PAYMENT SERVICES - TERMS OF SERVICE

These Terms of Service apply to the provision of Services by Xplor to Client. By executing the Order Form, Client agrees to be bound by the terms of the Order Form and these Terms of Service (together this Agreement).

1. **DEFINITIONS**

1.1 In this Agreement the following words and expressions have the following meanings unless otherwise defined in the Order Form:

Access ID means a personal identification number, a password and/or any other information provided by Xplor to enable Client to access and/or use the Client Portal and/or the Services.

Acquirer means a merchant acquirer licensed by a Card Scheme to provide card processing services appointed by Xplor or directly by the Client, in relation to the Card Payment Services.

Affiliate means in relation to a party, a related body corporate as that term is defined in section 50 of the *Corporations Act 2001* (Cth).

Agreed Currency means the currency identified as such in the Order Form or such other currency agreed in writing between Client and Xplor.

Agreement means this agreement, which consists of the Order Form and these Terms of Service.

Applicable Law means all applicable laws, statutes and regulations (including all Data Protection Legislation).

Assessment means any assessment, fine, or similar charge of any nature which a Card Scheme and Other Payment Service provider levies on Client or Xplor, directly or indirectly, in respect of the Card Payments Services or any Card Transaction or Other Payment Service or Other Payment Transaction.

Bulk Transfer Fee means $2500 per location which will include all Direct Debit Mandates Xplor transfers to an alternative provider on Client's instruction.

Business Day means a day other than a Saturday or Sunday or public or bank holiday when banks are open for the transaction of business in the jurisdiction in which Xplor is incorporated.

Buyer means a person who has purchased goods and/or services from Client and who has initiated a Transaction in respect of that purchase.

Buyer Terms means any terms and conditions that Client enters into with a Buyer in respect of a Transaction.

Card means a credit, debit or other payment card issued by a Card Issuer under a Card Scheme whose payments Xplor is able to process via an Acquirer (as notified by Xplor to Client from time to time).

Card Authorisation means Xplor's provision to Client of confirmation from the Acquirer of the relevant Card Issuer's confirmation as to whether or not the Card used to pay for the Card Transaction has sufficient funds available for the relevant Card Transaction and has not been blocked for any reason or listed as lost, stolen or as having had its security compromised.

Card Capture means Xplor's transmission of a payment instruction in relation to a Card Transaction to an Acquirer for onward transmission to a Card Scheme to enable the earmarking of funds by a Card Issuer against the relevant Cardholder's account for Card Settlement.

Card Payments Services means the Card Authorisation, Card Capture and Card Settlement by Xplor.

Cardholder means the authorised user of a Card.

Card Issuer means an organisation which issues a Card to a Cardholder.

Card Scheme means a scheme governing the issue and use of a Card.

Card Settlement means the crediting by the relevant Acquirer to Xplor of funds equating to the net value of a Card Transaction as determined by that Acquirer (via a Card Scheme) (and **Settle** will be construed accordingly in the context of Card Settlement or mutatis mutandis in the context of an Inward Payment).

Card Transaction means any transaction between Client and a Buyer in relation to which the Card Payments Services are supplied.

Change of Control means any transaction which results in a person who immediately prior to such transaction did not have Control of Client acquiring Control of Client.

Chargeback means a Card Transaction or Other Payment Transaction that is partially or fully returned by a Card Issuer or Other Payment Service provider, resulting in a financial liability to Xplor, including where a Card Issuer, Acquirer, Card Scheme or Other Payment Service provider: (a) refuses to Settle a Card Transaction or relevant Inward Payment; (b) demands payment from Xplor in respect of a disputed Card Transaction or disputed Other Payment Transaction that has been Settled or to which an Inward Payment relates; or (c) demands payment from Xplor in respect of a disputed Card Transaction or disputed Other Payment Transaction for which Remittance or an Outward Payment has been made, in each case notwithstanding any Card Authorisation or Other Payment Transaction authorisation.

Client means the client set out in the Order Form.

Client Bank Account means an account with an authorised credit institution held in the name of Client, used to receive Remittances and Outward Payments and pay amounts due to Xplor under this Agreement.

Client Payments Account means a Xplor bank account in which Xplor holds the Card Settlement funds or Inward Payments in accordance with Applicable Law.

Client Portal means an electronic management information portal, area or account in Xplor's systems in which Transaction Data is recorded.

Commencement Date means the means the date of execution of the Order Form by both parties. .

Confidential Information has the meaning given to it in Clause 21.1.1.

Control has the meaning given to it in section 50AA of the Corporation Act 2001 (Cth).

Data Protection Legislation means all applicable data protection and privacy laws, including the *Privacy Act 1988* (Cth) (**Privacy Act**) all supplemental, replacement or

amending laws to the Privacy Act, and all guidance issued by an applicable supervisory authority relating to Personal Information

Defaulting Party has the meaning given to it in Clause 20.1.

Direct Debit Mandate means the authority provided by the Buyer in a form prescribed or permitted by the relevant Direct Debit Scheme which authorises Client or Xplor to take payment from the Buyer's bank account in accordance with the rules of the relevant Direct Debit Scheme.

Direct Debit Payments Services means payment services relating to, together, Inward Payments and Outward Payments under a Direct Debit Scheme.

Direct Debit Scheme means a scheme or set of rules governing the use of a direct debit service or direct-debit like service (such as, without limitation, the UK BACS Direct Debit scheme, the Australian BECS Direct Debit Scheme, the New Zealand BECS Direct Debit Scheme or the European SEPA payments scheme).

