



Payment Processing Services Agreement

Ref (RXRUKGBPRP V4.7)

PART 1 – REGISTRATION FORM

Thank you for selecting Realex Payments as your payment exchange. Please note that on signing this contract you are agreeing to pay the fees (by Direct Debit) outlined below (all prices in **Sterling** excluding VAT).

Client Corporate Details

Company Name:		
Registered Address:		
Web Site:		
Date	Commencement Date	
Term	Contract Term	12 Months

Contacts	Name	Email	Phone/Mobile
Main			
Billing*			
Technical			

***Please note that all invoices will be sent via email to the Billing contact email address**

Bank Details	Acquirer Bank	
	Clearing Bank (EFT)	
	Card Types	MasterCard Visa Maestro
	Currencies	GBP

Service Fees	Setup Fee	Monthly Fee	Transactions Included	Excess Transaction Fee
- RealAuth	0	19	350	0.09
- RealScore	Included as part of the RealPay product offering (see Clause 3.4 of part 3)			
- RealMPI (3DS)	Included as part of the RealPay product offering up to 5,000 per month. (see Clause 4.4 of part 3)			
- RealFX(DCC)	Included as part of the RealPay product offering (see Clause 5.5 of part 3)			
- RealVault	Included as part of the RealPay product offering up to 1,000 cards stored. If number of cards stored exceeds 1,000 at any given time, all cards will be charged at £0.03 per card per month. (see Clause 6.5 of part 3)			

TERMS

Setup Fee	Set up fees (where applicable) are payable by Direct Debit on contract signing and payment must be cleared prior to service live activation.
Monthly Fee	Monthly Fee for the provision of the service or services invoiced monthly in arrears from the commencement date.
Transactions Included	This is the transaction ceiling above which the Excess transaction fee applies
Excess Transaction Fee	Charge per each transaction over and above the transactions included (as above). Per transaction fees apply to all authorisations and refunds and are payable monthly in arrears. Void and settle requests are not counted in monthly transaction totals.

The parties do not accept any terms and conditions in relation to the subject-matter of this Agreement except the terms and conditions set out in this Registration Form and the attached Agreement. In particular, no terms set out in any purchase order issued by the Client shall apply between the parties. Please indicate your acceptance of the terms and conditions of this Agreement by signing below: Support is available from Realex Payments on +353 (0)1 280 8559 and at support@realexpayments.com or fax +353(0)1 2808538.

**Signed for and on behalf of the Client by its
duly authorised representative - Fax to +44 (0)
20 7691 7264**

**Signed for and on behalf of Pay and Shop Limited
(t/a Realex Payments) by its duly authorised
representative:**

Name:	
Signature:	
Title:	
Date:	

Name:	Gary Conroy
Signature:	
Title:	Chief Operating Officer
Date:	



Instruction to your Bank or Building Society to pay by Direct Debit

Please fill in the whole form including official use box using a ball point pen

Pay and Shop Limited T/A Realex Payments The Observatory 7-11 Sir John Rogerson's Quay Dublin 2 Ireland.
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Originator's Identification Number

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For Pay and Shop Limited, trading as Realex Payments – Official Use Only.

This is not part of the instruction to your Bank or Building Society.

Pay and Shop Limited, trading as Realex Payments has its registered office at The Observatory, 7-11 Sir John Rogerson's Quay, Dublin 2, Ireland and is registered in Ireland, company number 324929.

If you require any further information please contact us using any of the methods below:

The Observatory, 7-11 Sir John Rogerson's Quay, Dublin 2, Ireland.

T: +44 (0)870 7352880

F: +353 (0)1 2808538

W: www.realexpayments.com

E: info@realexpayments.com

Name(s) of Account Holder(s)

Bank/Building Society account number

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Branch Sort Code

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Name and full postal address of your Bank or Building Society

To: The Manager	Bank/Building Society
Address	
Postcode	

Instruction to your Bank or Building Society

Please pay Pay and Shop Limited T/A Realex Payments Direct Debits from the account detailed in this Instruction subject to the safeguards assured by the Direct Debit Guarantee. I understand that this Instruction may remain with Pay and Shop Limited T/A Realex Payments and, if so, details will be passed electronically to my Bank/Building Society.

Signature(s)
Date

Reference

TBC by Realex Payments

Banks and Building Societies may not accept Direct Debit Instructions for some types of account

DD11

This guarantee should be detached and retained by the Payer.

The Direct Debit Guarantee



- This Guarantee is offered by all Banks and Building Societies that take part in the Direct Debit Scheme. The efficiency and security of the Scheme is monitored and protected by your own Bank or Building Society.
- If the amounts to be paid or the payment dates change Pay and Shop Limited T/A Realex Payments will notify you 10 working days in advance of your account being debited or as otherwise agreed.
- If an error is made by Pay and Shop Limited T/A Realex Payments or your Bank or Building Society, you are guaranteed a full and immediate refund from your branch of the amount paid.
- You can cancel a Direct Debit at any time by writing to your Bank or Building Society. Please also send a copy of your letter to us.

PART 2 – TERMS AND CONDITIONS

IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

In this Agreement the following words and expressions shall have the following meanings:

