



pixxles

PIXXLES LTD

CARD PAYMENT PROCESSING AGREEMENT

These terms and conditions of the Card Payment Processing Agreement (“**Agreement**”) are a legal agreement between Pixxles Ltd, a limited company incorporated in the United Kingdom with its registered office at 78 Cannon Street, London EC 4N 6AF, United Kingdom (company number: 11604773) and regulated by the Financial Conduct Authority (firm reference number: 927960) (“**Pixxles**”), and the legal entity listed as the “**Merchant**” in the Merchant Terms Acknowledgement. Pixxles and Merchant may be individually referred to herein as a “**Party**” or collectively as the “**Parties**”.

This Agreement sets out the terms and conditions on which Pixxles or its Affiliates will provide, among other things, card payment processing services which allow Pixxles to clear and settle payments for purchases of Merchant’s goods and services by way of Cards. Merchant acknowledges that this Agreement is being presented and executed electronically, and Merchant understands that Merchant must read the entire Agreement before accepting its terms.

In addition to the terms and conditions set out herein, this Agreement includes the following documents (as each may be amended, supplemented or restated from time to time), each of which is defined and incorporated into this Agreement herein:

- (i) the Merchant Services Application, including the Electronic Transfer Authorisation Form;
- (ii) the Merchant Terms Acknowledgement;
- (iii) the Personal Guarantee (if applicable); and
- (iv) the Cross-Corporate Guarantee (if applicable).

This Agreement incorporates by reference all policies, notices, and other content that appear on the Portal.

1. DEFINITIONS.

When used in this Agreement (including the recitals), the following terms will have the meanings set forth in this Clause. Certain other capitalised terms are defined elsewhere in this Agreement in the context of the provision in which they are used.

“**Acquirer**” means the financial institution or company that is a member of the Card Schemes and, for purposes of this Agreement, functions as an acquiring bank. The Acquirer may be changed at any time by Pixxles without prior notice to Merchant.

“**Affiliate**” means a Person that, directly or indirectly, (i) owns or controls a party, (ii) is owned or controlled by a party or (iii) is under common ownership or control with a party.

“**AML Requirements**” means the requirements of any legislation, regulation or rule applicable to either Party relating to anti-money laundering, counter-terrorist financing, anti-bribery, economic sanctions or any similar regulatory issue;

“**API**” means an Application Programming Interface;

“**Applicable Law**” means any and all applicable laws, legislation, by-laws, decisions, notices, statutes, orders, rules (including any rules or decisions of court), regulations, directives, edicts, schemes, warrants, local government rules, statutory instruments or other delegated or subordinate legislation and any directions, codes of practice issued pursuant to any legislation, voluntary codes, other instruments made or to be made under any statute and codes of conduct and mandatory guidelines (including in all cases those that relate to audit, accounting, or

financial reporting) and which have legal effect, whether local, national, international or otherwise existing from time to time, together with any similar instrument having legal effect in the relevant circumstances, that govern or affect this Agreement or the subject matter hereof, and shall include, for the avoidance of doubt, AML Requirements and DP Laws.

“**Business Day**” means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business, and for purposes of this Agreement, the end of a Business Day is 17:00 local time in London, England.

“**Card**” means (i) a valid credit card or debit card in the form issued under licence from a Card Scheme; or (ii) any other valid payment card or other payment device offered by the Card Schemes and accepted by Merchant.

“**Card Issuer**” means the financial institution or company which has provided a Card to a Cardholder.

“**Cardholder**” (sometimes referred to as “**Card Member**” in certain Card Scheme materials) means any individual authorised to use the Card in accordance with its terms of issue or the accounts established in connection with the Card.

“**Cardholder Charge**” means the amount to be charged to the Cardholder’s account for the purchase of Merchant’s goods or services.

“**Card Schemes**” means Visa, Inc. (“**Visa**”), Mastercard, Inc. (“**Mastercard**”), American Express Company, Inc., Discover Financial Services, Inc., including any subsidiaries that operate their respective payment networks in Merchant’s region, and their Affiliates, or any other payment networks offered by Pixxles and accepted by Merchant.

“**Card Scheme Rules**” means all rules, regulations, by-laws, standards, and procedures adopted or amended from time to time by the Card Schemes, including, without limitation, the PCI DSS.

“**Chargeback**” means a reversal of a previously submitted Cardholder transaction that the Card Issuer has identified as being invalid or non-collectible after initial acceptance on account of a lost, cancelled, or non-issued Card, fraud, invalid account identification, an unresolved Cardholder complaint, or other cause that results in the deduction of the Cardholder transaction from amounts settled to Pixxles through the Card Schemes. For purposes of this Agreement, Chargeback includes any retrieval or other dispute initiated by a Cardholder with Card Issuer.

“**Charity**” shall have the meaning as provided in the PSRs.

“**Cross-Corporate Guarantee**” means the Cross-Corporate Guarantee executed by Merchant, if applicable, and incorporated herein by this reference as though set forth in full to form part of this integrated Agreement.

“**DP Laws**” means any Applicable Law relating to the processing, privacy, and use of personal data, that applies to Pixxles, the Merchant or the Services, including the Data Protection Act 2018, in each case, as in force and applicable, and as amended, supplemented, or replaced from time to time.

“**Duly Authorised User**” means a Merchant employee authorised to access the Portal in accordance with the requirements of Clause 16.

“**Effective Date**” means the date this Agreement is accepted by the Merchant as per Clause 46 and comes into force for both Parties.

“**Electronic Transfer**” means an electronic funds transfer using the Bacs Payment Scheme, bank wire, or any similar payment scheme regulated or supervised by the Bank of England, including the Faster Payments Scheme.

“Electronic Transfer Authorisation Form” means the section of the Merchant Services Application where Merchant provides information for the Merchant Operating Account and authorises Pixxles to make Electronic Transfers to or from such account.

“Excessive Activity Fee” means the fee payable by the Merchant to Pixxles when the value of reported fraudulent transactions, and/or the amount of Chargebacks incurred by the Merchant, in a month exceed either: (i) a relevant threshold set by the relevant Card Scheme for the applicable individual payment instrument; or (ii) 100 basis points as a proportion of the total value of all transactions processed by Pixxles for the Merchant in that month.

“Fee Schedule” means the range of fees that may be applied by Pixxles and the Card Scheme in respect of each card payment transaction, as outlined in the Pixxles Fee Sheet document maintained and updated by Pixxles from time to time;

“Force Majeure Event” has the meaning given in clause 38.1;

“GBP” or **“Pound”** each means the currency to be used to settle all transactions between Merchant and Pixxles contemplated in this Agreement, being Pound Sterling.

“MCC” or **“Merchant Category Code”** means the code assigned by the Card Schemes to Merchant based on Merchant’s line of business that identifies the types of Card transactions that Merchant will process, and the initial MCC assigned to Merchant is set forth in the Merchant Terms Acknowledgement.

“Merchant Operating Account” means a payment, deposit, or current account maintained by Merchant as set forth on the Electronic Transfer Authorisation Form for the crediting of collected funds under this Agreement and in respect of which a direct debit mandate can be given, and is given by the Merchant, in accordance with Clause 7 of this Agreement.

“Merchant Services Application” means the Merchant Services Application executed by Merchant and incorporated herein by this reference as though set forth in full to form this integrated Agreement.

“Merchant Terms Acknowledgement” means the Merchant Terms Acknowledgement document executed by Merchant and incorporated herein by this reference as though set forth in full to form part of this integrated Agreement.

“Micro-Enterprise” shall have the meaning as provided in the PSRs.

“Monthly CB Threshold” means the maximum limit of Chargebacks allowed per month by Merchant as established by the Card Scheme Rules from time to time, or such lower limit as may be established by Pixxles in its sole discretion and notified to Merchant in writing from time to time.

“PCI” means the payment card industry as used in connection with the PCI Security Standards Council, which develops the PCI Data Security Standard (“PCI DSS”) and the PCI Payment Application Data Security Standard (“PA-DSS”).

“Penalties” means such fines and other charges as may be assessed imposed, or levied by the Card Schemes, Acquirer, or Supervisory Authority, or by Pixxles or its Affiliates, as set forth in this Agreement.

“Person” means an individual, corporation, partnership, sole trader, sole proprietorship, trust, association, or any other legally recognised entity or organisation, other than Merchant or Pixxles.

“Personal Guarantee” means the guarantee referred to in clause 28.

“Portal” means the electronic system that Pixxles provides for Merchant to access information related to the Service, such as transaction details,

notices, statements, and amendments to this Agreement and to update Merchant’s own information, and it includes any method provided by or on behalf of Pixxles to access the Portal, such as via a URL or a Pixxles mobile application.

“Protected Data” means any Cardholder or purchaser personal data received by Pixxles from or on behalf of the Merchant in connection with the performance of the Services, including contact information, bank details, transaction information and purchase history.

“PSRs” means the Payment Services Regulations 2017 as amended from time to time.

“Refund” means a payment initiated by the Merchant to a Cardholder for returned goods or services, a price adjustment, or reasons related to the initial sale of goods and/or services.

“Reserve(s)” means an amount that Pixxles may retain from the Merchant’s Total Revenue in a Reserve Account in accordance with Clause 9.

“Reserve Account” means one or more financial accounts in the name of Pixxles held at a third party financial institution in which Pixxles may retain amounts of Merchant’s Total Revenue as Reserve or which Pixxles may require Merchant to fund in accordance with the terms of this Agreement. The Reserve Account provides Pixxles with security against the risk of loss associated with Merchant or Merchant’s processing activities under this Agreement. Pixxles and its Affiliates shall be entitled to debit the Reserve Account to pay for Chargebacks, Refunds, Service Fees, and Penalties, any amount for or in respect of which Merchant has given an indemnity under or in connection with this Agreement, and/or any other obligations or liability (present, future, actual or contingent) owed by Merchant to Pixxles under or in connection with this Agreement.

“Reserve Account Minimum Balance” means the amount set forth in the Merchant Terms Acknowledgement or such other amount as may be set by Pixxles in accordance with Clause 9.2.

“Resolution Period” has the meaning set out in Clause 9.4.

“Service” means the Pixxles card payment processing services and any related products and services provided pursuant to this Agreement, including access to and use of the Portal.

“Service Fees” means the charges, fees and prices for the Services set forth in the Merchant Terms Acknowledgement, as amended from time to time.

“Software” means the software products, including the Portal and any API, and related documentation provided by Pixxles to Merchant in connection with the Service.

“Supervisory Authority” means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Applicable Law or overseeing, regulating or supervising any party.

“Total Revenue” means Merchant’s gross revenues from the transactions submitted to Pixxles for processing, before the deduction of applicable Reserve, Service Fees, Refunds, Chargebacks and any other charges or obligations owed by Merchant under this Agreement.

“Trademarks” means all trademarks and logos of Pixxles that exist now or in the future, both registered and non-registered, in addition to their associated commercial goodwill, all as may be specified by Pixxles from time to time.

“URL” means uniform resource locator, also known as a web or internet address.

2. SUBJECT OF THE AGREEMENT.

Pixxles will provide the Services on and subject to the terms of this Agreement. Merchant agrees that Pixxles, in providing the Services, does not act as principal in any transaction between Merchant and its customers, but rather, Pixxles functions only as a payment facilitator with an Acquirer to enable Merchant to enter into Card transactions with Merchant's customers. Merchant authorises Pixxles to act as a payment facilitator for the purpose of processing such Card transactions. Merchant acknowledges that some of the services to be provided by Pixxles hereunder may be provided by third parties. Merchant agrees that except for its right to use such services in connection with this Agreement, (i) it does not (a) acquire any right, title or interest in any such services (b) have a contractual relationship with any third party providing services under this Agreement and (ii) that it is not a third party beneficiary of any agreement between Pixxles and such third party. Each of the Card Schemes and Acquirer is a third-party beneficiary of this Agreement and has beneficiary rights, but not obligations, and may enforce this Agreement against Merchant. Some of these third parties may require a direct agreement with Merchant (for instance as per Clause 5.11 of this Agreement). If Merchant is required to enter into such an agreement and declines to do so, Pixxles may suspend or terminate the Merchant's processing account and the Services under this Agreement.

3. NON-APPLICATION OF CERTAIN REGULATIONS.

- 3.1** This Clause does not apply if Merchant is a Micro-Enterprise or a Charity.
- 3.2** Merchant represents and warrants to Pixxles that it is not a Micro-Enterprise or Charity as at the time of execution of this Agreement and on each day the Services are provided. Merchant undertakes to notify Pixxles immediately if at any time during the term of this Agreement this representation and warranty ceases to apply.
- 3.3** In accordance with regulations 40(7) and 63(5) of the PSRs, Merchant agrees that all regulations in Part 6 of the PSRs and regulations 66(1), 67(3), 67(4), 75, 77, 79, 80, 83, 91, 92, and 94 of the PSRs shall not apply in respect of this Agreement and the Services, and that the notification period in regulation 74(1) of the PSRs shall be amended by this Agreement.