Direct Debit Transaction means any transaction between Client and a Buyer in relation to which the Direct Debit Payments Services are supplied.

Early Termination Fee means an amount equal to the average total monthly Fees paid by the Client over the last 12 month period or if shorter, the average monthly Fees paid by the Client since the commencement of the Initial Term multiplied by the number of months remaining in the Initial Term.

Exchange Rate means the reference currency exchange rate Xplor notifies to Client.

Fees means the fees and any other charges set out in the Order Form or otherwise in this Agreement.

Force Majeure Event has the meaning given to it in Clause 19.7.

Freedom of Information Legislation means Freedom of Information Act 1982or any equivalents provisions which have been implemented in the jurisdiction where Client is incorporated or any other relevant jurisdiction.

Gateway Services means the provision of an online portal (which may be a Hosted Payment Portal) that supports the transmission and/or processing of Transactions by a bank, Other Payment Service provider or third party payment processor (including any white labelled acquiring service).

Go Live Date means the go live date specified in the Order Form if any.

GST has the meaning given to it in *A New Tax System (Goods and Services tax) Act 1999* (Cth)

Hosted Payment Portal means payment pages hosted by Xplor or an Affiliate of Xplor which may be utilised by Client as part of the Gateway Services.

Initial Term means the initial term set out in the Order Form.

Insolvency Event means, in respect of a party, the occurrence of one or more of the following events: (a) an inability to pay its debts when they become due; (b) the making of an order, or passing of a resolution, for that person's liquidation, administration, winding-up, or dissolution (apart from for the purposes of a solvent amalgamation or reconstruction); (c) the appointment of an administrative or other receiver, manager, trustee, liquidator, administrator, or similar officer over all or any substantial part of the assets of that person which is not discharged within 14 days; (d) the entering into or proposal of any composition or arrangement with that person's creditors generally; and/or (e) anything analogous to any of the events described in (a) – (d) above being suffered by that person in any jurisdiction.

Intellectual Property Rights means all intellectual property rights of any nature including: (a) copyright, patents, trade marks, database rights, designs, format rights, inventions, know-how, trade secrets, techniques and confidential information, customer and supplier lists and other proprietary knowledge and information (whether registered or unregistered); (b) applications and all rights to apply for registration for any of the foregoing; and (c) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world in each case for their full term and together with any revivals, renewals or extensions.

Inward Payment means funds received into a Client Payments Account originating from a Buyer in respect of a Transaction identifying Client or Xplor as the intended recipient and beneficiary in accordance with a Direct Debit Mandate or other payment instruction pursuant to an Other Payment Service.

Kiosk means an authorised point-of-sale payments terminal and any associated equipment or device(s).

Liabilities means any and all costs, losses, liabilities, obligations, damages, deficiencies, penalties, fines, interest and expenses.

Network Rules means those third party rules (such as those applying to the Visa and MasterCard Card Schemes) which apply to the Card Payments Services or any other third party payment service made available to Client by Xplor via the Payment Services (in any relevant jurisdiction).

Order Form means the order form signed by the parties in which these Terms of Service are referenced.

Original Credit Transaction means a Card Transaction that results in a disbursement to the account number of a Card for a purpose other than a Refund as permitted from time to time by a Card Scheme.

Other Payment Service means payment services relating to together, Inward Payments and Outward Payments under a set of Network Rules that is not a Direct Debit Payments Service or a Card Payments Service.

Other Payment Transaction means any transaction between Client and a Buyer in relation to which the Other Payments Services are supplied.

Outward Payment means a single or periodic payment transaction whereby Xplor transfers funds (which may be net of any tax deduction required by Applicable Law, Fees, any applicable third party bank charges and/or Reversed Payment) received into a Client Payments Account as the result of an Inward Payment to the Client Bank Account.

Payment Mandate means a Direct Debit Mandate or another valid payment instruction pursuant to an Other Payment Service.

Payments User Guide means any guidance, instructions, user guides or manuals made available by Xplor to Client at any time that include information and requirements relating to the Network Rules, the Direct Debit Scheme and the provision of the Services.

PCI SSC means those standards of the PCI Security Standards Council (or its replacement body or successor) in force from time to time, including the Payment Card Industry Data Security Standard, Payment Application Data

Security Standard and the PIN Transaction Security Standard (each as updated or replaced).

Permitted Deductions means any tax deduction required by Applicable Law, Fees, any applicable third party bank, Other Payment Service provider charges or Acquirer charges, Assessments, Chargebacks, Refunds and Reversed Payments together with any fees, costs or charges related to the above.

Personal Information has the meaning given to it in section 6 of the Privacy Act.

Proprietary Materials means all methods, methodologies, products, processes, tools, techniques, databases, know how, software or other materials owned or licensed by Xplor, which are comprised within the Services or otherwise utilised by Xplor in the performance of this Agreement.

Reason Code means a code or category used by a Card Scheme, Other Payment Service or Direct Debit Scheme to classify a specific activity, act or omission.

Recurring Card Transaction means a periodic Card Transaction for which Client charges the Buyer's Card (e.g. subscriptions or instalments).

Recurring Other Payment Transaction means a periodic Other Payment Transaction for which Client charges the Buyer's Other Payment Service payment method (e.g. subscriptions or instalments).