"Acquiring Bank"	means the bank stated in the Registration Form with whom the client has an appropriate merchant services agreement for the authorisation and settlement of agreed transactions, currencies and card types;
"Agreement"	means the Registration Form contained in Part 1, the Terms and Conditions contained in Part 2 and the Service Schedule contained in Part 3; in the event of any conflict between any parts of this Agreement, Part 2 shall take priority over Parts 1 and 3, and Part 1 shall take priority over Part 3;
"Business Day"	means a day (except a Saturday or Sunday) on which banks are generally open for business in London, United Kingdom, and, for the avoidance of doubt, excludes bank and public holidays in England and Wales;
"Charges"	means the fees and charges set out in the Registration Form which are payable in accordance with Clause 8;
"Clearing Bank"	means the bank stated in the Registration Form with whom the Client has an appropriate direct debit/credit processing agreement for the submission and processing of electronic funds transfer transactions;
"Client"	means the person described in the Registration Form;
"Client Data"	means all information collected by the Client from or concerning Payers and/or Payees over a Communications Network and includes personal data of the Payers and/or Payees;
"Client Systems"	means the Internet website, call centre application or other remote sales application of the Client;
"Commencement Date"	means the commencement date specified in the Registration Form;
"Communications Network"	means any telecommunications, wireless, radio, television, cable, satellite or terrestrial networks currently in existence or which may be developed in the future including without limitation the Internet, intranets, extranets, mobile phones, handheld communications devices, interactive television or comparable electronic media services or platforms;
"Confidential Information"	<p>means all information which prior to its disclosure is designated as confidential by the Disclosing Party in writing and all such other information which relates to business affairs, products, services, pricing, marketing strategy, developments, trade secrets, know-how, personnel, customers and suppliers of the Disclosing Party and information which may reasonably be regarded as the confidential information of the Disclosing Party and all designs, drawings, software specifications, processes, testing procedures, security systems and all other information and material including all data subject to the Data Protection Laws which are supplied or in respect of which access is granted by the Disclosing Party to the Recipient pursuant to this Agreement, or which the Disclosing Party is required to generate under this Agreement or which was disclosed by the Disclosing Party to the Recipient either directly or indirectly, in each case in whatever form stored or maintained, whether in oral, written, magnetic, digital or any other form, provided that Confidential Information shall not include;</p> <ul style="list-style-type: none">(i) information which was in the public domain at the time of disclosure;(ii) information which, though originally Confidential Information, after disclosure falls into the public domain through no fault of the Recipient of the Confidential Information as of the date of its so falling;(iii) information independently developed by employees or agents of either party where such party can show it had no access to Confidential Information received under this Agreement;(iv) information disclosed pursuant to a duty imposed by law or the requirements of a regulatory authority or government body or to a court of competent jurisdiction, but only to the extent so required;(v) information disclosed by Realex Payments pursuant to this Agreement or with the Client's prior written approval;(vi) information that (1) can be shown by the Recipient to have been already within the Recipient's possession prior to its being furnished to the Recipient by or on behalf of the Disclosing Party or (2) is subsequently provided to the Recipient by a person who has not obtained such information from the Disclosing Party, provided that, in any such case, such information was not disclosed by any person in breach of any undertaking as to confidentiality; and <p>Without prejudice to the generality of (i) and (ii) above, information shall not be deemed to be in the public domain by reason only that it is known to only a few of those people to whom it might be of commercial interest and a combination of two or more items of Confidential Information shall not be deemed to be in the public domain by reason only of each separate item being so available;</p>

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"Data Protection Laws"	means the European Union Data Protection Directive (95/46/EC), the Data Protection Act 1998, and any other applicable legislation governing privacy and/or the obtaining, processing and security of personal data;
"Disclosing Party"	means the party who discloses any Confidential Information to a Recipient pursuant to or in contemplation of this Agreement;
"Force Majeure"	means any event which is outside the reasonable control of the relevant party, including the unavailability or faulty performance of Communication Networks or energy sources, any act of God, any act or omission of governmental or other competent authority, fires, strikes, industrial dispute, riots, war, civil unrest, revolution, act of terrorism, inability to obtain materials, embargo, refusal of licence, theft, destruction, denial of service (DoS) attacks, unauthorised access to computer systems or records, programs, equipment, data, or services, breakdown of plant or machinery, flood or other adverse weather conditions;
"Group Company"	means any subsidiary undertaking and/or parent undertaking of a person and/or any subsidiary undertaking of any such parent undertaking;
"Insolvency Event"	<p>means, in relation to a person, that:</p> <ul style="list-style-type: none">(i) it has suspended or ceased (or threatened to suspend or cease) all or a substantial part of its operations;(ii) any expropriation, attachment, sequestration, distress or execution or analogous process in any jurisdiction has been levied against any of its assets having an aggregate value of £10,000 or more and has not been discharged within 7 days;(iii) it is unable or admits inability to pay its debts as they fall due or is deemed to or declared to be unable to pay its debts under applicable law, suspends or threatens to suspend 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 indebtedness;(iv) the value of its assets is less than its liabilities (taking into account contingent and prospective liabilities);(v) a moratorium is declared in respect of its indebtedness;(vi) any corporate action, legal proceedings or other procedure or step is taken in relation to it for:<ul style="list-style-type: none">(1) the suspension of payments, a moratorium of any indebtedness, winding up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise);(2) any composition, compromise, assignment or arrangement with any creditor;(3) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager, or other similar officer in respect of it or any of its assets;(4) enforcement of any mortgage, charge, pledge, lien or other security interest securing any obligation of that company or any other agreement or arrangement having a similar effect; or(5) where such other party is an individual, a bankruptcy petition or order, <p>or any analogous procedure or step is taken in any jurisdiction, but paragraph (vi) shall not apply to:</p> <ul style="list-style-type: none">(A) a solvent reconstruction or amalgamation the terms of which have previously been approved in writing by the other party to this Agreement; or(B) any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 7 days of commencement, of if earlier, before the date on which it is advertised; or <p>(viii) it, being an individual, dies or, by reason of illness or incapacity (whether mental or physical), becomes incapable of managing his or her own affairs or becomes a patient under any mental health legislation.</p>
"Intellectual Property"	means patents, registered designs, trade marks, service marks, design rights and database rights (whether registerable or otherwise), applications for any of the foregoing, copyright (including copyright in source code, object code, procedures manuals and related documentation), know-how, trade or business names and other similar rights or obligations, whether registerable or not in any country (including the United Kingdom and Ireland) and all rights of a similar or corresponding character subsisting anywhere in the world;
"Losses"	means all costs, claims, demands, liabilities, expenses, damages and/or losses (including any direct or indirect losses, consequential losses, loss of profit and/or loss of reputation, and all interest, penalties and legal and other professional costs and expenses);
"Payee"	means the person identified by the Client for the receipt of a payment using the Services;
"Payer"	means any person who attempts to make a purchase/payment to which the Services apply from the Client. The term Payer includes customers in the context of EFT services (if such are provided by Realex Payments - see Part 3) and cardholders in the context of credit/debit card transactions;