4. MERCHANT VERIFICATION PROCEDURES.

- 4.1** Merchant shall, before entering into this Agreement, and at any time during this Agreement's term, provide to Pixxles such information regarding itself and its operations (and any other matter) as Pixxles shall require from it, including but not limited to information related to the financial and credit history of Merchant's owners, directors, officers, and principals, and information required to meet applicable AML Requirements or comply with any other Applicable Law.
- 4.2** Based on the information provided by the Merchant about its business, Pixxles will assign (a) a risk profile and (b) one (1) or more MCCs to the Merchant. The assignment of the risk profile and respective MCC to the Merchant shall be at Pixxles's reasonable and sole discretion, having regard to the content of the Card Scheme Rules. Pixxles may change the MCCs at any time if and to the extent Pixxles deems necessary after a reassessment of the Merchant, taking into account the Merchant's reasonable interests. Notwithstanding the foregoing, the Merchant shall promptly notify

Pixxles of any change in its business at any time as per Clause 5.6 to enable Pixxles to adjust the MCC as appropriate.

5. MERCHANT OBLIGATIONS.

- 5.1** Honour All Cards. Merchant's payment transactions will be processed by Pixxles pursuant to the terms of this Agreement, the Card Scheme Rules, the rules, policies and requirements of Acquirer, and Applicable Law. Merchant, whether dealing with the public or otherwise, shall honour all valid Cards (as permitted under this Agreement) when properly presented as payment in connection with a legitimate business transaction.
- 5.2** Prohibited Conduct and Transactions. Merchant shall not engage in any conduct or business practice described in this Clause (collectively, "Prohibited Conduct"). Merchant acknowledges and agrees that (in addition and without prejudice to Pixxles other rights and remedies) if it engages in any Prohibited Conduct, Pixxles shall be authorised to exercise its right to withhold payment pursuant to Clause 7, and Merchant shall relinquish to Pixxles any claim to any funds held by Pixxles in the Reserve Account (or otherwise). Merchant acknowledges that Merchant shall be fully responsible for any violation of this Clause by any employee, agent or representative of Merchant. Any violation of this Clause shall be a material breach and good cause for termination of this Agreement by Pixxles in its sole discretion.
- 5.2.1** In respect of the Service and performance under this Agreement, Prohibited Conduct includes any conduct or business practice that:
- (a) violates the Card Scheme Rules or Applicable Law;
 - (b) is harmful or abusive to Pixxles or its Affiliates, including their affiliates and independent contractors, as determined by each in its sole discretion; and/or
 - (c) may reflect negatively upon or damage the goodwill or reputation of the Card Schemes, Acquirer, Pixxles, or their Affiliates, including employees and independent contractors of the foregoing, as determined by each in its sole discretion.
- 5.2.2** In respect of Card transactions, Prohibited Conduct includes:
- (a) engaging in "transaction aggregating," which for purposes of this Agreement, is submitting, directly or indirectly, to Pixxles for processing, any Card transaction:
 - (i) other than a bona fide Card transaction between a Cardholder and Merchant for such Cardholder's purchase of goods or services directly from Merchant,
 - (ii) on behalf of another Person, or
 - (iii) from any URL that does not comply with Clause 5.5;
 - (b) engaging in "load balancing," which for purposes of this Agreement, includes distributing the submission of Card transactions for processing across multiple payment service providers or multiple undisclosed accounts in an effort to allocate or shift Merchant's higher-risk or other transactions to a particular payment service provider or to obscure the overall risk profile of Merchant's business;
 - (c) submitting to Pixxles for processing any Card transaction for goods or services that are not included in or appropriate for Merchant's MCC;

- (d) acceptance of Cardholder payments for previous Cardholder Charges incurred at the Merchant location;
 - (e) establishment of minimum or maximum amounts for Cardholder Charges or credit vouchers unless required or permitted by the Card Scheme Rules;
 - (f) imposition of any surcharge or convenience fee on Cardholder Charges or Card transactions unless required or permitted by the Card Scheme Rules and Applicable Laws;
 - (g) requesting or using a Cardholder account number for any purpose other than as payment for Merchant's goods or services;
 - (h) disbursement of funds in the form of travellers cheques or other non-cash media, if the sole purpose is to allow a Cardholder to make a cash purchase of goods or services from Merchant;
 - (i) unless specifically permitted or required by the Card Scheme Rules or Applicable Laws, requiring a Cardholder to provide fingerprints or other personal information, such as address, licence, telephone number or national insurance or identification number as a condition for honouring a Card;
 - (j) acceptance of Cards for transactions that are classified as cash or "quasi-cash transactions," including but not limited to the sale of casino gaming chips, money orders, vouchers, gift cards, opening deposits on financial or other accounts, wire transfer money orders, or the issuance of scrip (or any other items which would violate any Card Scheme Rules);
 - (k) acceptance of a Card to collect or refinance an existing debt including any debt that has been deemed uncollectible by Merchant;
 - (l) acceptance of a Card that represents collection of a dishonoured cheque;
 - (m) requiring a Cardholder, as a condition of honouring a Card, to sign a statement that waives the Cardholder's rights to dispute the transaction with the Card Issuer;
 - (n) submission of a Card transaction for a Card bearing the account number of an account issued to Merchant, an Affiliate of Merchant, or a Merchant-related entity or individual;
 - (o) conducting any continuity, negative option, or recurring billing of a Card without satisfying the complete requirements of the Card Scheme Rules and Applicable Law in the jurisdiction where Merchant is located and where the Cardholder of such Card is located or resides;
 - (p) engaging in any unfair or deceptive business practice that would violate any Applicable Law regarding consumer protection in the jurisdiction where Merchant is located or where the Cardholder of such Card is located or resides; and/or
 - (q) engaging in fraud of any kind.
- 5.2.3** In respect of the Portal, Prohibited Conduct includes:
- (a) permitting anyone other than a Duly Authorised User to access or use the Portal; and / or
 - (b) using, or permitting use of, the Portal other than to use the Services in accordance with this Agreement.
- 5.3** Authorisation. Before honouring any Card, Merchant shall request authorisation from Pixxles via the Pixxles' API or the Portal, as designated by Pixxles. If authorisation is denied, Merchant shall not complete the transaction. Merchant may request but must not require a Cardholder to provide additional identification information as a condition of Card acceptance, unless such information is required to complete the transaction, such as for delivery purposes, or Card Scheme Rules or Applicable Law specifically permit or require such information to be collected. Merchant may require the Cardholder's postal code to complete a transaction where Address Verification Service (AVS) is available for the transaction.
- 5.4** Cardholder Disputes. Merchant must respond to Cardholder disputes and handle Chargebacks in accordance with the Card Scheme Rules and Applicable Law. All disputes between Merchant and any Cardholder relating to any Card transaction shall be settled between Merchant and such Cardholder. Merchant acknowledges that Pixxles has no legal relationship with the Cardholders and shall not enter into any negotiations, correspondence or disputes with Cardholders with regards to any transaction processed under this Agreement. Cardholder complaints, inquiries, Refunds and Chargebacks regarding Merchant's services may be cause for termination of this Agreement as determined by Pixxles in its sole discretion.
- 5.5** Merchant URLs. Merchant must provide Pixxles a complete and accurate list of all URLs used by Merchant at the time of completing the Merchant Services Application for compliance review by Pixxles, and thereafter by the end of the third (3rd) Business Day following the date of any request by Pixxles. Merchant acknowledges that Pixxles may request that Merchant execute a separate Merchant Terms Acknowledgement for each URL used by Merchant in which case Merchant must return each such executed Merchant Terms Acknowledgement requested by Pixxles by the end of the third (3rd) Business Day following the date of any such request. It is Merchant's responsibility to update these initial disclosures on an ongoing basis and notify Pixxles of any new URLs for compliance review prior to accepting live transactions through such URLs. Merchant acknowledges and agrees that Pixxles may require any changes to Merchant URLs as Pixxles deems necessary or appropriate in its sole discretion, including without limitation for purposes of compliance with any Card Scheme's business risk mitigation or compliance programs, Card Scheme Rules, or Applicable Law. Notwithstanding the foregoing, Pixxles shall have no liability whatsoever to Merchant or any third party regarding Merchant's URLs. Merchant shall not submit to Pixxles for processing any transaction flowing from a URL that has not been subject to such compliance review (including any change or addition to the content to the page located at a URL, even if such URL or page is offline or inactive), and any such submission shall be a material breach hereunder, and may result in immediate suspension of Services or termination of this Agreement by Pixxles in its sole discretion.
- 5.6** Other Merchant Information. Merchant is responsible for providing information that is timely, complete, truthful, and not misleading. If Merchant, in connection with this Agreement and the Services, including in the Merchant Services Application or through the Portal, provides to Pixxles any false or misleading information,

including but not limited to information that misrepresents or omits material facts concerning Merchant's business, business activities, ownership, number of employees, address, goods or services, and/or financial condition such conduct may constitute a criminal offence and may result in the withholding of payments due to Merchant as additional Reserves in an amount sufficient to cover the anticipated risk of loss to Pixxles arising from the misrepresentation(s) or omission(s). The Merchant shall promptly inform Pixxles of any changes, whether adverse or not, in the information provided at the time of entering into this Agreement.

- 5.6.1** Merchant agrees to notify Pixxles immediately and in any case by the end of the second (2nd) Business Day following the date Merchant becomes aware of (i) of any change in its circumstances which may affect its condition or status or ability to perform its obligations under this Agreement, (ii) any actual or pending changes in Merchant's ownership, trading address, head office address, phone number, email address, bank account, financial condition (including any projection or forecast provided to Pixxles), legal form, name, business name, trading address, or business activities (including any change in the goods or services offered by Merchant), (iii) any actual or pending changes in the information provided in accordance with the laws against money laundering or terrorist financing and (iv) of any other actual or pending changes or developments related to Merchant or Merchant's business (including any sale or lease of the Merchant's company and any investigation or action by a Supervisory Authority) that are relevant to this Agreement or that could materially affect Pixxles' rights under this Agreement. Merchant further agrees that, if at any time, Merchant learns that it is the subject of any civil or criminal investigation or action regarding Merchant's business, goods, services or other activities, by any authority, or that it has or is suspected to have violated any Applicable Law or the Card Scheme Rules, or that it is subject to any litigation related to this Agreement, Merchant shall inform Pixxles by the end of the second (2nd) Business Day following the date that Merchant learns about such investigation, violation, or litigation. Any failure by Merchant to so inform Pixxles within such timeframe shall be a material breach and good cause for termination of this Agreement by Pixxles.
- 5.6.2** Notwithstanding Clause 5.6.1, at least one (1) month in advance the Merchant shall inform Pixxles of any intended change of types of goods or services or introduction of new categories. During this period Merchant will not implement the notified changes until Pixxles in writing approved or rejected the notified changes. If Pixxles rejects the notified changes, the Merchant will not offer use of the Services in respect of such goods or services. This Agreement will remain operational in respect of the goods or services approved before notification of these requested changes.
- 5.7** If Merchant ceases to be a member of any trade association or affinity group as a result of which any preferential terms were being applied, Merchant shall notify immediately Pixxles and Pixxles reserves the right to withdraw such terms.
- 5.8** The Merchant agrees and acknowledges that if it breaches its obligations under Clauses 5.5, 5.6 and/or 5.7 such may cause a new underwriting review and approval of terms and Pixxles may retrospectively from the Effective Date charge the Service Fees that would apply for the Services if the Merchant initially provided correct and fair information. An increase of the Service Fees will apply in any case incorrect or unfair information was provided or information was omitted or withheld.

- 5.9** Confidentiality of Cardholder Information and Data Security Standard Compliance. Except as otherwise required or permitted by law, Merchant shall not, without the Cardholder's and Pixxles' prior written consent, sell, purchase, provide, or otherwise disclose the Cardholder's account information or other Cardholder information to any third party other than Pixxles, Merchant's agents and processing organisations for the purpose of assisting Merchant in its business, or in response to a valid government demand. Merchant shall at all times comply with and shall ensure Merchant's agents comply with all applicable data security standards and programs, including, without limitation, PCI DSS, PA-DSS, the Visa Cardholder Information Security Program, the Mastercard Site Data Protection Program, and any other program or requirement mandated by the Card Schemes or DP Laws ("Data Security Requirements"). The Merchant shall be responsible for and shall indemnify Pixxles on demand for the amount of any costs, claims, losses, liabilities, damages, penalties, fines, and/or expenses which Pixxles and/or any of its Affiliates may suffer or incur and which may arise (directly or indirectly) out of or in connection with any non-compliance by the Merchant (or any of its agents) with any such Data Security Requirements. The indemnified amounts shall be immediately due and payable to Pixxles without any damage or losses being required to be proven by Pixxles and without prejudice to any other rights of Pixxles under Applicable Law. This Clause shall survive termination of this Agreement.

