect of the deduction or withholding that gave rise to that increased payment, then Luxon will reimburse Merchant with such sum as Luxon (acting reasonably) certifies to Merchant will leave Luxon (after such reimbursement) in no better and no worse position than it would have been in

had that deduction or withholding not been required.

- 12.4. For the avoidance of doubt, Merchant is solely responsible for, and fully indemnifies Luxon, its Affiliates and all of its or their Representatives for all liability in connection with any VAT chargeable by Merchant in connection with Merchant's goods or services.

13. **Currency Conversion**

All Settlement funds and the Reserve Amount shall be denominated in Euros and, subject to the following sentence, all payments under this Agreement shall be made in Euros unless Luxon and Merchant agree in a separate addendum to this Agreement to make payments to, or receive payments from, Account Holders in another Available Currency. Merchant may elect to receive the payment of Settlement funds in any Available Currency in accordance with the commercial terms and pricing that Luxon shall provide to Merchant at the time of such payment. Merchant shall not make any promise to an Account Holder regarding the terms of currency conversions that the App or Luxon may make on Account Holder's behalf for E-Money either upon receipt or disbursement of such E-Money, as Merchant accepts that all such terms will be agreed directly between the Account Holder and Luxon.

14. **Limitations on Liability; Indemnity**

- 14.1. Nothing in this Agreement shall limit or exclude the liability of either party for losses arising out of or in connection with:

- (i) death or personal injury resulting from its negligence;
- (ii) its fraud or fraudulent misrepresentation; or
- (iii) any other act or omission, liability for which cannot be limited or excluded by Applicable Law.

- 14.2. Except as expressly provided in this Agreement, to the maximum extent permitted by law, Luxon disclaims all representations, warranties, covenants or other terms, whether express or implied, made to Merchant, its Affiliates, or any other person or Entity, including any warranties regarding quality, suitability, merchantability, non-infringement, fitness for a particular purpose or otherwise (regardless of any course of dealing, custom or usage of trade) of any Service or any goods provided incidental to the Services provided under this Agreement.

- 14.3. Notwithstanding anything in this Agreement to the contrary, and except as provided in Clause 14.1, in no event shall Luxon, its Affiliates or any of its or their Representatives be liable under or in connection with this Agreement and whether in contract, tort (including negligence), for breach of statutory duty or otherwise for any:

- (i) lost profits, lost business or revenues, lost savings or lost business opportunities or contracts;
- (ii) loss of, or damage to, goodwill or reputation; or
- (iii) exemplary, punitive, special, incidental, indirect or consequential damages of any kind,

in each case, regardless of whether such damages were foreseeable or whether Luxon, its

Affiliates or any of its or their Representatives have been advised of the possibility of such damages.

14.4. Except as provided in Clause 14.1:

- (i) except for undisputed amounts owed by Luxon to Merchant in connection with Settlement, Luxon's maximum liability to Merchant for any and all claims under or in connection with this Agreement and whether arising in contract, tort (including negligence), breach of statutory duty or otherwise shall be limited to \$50,000 ("**Limitation of Liability**");
- (ii) the Limitation of Liability shall control notwithstanding any other provision of this Agreement and shall apply to the liability of Luxon, its Affiliates or any of its or their Representatives; and
- (iii) Luxon shall have no liability for claims made by Merchant in connection with Settlement if Merchant has not made a claim for the amount within [twelve (12) months] of the obligation arising.

14.5. Notwithstanding any other provision of this Agreement to the contrary, except as provided in Clause 14.1, Merchant releases Luxon, its Affiliates and all of its or their Representatives from any Losses known or unknown, now or hereafter arising, in respect of or arising from systems failures causing an inability to, or delay in the ability of Luxon to, process Transactions.

14.6. Merchant shall defend (unless otherwise requested by the indemnified party), and indemnify and hold harmless Luxon, its Affiliates and each of their respective Representatives from and against all Losses arising from or relating to any and all of the following: (i) any failure by Merchant, its Affiliates or its or their Representatives to disburse E-Money or deliver promised value for E-Money redeemed with Merchant, its Affiliates or such Representatives; (ii) any dispute (including all Disputes) between Merchant, its Affiliates or its or their Representatives, on the one hand, and Account Holder on the other hand in connection with a Transaction, the App, the Luxon Software, or the Services, or any harm or losses that Account Holder may wrongfully incur in connection with such Transactions; (iii) any failure by Merchant to ensure the accuracy or completeness (or both) of Transaction Data as set out in Clause 6.1; (iv) any of the amounts or obligations listed in Clause 8 and Clause 9; (v) Merchant's or any of its Affiliates' or its or their Representatives' negligence or wilful misconduct in connection with Transactions or otherwise arising from their provision of goods and services to Account Holders; (vi) Merchant's, its Affiliates' or any of its or their Representatives' breach of Applicable Laws; (vii) any breach of Clause 20 or other misuse of Account Holder Personal Data in connection with this Agreement; or (viii) any breach of Merchant's representations, warranties or obligations hereunder².

15. **Evidence of Transactions**

15.1. Merchant must retain the original and/or copies of the Transaction Data until the date such information is no longer required for Luxon to meet Applicable Laws or otherwise for at least [thirteen (13)] months and produce them to Luxon on request.