Recurring Transaction Authority means a Buyer's prior written authority (taken during the check-out process) for Client to establish a Recurring Card Transaction or Recurring Other Payment Transaction, setting out: (a) the amount of the relevant Recurring Card Transaction or Recurring Other Payment Transaction and whether this amount is fixed or variable; (b) the dates on which the relevant Recurring Card Transaction or Recurring Other Payment Transaction will be charged to the Buyer's Card or Other Payment Service payment method and whether the dates are fixed or variable; (c) the method of communication for all correspondence with the Buyer; and (d) a statement that the Buyer may cancel the Recurring Transaction Authority at any time.

Refund means a transaction made to wholly or partly reverse a Card Transaction or Other Payment Transaction.

Regulatory Authority means any governmental, regulatory authority or law enforcement department, agency, commission, board, tribunal, court, ombudsman, crown corporation or other law, rule or regulation making entity (including any stock exchange or central bank) that the parties and/or their Affiliates submit to or are subject to the jurisdiction of in respect of the Services.

Remittance means a payment of Card Settlement funds by Xplor to Client under this Agreement in connection with a Card Transaction (and **Remit** will be construed accordingly in the context of Card Remittance or mutatis mutandis in the context of an Outward Payment).

Renewal Period has the meaning given to it in Clause 2.3.

Representment means a transaction to reverse a Chargeback by the re-execution of the original Card Transaction, where Client has successfully challenged the Chargeback or similar transaction in respect of an Other Payment Transaction.

Retro-Charge means a transaction initiated by Client to reverse a Refund to which the Buyer was not entitled or similar transaction in respect of an Other Payment Transaction.

Reversed Payment means an Inward Payment to the extent that it is fully or partially returned to the bank or Other Payment Service provider associated with the Inward Payment or to the extent that any Regulatory Authority requires return of an Inward Payment, resulting in a financial liability to Xplor which may include any circumstances where: (a) a bank or Other Payment Service provider refuses to make the Inward Payment; (b) a bank, or Other Payment Service provider, third party payment processor or Regulatory Authority demands repayment from Xplor due to a disputed corresponding Direct Debit Transaction or Other Payment Transaction; (c) the Buyer exercises any right under any Direct Debit Scheme, including the direct debit guarantee, or Network Rule and in each case, notwithstanding: (i) any confirmation from a bank or Other Payment Service provider that an Inward Payment is authorized and/or in progress; and (ii) whether a corresponding Outward Payment has been made and any costs associated with any of the above.

Sensitive Authentication Data means data used for Card Authorisation, including magnetic stripe data (PAVE, CVV, CVC, CID) PINs, PIN blocks and the three or four digit number security code found either on the front or on the back of a card (e.g. MasterCard CVC2/Visa CVV2).

Services means the Card Payments Services, the Direct Debit Payments Services, the Other Payment Services and/or the Gateway Services.

Terms of Service means these terms and conditions.

Term means the Initial Term and any Renewal Period(s).

Terminating Party has the meaning given to it in Clause 20.1.

Transaction means a Card Transaction, a Direct Debit Transaction or an Other Payment Transaction in relation to which any Payment Services or Kiosks are supplied.

Transaction Data means Transaction Personal Data and any other data relating to a specific Transaction.

Transaction Personal Data means Personal Information relating to a specific Transaction and which it is necessary to process in connection with the provision of the Services.

Xplor means the Xplor entity specified in the Order Form

Xplor Payments means the Fees (including any Default Charge), any Liabilities and any such other amounts as are owing to Xplor under, or in connection with, this Agreement or any other agreement between Xplor or its Affiliates and Client or its Affiliates.

Xplor Privacy Notice means the privacy policy available on Xplor's website.

1.2 Any reference to Xplor in these Terms of Service will be a reference to Xplor or the Affiliate providing the Services and that entity will be solely responsible for its obligations in these Terms of Service.

1.3 References to **parties** are to Xplor and Client, each a **party**.

1.4 References to **Clauses**, **Schedules** and **Annexes** are to clauses in and schedules to these Terms of Service and annexes to the Order Form.

1.5 Headings are inserted for convenience only and will not affect the construction of this Agreement.

1.6 References to **persons** include natural persons, companies and other corporate bodies, unincorporated associations, partnerships, firms and government bodies, governments, states and any other organisations.

1.7 The singular includes the plural and vice versa.

1.8 Use of the terms **include(s)**, **including**, **such as** or similar will be construed without limiting the generality of the words preceding those terms.

1.9 In the event of any conflict between the terms of the Order Form and these Terms of Service, the terms of the Order Form will take precedence.

2. COMMENCEMENT & DURATION

2.1 Xplor's obligations under this Agreement shall be conditional on Xplor successfully completing (which Xplor shall determine in its sole discretion) all required anti-money laundering, counter terrorism financing and other applicable customer due diligence checks in respect of the Client. Xplor may terminate this Agreement immediately on written notice to the Client in the event that such due diligence checks are not adequately (in Xplor's sole discretion) completed.

2.2 Subject to Clause 2.1 and unless provided otherwise in the Order Form, this Agreement will commence on Commencement Date and will continue, unless terminated earlier in accordance with its terms, until expiry of the Term.

2.3 Following the Initial Term, this Agreement will automatically renew for successive periods of 12 months (each a **Renewal Period**) unless either party provides written notice of termination to the other party at least 60 days prior to the expiry of the Initial Term or any Renewal Period.