- 5.10** Audit. Merchant agrees to allow Pixxles, Acquirer, Card Schemes, and Supervisory Authorities to audit or review Merchant's records, systems, processes, procedures, and facilities to assess Merchant's financial position and/or confirm compliance with this Agreement, Card Scheme Rules, or Applicable Law. Pixxles shall be entitled to inspect and request, make and retain copies of any books, records or other documents relating to this Agreement or any other related affairs of the Merchant, and Merchant shall afford such access and co-operation as may be reasonable in the circumstances to facilitate the carrying out of such audit or review. At Pixxles' request, Merchant shall make all reasonable changes required by, and take any other action necessitated by, any such audit or review within the time period specified by Pixxles. Any failure by Merchant to so cooperate and provide financial or other information upon request shall be a material breach and good cause for termination of this Agreement by Pixxles or to seek injunctive relief. Upon failure to cooperate and/or depending on the outcome of the audit Pixxles reserves the right to assign a different risk profile to the Merchant. Any negative consequences of Merchant's non-cooperation may cease to exist upon the Merchant's compliance.

- 5.11** Direct Agreement with Acquirer. In accordance with the Card Scheme Rules, if Merchant exceeds the applicable sales volume threshold, Merchant will be required to enter into a direct agreement with Acquirer. At the time of execution of this Agreement, the applicable threshold for each of Visa and Mastercard is USD 1,000,000 in any twelve (12) month period.

6. FEES PAYABLE BY MERCHANT.

- 6.1** Service Fees. Merchant agrees to pay all Service Fees. The Service Fees in this Agreement, including in the Merchant Terms Acknowledgement, are exclusive of any value added tax ("VAT") that is chargeable in connection with such Service Fees, and such

VAT shall be paid by Merchant in addition to the Service Fees (at the applicable rate in force). Pixxles may modify the Service Fees at any time during the term of this Agreement upon at least thirty (30) days' (or two (2) months' if the Merchant is a Micro-Enterprise or Charity) prior written notice to Merchant by email, (or, except where the Merchant is a Micro-Enterprise or a Charity) posting a notice on the Portal or another method. Upon receipt of such notice, Merchant shall be entitled to terminate this Agreement by providing written notice to Pixxles, provided that such notice is served within thirty (30) days (or two (2) months if Merchant is a Micro-Enterprise or Charity), of the Merchant being notified of the change to the Service Fees. Merchant shall be deemed to have accepted the modified Service Fees if Merchant does not exercise such right of termination before such notice period expires.

- 6.2** Adjusted service fees. Notwithstanding Clauses 5.8 and 6.1, Pixxles has the right to proportionally adjust the pricing with immediate effect if the transactions differ materially from the information provided by Merchant upon entering into this Agreement. If the Merchant does not understand the Service Fees set out in the Fee Schedule or has any questions about the Service Fees, the Merchant is entitled to contact Pixxles.
- 6.3** Penalties by Card Schemes, Acquirer and Supervisory Authorities. Merchant shall be responsible for paying (and shall indemnify Pixxles on demand and in full from and against) any and all Penalties assessed by the Card Schemes, Acquirer, and/or (to the extent permitted under Applicable Law) by Supervisory Authorities against Pixxles related to Merchant's activities or the processing of Merchant's Card transactions. In addition to such Penalties, Merchant shall pay (and shall indemnify Pixxles on demand and in full from and against) such amount as specified by Pixxles to meet its administrative costs in communicating with, and for managing the delivery of documents and other information related to the Merchant, its activities or the processing of Merchant's Card transactions as may be requested by, the Card Schemes, Acquirer or Supervisory Authorities. Merchant acknowledges and agrees that, subject to Applicable Law, Pixxles may refuse to share any documentation, correspondence, or other information received by Pixxles from the Card Schemes, Acquirer, or Supervisory Authorities relating to such Penalties in Pixxles' sole discretion.
- 6.4** Damages for Violation of Monthly CB Threshold. Merchant's Chargeback activity must remain below the Monthly CB Threshold, and Merchant acknowledges and agrees that any Chargeback activity in excess of the Monthly CB Threshold shall be deemed excessive, may cause Pixxles and Merchant to incur Penalties (which Penalties shall be the exclusive responsibility of, and indemnified by, Merchant in accordance with Clause 6.3), and shall constitute good cause for termination of this Agreement by Pixxles. If Merchant exceeds the Monthly CB Threshold in a given month, Merchant shall be subject to Penalties calculated at the rate set out in the overview of Service Fees per Chargeback

accrued by Merchant during the applicable month, which shall be in addition to any Penalties assessed by the Card Scheme or Acquirer and any other Service Fees, including Chargeback fees. The Merchant agrees and acknowledges that (without prejudice to any of Pixxles other rights and remedies) (i) these Penalties represent a genuine pre-estimate of Pixxles' losses and (ii) are to protect Pixxles' legitimate business interests.

- 6.5** Excessive Activity Fee. If the value of reported fraudulent transactions and/or the amount of Chargebacks incurred by the Merchant in any month exceeds either: (i) any relevant limit set by a Card Scheme for the relevant payment instrument; or (ii) 100 basis points as a proportion of the total value of all transactions processed by Pixxles for the Merchant in that month then the Merchant may be charged and shall be responsible to pay an Excessive Activity Fee which will be an additional charge per transaction which will match the applicable excessive ratio. If both the fraud-to-sales ratio and monthly Chargeback-to-sales ratio are excessive, the Excessive Activity Fee will match the higher ratio. The Excessive Activity Fee will be in addition to the standard Service Fee and may be charged by Pixxles and will be payable by the Merchant retrospectively and arrears based on the relevant months' transactions once the relevant level of Chargebacks and fraud have been ascertained.

For example, if for June the Merchant had a chargeback-to-sales rate of 105 basis points, an additional fee of 1.05% per transaction would be charged for processing transactions in June. If the Merchant also had a fraud-to-sales rate of 120 basis points for June, the applicable additional fee would be 1.20% per transaction in addition to the standard Service Fees. In July, the Excessive Activity Fee will be calculated retroactively for the calendar month in breach and will be payable by the Merchant in August.

- 6.6** Legal Fees. If Merchant breaches this Agreement or takes any action to block or prevent Pixxles from exercising any of its rights or obligations under this Agreement, including Pixxles' right to withhold payment, Pixxles shall be authorised to charge, and Merchant agrees to pay and shall indemnify Pixxles on demand and in full from and against, the reasonable and properly incurred legal fees (including costs, disbursements, and expenses) Pixxles incurs to enforce its rights under this Agreement and cure any breaches by Merchant of this Agreement.
- 6.7** Technical Assistance from Pixxles. In the event Merchant requires technical assistance (including but not limited to phone and email support) from Pixxles' technicians that is outside the normal scope of technical support provided in connection with the Services, Pixxles may elect in its sole discretion to bill Merchant (and Merchant shall be responsible to pay) for such technical support services on an hourly basis at the rate set out in the overview of Service Fees for such services as part of the monthly Services invoice to Merchant.
- 6.8** Other Services. From time to time, Pixxles may need to amend or supplement the Services it provides to Merchant based on Merchant's processing activity (for example, additional monitoring services). Pixxles will provide Merchant with written notice of such additional services at least thirty (30) days (or two (2) months if the Merchant is a Micro-Enterprise or Charity) before their implementation. Merchant shall if the amendment or supplemental services could cause an increase in the Service Fees paid by the Merchant, be entitled to terminate this Agreement by providing written notice to Pixxles, provided that such notice

is served within thirty (30) days, (or within two (2) months if Merchant is a Micro-Enterprise or Charity), of the Merchant being notified of the change. and Merchant hereby agrees that Merchant's continued use of the Services without terminating this Agreement before the effective date of the proposed additional services shall be deemed acceptance by Merchant of such additional services and related Service Fees.

6.9 Inactive Accounts. Without prejudice to Pixxles' right to terminate this Agreement and any other rights under this Agreement, if there (i) is no activity in Merchant's processing account (such as a Cardholder Charge) for a continuous period of at least thirty (30) days and/or (ii) are any funds remaining in Merchant's processing account one (1) year after the termination date of this Agreement, Pixxles may charge at its discretion an increased monthly Service Fee for maintaining the processing account, a research fee and/or the Maintenance Fee set forth in Clause 29.7 at the rate set out in the overview of Service Fees from the total outstanding balance of the processing account. Pixxles may notify Merchant of any inactivity or funds remaining and if Merchant does not initiate settlement of the funds or respond to the notice within the time period specified therein (which in the case of a Micro-Enterprise or Charity shall be at least two (2) months), Pixxles may close Merchant's processing account and deliver such funds (less any charged Service Fee or other fee) to the appropriate government authority in accordance with Applicable Law, unless such funds are permitted to accrue up to Pixxles. The negative consequences of Merchant's processing account being inactive cease to exist upon the Merchant's processing account ceases to be inactive. The Merchant agrees and acknowledges that any inactivity for a period of three (3) or more months will, and for a period of less than three (3) months may, cause a new underwriting review and approval of terms. Any fees relating to ongoing management of inactive accounts will also continue to be charged following closure of the Merchant's processing account and termination of this Agreement as per Clause 29.7. This provision shall survive expiration or termination of the relationship between the Parties. The Merchant agrees and accepts herein not to hold Pixxles liable for any loss or damage arising in respect of the foregoing.

7. PAYMENT TO MERCHANT.

7.1 Account Activation. Merchant must comply fully with Pixxles' set up requirements, including proper configuration and troubleshooting of the API prescribed for Merchant's use by Pixxles, in order to enable the activation of Merchant's processing by Pixxles.

7.2 Timing and Calculation of Payment. Unless Pixxles informs Merchant otherwise and subject to any technical issues with the operating systems of the Card Schemes, Pixxles will deliver payments of amounts received to the Merchant Operating Account. After Pixxles receives settlement for Merchant's transactions through the Card Schemes, Pixxles will deliver payments to Merchant in accordance with the schedule and days in arrears set forth in the Merchant Terms Acknowledgment. If Merchant has executed more than one (1) Merchant Terms Acknowledgment under Clause 5.5, then Merchant acknowledges and agrees to be bound by the terms of each such Merchant Terms Acknowledgment even if the terms, including the payments schedule, in each such Merchant Terms Acknowledgment differ from each other. Such delivery of payments is also subject to Pixxles' rights in this Agreement to offset, deduct, retain, and/or holdback sums due to Merchant

or collected from Merchant's sales. Pixxles has no obligation to deliver payment for any Card transactions that violate the terms of this Agreement or the Card Scheme Rules, and the proceeds from any such transactions are not amounts due to Merchant. The payment due to Merchant Operating Account is equal to the sum of Merchant's Total Revenues during the specified time period along with any Reserve due to be released minus the sum of:

- (a) all Chargebacks processed during the period;
- (b) all Refunds processed and requested during the period;
- (c) the amount required to cure any deficiency in the Reserve Account;
- (d) the applicable Service Fees; and
- (e) all other fees, fines, Penalties, taxes and other items reimbursable, deductible, or chargeable in this Agreement or otherwise occurring during the period, including but not limited to any offsets, retentions, deduction, and/or holdbacks permitted hereunder as determined by Pixxles in its sole discretion.

7.3 In case the Card transaction currency is not in the billing currency specified in the Merchant Services Application or Merchant Terms Acknowledgment, Pixxles shall convert the payment into a billing currency when deducting Service Fees and Chargebacks from the Merchant Operating Account. The Merchant agrees and acknowledges that the conversion rate will be (i) the rate used by the third-party service provider which performs the conversion and (ii) could be subject subject to a currency conversion fee at the rate set out in the overview of Service Fees above the third-party service provider's wholesale exchange rate at which Pixxles obtains foreign currency. The third-party service provider's exchange rate reflects movements in foreign-exchange market and is adjusted regularly based on market conditions. The Merchant agrees and acknowledges that Pixxles does not control and cannot display the third-party service provider's exchange rate. Changes in the third-party service provider's exchange rates may be applied immediately and without notice to the Merchant. Pixxles is not liable for any loss or damage arising as a result of the currency conversion referred to in this paragraph.

7.4 Remittance statements. The Merchant may access statements (remittance statements or invoices) via the Portal. The Merchant must check each statement on receipt and notify Pixxles within thirty (30) days of receipt of any errors in it or, if the Merchant is a Micro-Enterprise or Charity, without undue delay and in any event within thirteen (13) months of the date of the transaction which the Merchant claims is incorrect. Failure to object in time shall be deemed an approval. Pixxles reserves the right to reissue corrected statements or correct any payments after the expiration of this deadline. If the Merchant notifies Pixxles after such time period, Pixxles may, at its discretion and at the Merchant's expense, assist the Merchant in investigating whether any adjustments are appropriate and whether any amounts are due to or from other parties, but Pixxles will not have any obligation to investigate or effect any such adjustments. Any voluntary efforts by Pixxles to assist Merchant in investigating such matters will not create any obligation to continue such investigation or any future investigation. Except as required by law, the Merchant shall be solely responsible for keeping records of all Card transactions and other data related to the Merchant's account and use of the Services.