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"Password" and "Username"	mean, respectively, the unique password and username which are issued by Realex Payments to the Client in accordance with Clause 5;
"Realex Payments"	means Pay and Shop Limited trading as Realex Payments, a company registered in Ireland, whose registered office is at The Observatory, 7-11 Sir John Rogerson's Quay, Dublin 2, Ireland;
"realscore"	means the realscore system which allows the Client to pre-select criteria so that as transactions are submitted to Realex Payments they can be scored for suitability against the criteria selected by the Client. realscore operates independently of the Acquiring Banks and Clearing Banks;
"Recipient"	means any party who receives Confidential Information of a Disclosing Party pursuant to or in contemplation of this Agreement;
"Registration Form"	means the form contained in Part 1 of this Agreement;
"Regulator"	means any person having regulatory or supervisory responsibility and/or authority over the business of the parties or their Group Companies;
"Relief Event"	means any breach by the Client of its obligations under this Agreement, including the obligations in clauses 3 and 5, which has a material adverse effect on Realex Payments' ability to provide the Services and/or perform its obligations under this Agreement;
"Services"	means the services specified in the Registration Form as more particularly described in Part 3 to be provided by Realex Payments to the Client in accordance with this Agreement;
"Shared Secret"	means a secret phrase used in conjunction with a hash function that Realex Payments can use to authenticate any request from the Client. This Shared Secret is the Client's responsibility and must never be disclosed to third parties;
"Tax"	means: (i) all forms of tax, levy, impost, contribution, duty, liability and charge in the nature of taxation and all related withholdings or deductions of any nature (including, for the avoidance of doubt, National Insurance contribution liabilities in the United Kingdom and corresponding obligations elsewhere); and (ii) all related fines, penalties, charges and interest, imposed by a taxing authority;
"Term"	means the period of one year from the Commencement Date as renewed (if applicable) under clause 11.1, unless otherwise terminated in accordance with clauses 3.1(f) and/or 11;
"VAT"	means any sales, purchase or turnover tax as may be applicable in any relevant jurisdiction, including, without limitation, value added tax chargeable under or pursuant to the Value Added Tax Act 1994 or the EC Sixth Directive (77/388/EEC).
1.2	Save as otherwise provided herein, any references in this Agreement to clauses, paragraphs, parts or schedules are references to the clauses, paragraphs, parts or schedules of this Agreement unless the context otherwise admits or so requires.
1.3	A reference in a clause, part or schedule to a paragraph is, unless otherwise stated, a reference to a paragraph in that clause, part or schedule.
1.4	References to the singular shall include the plural and vice versa and reference to any gender shall include other genders.
1.5	The headings to the clauses in this Agreement are for reference only and shall not affect the interpretation of this Agreement.
1.6	A reference to a "person" includes any individual, company, corporation, firm, partnership, joint venture, association, state, state agency, institution, foundation or trust (whether or not having a separate legal personality).
1.7	A reference to an English legal term for a legal document, court, judicial process, action, remedy, legal status, official or any other legal concept or thing is, in respect of a jurisdiction other than England, deemed to be a reference to whatever most closely equates to the English legal term in that jurisdiction.
1.8	A reference to "including" or "includes" does not limit the scope of the meaning of the words preceding it.
1.9	A reference to a particular time of day is, unless stated otherwise, a reference to that time in London, UK.
1.10	References to "liability", unless the context otherwise requires, includes claims, demands, proceedings, damages, losses, costs and expenses.
1.11	A reference to a statute or statutory provision includes a reference to any subordinate legislation and is a reference to that statute, statutory provision or subordinate legislation as modified, consolidated, superseded, re-enacted or replaced (whether with or without modification) from time to time after the date of this Agreement.
1.12	The expressions "subsidiary undertaking" and "parent undertaking" have the meanings given to them by the Companies Act 1985.

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2. OBLIGATIONS OF REALEX PAYMENTS

- 2.1 In consideration of the Charges, Realex Payments agrees to provide the Services to the Client for the Term.
- 2.2 Realex Payments shall only provide the Services to the Client if and for so long as the Client has a valid arrangement in place with an Acquiring or Clearing Bank. Realex Payments is not party to the Client's contract with the Acquiring or Clearing Bank and bears no liability for the authorisation or non-authorisation of transactions by the Acquiring or Clearing Bank or for any charge backs or other charges arising between the Client and the Acquiring or Clearing Bank. The Services shall be provided only in relation to the transactions, card types and currencies advised by the Acquiring or Clearing Bank to Realex Payments.
- 2.3 Realex Payments shall not be responsible for the verification of the identity of Payers or Payees and the Client remains solely responsible and liable for the accuracy of all Payer and Payee and any other data provided to Realex Payments.
- 2.4 Any Client Data stored or hosted by Realex Payments shall be stored on its private network but Realex Payments shall not be responsible for the accuracy or otherwise of any Client Data. Realex Payments operates as a processor of transactions. Payer and transaction information when collected by Realex Payments is done so using up to 128bit encryption, the exact level of encryption employed is browser dependant.

3. OBLIGATIONS OF THE CLIENT

- 3.1 The Client assumes full and sole responsibility for the following
- (a) Ensuring the Client Systems or sales application is capable of collecting order details of the Payer and the Payee;
 - (b) Ensuring the Client Systems or sales application is reasonably secure and contains appropriate legal terms and conditions of use and an appropriate and accurate privacy policy;
 - (c) At all times operating within the terms and conditions of its agreement with the Acquiring or Clearing Bank;
 - (d) Ensuring that all necessary regulatory or other consents or authorisations are in place prior to using the Services to allow Realex Payments to provide the Services to it lawfully and for it to take the Services lawfully. Without prejudice to the generality of the foregoing, the Client shall ensure that all necessary consents from the Payer and the Payee are obtained for the purpose of the Data Protection Laws;
 - (e) Any representations it makes to Payers or Payees concerning the Services, including without limitation, any communications relating to the availability or non-availability of Payer funds;
 - (f) Providing true, accurate and complete registration information and maintaining and promptly updating its information as applicable. If any information provided by the Client is in any material respect untrue, inaccurate, not current, or incomplete, without limiting other remedies, Realex Payments has the right to terminate the Client's use of the Services and to terminate this Agreement, and in either case Realex Payments, its agents, suppliers, and subcontractors have the right to recover from the Client any costs or losses incurred as a direct or indirect result of the inaccurate or incomplete information. The Client authorises Realex Payments and its agents, suppliers and subcontractors to make any inquiries they consider necessary to validate the Client's registration for the Services; and
 - (g) Storing and making back-ups of all Client Data.