15.2. Merchant is responsible for ensuring that all Transaction Data which Merchant shall retain or

² Note to Luxon - to discuss inclusion of (viii) which is favourable to Luxon, but not the customary approach taken in English law arrangements.

submit to Luxon is complete and not lost or damaged and that all Transaction Data is securely held in and can be reconstituted in a complete and easily readable form.

- 15.3. It is Merchant's responsibility to ensure that the Transaction Data can be reconstituted if corrupted, lost or damaged, and Luxon will not in any circumstances be liable in respect of the face value of any Transaction Data for the costs of reconstituting such data or for any other corruption, loss or damage.

16. **Supplies, Advertising and Use of Name**

Merchant shall (i) comply with the requirements set out in Appendix 4 with respect to the marketing and promotion of the availability of Transactions and the Services at Merchant's premises and online (as applicable); (ii) display Luxon's marks on promotional materials and its websites in the form approved by Luxon (email shall suffice), but shall not indicate that Luxon endorses the goods and services of Merchant; and (iii) in respect of this Agreement cease using such materials after termination or expiration of this Agreement. Except as provided in this Clause, Merchant may not use the logo, name, trade mark or service mark of Luxon in any manner, including in any advertisements, displays, or press releases, without the prior written consent of Luxon.

17. **Assignment and Sub-Contracting**

- 17.1. This Agreement shall be binding on, and be for the benefit of, the successors and permitted assigns of the parties. Merchant may not transfer, assign, sub-contract, charge or otherwise deal with any of its rights or obligations under this Agreement, without Luxon's prior written consent. For these purposes, any change of Control of Merchant shall be considered an assignment or transfer of this Agreement.
- 17.2. Luxon may assign, transfer, charge or otherwise deal with all or any of its rights or obligations under this Agreement and may delegate its duties under this Agreement, in whole or in part, to any of its Affiliates or any third party upon written notice thereof to Merchant.
- 17.3. If Luxon assigns, transfers, charges or otherwise deals with any of its rights or obligations under this Agreement, then Merchant shall, on request from Luxon, execute any agreement or other instrument (including any supplement or amendment to this Agreement) that may be required to give effect to or perfect the assignment, transfer, charge or dealing.

18. **Confidentiality**

- 18.1. No party shall obtain any proprietary rights in any Confidential Information which has been disclosed or at any time after the date of this Agreement is disclosed, directly or indirectly, to it by another party under this Agreement, except as expressly provided in this Agreement.
- 18.2. Except as required by law, each party shall keep confidential and not disclose to any third party (other than to such party's Affiliates or its or their Representatives as necessary for the purpose of performing this Agreement), and shall cause its Affiliates or its or their Representatives to keep confidential and not disclose to any third party, any of the terms and conditions of this Agreement without the prior written consent of the other party.
- 18.3. Each party agrees to maintain Confidential Information in strict confidence. Without limiting the generality of the foregoing, the parties each agree: (i) to only use the other party's Confidential Information to the extent necessary for the proper performance of the receiving party's obligations or the exercise of its rights under this Agreement (ii) not to disclose, or

permit any third party access to, the Confidential Information of the other without the prior written consent of the other party, except that disclosure or access shall be permitted to their respective Affiliates or its or their Representatives requiring access to the same in the course of their employment or services to the extent necessary for the proper performance of the parties' respective obligations or the exercise of their respective rights under this Agreement; (iii) to ensure that their respective Affiliates or its or their Representatives are advised of the confidential nature of the Confidential Information and are precluded from taking any action prohibited under this Clause 18, provided that in any event each party shall each be liable for any breach of this Clause 18 by their respective Affiliates or its or their Representatives; (iv) subject to any Applicable Laws, not to alter or remove any identification, copyright or proprietary rights notice which indicates the ownership of any part of the Confidential Information of another party; and (v) to notify the other party promptly and in writing of any circumstances of which they become aware surrounding any possession, use or knowledge of Confidential Information at any location or by any person or Entity other than those authorised by this Agreement.

- 18.4. Nothing in this Clause 18 shall restrict a party with respect to information or data identical or similar to that contained in Confidential Information, but which: (i) that party rightfully possessed before it received the information from the other as evidenced by written documentation; (ii) subsequently becomes publicly available through no fault of that party; (iii) is subsequently furnished to that party by a third party (no Affiliates of any party or its or their Representatives shall be considered to be a third party for the purpose of this Clause 18.4(iii) only) free of any obligation of confidentiality; (iv) is independently developed by an Affiliate of such party or its or their Representative as evidenced by written documentation; or (v) is required to be disclosed by law or regulation binding upon a party, its Affiliates or its or their Representatives, or by court order binding upon the disclosing party, its Affiliates or its or their Representatives, provided that in all of the cases set out in this Clause 18.4(v) the disclosing party will, to the extent legally permissible, exercise reasonable efforts to: notify the affected party prior to disclosure, seek any confidentiality or protective orders that may be available, and, where legally permissible, delay disclosure until disclosing party has an opportunity to object and appear before the court requesting reconsideration of the required disclosure or additional protection.
- 18.5. In the event of any breach of this Clause 18, the parties agree that the non-breaching party may suffer irreparable harm and the total amount of monetary damages for any injury to the non-breaching party from any violation of this Clause 18 will be difficult or impossible to calculate and will therefore be an inadequate remedy. Accordingly, the parties agree that the non-breaching party shall be entitled to seek temporary and permanent injunctive relief against the breaching party and its Affiliates or its of their Representatives, in addition to the other rights and remedies to which the non-breaching party may be entitled at law, in equity and under this Agreement for any violation of this Clause 18. The provisions of this Clause 18 shall survive the expiry or termination or expiration of this Agreement.
- 18.6. Merchant shall not make any announcement or statement about this Agreement or the subject matter of, or any matter referred to in, this Agreement without the prior written approval of Luxon. If Merchant submits any ideas, suggestions or other feedback to Luxon about the Luxon Software or the Services, Merchant hereby grants to Luxon the right to use and disclose such feedback without any further obligation to Merchant.
19. **Use of Information**
- 19.1. Subject to Clause 20, Luxon may hold, use and disclose all Transaction Data received from Merchant for any purpose subject to the rights granted by Account Holders.