- 7.5** Withdrawal of Transactions. The Merchant may not withdraw an instruction to process a transaction once submitted to Pixxles.
- 7.6** Merchant Operating Account. The Merchant shall maintain with the provider of the Merchant Operating Account a direct debit mandate to authorise Pixxles to Bacs Direct Debit from the Merchant Operating Account all amounts due from the Merchant to Pixxles under this Agreement. The Merchant Operating Account must remain available for debiting such amounts for at least eighteen (18) months after the last Card transaction was processed and an appropriate Direct Debit Instruction must remain in place for that period. The Merchant hereby authorises Pixxles to collect all amounts due from the Merchant under this Agreement, including any costs and expenses incurred in connection with the collection of these amounts, directly from the Merchant Operating Account, whether under the direct debit mandate or otherwise, or as otherwise provided in this Agreement. Merchant agrees that Pixxles shall, only if practicable, notify the Merchant in advance of any sum's payable by the Merchant to Pixxles which Pixxles intends to debit by direct debit. The Merchant must ensure that (a) the financial institution specified in the direct debit mandate accepts and acts upon direct debits for the Merchant Operating Account and (b) the account details specified in the direct debit mandate are correct. Merchant agrees to maintain sufficient funds in the Merchant Operating Account to satisfy all such direct debits for payment. The modifications to which Merchant has agreed in this Clause shall not prejudice Merchant's rights under Applicable Law or the UK Direct Debit Guarantee Scheme to recover payments made by direct debit. Without limiting Pixxles' remedies, Merchant's failure to maintain a Merchant Operating Account in accordance with this Clause, including the failure or return of any direct debit due to insufficient funds or an indemnity claim, will permit Pixxles, without advance notice, to suspend processing Card transactions and Refunds and shall be a material breach and good cause for termination of this Agreement by Pixxles.
- 7.7** Payment Delays. Pixxles will not be liable to Merchant for any delays in payments or errors caused by third parties, including without limitation the Card Scheme or the financial institution at which the Merchant Operating Account is held. Merchant is solely responsible for providing Pixxles with and maintaining accurate contact, payment, and account information for the Merchant Operating Account, and Pixxles will not be liable to Merchant for any delays in payments or errors caused by Merchant's failure to maintain such information.
- 7.8** Method of Payment. Pixxles may make payment to Merchant by Electronic Transfer to the Merchant Operating Account, and shall issue a charge against the Merchant Operating Account for any fee for such payment. Unless in relation to a final payment at the end of any Resolution Period (defined below) Pixxles shall have no obligation to issue payment when the amount due to Merchant for the applicable billing cycle is less than twenty-five Pounds (GBP 25) or, if the payment is to be made by wire transfer, when such amount is less than fifty Pounds (GBP 50). Any outstanding balance not credited to Merchant shall roll over to Merchant's next billing cycle. Merchant authorises Pixxles to deposit amounts owed to Merchant by initiating credit entries to Merchant's financial institution stated on the Electronic Transfer Authorisation Form. Merchant further authorises Merchant's financial institution to accept and credit any entries indicated by
- Pixxles to the Merchant Operating Account. If Pixxles erroneously deposits funds into the Merchant Operating Account, including as payment for any transaction that subsequently is contested or results in a Chargeback or Refund, Merchant authorises Pixxles to debit the Merchant Operating Account for an amount not to exceed the original amount of the erroneous credit, and Merchant shall be liable for any deficit in the amount available for such debit. This authorisation shall remain in full force and effect until Merchant has satisfied all payment obligations due to Pixxles under this Agreement and has provided both Pixxles' and Merchant's financial institutions with proper notice of the termination of this Agreement.
- 7.9** To Whom Payment May Be Made. Pixxles will only direct payments due to Merchant under this Agreement to the Merchant Operating Account unless Pixxles and the Merchant agree otherwise in writing.
- 7.10** Set-Off Rights. Anytime there is an obligation, liability or amount owed by Merchant to Pixxles, whether under this Agreement or otherwise (and whether such liabilities, obligations, or amounts are present, future, actual or contingent or potential, liquidated or unliquidated), Pixxles may offset, withhold and/or deduct by whatever means the whole or part of any such amount against any deposit balances or other money now or hereafter owed to Merchant by Pixxles or against any Merchant Operating Account (where possible), without notice or demand of any kind. Merchant shall have no right to counterclaim or withhold or offset payments against any amounts owed by Merchant to Pixxles under this Agreement.
- 7.11** Anti-Money Laundering Controls. Pixxles reserves the right to require Merchant to furnish Pixxles with information concerning Merchant's business or its ownership as may be necessary to assure Pixxles' compliance with Applicable Law and, specifically, AML Requirements. Pixxles may refuse to provide Services or withhold payments to Merchant, without liability, if Merchant does not furnish Pixxles with any information requested hereunder by the end of the third (3rd) Business Day following receipt of such request or if Pixxles reasonably suspects that Merchant's conduct may be in violation of relevant law.
- 7.12** Right to Suspend Services and Withhold Payment. Pixxles may with immediate effect suspend the Services, delay and/or withhold any and all payments due to Merchant, including amounts owed to Merchant but not released to Merchant from Card transactions, or charge the applicable higher Service Fee for any of the following reasons:
- (a) Pixxles suspects Merchant engaged in any Prohibited Conduct;
 - (b) Pixxles believes it is desirable or necessary to do so on security grounds;
 - (c) Pixxles is obliged to do so as a result of Applicable Law or at the direction of any competent body, Supervisory Authority, Card Scheme, or Acquirer;
 - (d) Merchant's volume of sales during a particular period exceeds the limit set forth in the Merchant Terms Acknowledgment or there has been no submission of any Card transactions for processing for six (6) consecutive months, both without having notified that its business is seasonal;

- (e) Pixxles identifies an unexpected, unusual or suspicious pattern in Merchant's transactions, including without limitation sudden or erratic increases or decreases in volume of sales or average ticket amount;
- (f) Merchant exceeds the Monthly CB Threshold;
- (g) Merchant has any other activity in excess of a Card Scheme program and/or a limit in this Agreement during any monthly period, including but not limited to (i) the combined count or amount of credits and Refunds exceeding a market standard percentage of the sales Card transactions (captures and payments) processed by Pixxles for the account of the Merchant in the same monthly period; and/or (ii) the count or amount of reported fraud (transactions reported to any fraudulent transaction database maintained by the Card Schemes) exceeding a market standard percentage of the sales transactions (captures and payments) processed by Pixxles for the account of Merchant in the same monthly period;
- (h) Merchant does not remedy a deficiency in the Reserve Account, pursuant to Clause 9.3;
 - (i) Pixxles is holding Reserves after termination, pursuant to Clause 9.4;
 - (j) Merchant fails to maintain accurate contact, payment, and account information for the Merchant Operating Account;
- (k) Merchant revokes the direct debit mandate in respect of the Merchant Operating Account at any time;
- (l) change of control in Merchant or any guarantor, or any significant change in the nature of the Merchant's or any guarantor's business;
- (m) upon commencement of bankruptcy or insolvency proceedings by or against Merchant or any guarantor, or Merchant or any guarantor has a receiver, administrator or liquidator appointed or enter into arrangement or composition with creditors; or
- (n) Merchant otherwise breaches the terms of this Agreement.

Subject to Applicable Law, Pixxles will inform Merchant of the reason for taking action in accordance with this Clause save where to do so would breach Applicable Law or compromise Pixxles' security measures. In respect of (d) and (e) in this Clause, to avoid suspension of Services and withholding of payments for these reasons, Merchant must notify Pixxles by the end of the fifth (5th) Business Day following the date when Merchant became aware of any such expected increases or decreases in volume or average ticket amount so that Pixxles may in its sole discretion modify such limits.

The period for such suspension of the Services, delay or withholding of payments is determined by Pixxles in its sole discretion. Notwithstanding Pixxles' rights under Clause 6.4, the higher Service Fee and the Excessive Activity Fee shall be proportionate to the Merchant's excessive activity first occurred until the Merchant's activities cease to exceed the thresholds as notified by Pixxles from time to time. The Merchant agrees and acknowledges that (without prejudice to Pixxles other rights and/or remedies) the higher Service Fee and Excessive Activity Fee (i) represent a genuine pre-estimate of Pixxles' losses and (ii) are to protect Pixxles' legitimate business interests. The Excessive Activity Fee shall be payable on a rolling basis in the month

that follows the month in respect of which it was accrued. The Merchant further agrees and acknowledges that in case a limit is exceeded, such may cause a new underwriting review and approval of terms. The Merchant agrees and accepts herein not to hold Pixxles liable for any loss or damage arising in respect of the foregoing.

- 7.13** Special terms. Pixxles may at any time require Merchant to apply special terms or conditions in relation to Merchant's acceptance of Card transactions.

8. INTEREST; OVERDUE PAYMENTS.

- 8.1** Interest. The Merchant will not receive interest or any other earnings on any funds in the Merchant's account. The Merchant irrevocably assigns to Pixxles all rights and legal interests to any interest and/or other earnings that may accrue or are attributable to the funds in the Merchant's account.

- 8.2** Overdue payments. If either Party fails to pay any undisputed amount due under this Agreement to the other Party when due and payable, then the relevant Party to whom such sum was owed shall be entitled to charge default interest at the rate prescribed from time to time in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time) or any successor legislation. Such interest shall accrue on a daily basis from the day following the due date until actual payment of the overdue amount and interest thereon has been made in full. Any interest which may accrue on the amount of any unpaid or late-paid sum which Pixxles is entitled to deduct from the Merchant Operating Account (but which Pixxles was unable to deduct due to there being insufficient funds in such account), shall begin to accrue on the date that Pixxles provides the relevant notice that such withdrawal has failed or will fail. Each Party acknowledges and agrees that the interest payments set out in this Clause are, in the context of the activities contemplated under this Agreement, a "substantial remedy" (as this expression is used in the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time)).

9. MERCHANT RESERVES.

- 9.1** Reserve Account. The Merchant acknowledges and agrees that:
 - 9.1.1** Pixxles may withhold a risk-profile-based Reserve at its sole discretion at any time for the Merchant's use of the Services;
 - 9.1.2** when a Reserve is paid to Pixxles such funds shall be held by Pixxles for itself in the Reserve Account, and the Merchant ceases to have any entitlement to such funds;
 - 9.1.3** Pixxles is authorised to make any charge, withdrawal or debit against the Reserve and/or the Reserve Account in respect of indebtedness or any liability (whether present, future, actual or contingent) of the Merchant for Chargebacks, Refunds, Service Fees and Penalties payable from Merchant to Pixxles and for any other charges or amounts due or which may become due to Pixxles under this Agreement, including damages, indemnification obligations, and other charges;
 - 9.1.4** Merchant is not entitled to any interest on the funds held in the Reserve Account, and it has no right to direct in any way the use or expenditure of such funds;

- 9.1.5** Other than pursuant to Clause 10, Merchant cannot and will not attempt to assign or grant any security interest in the Reserve or the Reserve Account, and it cannot and will not allow any encumbrance against those funds; and
- 9.1.6** Merchant has no legal or beneficial interest in the Reserve, the Reserve Account or any funds held in the Reserve Account until released in accordance with this Agreement.
- 9.2** Reserve Account balance. Pixxles may apply such amounts of the Merchant's Total Revenue as is necessary to ensure that the available balance of the Reserve Account at no time falls below the Reserve Account Minimum Balance. Pixxles may from time to time upon at least twenty-four (24) hours' notice to Merchant increase the Reserve Account Minimum Balance if Pixxles determines in its sole discretion that Merchant's activities and/or risk profile require such a change. Grounds for such an increase include, but are not limited to, excessive Chargebacks, excessive Refunds, increases in transaction volume, and a deterioration in Merchant's financial condition or business activities. The Merchant authorises Pixxles to debit the Merchant Operating Account under Clause 7 to remedy a breach of this obligation. Pixxles may deduct from the Merchant's Total Revenue as a Reserve such amount as it reasonably considers necessary to prevent the Reserve Account Minimum Balance obligation being breached ahead of the next date any payment to the Merchant is due. Pixxles may release such amounts from the Reserve Account that it in its sole discretion considers unnecessary to retain pursuant to this Clause.
- 9.3** Authorisation; Reserve deficiency. Pixxles may, without notice to Merchant, apply Reserves against any outstanding amounts Merchant owes under this Agreement. Pixxles may exercise its rights under this Agreement to collect any amounts due to Pixxles including, without limitation, rights of set-off and recoupment. In the event that Pixxles cannot remedy a breach of the Reserve Account Minimum Balance, Merchant will remedy any deficiency in the Reserve Account by the end of the third (3rd) Business Day following receipt of Pixxles' oral or written request for replenishment of Reserves. After the first such deficiency and request for replenishment, Merchant will remedy any subsequent deficiency in the Reserve Account within twenty-four (24) hours after receiving Pixxles' oral or written request for replenishment of Reserves. Without limiting Pixxles' remedies, Merchant's failure to remedy any deficiency on time will permit Pixxles, without advance notice, to suspend processing Card transactions and Refunds and shall be a material breach and good cause for termination of this Agreement by Pixxles and the Merchant will bear and shall on demand indemnify Pixxles against all costs associated with collection of such amounts, including without limitation, reasonable and properly incurred legal fees and expenses, collection agency fees, and any applicable interest.
- 9.4** Withholding of Reserves and Funds after Termination. Pixxles will continue to require Reserves to be held in the Reserve Account and will withhold all other funds and payments due to Merchant but not released to Merchant, including proceeds from Card transactions, for a period from termination of this Agreement until the later of: (i) satisfaction of all Merchant's reasonably anticipated obligations under this Agreement, including but not limited to Service Fees, Chargebacks, Refunds, credits, Penalties, damages, indemnification obligations, reasonable and properly incurred legal fees, costs, expenses and any other charges, and (ii) three-hundred sixty-five (365) days after the last Service activity

or the expiration of the applicable timeframes for Chargebacks ("Resolution Period"). All such other funds and payments that are withheld shall upon termination become Reserves and will be held in the Reserve Account in accordance with this Clause. Pixxles may withhold or require Merchant to deposit additional funds into the Reserve Account upon termination of this Agreement, and Merchant's obligation to replenish Reserves upon request by Pixxles shall survive termination of this Agreement. In the event of a conflict or inconsistency between this Clause and any other terms in this Agreement, this Clause shall control and govern the rights and obligations of the Parties.