4. INSTALLATION AND ACCEPTANCE TESTING

- 4.1 The Parties shall agree a timetable for the installation, acceptance and launch of the Services. Both parties shall use reasonable endeavours to perform their obligations under this Agreement in accordance with the timetable. However, the parties agree that time shall not be of the essence in this Agreement.
- 4.2 In order to avail of the Services, the Client must, at its own cost, integrate its Internet site and other systems in accordance with the reasonable technical instructions provided by Realex Payments. Realex Payments shall provide advice and assistance to the Client to ensure that the Client's systems comply with the procedural and technical requirements of Realex Payments.
- 4.3 The Client may access Realex Payments technical references, application programming interfaces (APIs) and other software ("Programs") free of charge from www.realexpayments.com. Because the Programs are licensed free of charge, Realex Payments provides the Programs "as is" without any warranty of any kind, either expressed or implied, including, but not limited to, the implied warranties of satisfactory quality and fitness for a particular purpose. The entire risk as to the quality and performance of the Programs is with the Client. Should the Programs prove defective, the Client assumes the cost of all necessary servicing, repair or correction.
- 4.4 Where any software is supplied and/or configured by Realex Payments pursuant to this Agreement for use by the Client on its computer(s), Realex Payments grants the Client a limited, personal, non-exclusive, non-transferable licence to install and use the software for use solely for the purpose of availing of the Realex Payments Services pursuant to this Agreement and for no other purpose whatsoever.

5. USERNAME, PASSWORD AND SHARED SECRET

- 5.1 On completion of the Registration Form, Realex Payments shall issue the Client with a Username, Password and Shared Secret. It is the Client's responsibility to keep its Username, Password and Shared Secret secure.
- 5.2 A Username, Password or Shared Secret may not be shared with any other party. Other users of the Client's Username, Password or Shared Secret shall be bound by this Agreement as if they were the Client and the Client shall be responsible for their acts and omissions under the terms of this Agreement as though such acts and omissions had been carried out (in the case of acts) or omitted to be carried out (in the case of omissions) by the Client. The Client agrees to immediately notify Realex Payments of any unauthorised use of its Username, Password or Shared Secret or any other breach of security or breach of this Agreement of which the Client becomes aware.

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6. SUPPORT AND MAINTENANCE

- 6.1 The Client may contact Realex Payments for support in relation to the Services. In the event that the Client experiences problems then the Client may contact Realex Payments at the numbers indicated in the Registration Form.
- 6.2 Support is available during Realex Payments' normal business hours – 09:00 to 17:30 on Business Days.
- 6.3 From time to time it may be necessary for Realex Payments to complete maintenance on its systems. If the maintenance is likely to result in unavailability of the Services then Realex Payments will endeavor to advise Clients in advance.

7. ENHANCEMENTS AND UPGRADES

- 7.1 From time to time upgrades or enhancements may be introduced by Realex Payments on a mandatory basis in which case Realex Payments will advise the Client of the changes and the Client will implement the changes. Realex Payments will not charge for any mandatory enhancements during the Term. The Client may opt to use upgrades or enhancements that are not mandatory subject to Realex Payments' then applicable standard pricing.

8. PAYMENT OF CHARGES

- 8.1 In consideration of Realex Payments performing the Services, the Client will pay Realex Payments the Charges by Direct Debit or by other payment methods if agreed by Realex Payments. Unless otherwise stated by Realex Payments, all Charges shall be paid within 28 days of issue of an invoice for the same from Realex Payments.
- 8.2 All amounts owed hereunder not paid when due and payable will bear interest from the date such amounts are due and payable at 2% per annum above the base rate applicable from time to time of Barclays Bank plc.
- 8.3 Unless expressly stated otherwise in this Agreement, all sums referred to in this Agreement shall be exclusive of VAT. Any VAT properly chargeable in respect of sums referred to in this Agreement shall be payable in addition to such sum at the relevant rate from time to time.
- 8.4 In all cases, the amounts due under this Agreement will be paid by the Client to Realex Payments in full without any right of set-off or deduction.

9. INTELLECTUAL PROPERTY

- 9.1 The Realex Payments name and trademarks are included in the valuable Intellectual Property of Realex Payments. All Intellectual Property with respect to the Services and the Realex Payments name and trademarks, whether now existing or which may hereafter come into existence, where and solely to the extent that any rights thereto are not expressly granted to the Client herein are reserved to Realex Payments. Any goodwill generated through the Client's use of the Realex Payments name and trademarks shall inure solely to the benefit of Realex Payments.
- 9.2 Unless expressly provided in this Agreement, nothing in this Agreement shall be interpreted as granting to the Client a licence to use any of the Intellectual Property of Realex Payments.
- 9.3 The Client will promptly notify Realex Payments of any infringement or threatened infringement or of any challenges to validity or ownership of any Intellectual Property or other right of Realex Payments of which the Client becomes aware and will provide reasonable assistance to Realex Payments, at Realex Payments' expense, in connection therewith.
- 9.4 Realex Payments may include at its discretion the Client's company name, description and hyperlink on its website and other marketing material.
- 9.5 On signing this Agreement, the Client may, at its discretion display the Realex Payments graphic and hyper-link provided to the Client by Realex Payments on the Client's Internet website.
- 9.6 If the Client uses the Realex Payments realauth redirect or a similar service, the design of the secure page hosted on the Realex Payments server must be agreed in writing in advance with Realex Payments.