2.4 Xplor will be entitled to increase the Fees payable in respect of the Services by notifying Client no less than two (2) months prior to such increase. If Client does not agree to the Fee increase, Client may terminate this Agreement without penalty by providing written notice to Xplor within 10 days of receiving notice from Xplor notifying Client of an increase to the Fees payable. In such case termination will take effect on and from the date the Fee increase was due to take effect. Otherwise, Client will be deemed to have accepted the Fee increase two (2) months from being notified of it.

3. SERVICES

3.1 Xplor agrees to provide the Services in a professional manner, using due skill and care.

3.2 In consideration for the establishment costs incurred by Xplor and not passed on to Client, Client hereby appoints Xplor as its exclusive provider of the Services and any services which are equivalent to the Services available from another provider.

3.3 Subject to Clause 3.1, Client will be solely responsible for establishing that the Services are fit for Client's purposes and comply with its legal obligations.

3.4 Xplor will only provide the Services in respect of Client's primary business as at the Commencement Date and only to the extent permitted by Applicable Law. Client must obtain Xplor's prior written consent (which will not be unreasonably withheld) before making any change to the goods and/or services sold by Client for which the Services are provided.

3.5 Xplor will not be required to execute any Transaction that fails to comply with (or in Xplor's reasonable opinion would breach) any Applicable Law, the Network Rules or any Direct Debit Scheme.

3.6 Client will only accept payments and submit Transaction Data to Xplor in respect of Transactions which a Buyer has authorised in accordance with Applicable Law, this Agreement, the Network Rules, any Direct Debit Scheme and any other information or instructions provided by Xplor to Client from time to time.

3.7 Xplor will record the Transactions in the Client Portal. Client is responsible for maintaining its own records related to Transactions, and for reconciling its records against the Client Portal. Client must notify Xplor promptly (and, in any event, no later than 10 Business Days) after any unauthorised, incorrect or disputed entry is entered in the Client Portal. Following the expiry of this 10 Business Day period and in the absence of any manifest error, the entries in the Client Portal will be deemed agreed.

3.8 Client will not be entitled to receive any interest in respect of funds held in a Client Payments Account.

3.9 Client will include a provision in all Buyer Terms whereby the Buyer agrees that Client may appoint an agent to collect payments (whether fees and/or periodic charges and including any administration fees for late payment) from the Buyer on Client's behalf.

3.10 Xplor may vary:

3.10.1 the provisions of these Terms of Service or any aspects of the Services by giving Client no less than two (2) months' prior written notice; and

3.10.2 any provision of this Agreement from time to time (including in respect of any item of pricing contained in the Fees or otherwise any of the Services) by giving you prior written notice if there is a change in Applicable Law, or any Network Rule or to any of the fees applied by third parties that apply to the Services (including an Acquirer's Card Scheme fees, interchange fees or Other Payment Service provider's fees), but only to the extent required to pass-through and reflect such change.

In each case, such variations may be notified by reference to materials available on Xplor's website, as set out in Clause 22.322.3.

3.11 Where any change pursuant to Clause 3.10.1 will have a material adverse effect on Client, Client shall promptly notify Xplor of such material adverse effect and Client and Xplor shall work together in good faith to mitigate the impact of the change to the Client. In the event the parties determine that it is not possible to mitigate the material adverse effect caused by the change, Client shall be entitled to terminate this Agreement with effect from expiry of the variation notice by provision of no less than one (1) month's prior written notice to Xplor. Otherwise, Client will be deemed to have accepted any variation of the provisions of this Agreement pursuant to Clause 3.10.1 two (2) months from being notified of it. Where Client terminates pursuant to this Clause, Xplor shall reimburse Client for any prepaid Fees attributable to the period after the date of termination.

3.12 Client acknowledges and agrees that where Transactions are processed under multiple Payment Services, different Fees (sometimes of varying currencies) can apply in relation to each Payment Service and that Fees may be charged by Xplor on an interchange and Card Scheme fee plus basis.

3.13 **Debt Recovery**. Xplor does not provide debt recovery services under this Agreement. If requested by Client, Xplor may introduce Client to Xplor's preferred debt recovery services provider (the **Third Party Recovery Provider**).

3.14 If Client enters into an agreement with Third Party Recovery Provider for the provision of services (the **TPRP Agreement**):

3.14.1 during the Term of this Agreement, Client authorises Xplor and/or its Affiliates to:

i. liaise with, and instruct, the Third Party Recovery Provider on Client's behalf in respect of the performance of the TPRP Agreement;

ii. provide information obtained by Xplor pursuant to this Agreement, or otherwise provided by or on behalf of Client, to the Third Party Recovery Provider as reasonably required for the performance of the TPRP Agreement; and

iii. receive payments on behalf of Client under the TPRP Agreement (it being acknowledged that the Third Party Recovery Provider shall be required to issue any corresponding invoices);

3.14.2 for the duration of the TPRP Agreement (as the same may be renewed, extended, amended or superseded), Client shall pay to Xplor a referral fee per referred debt under the TPRP Agreement to the extent that the same is included in the Order Form (the **Referral Fee**);

3.14.3 during the Term of this Agreement, Xplor shall be entitled to deduct and retain the Referral Fee (where included in the Order Form) from the sums collected pursuant to 3.13.1 iii above;

3.14.4 following termination or expiry of this Agreement, Client shall pay the Referral Fees to Xplor monthly in arrears within forty-five (45) days of receipt of invoice;

3.14.5 Client acknowledges and agrees that Xplor and its Affiliates shall have no liability in respect of: (i) the services provided under the TPRP Agreement; and/or (ii) the performance of the TPRP Agreement; and

3.14.6 Client indemnifies and holds Xplor and its Affiliates harmless from and against any and all Liabilities suffered or incurred by Xplor and/or its Affiliates acting within the scope of the authority at 3.14.1 above, except to the extent those Liabilities were caused by the fraud, wilful misconduct or negligence of Xplor.