19.2. All Luxon Data provided by Luxon to Merchant is and shall remain at all times the property of Luxon or its agents. Subject to Clause 20, any Luxon Data provided by Luxon to Merchant which contains Personal Data may only be held, used and disclosed by Merchant solely to the extent necessary to reconcile Transactions with the Account Holder's account and identification credentials with the Merchant.

19.3. All rights not expressly granted to Merchant under this Agreement are reserved by Luxon.

20. **Data Protection**

20.1. Each party shall at all times comply with, and shall procure that its Processors shall at all times comply with, all applicable Data Protection Laws, and this Agreement, in relation to the Processing of Personal Data under or in connection with this Agreement.

20.2. In the event that more than one set of statutory or contractual requirements applies to the Processing of Personal Data under or in connection with this Agreement, the requirements that provide for a higher standard of protection shall apply.

20.3. Subject to Clause 20.16, each party, acts as a Controller when Processing Personal Data under or in connection with this Agreement, and bears sole and entire responsibility for its own compliance, and for the compliance of its Processors (except where the relevant Processor is the other party to this Agreement), with applicable Data Protection Laws in respect of the Processing of Personal Data under or in connection with this Agreement (including Personal Data contained within Transaction Data or Luxon Data, as applicable), and does not rely on the other party in connection with such compliance. In particular, each party acknowledges that it is responsible for providing suitable notice of its Processing activities under or in connection with this Agreement to affected Data Subjects to ensure such Processing complies with applicable Data Protection Laws.

20.4. Except as explicitly required by Applicable Laws, neither party shall, and each party shall procure that its Processors (except where the relevant Processor is the other party to this Agreement) shall not, disclose Personal Data Processed under or in connection with this Agreement to any third party other than a Processor that is: (i) appointed in accordance with applicable Data Protection Laws; and (ii) is subject to all of the obligations of that party under this Clause 20. Each party shall be liable and responsible for the acts and omissions of its Processors (except where the relevant Processor is the other party to this Agreement), as though those acts and omissions were its own.

20.5. Each party shall implement appropriate technical and organisational security measures to protect Personal Data Processed under or in connection with this Agreement against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the Processing and the nature of such Personal Data.

20.6. Without prejudice to Clause 20.12, each party will, upon reasonable request of the other party submit its data Processing facilities, data files and documentation needed for Processing to reviewing, auditing and/or certifying by the other party (or any independent or impartial inspection agents or auditors, selected by the other party and not reasonably objected to by the party receiving the request) to ascertain compliance with this Agreement, upon reasonable notice and during regular business hours. The request will be subject to any necessary consent or approval from a regulatory authority or Data Protection Authority to which the party receiving the request is subject. The party receiving the request shall use reasonable efforts to obtain such consent in a timely fashion. Requests under this Clause 20.6 shall be made no more than once by each party in any twelve month period, or more

frequently to the extent required by a Data Protection Authority.

- 20.7. Each party will respond reasonably promptly to enquiries from Data Subjects and Data Protection Authorities concerning the Personal Data Processed under or in connection with this Agreement by that party; provided that, if either party receives an enquiry from a Data Subject that refers to the other party, the party receiving the enquiry shall promptly notify the other party of such enquiry and provide all necessary information to enable the other party to respond to that enquiry.
- 20.8. In the event that either party suffers a Data Security Breach affecting Personal Data Processed under or in connection with this Agreement, that party shall promptly (and in any event within no more than thirty six hours of becoming aware of the Data Security Breach) provide notice in writing of the Data Security Breach to the other party, specifying at least:
- (i) the nature of the Data Security Breach and a brief description;
 - (ii) an explanation of how the Data Security Breach was discovered;
 - (iii) confirmation of whether the Data Security Breach remains ongoing (and, if not, when the Data Security Breach ended); and
 - (iv) an indication, to as great a degree of accuracy as is reasonably possible, of the number of Data Subjects whose Personal Data are affected by the Data Security Breach.
- 20.9. To the extent that it is necessary for either party to transfer Personal Data processed under or in connection with this Agreement to a location outside of the European Economic Area, such transfers shall be subject to compliance at all times with the requirements of the GDPR and/or any other applicable Data Protection Laws.³
- 20.10. Neither party shall, whether through action or omission, intentionally, negligently, or recklessly, place the other party in breach of any applicable Data Protection Laws, with respect to any Processing of Personal Data under or in connection with this Agreement.
- 20.11. Each party shall indemnify and hold harmless the other party from any cost, charge, damages, expense or loss caused by it, or its Processors, as a result of any breach of any of the provisions of this Clause 20 committed by it or any of its Processors.⁴
- 20.12. If the Merchant uses any third party to handle Luxon Data or Transaction Data, Merchant must ensure those third parties handle such Luxon Data or Transaction Data in compliance