10. SECURITY INTEREST.

- 10.1** If any competent body or Supervisory Authority finds for any reason that the Reserve Account or any Reserve is owned by or is property of Merchant, Merchant hereby:
- (a) holds such Reserve Account or Reserve on trust for Pixxles; and
 - (b) shall only deal with the Reserve Account and such Reserve as directed by Pixxles from time to time; and
 - (c) grants Pixxles a fixed charge over all its present and future right, title and interest in and to the Reserve Account and in any such Reserve by way of security for all amounts due from Merchant to Pixxles from time to time under this Agreement.
- 10.2** This is a security financial collateral arrangement under the Financial Collateral Arrangements (No.2) Regulations 2003, as amended. Pixxles may exercise its rights in respect of its security and the charged asset referred to in this Clause 10 without notice or demand of any kind, including by making an immediate withdrawal from the Reserve Account and/or otherwise appropriating the sums in the Reserve Account and applying the same upon Pixxles' determination that Merchant has breached any obligation to Pixxles, and such rights shall be in addition to all other rights of Pixxles under this Agreement.
- 10.3** Merchant hereby acknowledges and agrees that notice shall be given to the third party financial institution holding the Reserve Account by Pixxles or on request from Pixxles bank. Merchant further agrees to execute any control agreements or other documents (including assignments, transfers, mortgages, charges, notice and instructions) and to perform any other action as Pixxles may specify or as otherwise required in order to create, comply with and perfect, protect and/or maintain the charge and security interest, and other arrangements set out in this Clause 10 and to facilitate the realisation of the assets referred to in this Clause 10.

11. REPRESENTATIONS AND WARRANTIES.

Merchant represents and warrants to Pixxles at the time of execution and throughout the term of this Agreement that:

- (a) All information contained in the Merchant Services Application and any other documents delivered to Pixxles in connection with this Agreement is true and complete, properly reflects Merchant's business, address, financial condition and principal partners, owners, directors or officers, and does not omit any material information requested by the Merchant Services Application;

- (b) Merchant is not an individual, sole trader, sole proprietorship, or substantively equivalent legally recognised entity;
 - (c) Merchant has the power to execute, deliver and perform this Agreement, and this Agreement is duly authorised and does not and will not violate any provisions of any Applicable Law to which Merchant is subject;
 - (d) Merchant has all licenses required to conduct its business and is qualified to do business in every jurisdiction where it is required to do so, and does not sell any goods or services prohibited under the laws of the jurisdiction in which Merchant is located, or any jurisdiction in which Merchant offers goods or services to consumers;
 - (e) Merchant complies fully with the Applicable Laws and DP Laws of the jurisdictions in which Merchant is located and every jurisdiction in which Merchant markets its goods and services to consumers, and covenants to implement appropriate technical and organisational measures as necessary to ensure protection of personal data and remain in compliance with applicable personal data protection laws at all times during the term of this Agreement;
 - (f) Merchant provides consumers with all disclosures and other information required by consumer protection laws applicable in the jurisdiction in which Merchant is located and in which Merchant offers goods or services to consumers;
 - (g) Merchant respects the intellectual property rights of third parties and does not and will not infringe such rights in any way and, within twenty-four (24) hours of becoming aware of any infringement of such rights, will terminate such infringement;
 - (h) Merchant will use the Card Scheme logos and marks in compliance with Card Scheme Rules;
 - (i) To Merchant's knowledge, there is no pending or threatened action, suit, investigation, or proceeding by or against or affecting Merchant that would substantially impair Merchant's right to continue its business or would adversely affect Merchant's financial condition or business activities;
 - (j) Each transaction presented to Pixxles for collection is genuine, the result of a bona fide Card transaction for the purchase of goods or services by the Cardholder in the total amount stated on the sales draft, and is not the result of any fraudulent transaction, or be deposited on behalf of any business other than Merchant;
 - (k) Merchant has performed or will perform all of its obligations to the Cardholder in connection with the Card transaction, including but not limited to accepting responsibility for the acceptance of a Cardholder order, its fulfilment in an agreed upon manner, and all material warranties, guarantees and order commitments;
 - (l) Merchant will, on and after the Effective Date, comply with Pixxles' procedures for accepting Cards, and Card transactions will not involve any element of credit or debit for any purpose other than as set forth in this Agreement and will not be subject to any defence, dispute, offset, or counter claim which may be raised by any Cardholder;
 - (m) Any Refund that Merchant will, on and after the Effective Date, issue will represent a bona fide refund or adjustment on a Card sale by Merchant in respect of a transaction that has been accepted;
 - (n) In respect of all Card transactions that Merchant requests Pixxles to originate, Merchant will, on and after the Effective Date, ensure that:
 - (i) each customer has authorised the debiting and/or crediting of its account, as applicable;
 - (ii) each entry is for an amount the customer has agreed to; and
 - (iii) each entry is in all other respects properly authorised;
 - (o) Merchant will, on and after the Effective Date, comply with and will ensure its agents will, on and after the Effective Date, comply with all Data Security Requirements; and
 - (p) Merchant will, on and after the Effective Date, comply with any and all AML Requirements, including but not limited to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (as amended, supplemented or restated from time to time).
- 12. MERCHANT TRANSACTION LIMITS.**
- Pixxles shall have the right to set overall transaction and sales limits for all transactions processed pursuant to this Agreement, which may be amended from time to time by Pixxles in its sole discretion upon at least twenty-four (24) hours' notice to Merchant.
- 13. CARDHOLDER TRANSACTION LIMITS.**
- 13.1** To prevent the occurrence of fraudulent transactions, Pixxles may impose limits on the amount or number of purchases that may be charged to an individual Cardholder account during any time period, or refuse to accept orders from Cardholders with a history of Chargebacks, fraudulent transactions or other activity that is prohibited by the Card Schemes or Acquirer, or other questionable Cardholder Charges or Card transactions as determined in Pixxles' sole discretion. Merchant accepts and understands that Pixxles shall impose these limits within its sole discretion, and such limits may be amended from time to time by Pixxles upon notice to Merchant.
- 13.2** If the Merchant submits or attempts to submit any Card transaction which Pixxles believes is in violation of the Card Scheme Rules, Applicable Law, and/or this Agreement and/or will expose the Card Schemes or Pixxles to harm (including without limitation fraud, brand or reputational damage or criminal acts), Pixxles reserves the right not to authorise, to suspend or to reverse the Card transaction, to close or suspend the Merchant's account, to report the transaction to the relevant law enforcement agency, to claim damages from the Merchant and/or charge an administration fee in case Pixxles applies any of the foregoing.
- 14. REFUND POLICY.**
- 14.1** Pixxles shall use commercially reasonable efforts to direct Cardholders to utilise the Cardholder support services offered by Merchant to resolve all disputes and complaints; provided,

however, that Pixxles reserves the right in its sole discretion to issue a Refund on behalf of Merchant without Merchant's prior knowledge or consent. To avoid Chargebacks, Pixxles will in its sole discretion cancel and Refund on behalf of Merchant any suspicious transaction that cannot be verified to Pixxles' satisfaction as valid or that is reported to Pixxles by the Card Schemes or Acquirer. Merchant acknowledges and agrees that such determinations by Pixxles shall be fully and finally binding on Merchant.

14.2 If Pixxles determines in its sole reasonable discretion that the Merchant processes an excessive value and/or volume of Refunds, Pixxles may disable the refund option.

15. REQUEST FOR DOCUMENTS.

15.1 Pixxles may request delivery documents for tangible goods and/ or proof of services provided by Merchant in order to investigate processing activity, Chargebacks, and the Merchant's obligations pursuant to this Agreement. Merchant shall provide such documentation to Pixxles by the end of the third (3rd) Business Day following any such request. Merchant's failure to provide such documents within that timeframe shall be a material breach and good cause for termination of this Agreement by Pixxles.

15.2 The Merchant shall assist Pixxles when requested, at the Merchant's expense, to investigate any of the Card transactions processed through the Services. The Merchant further acknowledges that failure to assist Pixxles in a timely manner, including providing necessary documentation not later than ten (10) Business Days from Pixxles' request, may result in an irreversible Chargeback. Pixxles reserves the right to charge a consultancy fee at the rate set out in the overview of Service Fees for investigating and/or mediating any Chargebacks, with any such fees to be disclosed from time to time in the Portal.

16. PASSWORD AND PORTAL SECURITY.

16.1 On entering into this Agreement, Pixxles will issue to Merchant a password for use on the Portal and to access the Service. This password is used by Merchant to verify its identity to Pixxles. Merchant shall exercise all possible care to ensure password safety and confidentiality and, subject to this Clause, shall not share it with anyone. Merchant shall not permit or allow any person to access the Portal other than as authorised in this Agreement.

16.2 Merchant shall grant access to the Portal to Duly Authorised Users only on a need-to-know basis. Where Merchant establishes subaccounts for Duly Authorised Users to access the Portal, Merchant shall, and shall require that Duly Authorised Users, exercise all possible care to ensure password safety and confidentiality and to prevent passwords becoming known to or used by other persons. Merchant shall remain liable for all actions and omissions of all Duly Authorised Users.

16.3 Users of the Portal shall cease to be Duly Authorised Users in the event that their employment with Merchant terminates or they no longer require access to the Portal. Merchant shall withdraw access from such users as soon as they cease to be duly authorised, including by deleting the users' subaccounts, if applicable, or changing the Portal password of such users.

Merchant shall remain liable for all actions and omissions of any formerly authorised user until Merchant takes the steps necessary to withdraw access from such users.

16.4 Merchant acknowledges that the security of Merchant's activities pursuant to this Agreement depends upon Merchant securing and maintaining the confidentiality of Merchant's password and account information. Merchant shall be wholly responsible for maintaining the confidentiality of Merchant's password and account information, and for all activities that occur pursuant to this Agreement. Merchant must notify Pixxles immediately on becoming aware of any actual or suspected loss, theft, or misappropriation of any password or account information relevant to this Agreement, or of any actual or suspected fraudulent or unauthorised activity in respect of the Service provided under this Agreement. Pixxles shall be entitled to act on any such notification without further recourse to Merchant.

16.5 This Clause 16.5 shall apply where the Merchant is not a Micro-Enterprise or Charity. Pixxles shall not be responsible for any unauthorised activity associated with Merchant's processing where:

- (a) it arises from fraudulent activity on the part of the Merchant; or
- (b) it arises from the Merchant's failure to comply with its obligation to keep its systems secure and its password confidential; or
- (c) the Merchant fails to notify Pixxles within thirty (30) days of receipt of the relevant statement setting out details of the unauthorised transaction,

and where any of the conditions above is met, Merchant shall indemnify Pixxles in full and on demand for any and all losses Pixxles may incur as a result of any such activity.

16.6 This Clause 16.6 shall apply where Merchant is a Micro-Enterprise or Charity. Pixxles shall not be responsible for any unauthorised activity associated with Merchant's processing where:

- (a) it arises as a result of the Merchant, with intent or with gross negligence, failing to comply with its obligation to keep its systems secure and its password confidential, provided that Pixxles shall be responsible for any losses arising from unauthorised activity which occurs after Merchant has notified Pixxles of such activity; or
- (b) it arises from fraudulent activity on the part of the Merchant, and regardless of whether the Merchant notifies this to Pixxles or not; or
- (c) the Merchant fails to notify Pixxles within thirteen (13) months of the date of the unauthorised transaction, and where any of the conditions above are met, Merchant shall indemnify Pixxles in full and on demand for any and all losses Pixxles may incur as a result of any such activity.

16.7 Pixxles has the right to suspend the use of the Services on reasonable grounds relating to its security or its suspected unauthorised or fraudulent use. Except where the notification would compromise reasonable security measures or is otherwise unlawful, Pixxles shall notify Merchant of any such suspension and the reasons for the suspension in advance or, if unable to do so, as soon as practically possible after. Pixxles shall resume the Services to the Merchant as soon as practicable after the reasons for the suspension cease to exist.