3.15 Xplor or third parties may make third party content, data or other functionality available in connection with using the Services (**Third Party Services**). Third Party Services are not Services and Xplor makes no warranties of any kind in respect of Third Party Services or other non-Xplor products or services. Any procurement, access or use by Client of a Third Party Service, and any exchange of data between Client and the provider of such Third Party Service, is solely between Client and such provider. Without prejudice to any restriction in this Agreement, if Client enables or installs any Third Party Service for use with the Services, Client agrees (and confirms that it has the right, power and authority to agree) that Xplor may allow the provider of the Third Party Service to access Client data (including Client Personal Data) as required for the interoperation of that Third Party Service with the Services, and Xplor is not responsible for any disclosure, modification or deletion of such data resulting from such access. Xplor may restrict or disable access to any Third Party Services that are made available through the Services without notice and for any reason, including if the provider ceases to make it available. Client's use of Third Party Services:

3.15.1 is entirely at its own risk and Xplor shall have no liability whatsoever in connection with the same; and

3.15.2 may be subject to additional terms, conditions and policies applicable to such Third Party Services (such as terms of service or privacy policies of the providers of such Third Party Services).

3.16 Notwithstanding any other provision of this Agreement, Xplor may from time to time in its sole discretion withdraw or decommission a product, software or a Service that Client is using and will, if practicable, give Client reasonable prior notice of this.

4. ACCESS ID

4.1 Where Xplor receives any instruction from a person using Access ID, Xplor will and is entitled to treat such instructions as having been received from Client , unless the Client has previously made Xplor aware of a related security concern and requested Xplor to cease acceptance of Access ID instructions and Xplor has confirmed to the Client that Xplor has ceased accepting Access ID instructions from the Client. Xplor is under no obligation to check the authenticity or accuracy of instructions/data received from Client.

4.2 Client will ensure that Access ID is not disclosed to any person except for its permitted users on a need to know basis. Client will ensure that any such users are aware of the requirement to keep the Access ID secure and confidential.

4.3 Client is solely responsible for establishing and maintaining robust security systems and procedures sufficient to monitor effectively all access to, and use of, the Access ID (including frequently changing Access ID and ensuring that any passwords are sufficiently strong). Client will ensure that all Transaction Data and any data that has been accessed from the Client Portal is retained securely at all times.

4.4 If Client suspects or becomes aware that there has been or may be, any unauthorised use of the Access ID, Client will notify Xplor immediately of the same by telephone and will promptly confirm the same in writing.

5. TRANSACTIONS

5.1 Client will:

5.1.1 Honour/accept: (a) all valid Cards and Other Payment Service methods in accordance with the relevant Network Rules; and (b) each Direct Debit Mandate in accordance with any Direct Debit Scheme, in each case, without discrimination when properly presented by a Buyer for payment;

5.1.2 not establish a minimum or maximum Transaction amount as a condition for honouring/accepting Cards, Other Payment Service methods or Direct

Debit Mandates unless expressly permitted by Applicable Law and Network Rules;

5.1.3 not impose, charge or recover any surcharge, fee or similar amount in connection with a Transaction, including but not limited to Transactions processed using a Card or payment method, for which surcharging has been prohibited by Applicable Law, Network Rules, Card Scheme requirements, Acquirer requirements or Regulatory Authority requirements. Where a surcharge is permitted, Client must ensure the surcharge complies with all applicable requirements, is clearly disclosed to the Buyer before the Transaction is entered into, forms part of the Transaction amount and is not collected separately.

5.1.4 unless the Network Rules or any Direct Debit Scheme specifically states otherwise or unless agreed between the parties in writing, not request a payment before the relevant goods have been shipped or before a service is performed/provided in respect of the relevant Transaction. Unless agreed by Xplor in writing, requests for Card Authorisation which do not lead to a request for Card Capture within 10 Business Days after Card Authorisation will automatically expire and no longer be the subject of a Card Capture request;

5.1.5 display prominently on each of its premises, trading venues, Kiosks and/or websites where Client accepts Transactions, all applicable Card, Card Scheme, Other Payments Services and Direct Debit Scheme identification;

5.1.6 only accept Transactions in respect of goods and/or services that Client itself supplies;

5.1.7 notify Xplor in writing in advance of the URLs of any website in respect of which Services are to be provided;

5.1.8 upon Xplor's request (including following termination of this Agreement), promptly disclose to Xplor such information as Xplor reasonably requires in order to enable Xplor to: (a) perform its obligations; or (b) assess its financial and insurance risks, in connection with the Services; and

5.1.9 take all reasonable steps to assist Xplor in handling any query raised by a third party in relation to the Services, any Transaction, Chargeback, Assessment, Retro-Charge, Reversed DD Payment or Representment associated with the Client's Transactions.