³ **Note to Luxon:** if Personal Data processed within the EEA is to be transferred (or made accessible) to a country outside of the EEA, an international transfer mechanism is necessary. Typically, the EC-Approved, Standard Contractual Clauses are used. We have included this general wording to highlight the need to comply with GDPR when such transfers take place. If it is known in advance of any particular agreement that the Merchant is based outside of the EEA (or that transfers of personal data to outside of the EEA will take place), a form of the EC-approved Standard Contractual Clauses could be appended / incorporated to these terms.

⁴ **Note to Luxon:** please note that the effect of this indemnity means that if Luxon appoints a third party as a data processor and they breach their data protection obligations which causes losses (e.g. a fine) to the Merchant then Luxon is liable on an indemnity basis (however it would be usual for Luxon to require back-to-back indemnity protection in its agreements with its data processors). This clause will be subject to the overall limitation on liability provisions. It is not uncommon for parties to agree a specific data protection liability cap separate to the general liability cap; however, any increase on the general cap in this agreement will of course expose Luxon to greater potential liability.

with Applicable Laws and this Agreement (including Clause 20.4). Merchant is responsible for all actions (including the handling of Transaction Data and Luxon Data) of Merchant's third party suppliers.

- 20.13. Notwithstanding Clause 20.6, Merchant acknowledges that Luxon may be subject to on-going validation of its compliance with PCI DSS. Luxon retains the right to, at Merchant's expense, conduct, or direct a third party to conduct, and audit to verify the Merchant's (and its Affiliates' or its or their Representatives') compliance with this Agreement.
- 20.14. Notwithstanding any other provision in this Agreement:
- (i) Luxon will handle any information collected hereunder about Merchant and its directors, officers and principals in accordance with Data Protection Laws and Luxon's applicable privacy collection statements and privacy policies. Merchant will provide such directors, officers and principals with a copy of Luxon's privacy collection statements and privacy policies as made available and provided by Luxon from time to time; and
 - (ii) Merchant and its directors, officers and principals acknowledge that information that is collected about its directors, officers and principals or held by Luxon may be shared between the Luxon, its Affiliates and its or their Representatives, which may be located overseas, in connection with this Agreement and in accordance with their applicable privacy collection statements and privacy policies.
- 20.15. Merchant acknowledges and agrees that Personal Data provided by Merchant may be disclosed as follows and shall accordingly inform any individuals to whom the Personal Data relates of same: (i) to any Data Protection Authority or regulatory authorities of Luxon in order for Luxon to comply with Applicable Laws; (ii) to credit reference agencies for the purpose of obtaining credit assessments on Merchant as a business; (iii) to fraud prevention agencies if Merchant provides false or inaccurate information or if fraud is suspected; and (iv) to, if applicable, any Affiliates of Luxon, their agents, insurers or anyone to whom Luxon proposes to transfer any of their rights and/or responsibilities under this Agreement or any other agreement they may have with Merchant, each of whom may also use the Personal Data in the ways described in this Agreement.
- 20.16. To the extent that a relevant Data Protection Authority determines that either party acts as a Processor for and on behalf of the other party in relation to Processing of Personal Data under or in connection with this Agreement, the parties shall enter into all such further agreements (including a personal data processing agreement), and take all such steps, as may be reasonably necessary to achieve compliance with applicable Data Protection Laws. If the parties do not agree on the terms of such further agreements, Luxon may terminate the Agreement immediately by giving written notice to Merchant. In case of such termination, clause 23 of this Agreement shall apply accordingly.

21. **Financial and Other Information**

- 21.1. Merchant will provide Luxon with such financial statements and other information concerning Merchant's business and Merchant's compliance with the terms and provisions of this Agreement, as Luxon may reasonably request.
- 21.2. Merchant shall advise Luxon immediately of any change in its business circumstances including: (i) any change of Control in Merchant or its parent company; (ii) any sale or other disposal of all or any material part of Merchant's assets; (iii) any bankruptcy, liquidation, receivership or administration or other insolvency event affecting Merchant; or (iv) any

change in the trading terms, directors, other officers members of partners, business or trading name, legal status, business or trading address.

22. **Term**

Unless terminated earlier in accordance with this Agreement, the initial term of this Agreement shall commence upon the date of execution hereof and shall continue in force until [●] (“**Initial Term**”). This Agreement shall be automatically renewed for successive [one (1)] year periods (each a “**Renewal Term**”), unless any party serves written notice of at least [one hundred and eighty (180) days] on the other parties of its desire to terminate this Agreement, such notice to expire on the date when the Initial Term or Renewal Term, as the case may be, would otherwise expire (the Initial Term, together with all Renewal Terms (if any), the “**Term**”).