16.8 Where Pixxles suspects or has become aware of actual fraud or security threats relating to the Portal and/or the Services, Pixxles shall notify the Merchant by email of this (and by other methods designated by Pixxles from time to time, such as a portal notification), unless this would compromise reasonable security measures or would otherwise be unlawful.

17. MERCHANT E-MAIL AND ACCOUNT CHANGES.

Merchant must provide a valid, working administrative email address upon enrolment, and any changes to Merchant's processing pursuant to this Agreement via email may only be made using that email address. The security of Merchant's activities depends in part upon Merchant maintaining the security of the administrative email address provided to Pixxles by Merchant, and Pixxles shall not be responsible for any unauthorised changes made to Merchant's processing using such email address.

18. CONFIDENTIALITY; NON-DISPARAGEMENT.

18.1 The Parties shall treat all information of the other that comes to their knowledge or is processed in connection with this Agreement as confidential and shall not disclose such information unless required for the purposes of carrying out their obligations or exercising their rights under this Agreement or as required by Applicable Law. The Parties may also become aware of the other Party's trade secrets and shall treat such information as confidential. Notwithstanding anything in this Agreement to the contrary, either Party may disclose to third parties the fact that Merchant is using the Services. Merchant acknowledges and agrees that the Services and the documentation provided to Merchant under this Agreement are and contain the valuable, confidential and trade secret information of Pixxles.

18.2 The Parties shall refrain from making or causing to be made any publication, oral or written, of any actual, alleged, or implied defamatory, disparaging, or otherwise derogatory matter pertaining to each other, including their owners, employees, agents, and Affiliates. This prohibition is specifically meant to be broader than defamation and includes making postings on websites, contacting employees, customers, clients, or vendors, and stating or implying anything negative about each other by words, actions, context, or any combination of the foregoing.

19. INTELLECTUAL PROPERTY.

19.1 Merchant hereby grants Pixxles and its Affiliates an irrevocable, royalty-free and non-exclusive right for the term of this Agreement to use Merchant's trademarks and logos on Pixxles' websites and in off-line publications for promotional purposes.

19.2 Merchant shall not use the Trademarks without the prior written consent of Pixxles.

19.3 Without prejudice to the forgoing, if Pixxles provides prior written consent to use any Trademarks:

- (a) Merchant shall use such Trademarks in accordance with Pixxles' directions for the use of such Trademarks;
- (b) Merchant shall not have a right of sub-license;

(c) Pixxles may apply limitations to the rights granted to Merchant under this Clause at any time in Pixxles' sole discretion;

(d) Merchant will refrain from using the Trademarks in any manner that might create a composite mark with its own trademarks or logos and will not use any mark or name confusingly similar to the Trademarks;

(e) Merchant will not apply to register the Trademarks as trademarks, domain names or otherwise;

(f) Merchant shall notify Pixxles in writing immediately upon becoming aware of any infringement or misuse of the Trademarks by any person; and

(g) Merchant acknowledges and agrees that its use of the Trademarks does not create for itself any rights in the Trademarks other than those explicitly granted in this Agreement and that any use of the Trademarks by the Merchant (and any goodwill arising in relation to them) will be for the benefit of and accrue to Pixxles.

19.4 All proprietary rights in the Services, equipment, Software (including, without limitation, interfaces), Trademarks, and other materials used or made available by Pixxles in the performance of this Agreement, whether or not supplied to Merchant, shall remain with Pixxles or its licensors, and Merchant's rights of use in respect of such Services, equipment, Software, Trademarks or materials shall expire or terminate upon the termination of this Agreement.

19.5 Upon termination of this Agreement, Merchant will within twenty-four (24) hours withdraw any reference to Pixxles from its websites and promotional materials and cease all use of the Trademarks and all other proprietary rights formerly licensed to Merchant in connection with this Agreement, and Pixxles and its Affiliates will within twenty-four (24) hours withdraw any reference to Merchant from its websites and promotional materials and cease all use of Merchant's trademarks and logos.

19.6 The 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 Pixxles. If the Merchant submits any ideas, suggestions or other feedback to Pixxles about the Services or Software, the Merchant hereby grants Pixxles the right to use and disclose such feedback without any further obligation to the Merchant.

20. LIMITED USE LICENSE FOR SOFTWARE AND SERVICES.

20.1 All Software, Services and related products provided to Merchant under this Agreement are provided on an "as-is" basis. Merchant understands, acknowledges and agrees that processing outages are normal and may occur from time to time due to service interruption by banks, failed servers or the storage facility. Save to the extent expressly prohibited under Applicable Law, Merchant agrees that Pixxles shall not be liable for any loss of business or other damages caused by such outages.

20.2 In consideration for Merchant's payment of any applicable fees, Pixxles hereby grants Merchant a personal, non-exclusive, non-transferable, non-sublicensable license to (i) use the Software, in object code form only, and (ii) access and use the Portal, in each

case solely in connection with the Service. Merchant shall not:

- (a) attempt to reverse engineer, decompile, disassemble or otherwise translate or modify the Software in any manner (save to the extent expressly permitted under Applicable Law); or
- (b) sell, assign, license, sublicense or otherwise transfer, transmit or convey Software, or any copies or modifications thereof, or any interest therein, to any third party.

- 20.3** All rights in the Software, including without limitation any patents, copyrights and any other intellectual property rights therein, shall remain the exclusive property of Pixxles and/or its licensors. Merchant agrees that the Software is and contains the proprietary and confidential information of Pixxles and/or its licensors. Merchant shall notify Pixxles immediately upon becoming aware of any unauthorised use of the whole or any part of the Software by any person.
- 20.4** Any rights of use licensed by Pixxles to Merchant shall immediately terminate upon the earlier of (i) termination or expiration of this Agreement, (ii) termination of the Services with which the Software is intended for use; or (iii) failure of Merchant to comply with any provisions of this Agreement.

21. DATA PROTECTION.

- 21.1** For the purposes of this Clause, terms and expressions not defined in this Agreement shall have the meaning, if any, assigned to them by DP Laws.
- 21.2** The Parties agree that, for Protected Data, the Merchant shall be the Controller and Pixxles shall be the Processor. As the Controller, Merchant shall ensure its processing instructions comply with the DP Laws.
- 21.3** The Merchant shall have sole responsibility for accuracy, quality, and legality of Protected Data and for the means by which Merchant has established the legal basis for processing under the DP Laws, including providing all notices and obtaining all consents as may be required.
- 21.4** Where Pixxles processes Protected Data on behalf of the Merchant unless otherwise required by law, Pixxles shall process the Protected Data only in accordance with this Agreement, as is necessary to perform the Services or as otherwise agreed in writing between the Parties from time to time. Pixxles shall notify the Merchant in the event it reasonably believes any instruction given by the Merchant is unlawful.
- 21.5** Pixxles shall take appropriate technical and organisational measures to ensure security of processing and to protect Protected Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access and against all other unlawful forms of processing.
- 21.6** The Merchant agrees that Pixxles may engage another Processor to perform specific processing activities in respect of the Protected Data on behalf of the Merchant provided that Pixxles appoint such sub-processor under a binding written contract which imposes data protection obligations on the sub-processor no less stringent than those contained in this Clause. For the avoidance of doubt, Pixxles shall be liable to Merchant for a sub-processor's compliance with its data protection obligations in respect of this Agreement. Where a sub-processor is engaged by Pixxles under this general authorisation, Pixxles shall notify the Merchant of any intended sub-processor changes and the Merchant shall have the right to raise its reasonable objections to any such changes within five (5) Business Days of such change notification.
- 21.7** Pixxles shall take reasonable steps to ensure the reliability of all its employees and subcontractors who have access to Protected Data and ensure that they are bound by appropriate confidentiality obligations.
- 21.8** Pixxles shall implement and maintain, at its cost and expense, appropriate technical and organisational measures to assist the Merchant in the fulfilment of the Merchant's obligations to respond to requests from individuals to exercise their rights under the DP Laws, including subject access requests, requests for the rectification or erasure of personal data, and objections to processing relating to Protected Data, including to ensure that all Data Subject Requests it receives are recorded and then referred to the Merchant by the end of the fifth (5th) Business Day following receipt of the request.
- 21.9** Pixxles shall provide reasonable assistance, information and cooperation to assist the Merchant in complying with the Merchant's obligations under DP Laws in respect of: (i) security of processing; (ii) notification by the Merchant of breaches to the Supervisory Authority or Data Subjects; and (iii) data protection impact assessments and prior consultation with a Supervisory Authority regarding high risk processing.
- 21.10** Merchant agrees that Pixxles may transfer any Protected Data to any country outside the United Kingdom or to any international organisation, provided that Pixxles ensures that such transfer (and any onward transfer): (i) is pursuant to a written contract including provisions relating to security and confidentiality of the Protected Data; (ii) is effected by way of a legally enforceable mechanism for transfers of Personal Data as may be permitted under DP Laws from time to time and (iii) otherwise complies with DP Laws.
- 21.11** Pixxles shall maintain, in accordance with DP Laws binding on Pixxles, written records of all categories of processing activities carried out on behalf of the Merchant and shall make available to the Merchant on request such information as is reasonably required by the Merchant to demonstrate compliance by Pixxles with its obligations under DP Laws and this Agreement. Not more than once in each twelve (12) month period of this Agreement, Pixxles shall, upon reasonable notice, allow for, and contribute to, reasonable and necessary audits and inspections carried out by Merchant, or by an auditor appointed by Merchant, at Merchant's expense in connection with Merchant's obligations under the DP Laws.
- 21.12** In respect of any personal data breach related to the Protected Data, Pixxles shall, upon becoming aware of the breach, notify the Merchant of the breach without undue delay and provide the Merchant without undue delay with such details relating to the breach as the Merchant reasonably requires.
- 21.13** Pixxles shall, at the Merchant's written request, either securely delete or return all the Protected Data to the Merchant after the end of the provision of the relevant Services related to processing or, if earlier, as soon as processing by Pixxles of any Protected Data is no longer required for Pixxles' performance of its obligations under this Agreement, and securely delete existing copies (unless storage of any data is required by Applicable Law, and if so Pixxles shall notify the Merchant of this).

21.14 The Merchant acknowledges that Pixxles may be obliged to report the Merchant's business name, the name of Merchant's beneficial owners and principals, and other information to the Card Schemes when the Agreement is terminated due to any reasons listed in the Card Scheme Rules. The Merchant shall have no claim against Pixxles in respect of such reporting.

21.15 The processing of Protected Data in connection with this Agreement shall be in respect of the categories of Data Subjects and the types of Personal Data and for the purpose and nature and the duration, set forth below.

21.15.1 Categories of Data Subjects: Cardholders, potential Cardholders, and payment beneficiaries.

21.15.2 Types of Personal Data: name, contact details, transaction information, and purchase history.

21.15.3 Purpose and Nature of Processing: to provide Card payment processing to clear and settle payments for purchases of Merchant's goods and services by way of Cards and to otherwise provide the Services.

21.15.4 Duration of Processing: for the term of this Agreement.

22. TAXES.

Merchant is solely responsible for and agrees to pay all taxes and other charges imposed by any government authority on the Services provided under this Agreement and on any transactions processed pursuant to this Agreement.

23. LIABILITY OF MERCHANT AND PIXXLES.

23.1 Neither Party shall be liable for any delay or failure to carry out any of its obligations under this Agreement if and to the extent that such failure is due to complying with any relevant requirement under the Card Scheme Rules or any Applicable Laws.

23.2 Neither Party excludes or limits liability in respect of injury to or death of any person caused by their negligence nor in respect of their fraud nor for any matter for which it is not permitted by Applicable Law to exclude or limit, or to attempt to exclude or limit, its liability.

24. LIMITATION OF PIXXLES LIABILITY.

24.1 Pixxles will only be liable for its own acts or omissions and not for acts or omissions of third parties. This expressly excludes liability for acts or omissions of the Card Schemes, Acquirers, and issuers, or for events or activities originating outside Pixxles system (such as infrastructure failure, internet disturbances or malfunctioning in third party systems), except in case such events were caused by Pixxles' wilful misconduct or gross negligence.

24.2 Save to the extent expressly prohibited under Applicable Law and subject to clause 23.2, Pixxles liability to Merchant or to any party claiming by, through or under Merchant, for any claim related to a liability event or series of connected liability events shall be limited in the aggregate to the lower of (a) ten thousand GBP (£ 10,000) or (b)(i) the amount of Service Fees (exclusive of interchange fees,

assessments, PCI DSS charges and any other fees or costs that are imposed by a Card Scheme or a third party in connection with Merchant's payment processing), as set out in the Merchant Terms Acknowledgement, paid by Merchant to Pixxles during the six (6) months period immediately preceding the event or series of connected events giving rise to the claim for liability, or (ii) if this Agreement has not been in effect for six (6) months at the time of such event or series of connected events, the average monthly amount of Service Fees (exclusive of interchange fees, assessments, PCI DSS charges and any other fees or costs that are imposed by a Card Scheme or a third party in connection with Merchant's payment processing) paid by Merchant multiplied by six (6).