5.2 Client must, at or before entering into a Transaction with a Buyer, prominently and unequivocally inform the Buyer of:

5.2.1 Client's identity at all points of interaction with the Buyer (including prominently displaying its registered name and any trading name on any website through which Client accepts Transactions), so that the Buyer can identify Client as the Transaction counterparty and whose name will appear on the Buyer's Card, Other Payment Service or bank statement;

5.2.2 a complete description of the goods or services offered;

5.2.3 the terms and conditions of sale (and the length of any trial period) including Client's delivery policy, returns and cancellation policies relevant to the supply of goods and services which are the subject of the Transaction. Such policies will comply with Applicable Law;

5.2.4 the amount, date of, and currency in which any charges will commence and any other requirement of any Direct Debit Scheme, Card Scheme or Other Payment Service method which Client is using under this Agreement;

5.2.5 Client's complaints procedure, customer service email and telephone contact details;

5.2.6 the location (physical address) of Client to enable the Buyer to easily determine whether the Transaction will be a domestic transaction or a cross-border Transaction;

5.2.7 Client's consumer data privacy notice, security capabilities and policy for transmission of Card details, Direct Debit Mandates or other payment instruction pursuant to any Other Payment Service;

5.2.8 any legal and export restrictions (if known); and

5.2.9 Client's address of its fixed place of business.

5.3 Xplor, acting reasonably, may withhold, set-off and/or defer payment of any sums it owes and/or holds on behalf of Client:

5.3.1 until Client's Liabilities to Xplor have been discharged (including any Permitted Deductions or Xplor Payments); or

5.3.2 in respect of and/or against reasonably expected Permitted Deductions.

If Xplor withholds payment under this Clause 5.3, it will, to the extent permitted by Applicable Law, seek to notify Client of the deferral and provide the reasons for it. Client will not seek to dispose of, charge or otherwise deal with any such sums withheld, set-off or deferred by Xplor during the deferral period.

5.4 Without prejudice to any other rights and remedies that Xplor may have pursuant to this Agreement, on termination of this Agreement for any reason, Xplor may to the extent Xplor reasonably considers necessary to meet any contingent or actual Liability arising from the Transactions that Xplor may incur, withhold payment of any sums that it owes and/or holds on behalf of Client for a maximum period of twelve (12) months following such termination.

6. SETTLEMENT AND REMITTANCE OF CARD TRANSACTIONS

6.1 Xplor will value date and credit the Client Portal with the value of a Card Transaction on the day on which successful Card Capture in respect of that Card Transaction occurs. Xplor will hold Card Settlement funds in a Client Payments Account. To the extent that funds are not actually received, Xplor will reverse the value date and credit in respect of the relevant Card Transaction on the Client Portal. Xplor is only obliged to remit funds relating to a Transaction subject to receipt of the funds relating to the relevant Card Transaction.

6.2 Xplor will Remit in the Agreed Currency to the Client Bank Account the value of any Card Settlement funds (less any Permitted Deductions and/or Xplor Payments) due in respect of Card Transactions permitted under this Agreement promptly following Card Settlement or, (if invoked) upon the expiry of any reasonable period of deferral reasonably required by Xplor. Such Permitted Deductions/Xplor Fees are owed to Xplor immediately at Card Settlement.

6.3 Xplor may defer the payment of any Remittances if Xplor reasonably considers:

6.3.1 that a Card Transaction may be fraudulent or contrary to Applicable Law or not permitted under this Agreement, until the satisfactory completion of Xplor's investigation of the same;

6.3.2 a material positive or negative fluctuation month-on-month in Card Transaction volumes or the average value of its Card Transactions has taken place or is likely to take place;

6.3.3 that the total value of Refunds, Chargebacks and/or declined Transactions is excessive (or likely to be excessive) relative to expected volume; or

6.3.4 any event may occur which may give rise to a significant increase in Xplor's risk profile.

If Xplor defers payment of Remittance under this Clause 6.3, it will to the extent permitted by Applicable Law, seek to notify Client of the deferral and the reasons for it. Client will not seek to dispose of, charge or otherwise deal with any such sums deferred by Xplor.

6.4 If a Card Transaction is made other than in the Agreed Currency, Xplor will convert the relevant Card Transaction value into the Agreed Currency requested by Client using the Exchange Rate:

6.4.1 in the case of Kiosk Transactions on the date of that Transaction's Card Settlement; and

6.4.2 otherwise, including ecommerce Card Transactions, on the date obtainable via Client Portal.

Xplor may amend the Exchange Rate applied in case of manifest error caused by its external rate provider within 2 Business Days of Remittance.

6.5 Where Xplor has agreed in writing that Client may accept Recurring Card Transactions, Client will:

6.5.1 obtain a Recurring Transaction Authority from the Buyer for such Recurring Card Transaction and confirm, within 2 Business Days of the date of the Recurring Transaction Authority, to the Buyer via the agreed method of communication that a Recurring Transaction Authority has been established;

6.5.2 notify the Buyer via the agreed method of communication at least 7 Business Days prior to a Recurring Card Transaction payment being charged to the Buyer's Card if: (a) the payment amount has changed; (b) the payment date has changed; (c) more than 6 months have elapsed since the last Recurring Card Transaction payment; or (d) a trial period, introductory offer or promotional activity has expired;

6.5.3 not effect (or seek to effect) a Card Transaction under the Recurring Transaction Authority once the Recurring Transaction Authority has expired, or once the Buyer has notified Client that the Buyer wishes to cancel such Recurring Transaction Authority; and

6.5.4 retain securely the Recurring Transaction Authority for at least a period of 7 years after the date of final Card Transaction effected under it and produce each Recurring Transaction Authority to Xplor on demand.