23. **Termination**

23.1. An “**Event of Default**” shall comprise any of the following events:

- (i) a material adverse change in the business, financial condition, business procedures, prospects, products or services of Merchant; or
- (ii) any assignment or transfer of Control of Merchant except where Luxon gave its prior written consent to such assignment or transfer of Control in accordance with Section 17.1; or
- (iii) a sale of all or a substantial portion of Merchant’s assets; or
- (iv) any representation or warranty of Merchant: (a) is breached in any material respect and such breach cannot be remedied or, if capable of being remedied, is not remedied within [ten (10)] Business Days after Luxon has given notice to Merchant requiring such breach to be remedied, or (b) was or is incorrect in any material respect when made or deemed to be made; or
- (v) Merchant defaults in any material respect in the performance or observance of any term, covenant, condition or agreement contained in this Agreement, and such default cannot be remedied or, if capable of being remedied, is not remedied within [ten (10)] Business Days after Merchant has received notice requiring such default to be remedied; or
- (vi) Merchant defaults in any material respect in the performance or observance of Applicable Laws; or
- (vii) an Insolvency Event; or
- (viii) Merchant defaults in the payment when due, of any material indebtedness for borrowed money or any material trade payable (other than any trade payable subject to a good faith dispute by the applicable party so long as such party is actively pursuing resolution of such dispute); or
- (ix) the independent certified accountants retained by Merchant refuse to deliver an unqualified opinion with respect to the annual financial statements of Merchant and its consolidated subsidiaries; or
- (x) irregular sales by Merchant, excessive Disputes or requests for Refunds or any other

circumstances which, in Luxon's sole discretion, may increase Luxon's exposure for Merchant's Disputes or Refunds or otherwise present a financial or security risk to Luxon; or

- (xi) Merchant fails to deliver of a letter of credit or pledge to Luxon in accordance with Clause 10.1 or grants or pledges to any person or Entity any security interest or lien in the Reserve Amount; or
- (xii) Merchant submits any Transactions that were not created in conjunction with a Transaction between Merchant and an Account Holder, or if Merchant acts as a payment facilitator, payment aggregator, or payment service provider (however defined), and submits any Transaction on behalf of a third party to enable such third party to accept payment for goods and services that such third party provides to its customers.

23.2. Upon the occurrence of an Event of Default, Luxon may immediately and without notice terminate this Agreement.

23.3. Luxon may also terminate this agreement immediately upon written notice to Merchant if Luxon is no longer able to provide all or part of the Services or operate due to Applicable Laws.

23.4. The expiry or termination of this Agreement as provided for under this Agreement shall not prejudice or affect any right of action or remedy which has accrued or thereafter accrues to Luxon or Merchant.

23.5. Upon the expiry or termination of this Agreement as provided for under this Agreement neither party shall have any further right or obligation with respect to the other party except as set out in this Section 23 and in the following additional Sections:

- 7 Disputes and Refunds
- 8 Fees
- 10 Reserve Amount
- 11 Cash Payments By and Cash Disbursement To Account Holders
- 12 Taxes
- 13 Currency Conversion
- 14 Limitations on Liability; Indemnity
- 15 Evidence of Transactions
- 18 Confidentiality
- 19 Use of Information
- 20 Data Protection
- 25 Dispute Resolution
- 26 Governing Law and Jurisdiction
- 27 Notices
- 28 Miscellaneous

23.6. Merchant agrees that should Merchant cause any Event of Default to occur, Luxon may, upon at least 24 hours' advance written notice, change processing or payment terms to suspend such processing or payments of any and all funds, money and amounts now due or hereafter to become due to Merchant from Luxon, until Luxon has had reasonable opportunity to investigate and discuss such event with Merchant and assess the anticipated risk of loss to Luxon.

23.7. In the event that this Agreement is terminated pursuant to this Clause 23, all amounts

payable under this Agreement: (i) by Merchant to Luxon shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by Merchant; and (ii) by Luxon to Merchant shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by Luxon.

24. **Compliance with Laws**

- 24.1. The parties each acknowledge that the business to which the Services relate is subject to various Applicable Laws. The parties agree to comply with and assist each other in identifying and resolving compliance issues with regard to Applicable Laws.
- 24.2. In performing its obligations under this Agreement, each party agrees to comply with all Applicable Laws. Merchant further agrees to cooperate and provide information requested by Luxon, as Luxon determine necessary, to facilitate Luxon's compliance with all Applicable Laws, industry standards and codes of conduct.
- 24.3. Luxon shall obtain and maintain all certificates, licences, authorisations and approvals required for Luxon to meet its obligations under this Agreement and the Merchant shall obtain and maintain all certificates, licences, authorisations and approvals required for Merchant to meet its obligations under this Agreement.
- 24.4. Should it be necessary or (in the reasonable opinion of Luxon) advisable to make modifications to Luxon's systems or to any elements of the Services as a result of changes in Applicable Law after the date of this Agreement, Luxon shall provide notice of such modification to Merchant and shall make such modification as Luxon shall reasonably determine.