10. CONFIDENTIAL INFORMATION

- 10.1 Each party agrees not to use any Confidential Information disclosed to it by the Disclosing Party for its own use or for any purpose other than the purposes described in and envisaged by this Agreement. For the avoidance of doubt, nothing in this Agreement shall prevent Realex Payments from utilising Payers' and Payees' data for the purpose of liaising with the Acquiring Bank and/or Clearing Bank or any financial or credit institution for the purpose of verifying such data.
- 10.2 Neither party shall disclose or permit disclosure of any Confidential Information of the Disclosing Party to third parties or to employees of the Recipient, other than directors, officers, employees, consultants, advisers and agents to the extent necessary or desirable for them to have the information in order to carry out their obligations hereunder.
- 10.3 Each party agrees that it shall take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of the Disclosing Party in order to prevent it from falling into the public domain or the possession of persons other than those persons authorised under this Agreement to have any such information. Such measures shall include, but not be limited to, the highest degree of care that the Recipient utilizes to protect its own Confidential Information of a similar nature, which shall be no less than reasonable care. Each party agrees to promptly notify the other in writing of any actual or suspected misuse, misappropriation or unauthorised disclosure of Confidential Information of the Disclosing Party which may come to the Recipient's attention.
- 10.4 Subject to clause 10.5, on the earlier of: (a) termination of this Agreement; and (b) receipt of a request from one party (the "**Requesting Party**") to do so, the other party (the "**Returning Party**") will return to the Requesting Party or destroy all documents, notes and other data in whatever form the same may be stored which constitute, include or incorporate in any way any Confidential Information and any and all copies made of such documents or material, in whatever form such copies may have been made.
- 10.5 Each party shall be permitted to retain:

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- (i) corporate records (including, without limitation, board minutes) containing Confidential Information from which Confidential Information cannot be separated; and
- (ii) one copy of the Confidential Information for the purposes of and for so long as required by any Applicable Laws and regulations or by judicial or administrative process or its legitimate internal compliance procedures.

10.6 Each party will ensure that each person to whom any disclosure of Confidential Information is made in accordance with clause 10.2 adheres to the terms of this clause 10 as if he, she or it were a party to this Agreement.

11. TERM AND TERMINATION

11.1 This Agreement shall commence as of the Commencement Date and shall remain in force for the Term. Unless written notice of termination is given from one party to the other no later than sixty (60) days before the expiration of the then-current Term, this Agreement shall automatically renew for successive one (1) year terms subject to a minimum period of written notice of ninety (90) days.

11.2 Notwithstanding the foregoing, either party may terminate this Agreement at any time, effective immediately, upon written notice to the other party, if (i) such other party breaches any of its material obligations hereunder and fails to cure such breach within thirty (30) days of written notice thereof; or (ii) such other party or a Group Company of such other party is the subject of an Insolvency Event.

11.3 Any such termination shall be without any liability to or obligation of the terminating party, other than with respect to any breach of obligations under this Agreement prior to termination.

11.4 If this Agreement is terminated, each of the parties will promptly return to the other all property of the other then in its possession. The Client shall cease to use the Services, the Programs and any software provided by Realex Payments to the Client under this Agreement. In addition, the Client will remain liable to Realex Payments for any outstanding amounts owed, including disputed amounts occurring within six (6) months of termination.

11.5 Notwithstanding the foregoing, Realex Payments may suspend or terminate the Services without notice and may also terminate this Agreement upon written notice to the Client if the Client shall (i) fail to pay any Charges when due, (ii) if the Services are used for other purposes including but not limited to tampering, hacking, modifying or otherwise corrupting the security or functionality of Services, (iii) if the Services are used in a manner contrary to Realex Payments' Acceptable Usage Policy as described in Clause 11.6 below or (iv) for scheduled or emergency maintenance. Realex Payments shall endeavor to give reasonable notice to the Client of any maintenance.

11.6 The Realex Payments' Acceptable Usage Policy prohibits the processing of transactions involving the making available or sale of content, services or products which are deemed by Realex Payments in its sole discretion as being inappropriate or unlawful. The Acceptable Usage Policy of Realex Payments also aims to ensure that Realex Payments is not associated with any website content (including linked content) which is illegal, fraudulent, offensive, embarrassing, sexually explicit, obscene, threatening, defamatory or otherwise inappropriate. Realex Payments prohibits the processing of transactions using the Services where the transactions would breach the United States Unlawful Internet Gambling Enforcement Act of 2006 and the Client represents, warrants and undertakes to Realex Payments that no such transactions will be processed via the Services.

11.7 The provisions in this Agreement which expressly or by implication are intended to have effect after termination shall continue to apply and be enforceable notwithstanding termination and include clause 8 (Payment of Charges), clause 9 (Intellectual Property), clause 10 (Confidential Information), clauses 11.3 and 11.4 (Term and Termination), clause 12 (Limitation of Liability and Indemnity), clause 15 (Data Protection) and clause 16 (General).

12. LIMITATION OF LIABILITY AND INDEMNITY

12.1 This Clause 12 sets out the entire liability of Realex Payments to the Client in respect of any breach of its obligations under this Agreement and/or tortious act and/or omission, negligence and/or representation made in connection with this Agreement.

12.2 Realex Payments assumes no responsibility, and the Client shall indemnify and keep indemnified Realex Payments and its employees or agents for loss, damage, or injury to any person or property, of whatever nature and whether direct or indirect, occasioned by, arising from, or due to:

- (i) the breach by Client or the Client Systems or sales application of any Applicable Laws;
- (ii) representations made to Payers or Payees by the Client including without limitation any representations relating to the creditworthiness or character of any Payer or Payee whether made on reliance of the Services or otherwise;
- (iii) the inaccuracy or unlawfulness of any Client Data or any content on the Client Systems or any payments made to unintended recipients due to the input of incorrect information by Payers or the Client;
- (iv) the Client's reliance on realscore to approve or not approve any transaction;
- (v) the reliance by the Client on any information issued by the Acquiring Bank or Clearing Bank;
- (vi) any fraudulent or erroneous transactions or transactions incorrectly authorised or not authorised by the Acquiring Bank or otherwise accepted or paid by the Client;
- (vii) any charge-backs to the Acquiring Bank or any refunds payable to or from any Payers, Payees or other persons;
- (viii) any cause over which Realex Payments does not have direct control, including problems attributable to computer hardware or software (including computer viruses), telephone or other communications, Internet Service Providers, delays, non-deliveries, mis-deliveries, or service interruptions arising from Force Majeure;
- (ix) unauthorised interception or use of data relating to the Client or the Services;
- (x) any actions or transactions by any individual or entity that uses the Client's Username, Password or Shared Secret;
- (xi) any breach by the Client of its obligations under the Data Protection Laws; and
- (xii) any breach by the Client of Clause 3 above;

except and to the extent such Losses result directly from the knowing or willful misconduct of Realex Payments.