6.6 Client acknowledges that successful Card Authorisation does not guarantee payment from the Cardholder. Xplor will not be liable for any failure of an Acquirer to effect payment in respect of a Card Transaction (including Card Settlement) unless that Acquirer's failure was caused by the fraud, wilful misconduct or negligence of Xplor.

7. DIRECT DEBIT PAYMENTS SERVICES AND OTHER PAYMENT SERVICES

7.1 Where Xplor is providing Direct Debit Payments Services or Other Payment Services this Clause 7 will apply.

7.2 Client or Xplor, where Xplor has agreed with Client in writing that it will, will:

7.2.1 obtain a valid and accurate Payment Mandate from the Buyer and communicate the same to Xplor;

7.2.2 notify the Buyer at least 10 Business Days prior to a Direct Debit Transaction or if relevant Other Payment Transaction if: (a) the payment amount has changed; (b) the payment date has changed; or (c) if the frequency of the payment has changed; and

7.2.3 retain securely the Payment Mandate for at least a period of 18 months after the date of final Direct Debit Transaction effected under it or Other Payment Transaction.

7.3 Following receipt of a Payment Mandate, Xplor will value date and credit the Client Portal with the value of an Inward Payment on the day on which Xplor instructs for that Inward Payment to be made. To the extent that funds are not actually received or become a Reversed Payment in respect of an Inward Payment, Xplor will reverse the value date and credit in respect of the relevant Inward Payment on the Client Portal. Xplor will execute the relevant Outward Payments subject to receipt of the Inward Payment and the remaining provisions of this Clause 7.

7.4 Client accepts that the payment of an Inward Payment by the Buyer will extinguish the corresponding debt owed by the Buyer to Client.

7.5 The receipt of a Payment Mandate in respect of Client pursuant to this Agreement, constitutes Client's irrevocable consent and authorisation to execute each relevant Inward Payment and Outward Payment. Following receipt of a Payment Mandate, Xplor will only make the relevant Outward Payment provided that sufficient funds are available in the relevant Client Payments Account for the completion of the relevant Transaction and the payment of the applicable Xplor Payments.

7.6 Notwithstanding Clause 7.5, sometimes Xplor will make an Outward Payment on the receipt of satisfactory confirmation that the Inward Payment is authorised or in progress, but before the Inward Payment is actually received by Xplor. If any such Inward Payment is not actually received by Xplor in full through no fault of Xplor (whether because it is reversed or for any other reason) but Xplor has already made an Outward Payment against it then Client will reimburse Xplor by returning an amount equalling the Outward Payment without delay to Xplor, indemnifying Xplor for the amount of the Outward Payment in full. In addition, if Xplor informs Client that an Inward Payment is authorised or in progress and Client then acts on that information to its detriment, where the Inward Payment is not then made to or received by Xplor (through no fault of Xplor), Client will have no claim against Xplor and will hold Xplor harmless against any related Liabilities.

7.7 If Xplor reasonably believes that a Transaction may be fraudulent or contrary to Applicable Law, or if instructed by a bank or Other Payment Service provider associated with the relevant Transaction or any Regulatory Authority, Xplor may:

7.7.1 debit the value of an Inward Payment from the Client Portal and return the value to the sender (and if sufficient funds are not available, Client must reimburse Xplor on demand); and/or

7.7.2 refuse to execute an Outward Payment.

Xplor will notify Client of the reason for such action if it is lawful to do so.

7.8 Xplor may defer the payment of any Outward Payments if Xplor reasonably considers:

7.8.1 that the total value of Reversed Payments is excessive (or likely to be excessive) relative to expected volume; or

7.8.2 any event may occur which may give rise to a significant increase in Xplor's risk profile.

If Xplor defers payment of Outward Payment under this paragraph 7.8, it will to the extent permitted by Applicable Law, seek to notify Client of the deferral and the reasons for it. Client will not seek to dispose of, charge or otherwise deal with any such sums deferred by Xplor.

7.9 If a Transaction is effected other than in the Agreed Currency, then in order to make the relevant credit or payment, as the case may be, Xplor will:

7.9.1 for an Inward Payment, convert the relevant value either into the currency of the relevant Client Payments Account; or

7.9.2 for an Outward Payment, into the requested currency,

in each case, by reference to the applicable Exchange Rate. Xplor may amend the Exchange Rate applied in case of manifest error caused by its external rate provider within 2 Business Days.

8. GATEWAY SERVICES

8.1 Where Xplor is providing Gateway Services in respect of Direct Debit Transactions this Clause 8 will apply.

8.2 Xplor does not guarantee any minimum response times in connection with any bank, Card Scheme, Other Payment Service provider, third party payment processor or the completion of any Transaction transmitted and/or processed via the Gateway Services. Except to the extent caused by the fraud, wilful misconduct or negligence of Xplor, Xplor will not be liable for any failure of a bank, Card Scheme, Other Payment Service provider, or third party payment processor's failure to settle any Transaction.

8.3 Xplor may adjust the content and interfaces of the Gateway Services (including any Hosted Payment Portal) to keep the Gateway Services up to date with market requirements. If such adjustments lead to a necessary change in software, interfaces or operating procedures at Client, Xplor will notify Client as soon as possible prior to the execution of such adjustments. Client will be responsible for its own costs with respect to such changes to its software, interfaces or operating procedures.