25. **Dispute Resolution**

- 25.1. This Clause 25 shall apply without prejudice to the rights of the parties at law or in equity and is subject to Clause 18.
- 25.2. Subject to Clauses 25.5 and 26, the parties agree that any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement (including a claim, dispute or difference regarding its existence, termination or validity or any non-contractual obligations arising out of or in connection with Agreement) ("**Escalated Claim**"), shall be referred to and finally settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce ("**ICC**") as in force on the Effective Date and as modified by this Clause ("**Rules**"), which Rules shall be deemed incorporated into this clause.
- 25.3. The number of arbitrators shall be three, one of whom shall be nominated by the claimant, one by the respondent and the third of whom, who shall act as president, shall be nominated by the two party-nominated arbitrators, provided that if the third arbitrator has not been nominated within 28 days of the nomination of the second party-nominated arbitrator, such third arbitrator shall be appointed by the ICC Court. The parties may nominate and the ICC Court may appoint arbitrators from among the nationals of any country, whether or not a party is a national of that country.
- 25.4. The seat of arbitration shall be London, England and the language of arbitration shall be English. Section 69 of the Arbitration Act 1996 shall not apply.

26. **Governing Law and Jurisdiction**

- 26.1. This Agreement, and any non-contractual obligations arising out of or in connection with this Agreement, is governed by and shall be construed in accordance with the laws of England and Wales.
- 26.2. At any time before Luxon nominates an arbitrator to resolve any Escalated Claim pursuant to Clause 25.3, Luxon, at its sole option, may elect by notice in writing to Merchant (“**Election Notice**”) that such Escalated Claim(s) shall instead be resolved in accordance with this Clause 26.2. In the event that Luxon serves an Election Notice in respect of any Escalated Claim(s), Merchant agrees for the benefit of Luxon that the courts of England and Wales shall have exclusive jurisdiction to hear and determine any such Escalated Claim(s) and that Merchant may not commence proceedings (“**Proceedings**”) for the determination of any such Escalated Claim(s) in any other jurisdiction. Following the service of an Election Notice by Luxon, nothing in this Clause shall (or shall be construed so as to) limit Luxon’s right to bring Proceedings for the determination of any Escalated Claim(s) in the courts of England and Wales or in any other court of competent jurisdiction, nor shall the bringing of such Proceedings in any one or more jurisdictions preclude the bringing of Proceedings by Luxon in any other jurisdiction (whether concurrently or not) if and to the extent permitted by law.
27. **Notices**
- 27.1. Except as otherwise specifically provided, all notices and other communications required under this Agreement (other than those involving normal operational matters relating to the processing and Settlement of Transactions) shall be in writing, shall be sent by mail, courier or facsimile (facsimile notices shall be confirmed in writing by courier) to the addresses of the parties as set out in Clause 27.3 below.
- 27.2. Any notice or other communication served in accordance with Clause 27.1 shall be deemed to have been given: (i) if sent by mail or courier, when received; and (ii) if sent by facsimile machine, when the courier confirmation copy is actually received.
- 27.3. For the purposes of this Clause 27, the addresses of the parties are as follows: (i) if to Luxon, [●], with a copy to [●]; and (ii) if to Merchant, [●].
28. **Miscellaneous**
- 28.1. Luxon will not be in breach of this Agreement or liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by: (i) fire, flood or other acts of God; (ii) any outbreak or escalation of hostilities, war, riots or civil disorders in any territory; (iii) any act or omission of any Government Body; (iv) the non-performance by a third party for any cause set out in Clause 23.1(i) to (iv) inclusive; or (v) any interruption or failure in the supply of electricity or telecommunications services. In any such event, Luxon shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and it continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable, provided that if such period of delay or non-performance continues for more than thirty (30) days, Merchant may terminate this Agreement by giving fourteen (14) days’ written notice to Luxon.
- 28.2. A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of this Agreement. 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 person that is not a party to this Agreement.

- 28.3. Each party acknowledges that damages may not be an adequate remedy for a breach of this Agreement and that the non-breaching party is entitled to seek the remedy of injunction (interim or permanent or both), specific performance and other equitable relief for a threatened or actual breach of this Agreement, and that each party's rights to claim such relief are in addition, not an alternative, to its rights under this Agreement.
- 28.4. Any payment required by this Agreement shall be made in full without any counterclaim, set off, deduction or withholding, save for any deduction or withholding required by Applicable Law.
- 28.5. Nothing in this Agreement is intended to, or shall be construed so as to, establish or imply any partnership or joint venture or a relationship of principal and agent between the parties or constitute any party as the agent of the other party, or authorise any party to make or enter into any commitments for or on behalf of the other party.
- 28.6. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable in any respect under the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and such provision shall be deemed to be restated to reflect the parties' original intentions as nearly as possible in accordance with Applicable Laws.
- 28.7. This Agreement, including all appendices and applicable addendums hereto, constitutes the whole agreement between the parties relating to the subject matter of this Agreement and supersedes any prior written or oral arrangement, understanding or agreement between them relating to such subject matter.
- 28.8. Each party confirms that it has not entered into this Agreement on the basis of any representation, warranty, undertaking or other statement whatsoever, whether made negligently or innocently, by any person (whether a party to this Agreement or not), other than as expressly set out in this Agreement.
- 28.9. Each party waives all rights and remedies which, but for Clauses 28.7 and 28.8, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.
- 28.10. Except as expressly provided in other Clauses of this Agreement or the appendices, this Agreement may only be changed by a written agreement signed by all of the parties.
- 28.11. No waiver of any right under this Agreement shall be effective unless in writing. Unless expressly stated otherwise, a waiver shall be effective only in the circumstances for which it is given. No delay or omission by any Party in exercising any right or remedy provided by law or under this Agreement shall constitute a waiver of such right or remedy. The single or partial exercise of a right or remedy under this Agreement shall not preclude any other nor restrict any further exercise of any such right or remedy. The rights and remedies provided in this Agreement are cumulative and do not exclude any rights or remedies provided by law except as otherwise expressly provided.
- 28.12. This Agreement may be executed in counterparts and shall be effective when each party has executed and delivered a counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same instrument.