24.3 Save to the extent expressly required under Applicable Law and subject to clause 23.2, Pixxles shall in no event be liable for any incidental, exemplary, punitive, indirect or consequential damages whatsoever, regardless of whether such damages were foreseeable or whether any party or entity has been advised of the possibility of such damages. Save to the extent expressly required under Applicable Law, Pixxles is not liable to Merchant for account number verification service errors. Pixxles shall not be liable to Merchant or any third party for any loss and/or damage caused or suffered by the Merchant and/or such third party in connection with a ny unavailability of the Services contemplated by this Agreement. Pixxles assumes no liability for disruptions or improper operation of the Service for any reason, including but not limited to vandalism, theft, actions of third-party service providers, or any other causes in the nature of a Force Majeure Event.

24.4 Pixxles shall be responsible for the correct execution of Refunds or Cardholder Charges within the timescales set out in the PSR. Merchant shall be responsible for reconciling entries on the Merchant Operating Account(s) and to notify Pixxles of any differences/errors (such as unauthorised, non-executed or incorrectly executed Cardholder Charge or Refunds, representments or retro-charges), without any undue delay and in any event no later than two (2) months (or if Merchant is a Micro-Enterprise or Charity thirteen (13) months), after the date of the transaction. The Merchant waives any right to payment for any transaction if it fails to provide notice as required by this Clause.

24.5 Pixxles shall immediately retransmit the Cardholder Charge or Refund, where legally required and provided that Merchant provided all required card details to process the Card transaction correctly, has not acted fraudulently and notified Pixxles within the time periods stated in Clause 24.4.

24.6 If Pixxles can prove that it correctly transmitted the Cardholder Charge or Refund to the Card Issuer within the relevant timescale, Merchant will not be entitled to the retransmission of the Cardholder Charge or Refund.

24.7 In no event shall Pixxles be liable for any failure to make a Cardholder Charge which is not reported in writing to Pixxles within time periods stated herein. Merchant expressly waives any such claim that is not brought within the time periods stated in Clause 24.4.

24.8 Pixxles shall not be liable under the provisions of this Clause for losses caused by a Force Majeure Event.

25. LIABILITY OF MERCHANT.

If the Merchant consists of more than one legal person (for example, a partnership), each legal person has joint and several liability under this Agreement. If Merchant is a partnership and the partnership ends, Pixxles may terminate this Agreement, and if Pixxles has reason to believe that there is any dispute as to who is entitled to any funds Pixxles holds, Merchant authorises Pixxles to pay such funds into the account which Pixxles maintains in its books and records until Pixxles is satisfied that the dispute has been resolved or receives a court order to pay out such funds, at which point Pixxles will pay such funds to the partners who are entitled to such funds as confirmed by Merchant or in accordance with such court order.

26. PIXXLES DISCLAIMER OF WARRANTIES.

To the extent permitted by Applicable Law, Pixxles:

- 26.1** Disclaims all other representations or warranties made to Merchant or to any other person, except as specifically set forth in this Agreement;
- 26.2** Makes no warranties, express or implied, as to any of the Pixxles Services, related products, Software or documentation; and
- 26.3** Specifically disclaims any and all implied warranties, including without limitation any implied warranties of merchantability or fitness for a particular purpose.

27. INDEMNIFICATION.

Merchant shall defend, indemnify and hold harmless Pixxles, Acquirer, and each of their Affiliates, officers, directors, agents, employees and independent contractors (each an "Indemnitee"), on demand from and against any and all claims, demands, actions, losses, liabilities, damages, recoveries, settlements, costs or expenses (including but not limited to those arising from fraud or similar activities, whether or not Merchant participated in any way), including but not limited to investigation expenses, research time, reasonable and properly incurred legal fees, accountant and expert witness fees and costs, and other costs of defence, whether or not provided by Indemnitees' personnel or others, known or unknown, present or future contingent or otherwise, arising directly or indirectly out of or in connection with this Agreement, the duties to be performed by Merchant pursuant to this Agreement, any transactions that Merchant submits to Pixxles, or Merchant's violation of the Card Scheme Rules or any Applicable Law, except to the extent that any such losses are directly caused by the gross negligence, wilful deceit or fraud of an Indemnitee or, where Merchant is the Indemnitee, any other provision in this Agreement states that Pixxles shall be liable. If an Indemnitee is made a party to any litigation, proceeding, arbitration, bankruptcy proceeding, or other legal process (collectively "Actions") commenced by any third party arising out of or resulting from or in connection with Merchant's business activities, goods or services, contractual relationships, promotions, or advertising, or any alleged act of libel, slander, infringement or other violation of any third party's copyright, trademark or other intellectual property rights by Merchant or any subcontractor or agent of Merchant, Merchant shall (on demand) defend, indemnify and hold harmless such Indemnitee from and in respect of the Actions and shall pay all costs, expenses, and reasonable and properly legal fees incurred or paid in connection with the Action, together with any judgments rendered. Merchant shall (on demand) defend, indemnify and hold harmless an Indemnitee from and against all losses (present or future, actual or contingent) arising

out of or in connection with any hacking, infiltration, or compromise of Merchant's systems or the systems of Merchant's servicers, designated representatives, or other agents. Merchant will pay any and all Penalties assessed against an Indemnitee by the Card Schemes in connection with Merchant or Merchant's activities.

28. PERSONAL AND CROSS-CORPORATE GUARANTEE.

As an express condition precedent to this Agreement, and prior to furnishing any service or benefit to Merchant hereunder, Pixxles shall require an independent personal guarantee of Merchant's performance and obligations under this Agreement to be provided by one of Merchant's owners or principals, or another individual acceptable to Pixxles in its sole discretion ("Personal Guarantee"). Pixxles may also require a Cross-Corporate Guarantee from an Affiliate of Merchant. If so required, Merchant must provide Pixxles with the fully executed Cross-Corporate Guarantee (including any addendums) either prior to this Agreement taking effect or at any time during the term of this Agreement.

29. TERM AND TERMINATION.

- 29.1** The initial term of this Agreement shall be for twelve (12) months beginning upon the Effective Date, and the term shall automatically renew at the end of each consecutive twelve (12) month period unless terminated in accordance with this Clause.
- 29.2** Merchant may terminate this Agreement at any time on at least sixty (60) days' written notice unless otherwise expressly allowed pursuant to other provisions of this Agreement. If the Merchant is a Micro-Enterprise or Charity, Merchant may terminate this Agreement by giving one (1) month's written notice. If this Agreement has been in effect for a period of less than twelve (12) calendar months (or six (6) calendar months if Merchant is a Micro-Enterprise or Charity) (in each case the "Minimum Period"), Merchant shall pay Pixxles a charge for such termination, which shall be reasonable and correspond to the actual and/or anticipated: (1) costs of termination incurred by Pixxles; and (2) loss of fees which Pixxles would have received under this Agreement had it remained in place for the relevant Minimum Period (such amount to be calculated pro-rata based on the last full month's Service Fees which were due to Pixxles prior to the relevant notice of termination being given).
- 29.3** Pixxles may terminate this Agreement at any time on at least thirty (30) days' written notice unless otherwise expressly allowed pursuant to other provisions of this Agreement. (Provided that, if Merchant is a Micro-Enterprise or Charity then Pixxles shall give Merchant at least two (2) months' notice of termination).
- 29.4** Notwithstanding the notice periods above, either Party may terminate immediately upon written notice if:
 - (a) the other Party fails to pay any amount due under this Agreement on the due date for payment, and such amount remains in default not less than five (5) Business Days after the other Party is notified in writing to make such payment;
 - (b) the other Party commits a material breach of any of the terms of this Agreement and (where such breach is capable of remedy) fails to remedy the breach within thirty (30) days of being notified of the breach and requiring the breach to be remedied;

- (c) the other Party suspends or ceases, or threatens to suspend or cease, carrying on the whole or a substantial part of its business which is material for the purposes of this Agreement;
 - (d) the imposition of any law or regulation that means that this Agreement as a whole is unable to operate in the manner contemplated by the Parties;
 - (e) the other Party makes any voluntary arrangement with its creditors;
 - (f) the other Party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
 - (g) the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;
 - (h) a resolution is passed (otherwise than for the purpose of solvent amalgamation or reconstruction) or an order is made for the winding up of the other Party;
 - (i) the other Party is the subject of a notice of intention to appoint an administrator, is the subject of a notice of appointment of an administrator, is the subject of an administration application, becomes subject to an administration order or has an administrator appointed over it;
 - (j) a receiver or administrative receiver is appointed over all or any of either the other Party's assets or undertakings;
 - (k) the other Party is dissolved; or
 - (l) any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Paragraphs (e) to (l). (inclusive).
- 29.5** In addition to the circumstances expressly set forth in other provisions of this Agreement, Pixxles may terminate this Agreement immediately upon written notice to the Merchant in the event that:
- (a) the Merchant engages in any Prohibited Conduct;
 - (b) Pixxles is directed to do so by a Supervisory Authority, Card Scheme, Card Issuer, or Acquirer;
 - (c) the Merchant exceeds the Monthly CB Threshold or has any form of excessive activity in excess of the thresholds set by the Card Schemes;
 - (d) Pixxles determines in its sole discretion that there are excessive Cardholder complaints, inquiries, Refunds or Chargebacks;
 - (e) the Merchant does not submit any Card transactions to Pixxles for processing for three (3) consecutive Business Days (Refunds are not Card transactions for purposes of this paragraph);
 - (f) Pixxles determines in its sole discretion that continuing to provide the Service to the Merchant creates a risk that Pixxles or its Affiliates may be in violation of any Applicable Law or the Card Scheme Rules;
 - (g) the Merchant repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
 - (h) the Merchant takes any step with a view to proposing a compromise or making an arrangement with its creditors or members or any class of its creditors and/or members;
 - (i) Pixxles reasonably believes that:
 - (i) the Merchant will or may become subject to any of the events referred to at clauses 29.4(e) to 29.4(l) above; or
 - (ii) Any of the events referred to at clauses 29.4(e) to 29.4(l) (inclusive) above is about to occur;
 - (j) Any step is taken by the Merchant, or in relation to the Merchant, with a view to any of the events referred to at clauses 29.4(e) to 29.4(l) (inclusive) above; or
 - (k) The Merchant's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy.
- 29.6** The Merchant agrees and acknowledges that should any event of default mentioned in this Agreement occur, Pixxles may, upon at least twenty-four (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 the Merchant from Pixxles, until Pixxles has had reasonable opportunity to investigate and discuss such event with the Merchant and assess the anticipated risk of loss to Pixxles. In addition, upon the occurrence of any default by way of excessive activity by the Merchant as set forth in Clause 29.5 or elsewhere in this Agreement, Pixxles reserves the right to either grant the Merchant a three (3) months' window to eliminate such excessive activity or immediately terminate this Agreement.
- 29.7** Merchant understands, acknowledges and agrees that, during the Resolution Period following termination of this Agreement, Pixxles will incur ongoing administrative, maintenance and collection costs in connection with managing and maintaining the Reserves pursuant to Clause 9 and that Pixxles is entitled to compensation from Merchant to recover such costs related to data and risk management, systems support and safeguarding the Merchant's funds in a third-party bank account.
- 29.7.1** Maintenance Fee. During the Resolution Period, the Reserve Account will be subject to a monthly Maintenance Fee in the amount of the remaining balance in the Reserve Account at each billing cycle multiplied by the greater of (i) three percent (3%) or (ii) the percentage set out in the overview of Service Fees. Pixxles reserves the right to proportionally adjust the percentage with immediate effect if the Merchant's risk profile changes and differs materially from the information provided by Merchant upon entering into this Agreement.
- 29.7.2** Collection Fee. If the Reserve Account balance becomes negative at any time during the Resolution Period, the Reserve Account will be subject to a Collection Fee in an amount equal to twenty percent (20%) of the total amount of the negative balance in the Reserve Account at each billing cycle.
- 29.7.3** Closing Fee. At the conclusion of the Resolution Period and before the final Release Payment, as defined below, the Reserve Account will be subject to a Closing Fee in an amount equal to the lesser of (i) fifty Pounds (GBP 50) or (ii) the then remaining balance in the Reserve Account.

29.8 Following termination of this Agreement, the Reserves will be released to Merchant in accordance with this Clause.

29.8.1 The Reserves will be released and paid to Merchant in ten (10) payments (each a "Release Payment"), starting three (3) months after the date of termination and continuing each month thereafter, such that the final Release Payment will be made twelve (12) months after the date of termination.

29.8.2 At the beginning of the Resolution Period, Pixxles will calculate the amount equal to one-tenth (1/10th) of the total Reserves ("Reserves Share"), including all funds and amounts that become Reserves at termination under Clause 9.4.

29.8.3 The amount of each Release Payment ("Release Amount") will be the Reserves Share minus the sum of:

- (a) the Maintenance Fee;
- (b) all Chargebacks processed since the previous Release Payment;
- (c) all Refunds processed since the previous Release Payment;
- (d) any applicable Service Fees;
- (e) the Closing Fee, if applicable; and
- (f) all other fees, fines, Penalties, taxes and other items reimbursable or chargeable in this Agreement or otherwise occurring since the previous Release Payment.