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- 12.3 If, in respect of any payment due under clause 12.2, the Client is required by law to make a deduction or withholding from such a payment or such payment is chargeable to Tax in the hands of the payee (the "**Indemnified Party**"), the relevant sum payable by the Client will be increased by an additional amount to the extent necessary to ensure that, after making the deduction or withholding or after payment of the Tax so charged, the Indemnified Party receives and retains (free from any liability in respect of any deduction or withholding of Tax) a net sum equal to that which it would have received had the deduction or withholding not been made or required.
- 12.4 If the Indemnified Party receives the benefit of a Tax credit or an allowance resulting from a payment which includes an additional amount paid by the Client under clause 12.3, it must (to the extent that it can do so without prejudice to the retention of such credit or allowance and to the extent that it is lawful for it to do so) pay to the Client such part of that benefit as is, in the reasonable opinion of such Indemnified Party, attributable to the deduction or withholding giving rise to payment of that additional amount, provided that the Indemnified Party will:
- (i) be the sole judge of the amount of any such benefit to be so paid to the Client and of the date on which it is received;
 - (ii) have an absolute discretion as to the order and manner in which it employs or claims Tax credits and allowances available to it or otherwise arranges its Tax affairs; and
 - (iii) not be obliged to disclose to the Client or any other person any information regarding its Tax affairs or Tax computations.
- Any payment under this clause 12.4 will be conclusive evidence of the amounts due to the payer under this clause 12.4.
- 12.5 Subject to clause 12.8, but notwithstanding any other provision of this Agreement whether express or implied, Realex Payments shall not be liable to the Client or any third party in contract, tort or otherwise for any loss of revenue, business, use, goodwill, anticipated savings, profit, data or for any financial loss whatsoever or for any indirect, special, incidental, punitive or consequential loss or damage howsoever arising in relation to the use of the Services or any failure or error or default by Realex Payments in the provision thereof, or that result from mistakes, omissions, interruptions, deletion of files, e-mail errors, defects, viruses, trojan horses, worms, delays in operation or transmission, or any failure of performance, whether or not limited to any events of Force Majeure.
- 12.6 In no event whatsoever shall Realex Payments be liable to the Client for an amount exceeding the amount actually paid to Realex Payments by the Client for the Services and the parties acknowledge that the Charges are calculated on the basis that this limitation shall apply and that such amount represents a genuine pre-estimate of loss.
- 12.7 Without prejudice to any other rights or remedies that Realex Payments may have, the Client acknowledges and agrees that damages alone would not be an adequate remedy for any breach by the client of the provisions of this Agreement and that accordingly Realex Payments shall be entitled, without proof of special damages, to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the provisions of this Agreement.
- 12.8 Nothing in this Agreement limits or excludes liability of either party in respect of: (a) any claims for death or personal injury caused by the negligence of such party; (b) any claims resulting from any fraud including fraudulent misrepresentation made by such party; or (c) any claims for which liability may not otherwise lawfully be limited or excluded.
- 12.9 The rights and remedies provided by this Agreement are cumulative and do not exclude any rights and remedies provided by law.
- 12.10 Unless expressly provided otherwise, all agreements, obligations and liabilities assumed in this Agreement by more than one person are assumed jointly and severally.
- 13. WARRANTIES**
- 13.1 Realex Payments warrants that:
- (i) it has the necessary skill to supply the Services;
 - (ii) it will carry out the Services with reasonable care and skill;
 - (iii) the Intellectual Property in the software used in providing the Services vests in Realex Payments or its licensors; and
 - (iv) it has the right to enter into this Agreement and provide the Services hereunder.
- All other warranties express or implied, in relation to the Services are hereby excluded to the fullest extent permitted by law.
- 13.2 The Client warrants to Realex Payments that as at the Commencement Date:
- (i) it has all necessary licences, permits, authorisations, registrations, approvals, notifications and/or consents to enter into and perform all of its obligations under this Agreement and to grant the rights granted by it under this Agreement;
 - (ii) it has full capacity and authority to enter into and to perform this Agreement;
 - (iii) this Agreement has been executed by a duly authorised representative of the Client;
 - (iv) once duly executed this Agreement shall constitute its legal, valid and binding obligations;
 - (v) its proposed activities hereunder do not infringe any applicable law, any applicable codes of practice or guidance, and/or the rights of any third party, including any third party's Intellectual Property; and
 - (vi) the terms of this Agreement do not conflict with any contract entered into with any third party before the date of execution of this Agreement.
- 14. FORCE MAJEURE AND RELIEF EVENTS**
- 14.1 Except in relation to obligations under this Agreement to make payments when due, neither party shall be liable for any failure, interruption or delay in the performance of its obligations under this Agreement, in whole or in part, if such delay or failure is due to Force Majeure.
- 14.2 The parties shall make all reasonable efforts to minimise the effect of Force Majeure upon the performance and fulfilment of this Agreement and shall meet as soon as possible and in any event within 48 hours from the date of notice of any Force Majeure to agree upon any action to avoid delays.
- 14.3 Realex Payments shall not be in breach of this Agreement to the extent that its delay in providing, or failure to provide, the Services or perform any other obligation under this Agreement is a result of a Relief Event, and Realex Payments shall use all

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reasonable endeavours to provide the Services and perform its obligations under this Agreement notwithstanding the Relief Event.

- 14.4 If Realex Payments incurs costs in providing the Services as a result of any Relief Event it shall be entitled to recover those costs from the Client.