[Remainder of the page left intentionally blank]

Executed by:

Luxon Payments Ltd.

[•]

By: _____
Name:
Title:
Date:

By: _____
Name:
Title:
Date:

Appendix 1 – Definitions

Acceptable Bank means a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of [BBB+] or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or [Baa1] or higher by Moody's Investors Service Limited or a comparable rating from an internationally recognised credit rating agency;

Account Holder means a user of Luxon's services who has established a Wallet;

Affiliate means, when used with reference to a specific person or Entity, any person or Entity that, directly or indirectly, or through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such specific person or Entity.

Agreement means this Agreement including its appendices and any addendums;

App means the Luxon Payments Mobile Application and any other software (for use on mobile devices or otherwise) offered by Luxon now or in the future offering similar or additional functionality as the Luxon Payments Mobile Application;

Applicable Laws means any applicable statutes, laws, ordinances, orders, judgments, decrees, rules or regulations issued by any Government Body, and any judicial or administrative interpretation of any of these;

Authorisation means a confirmation from Luxon via the Luxon Software, as further described in Appendix 5, that a Transaction between an Account Holder and Merchant has been authorised to proceed;

Available Currency means the currencies set out in Appendix 6;

Bank means the financial institution where the segregated client account(s) held by Luxon in connection with the Transactions are held;

Business Day means a day (other than a Saturday or Sunday or a public holiday) when commercial banks are open for ordinary banking business in London;

Confidential Information means (i) the confidential information of a person or Entity, including any data or information that is a trade secret or competitively sensitive, or that is designated as or would reasonably be expected to be treated as confidential whether or not such information is reduced to a tangible form or marked in writing as "confidential", including (for Luxon) the App and the Luxon Software and (ii) any and all information which has been or which may be derived or obtained from any of the information detailed in (i);

Control and its variants mean (i) the beneficial ownership, directly or indirectly, of greater than fifty per cent (50%) of the equity interests of, or voting rights in, a person or Entity, or (ii) the power to direct or cause the direction of the management or affairs of a person or Entity, in whole or in part, whether through ownership of voting interests, by contract or otherwise;

Controller has the meaning given in the GDPR;

Data Protection Authority means a Supervisory Authority, as that term is defined in the GDPR;

Data Protection Laws means (a) the GDPR, Directive 2002/58/EC and Directive 2009/136/EC, together with any national implementing laws in any Member State of the European Union; and (b) any equivalent legislation, or legislation dealing with the same subject matter, anywhere in the world; each as applicable and each as amended, repealed, consolidated or replaced from time to time;

Data Security Breach means a breach of security leading to the accidental or unlawful Processing of Personal Data Processed under or in connection with this Agreement;

Data Subject has the meaning given in the GDPR;

Dispute means a Transaction that is disputed between an Account Holder and Merchant;

Documentation means the documentation for the Services provided or made available by Luxon to Merchant from time to time (including any amendments and updates thereto);

E-Money means electronic money issued by Luxon to an Account Holder where each unit represents a value of €1 Euro, for use by Account Holders in transferring value to Merchant via the App as consideration for Merchant's goods, services or other activities, as well as receiving value back from Merchant;

Entity means a company, partnership, sole proprietorship, joint venture or other form of organisation;

Fees has the meaning set out in Clause 8.1;

GDPR means Regulation (EU) 2016/679, as amended, consolidated or replaced from time to time;

Government Body means any foreign, federal, state, local or other governmental authority or regulatory body or competent tax authority;

Insolvency Event means the occurrence of any of the following:

- (i) Merchant suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (ii) Merchant is unable or admits inability to pay its debts as they fall due or is deemed or declared to be unable to pay its debts under any Applicable Laws, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its debts or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors;
- (iii) the value of the assets of Merchant is less than its liabilities (taking into account contingent and prospective liabilities);
- (iv) a moratorium is declared in respect of any indebtedness of Merchant;
- (v) an administrator, liquidator (compulsory or voluntary other than a liquidator appointed in a solvent winding-up for the purposes of amalgamation or reconstruction), receiver, administrative receiver, receiver and manager, voluntary arrangement supervisor, compulsory manager or other similar officer is appointed in respect of Merchant or the whole or any material part of the property, assets or undertaking of Merchant;
- (vi) a petition or application is presented or documents are filed or faxed with a court for the winding up, dissolution or re-organisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of Merchant other than for the sole purpose of a solvent liquidation or reorganisation of Merchant with one or more other companies where the resulting entity is materially as creditworthy as Merchant, or the appointment of an administrator, liquidator or receiver to Merchant (save for a winding up petition presented by a creditor which is frivolous or vexatious or which is being contested in good faith and with due diligence and is discharged, stayed or dismissed within 14 days of presentation);
- (vii) a meeting is convened, a resolution is passed or notice is given of the intention to wind up, dissolve or re-organise (by way of voluntary arrangement, scheme of arrangement or otherwise) Merchant other than for the sole purpose of a solvent liquidation or reorganisation of Merchant with one or more other companies where

the resulting entity is materially as creditworthy as Merchant, or appoint an administrator, liquidator or receiver (including an administrative receiver and a receiver and manager) to Merchant;

- (viii) an order is made for the winding-up, administration or dissolution of Merchant; or
- (ix) an event occurs, or a proceeding is taken, with respect to Merchant in any jurisdiction that has an effect equivalent or similar to any of the events mentioned above in (i) to (viii);

Losses means all claims, damages, losses, liabilities, costs or expenses (including reasonable attorneys' and other reasonable legal fees and expenses);

Luxon Data means all information relating to a Transaction, including the amounts times, locations used (where applicable), names, addresses and other personal information (including Personal Data) of Account Holders and Wallet credentials and any other information set out in Part 1 of Appendix 9, but excludes Transaction Data;

Luxon Software means the payments platform software including the web-based graphical user interface used by Luxon now or in the future in delivering the Services to Merchant;

Luxon's Dispute Resolution Process means the dispute resolution process set forth in Appendix 7;

PCI DSS means the Payment Card Industry Data Security Standards;

Personal Data has the meaning given in the GDPR;

Process, Processing or Processed each have the meaning given in the GDPR;

Processor has the meaning given in the GDPR;

Refund means a partial or full reimbursement to an Account Holder for an earlier Transaction between the same Account Holder and Merchant for goods, service or value that was either not redeemed or for which it is otherwise determined the amount paid, partially or in full, should be returned;

Representatives of a party means the employees, officers, directors, agents, or sub-contractors of that party or any of its Affiliates;

Reserve Amount has the meaning set forth in Clause 10 hereto;

Service(s) means the activities undertaken by Luxon for the provisioning of a Wallet by Account Holders, the provisioning of an Account Holder's Wallet credentials with Merchant, Authorisation, Settlement and clearing of all Transactions undertaken by Account Holders in connection with Merchant's goods and services, as well as those services set forth in Appendix 8;

Settlement means the process by which (a) Luxon transfers payment to Merchants for accepting E-Money; (b) Merchants present payment to Luxon for E-Money earned by Account Holders, and (c) Refunds, Fees and other expenses (including in connection with Disputes) are paid by Merchant;

Term has the meaning given to it in Clause 22;

Third Party Fees means any charges imposed by third parties (including domestic and international payment card networks, telecommunications companies, express delivery service providers and transportation suppliers) including any switch fee, processing fees, currency conversion fees, issuer reimbursement, adjustment fee, interchange fee, assessment, access fee, fines, obligations, or other charges a third party imposes on Luxon or the Bank in relation to Merchant's acts or omissions or the acts or omissions of Merchant's agents or those acting on Merchant's behalf;

Transaction means any transaction between Merchant and an Account Holder, via the App with respect to an Account Holder, and via the Luxon Software with respect to a Merchant, for the purchase of goods, services and/or other things of value, including payments via E-Money for goods, services and/or other things of value, reimbursements of E-Money in connection with Account Holder winnings, and Refunds, or for any other payment mechanism as agreed among the parties from time to time;

Transaction Data means the information set out in Part 2 of Appendix 9 and any other information relating to a Transaction which Luxon reasonably requests to receive from Merchant;

VAT means (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere; and

Wallet means a digital wallet account established with Luxon and accessible via the App for the use of E-Money as payment for certain goods or services as approved by Luxon from time to time.

Appendix 2 – Onboarding Requirements

[To be inserted]

Appendix 3 – Fees and Settlement

[To be inserted]

Appendix 4 – Display and Signage Requirements

[To be inserted]

Appendix 5 – Authorisation Procedure

[To be inserted]

Appendix 6 – Available Currency

[To be inserted]

Appendix 7 – Dispute Resolution Procedures

[To be inserted]

Appendix 8 – Services

[To further discuss any description of services outside of provisioning, Authorisation, clearing and Settlement]

Appendix 9 – Data⁵

Part 1: “Transaction Data” includes:

- Game reference from Merchant
- Merchant ID
- Till ID
- Trx reference from Merchant

Part 2: “Luxon Data” includes:

- Wallet/Account number - redacted to check digits (Masked PAN)
- Wallet holder name
- Date of transaction
- Amount
- Currency
- Type: On-line POS Live
- Date of submission
- Push payment / Pull Payment
- All Summaries of Charges

⁵ **Note to Draft:** To be confirmed once merchant solution finalized.

Appendix 10 – Form of Security Interests