29.8.4 If the Release Amount for any Release Payment is zero Pounds (GBP 0) or less, no payment will be made to Merchant for such Release Payment, and any negative Release Amount will be deducted from the following Release Payment.

29.8.5 If the Release Amount for any Release Payment other than the final Release Payment is less than twenty-five Pounds (GBP 25) or, when the Release Payment is to be made by wire transfer, if such amount is less than fifty Pounds (GBP 50), no payment will be made to Merchant for such Release Payment, and any unpaid Release Amount will be added to the following Release Payment.

29.8.6 If the Release Amount for any Release Payment is greater than the Reserve Account balance, the Release Amount for such Release Payment will be the amount of the Reserve Account balance.

29.8.7 Pixxles may, in its sole discretion, accelerate or increase the amount of any or all Release Payments, but any such acceleration or increase does not waive Pixxles' right to retain Reserves in the full amount and for the full duration permitted under this Agreement.

29.8.8 If Merchant files any dispute or claim with any competent body, Supervisory Authority or Pixxles in respect of the Reserve, Reserve Account, Reserve Share, any Release Payment or Release Amount, or any Chargebacks or Refunds, Pixxles may suspend payment of the Release Payments until such dispute or claim is resolved.

29.8.9 The payment of any Release Payment does not waive Pixxles' right to request replenishment of the Reserves under Clause 9. During the Resolution Period, if the balance of the Reserve Account is ever zero Pounds (GBP 0) or less, the schedule of Release Payments will be cancelled immediately, and Pixxles shall have no obligation to release any Reserves that may be replenished until completion of the Resolution Period. A negative balance in the Reserve Account during the Resolution Period is an amount owed by Merchant to Pixxles, and Pixxles shall have all rights under this Agreement in respect of collecting such amount.

30. SEVERABILITY.

Should any provision of this Agreement violate any Applicable Law relevant to either Party, or should any provision of this Agreement otherwise be held invalid or unenforceable by a court of law, then each such provision shall be automatically removed and any associated performance by the Parties waived, and all other provisions of this Agreement shall remain in full force and effect.

31. CHOICE OF LAW; VENUE; SERVICE OF PROCESS.

31.1 This Agreement and any dispute or claim arising out of, under, or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales. The Parties irrevocably agree, except as provided below, that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute which may arise out of, under, or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims). The Parties irrevocably waive any objection which they have, or may at any time have, to the courts of England and Wales on the grounds that those courts are an inconvenient or inappropriate venue or forum to settle any dispute. The Parties further agree that they shall not object to, contest, or appeal in any jurisdiction the choice in this Agreement of English and Welsh governing law, the exclusive jurisdiction of the English and Welsh courts, or the enforcement of any judgment made by the English and Welsh courts thereunder.

31.2 Notwithstanding the foregoing, Pixxles may in its sole discretion initiate proceedings against Merchant in any competent court in any jurisdiction in which Merchant or Merchant's parent company is organised or incorporated or in which Merchant or Merchant's parent company conducts business. Pixxles' initiation of proceedings in any one or more jurisdictions does not preclude the initiation of proceedings by Pixxles in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction. In respect of any proceedings initiated by Pixxles in such other courts pursuant to this Clause, Merchant hereby irrevocably waives any objection which it has, or may at any time have, to such other courts on the grounds that those courts are an inconvenient or inappropriate venue or forum to settle any dispute. Further in respect of any proceedings initiated by Pixxles in such other courts pursuant to this Clause, Merchant agrees that it shall not object to, contest, or appeal in any jurisdiction the choice in this Agreement of English and Welsh governing law, the jurisdiction of such other courts, or the enforcement of any judgment made by such other courts.

- 31.3** To the extent Merchant is incorporated in England and Wales, it irrevocably and unconditionally consents to service of process through personal service at its corporate headquarters, registered address, or primary address. Nothing in this Agreement shall affect the right of Pixxles to serve process in any other manner permitted by law.
- 31.4** In no event shall Merchant initiate any proceedings as a class action or in any class capacity.

32. AMENDMENTS AND MODIFICATIONS.

- 32.1** Except as otherwise expressly set forth in this Agreement, no amendment or modification of this Agreement shall be valid unless it is either communicated to and acknowledged by Merchant via the Portal, or made in writing and signed by all Parties hereto.
- 32.2** In addition to the other circumstances set forth in this Agreement, Pixxles may amend this Agreement to take into account changes in Card Scheme Rules, Applicable Law, or industry mandates, to accommodate changes imposed on Pixxles, and to make other changes deemed necessary by Pixxles. Pixxles may make such amendment(s) or modification(s) by notice via the Portal, sending Merchant an amendment to this Agreement, or making the amendment to this Agreement available on a webpage located on the Internet (provided that, if the Merchant is a Micro-Enterprise or a Charity it shall also provide email confirmation of the amendment or modification). Pixxles will provide Merchant notice of such proposed amendment(s) or modification(s) set forth in this Clause at least thirty (30) days, (or two (2) months if Merchant is a Micro-Enterprise or Charity), before their implementation, unless a change in Applicable Law or Card Scheme Rules requires earlier implementation, during which Merchant may terminate this Agreement by written notice without charge, and Merchant hereby agrees that Merchant's continued use of the Services without terminating this Agreement prior to the effective date of the proposed amendment(s) or modification(s) shall be deemed acceptance by Merchant of such amendment(s) or modification(s).

33. NOTICES.

All notices or other communications shall be in writing, by email, or via the Portal, and shall be effective when hand delivered, when sent by postage prepaid first class mail, when sent by email with verification of receipt, or when sent via the Portal with verification of receipt, and shall be deemed to have been delivered at that time. Notices via the Portal shall satisfy any applicable requirement in this Agreement that a notice be provided in writing. Notices to Merchant shall be made by Portal notification or message or shall be addressed to the administrative email Merchant provided on the Merchant Services Application, to the postal address listed on the Merchant Services Application, or to any updated or subsequent administrative email or postal address provided by Merchant following enrolment with Pixxles. Notices to Pixxles shall be made by Portal message, if available, or shall be addressed to <legal@pixxles.com> or to Pixxles Ltd, 78 Cannon Street, London EC 4N 6AF, United Kingdom.

34. COMPLAINTS.

- 34.1** If Merchant has any complaints regarding Pixxles' Service provided under this Agreement, Merchant must first contact <complaints@pixxles.com> to seek to resolve the complaint. Pixxles will seek to resolve Merchant's complaint as quickly as possible and as per the FCA Handbook – DISP Dispute Resolution: Complaints.
- 34.2** If Merchant is not satisfied with Pixxles' response, or if Pixxles has not finished investigating the complaint and given its final response after fifteen (15) Business Days (or in exceptional cases within a maximum of thirty five (35) Business Days), Merchant may, subject to fulfilling eligibility criteria, refer its complaint to The Financial Ombudsman Service, Exchange Tower, London E14 9SR, United Kingdom, telephone number: +44 (0) 300 123 9 123 or +44 (0) 800 023 4567 or to complaint.info@financial-ombudsman.org.uk.
- 34.3** Before resorting to the courts the Parties agree to use their best efforts to negotiate in good faith and settle amicably any dispute that may arise out of or relate to this Agreement or a breach of this Agreement. Only if negotiations fail to result in an amicable settlement, the matter may be submitted for resolution to a court of competent jurisdiction (provided that nothing in this clause shall prevent either party from seeking urgent or injunctive relief in the courts).

35. SURVIVAL OF OBLIGATIONS.

All terms and agreements that by their context are intended to survive shall survive the expiry or termination of this Agreement for any reason, specifically including but not limited to Clauses 5.4, 5.7, 5.8, 5.9, 6, 7, 8, 9, 14, 15, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 33, 34.3, 35 and 39.

36. SUCCESSORS AND ASSIGNS.

This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns; provided that Merchant may not sell, assign or transfer any of its rights or obligations under this Agreement without the prior written consent of Pixxles, and any unauthorised assignment, sale or transfer shall be null and void. Pixxles shall be free to sell, assign, or transfer any of its rights and obligations under this Agreement in its sole discretion, without any prior notice to Merchant.

37. INDEPENDENT CONTRACTORS.

- 37.1** Pixxles and the Merchant acknowledge and agree that their relationship is one of independent contractors and independent organisations, and this Agreement does not represent a partnership of any kind. Neither Party shall owe fiduciary duties to the other Party.
- 37.2** Except as provided herein, each Party shall pay its own costs in relation to the negotiation, preparation, execution and carrying into effect of the Agreement and in carrying out any related due diligence.

38. FORCE MAJEURE.

38.1 Neither Party will be in breach of this Agreement or liable for any default or delay in the performance of its obligations under this Agreement and shall be excused from performing any of its obligations under this Agreement that it is, directly or indirectly, prevented or delayed from performing by any circumstances beyond such Party's control, the consequences of which would have been unavoidable despite reasonable efforts to the contrary (each a "Force Majeure Event"), and if Merchant is a Micro-Enterprise or Charity "by any abnormal and unforeseeable circumstance" and "unavoidable despite all efforts to the contrary" in respect of Pixxles' Force Majeure Event. Force Majeure Events include, but are not limited to, non-performance of vendors or suppliers, terrorism or vandalism (including computer virus and hacking), sanctions, currency exchange restrictions, any law or any action taken by a government or public authority, card scheme or acquirer, strikes or other labour matters, destruction of or damage to any building, severe or adverse weather conditions, natural disasters, accidents, war, riots, emergency conditions, interruption of transmission or communications facilities, and/or infrastructure failure.

38.2 In any such Force Majeure Event, the Party so affected shall be excused from any further performance and observance of the obligations so affected only for the duration of such Force Majeure Event and provided that it continues to use commercially reasonable efforts to mitigate the effects of such Force Majeure Event and recommence performance or observance as soon as practicable, provided that if such period of delay or non-performance by Pixxles continues for more than thirty (30) days, the Merchant may terminate this Agreement by giving fourteen (14) days' written notice to Pixxles.

38.3 This Clause does not have geographical limitations.

38.4 Nothing in this Clause will affect or excuse the Merchant's liabilities or obligation to pay Service Fees, Penalties, Chargebacks or Refunds under this Agreement.

39. INTERPRETATION.

39.1 Headings in this Agreement are for convenience only and shall not affect this Agreement's construction. Headings shall not be used in interpreting, construing, performing or enforcing this Agreement.

39.2 Any obligations given or entered into by more than one party are given to or entered into jointly and severally unless otherwise specified.

39.3 Any reference in this Agreement to an article, Clause, paragraph, schedule, or appendix, is a reference to a portion of, or an exhibit or appendix to, this Agreement.

39.4 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

39.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

39.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

39.7 If there is a conflict between this Card Payment Processing Agreement and the Merchant Services Application or Merchant Terms Acknowledgement, this Card Payment Processing Agreement will take precedence.

40. ENTIRE AGREEMENT.

This Agreement and any documents incorporated by reference into this Agreement, is an integrated document that represents the complete terms of the Parties' agreement in their entirety, and supersedes any other agreements, written or oral, instruments or writings related to its subject matter.

41. AUTHORISATION.

41.1 The Merchant can accept the Agreement by:

41.1.1 clicking to "Accept" or "Agree" to this Agreement, where this option is made available by Pixxles in the Portal or a mobile application for the Service represents an advanced digital signature made by the Merchant and therefore the electronic document of this Agreement is deemed as duly signed by the Merchant;

41.1.2 signing this Agreement on a hard copy, if requested by Pixxles; or

41.1.3 actually, using the Services. In this case, the Merchant agrees that Pixxles will treat the use of the Services by the Merchant as acceptance of this Agreement from the moment of first use of Service.

41.2 The persons signing or otherwise accepting this Agreement on behalf of Merchant represent and warrant that they have the authority to enter into this Agreement on behalf of Merchant.

42. LANGUAGE.

This Agreement is in English and Pixxles will write and communicate with Merchant in English only.

43. COPIES OF AGREEMENT.

Merchant may request a copy of this Agreement from Pixxles in writing. If Merchant is a Micro-Enterprise or Charity such copy shall be provided free of charge.

44. WAIVER.

Unless otherwise stated in this Agreement no failure, delay or omission by either Party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right or remedy. No single or partial exercise of any right, power or remedy provided by law or under this Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.

45. THIRD PARTY RIGHTS.

Except as expressly provided for in this Agreement, a Person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of this Agreement. Each of the Indemnitees shall be entitled to enforce the terms of this Agreement that are necessary to enforce their rights under this Agreement.

46. ACCEPTANCE.

By signing this Agreement or otherwise authorising this Agreement as per Clause 41, the Merchant manifests its consent and agreement to these terms and conditions. Merchant hereby affirms that Merchant has read, understands, and agrees to abide by this Agreement, and any documents incorporated by reference into this Agreement. Merchant agrees that Merchant intends to form a legally binding contract and that this Agreement constitutes "a writing signed by Merchant" under any Applicable Law. Any rights not expressly granted herein are reserved by Pixxles.