15. DATA PROTECTION AND SECURITY

- 15.1 The Client shall comply with its obligations as a data controller and data processor under the Data Protection Laws and Realex Payments shall comply with its obligations as a data processor acting on the instructions of the Client under the Data Protection Laws. In this clause 15 the terms "personal data", "data processor" and "data controller" have the same meanings as set out in the Data Protection Laws.

- 15.2 The parties acknowledge and accept that clause 15.3 shall apply to the extent that Realex Payments processes personal data as a data processor on behalf of the Client as data controller.

- 15.3 Without prejudice to clause 15.1, to the extent that it acts as data processor, Realex Payments undertakes that it will:

- (i) only process the personal data in accordance with the terms of this Agreement and any instructions from the Client;
- (ii) take such appropriate technical and organisational measures as required to enable it to process the personal data in compliance with obligations equivalent to those imposed on the Client by the seventh principle of the Data Protection Laws, including without limitation:
 - (a) measures designed to protect any personal data that it processes against: (1) any unauthorised use or unlawful processing; and (2) accidental loss, destruction or damage; and
 - (b) the taking of reasonable steps to ensure the reliability of any of its staff which shall have access to the personal data processed under this Agreement.

- 15.4 The parties acknowledge that in the course of the performance of this Agreement personal data may be transferred outside the European Economic Area ("EEA"), in which event the Client shall prior to the transfer of any personal data outside the EEA:

- (i) ensure that proper wording is included on documentation presented to Payers and/or Payees notifying them that processing may take place outside the EEA and (where appropriate) seeking their consent to the transfer of their Personal Data outside the EEA; and
- (ii) enter into, with Realex, such appropriate model contracts approved by the European Commission (or other contracts providing adequate protection for Personal Data) which enable the transfer of personal data outside the EEA.

- 15.5 The Client is solely responsible for the lawful collection, delivery, obtaining of consents and use of all Client Data.

- 15.6 Realex Payments will process the Client Data in accordance with this Agreement and will only share Client Data where it is necessary for the performance of this Agreement.

- 15.7 Realex Payments may aggregate information in its database for the purposes of fraud detection and specifically in this event the Client agrees that Realex Payments can use its historical information to detect possible fraudulent transactions for other clients that use the Realex Payments service.

- 15.8 Realex Payments is certified as a Level 1 PCI Compliant payment services provider, a certification provided by an accredited third party. In order to maintain this status, Realex Payments submits to an annual security audit and employs an in-house security team who monitor Realex Payments' systems on an ongoing basis. As a condition of achieving and maintaining that level of compliance, Realex Payments is responsible for the security (but not the accuracy or legality) of any data submitted by the Client to Realex Payments as card data for processing, transmission or storage, but only for so long as such data remains within Realex Payments' systems.

16. GENERAL

Notices

- 16.1 A notice, permission or other communication under or in connection with this Agreement must be: (i) in writing; (ii) in English; (iii) signed by or on behalf of the person giving it; and (iv) sent by recorded delivery post or by fax or email to the relevant party to the contact address, and/or fax number, and/or email address(as applicable) set out in this Agreement (or if otherwise notified by the relevant person under clause 17.4 to such other contact, address or fax number as has been so notified).

- 16.2 Such notices addressed to Realex Payments should be sent to: Realex Payments UK, 1 Lyric Square, London, W6 0NB, UK, fax number 020 7691 7264 email address sales@realexpayments.com.

- 16.3 Unless there is evidence that it was received earlier, and provided such notice is not returned to the sender undelivered, a notice or other communication that complies with clause 16.1 is deemed given:

- (i) if sent by recorded delivery post, at 9.00 am on the second Business Day after the day of posting;
- (iii) if sent by fax, at the time of its transmission, except as provided in clause 16.4.

- 16.4 If deemed delivery under clause 16.3 of a notice or other communication delivered by hand or sent by fax occurs after 6.00 pm on a Business Day or on a day which is not a Business Day, the notice or communication is deemed to have been given at 9.00 am on the next Business Day.

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- 16.5 A party may notify the other party of a change to any of its contact details for notices. The notice must comply with the terms of clause 16.1 and must state the date on which the change is to occur. That date must be on or after the fifth Business Day after the date on which the notice is delivered.

Illegality

- 16.6 If a provision of this Agreement is found to be illegal, invalid or unenforceable, then to the extent it is illegal, invalid or unenforceable, that provision will be given no effect and will be treated as though it were not included in this Agreement, but the validity or enforceability of the remaining provisions of this Agreement will not be affected.

Applicable law and regulations and jurisdiction

- 16.7 This Agreement, the jurisdiction clause contained in it, all the documents referred to in it which are not expressed to be governed by another law, and all non-contractual obligations arising in any way whatsoever out of or in connection with this Agreement or any such document are governed by, and shall be construed and take effect in accordance with English law. The courts of England have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise in any way whatsoever out of or in connection with this Agreement (including without limitation claims for set off or counterclaim) or the legal relationships established by this Agreement.

Counterparts

- 16.8 This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when executed and delivered shall constitute an original, and all such executed counterparts together shall have the same effect as though each party had executed the same document.

Amendments

- 16.9 Amendments to or modifications of this Agreement may be made only by mutual Agreement of all parties in writing and shall be subject to whatever approvals or appropriate authorities as may be required by law. Notwithstanding the foregoing, where Realex Payments requires changes to the Services for technical, operational or business purposes Realex Payments may make such changes and shall endeavour to give at least 30 days prior notice to the Client.

Waiver

- 16.10 Failure to exercise, or a delay in exercising, a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents the further exercise of the right or remedy or the exercise of another right or remedy. A waiver of a breach of this Agreement does not constitute a waiver of a subsequent or prior breach of this Agreement.

No partnership. etc

- 16.11 This Agreement shall not constitute any party, the legal representative, partner or agent of the other parties or any of them nor (save as expressly provided in this Agreement) shall any party or any successor of any party have the right or authority to assume, create or incur any liability or obligation of any kind express or implied against or in the name of or on behalf of any other party. The parties hereto enter this Agreement as principals for and on their own behalf.

Assignment and transfer

- 16.12 The Client may not assign, transfer, charge or deal in any other manner with this Agreement or any or all of its rights or obligations under it, nor purport to do so, nor sub-contract any or all of its obligations under this Agreement without having obtained the prior written consent of Realex Payments.
- 16.13 The Client may not re-sell or make available the Services to any third parties.

Entire agreement

- 16.14 This Agreement (together with any documents referred to in it) sets out the entire agreement between the parties and supersedes any previous agreement or arrangement between the parties relating to the subject matter of it (and any document referred to in it).
- 16.15 Each party agrees and acknowledges that it has not relied on, or been induced to enter into this Agreement by, any warranty, statement, representation or undertaking which is not expressly included in this Agreement.
- 16.16 Subject to clause 12.8, no party has any claim or remedy in respect of a warranty, statement, misrepresentation (whether negligent or innocent) or undertaking made to it by or on behalf of the other party in connection with or relating to the subject matter of this Agreement and which is not expressly included in this Agreement.

Effective date of agreement

- 16.17 This Agreement shall become effective only upon the same being executed by or on behalf of all parties hereto.

**PART 3
SERVICE SCHEDULE**

1. The Service Process – Card Processing

- 1.1. The Client will have a sales application and/or internet site that will collect the order details from the Payer;
- 1.2. In the case of internet sales the Payer will either (1) enter their credit card details on a secure page – hosted by Realex Payments (realauth redirect) or (2) enter their details on a page hosted on the Client's secure site (realauth remote). In the case of a call centre, the Payer will pass their card details to the Client over the telephone;
- 1.3. The Client's application may submit requests for credit card authorisations at any time and these are forwarded on to the Client's Acquiring Bank;
- 1.4. Successful authorisations are batched on a daily basis and submitted to the Client's Acquiring Bank at an agreed time.
- 1.5. The Acquiring Bank pays all funds to the Client.

2. RealAuth – Online Authorisation Service

- 2.1. Realex Payments operate as a processor of transactions and not as a repository or information store for Clients.
- 2.2. The Client is responsible for the collection and delivery of data.
- 2.3. There are different methods for connecting to the Realex Payments service – these are RealAuth redirect, RealAuth remote.
- 2.4. In the case of RealAuth remote the Client remains entirely responsible for securely collecting and storing any credit card details and will agree and disclose this to their Acquiring Bank – in the case of RealAuth redirect the credit card details are entered on the Realex Payments server.
- 2.5. As a user of the RealAuth service the Client may access RealControl – an application provided by Realex Payments to assist with the management of historical transactions. Realex Payments will supply the Client with a Username and Password for accessing the RealControl service.
- 2.6. When transferring information to Realex Payments over the Internet the Client must, using a Shared Secret, generate a hash function that Realex Payments can use to authenticate the request. This Shared Secret is the Client's responsibility and must never be disclosed to third parties.

3. RealScore - Transaction Suitability Scoring

- 3.1. Realex Payments operate a transaction suitability scoring system, referred to as RealScore that allows the Client to set criteria so that as transactions are submitted they can be scored for suitability against the Client criteria – this scoring system operates independent of the Acquiring Banks and the Clearing Banks.
- 3.2. Realex Payments may, at its discretion, maintain all Client transactions for the generation of internal reports
- 3.3. The calculation of the score will use a maximum of 90 days history for each Client or less if the volume is likely to impact on the ability of Realex Payments to deliver its service.
- 3.4. RealScore is included free of charge in the RealPay product offering. It is the responsibility of the Client to notify Realex Payments if they wish for this service to be activated.

4. RealMPI - Payer Authentication

- 4.1. Realex Payments operate a payer authentication service – referred to as RealMPI – this is used by internet Clients when accepting credit card details online.
- 4.2. The process involves sending a request to Realex Payments, who in turn submit a request to the appropriate scheme (Visa/MasterCard) who in turn determine via the issuer if the Payer is enrolled in the scheme. Realex Payments reply to the Client's internet site with the issuer's address. The Client must then redirect the Payer to the issuer's system for authentication and the result of this process is sent to Realex Payments for verification.
- 4.3. The Client's Acquiring Bank must be compliant with the process and all issues of liability shift and guaranteed payments are between the Client and the Acquiring Bank – the use of the Services alone does not impact nor change the Client liability in any way.
- 4.4. RealMPI is included free of charge in the RealPay product offering subject to limits outlined in Part 1 – Registration Form of this contract. It is the responsibility of the Client to notify Realex Payments if they wish for this service to be activated.

5. RealFX - Currency Conversion

- 5.1. In association with other parties, referred to as currency conversion processors, Realex Payments can provide a real time currency conversion process – this allows a Client to submit a request to Realex Payments, prior to authorisation that will determine the FX of the card and provide an alternative rate in the currency of the card holder – this information is from the currency conversion processor.
- 5.2. Transactions may then be processed by the Client in the currency selected by the cardholder.
- 5.3. Settlement files for Clients using RealFX are submitted to the currency conversion processor and not the Acquiring Bank.
- 5.4. To use RealFX a Client must have an agreement in place with a currency conversion processor and the details of the arrangement are between the Client and the currency processor.
- 5.5. The RealFX multi-currency capability is offered free of charge in the RealPay product offering subject to the Client having the appropriate agreement with the currency conversion processor.

6. RealVault - Card Storage

- 6.1. Realex Payments provide a solution whereby the merchant may use our secure infrastructure to store card numbers sending payment requests with a 'payer reference' rather than the card number when they wish to do an authorisation.
- 6.2. The process works where the merchant submits a 'payer setup' request. This sets up a profile on the Realex Payments system where the cardholder is assigned a 'payer reference' and a card number is assigned to this reference.

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- 6.3. When the client wishes to enter a subsequent authorisation request, they simply submit the required request, however they will pass us the 'payer reference' rather than the card number.
- 6.4. The management of the Clients payers is operated through the reporting tool RealControl. Cardholders can be activated, amended or deleted as required.
- 6.5. RealVault is included free of charge in the RealPay product offering subject to limits outlined in Part 1 – Registration Form of this contract. It is the responsibility of the Client to notify Realex Payments if they wish for this service to be activated.