8.4 Where Client uses a Hosted Payment Portal to process Transactions:

8.4.1 Client remains responsible for its own compliance with all applicable rules, regulations and/or standards as required of it (including any Direct Debit Scheme or Network Rules) in accordance with these Terms of Service; and

8.4.2 where Client has customised the Hosted Payment Portal (or Xplor has done so at Client's request), Client is responsible for the content of the Hosted Payment Portal and indemnifies and holds Xplor harmless from any Liabilities regarding such content including claims relating to infringement of third parties' rights (including Intellectual Property Rights) except to the extent caused by the fraud, wilful misconduct or negligence of Xplor.

8.5 Upon receipt of a Transaction request, Xplor will forward such request to the relevant bank, Other Payment Service provider or third party payment processor. Client will be responsible for any necessary contractual arrangements and integrations with such third parties and the provision of any required information.

8.6 Xplor may disconnect Client if a bank, Card Scheme, Other Payment Service provider or third party payment processor ceases or refuses to offer the relevant payment service being used in respect of the Transactions as a payment method. Xplor will notify Client if it is disconnected.

9. CHARGEBACKS, ASSESSMENTS AND REVERSED PAYMENTS

9.1 Upon its occurrence each Chargeback, Assessment or Reversed Payment represents a debt immediately due and payable by Client to Xplor on demand, notwithstanding any termination of this Agreement or the Services.

9.2 To the extent permitted by Applicable Law, the Network Rules and any Direct Debit Scheme, Xplor will notify Client as soon as reasonably practicable of any Chargebacks, Assessments and/or Reversed Payments which have occurred or have been incurred.

9.3 Each Chargeback, Assessment and Reversed Payment will be charged to Client in the currency in which Xplor is required to pay the Chargeback, Assessment or Reversed Payment.

9.4 If Client wishes to dispute a Chargeback, Assessment or Reversed Payment, Client will do so in accordance with the applicable procedure set out in the Payments User Guide, Network Rules and/or any Direct Debit Scheme. It is Client's responsibility in the case of a disputed Chargeback, Assessment or Reversed Payment, to provide to Xplor such evidence as Xplor, the Acquirer, the Card Scheme, the Card Issuer, any Other Payment Service provider, any Direct Debit Scheme or bank may reasonably require to investigate the disputed Chargeback, Assessment or Reversed Payment.

9.5 Client agrees that the relevant Acquirer's, Card Scheme's, Other Payment Services provider's, Direct Debit Scheme's or bank's decision regarding the validity and value of any Chargeback, Assessment and/or Reversed Payment will be final and binding and Xplor will not be obliged to investigate or defend the validity and or value of any Chargeback, Assessment or Reversed Payment.

10. DISHONOURED TRANSACTIONS

Client agrees that, in respect of a Transaction which has failed due to a dishonoured payment instruction (whether direct debit or other payment instruction) arising from a Buyer's act or omission and Xplor has incurred associated bank and/or other administrative or service charges (**Dishonoured Transaction**), Client will pay Xplor, in respect of each Dishonoured Transaction, the relevant fee as specified in the Order Form.

11. **REFUNDS**

11.1 Where a Buyer requests that Client refunds a Card Transaction or Other Payment Transaction Client will submit a Refund request using the procedure set out in the Payments User Guide and such request constitutes irrevocable consent by Client for the execution of such Refund. Client agrees to pay the fee specified in the Order Form in respect of each Refund requested.

11.2 In relation to any Card Transaction or Other Payment Transaction, Client will:

11.2.1 only effect a Refund to a Buyer in respect of goods and/or services Client has actually sold and/or agreed to supply and using the payment method used by the Buyer in respect of that Transaction;

11.2.2 not provide a cash Refund to a Buyer, unless required to do so pursuant to Applicable Law; and

11.2.3 not accept cash or any other compensation for effecting a Refund.

11.3 All Refunds must be paid in the currency of the original Transaction. If a Refund value is not in the Agreed Currency, then Xplor will convert the Refund back into the original Transaction currency using the Exchange Rate applicable on the date on which the Refund request is processed by Xplor.

11.4 Xplor is only obliged to process any Refund or Original Credit Transaction to the extent that it holds sufficient funds for Client in the currency of the particular Refund or Original Credit Transaction. If Xplor does not hold such funds Client will credit Xplor with sufficient funds without delay prior to such Refund or Original Credit Transaction being undertaken, indemnifying Xplor against any Liability (except to the extent caused by the fraud, wilful misconduct or negligence of Xplor) in respect of the payment of Refunds or Original Credit Transactions. Where the Refund or Original Credit Transaction is not made, Client will have no claim against Xplor and will hold Xplor harmless against any related Liabilities.

11.5 Xplor may refuse to execute a Refund or Transaction if it does not meet the conditions in this Agreement or is prohibited by law. If Xplor does refuse to execute a Refund or Transaction, within the time for processing the Refund or Transaction, Xplor will notify Client (i) (unless prohibited by law) of the refusal, (ii) (if possible) the reasons for such refusal, and (iii) (where it is possible to provide reasons for the refusal and those reasons relate to factual matters) the procedure for correcting any factual mistakes that led to it. Any Refund or Transaction that Xplor refuses will be deemed not to have been received for the purposes of execution times and liability for nonexecution or defective execution.

11.6 Where Xplor executes a Transaction or Refund in accordance with details provided by Client, the Transaction or Refund will be deemed to have been correctly executed by Xplor and any other financial institution involved. Where the details provided by Client are incorrect, Xplor is not liable for the nonexecution or defective execution of the Transaction or Refund, but Xplor will make reasonable efforts to recover the funds involved in such a Transaction or Refund and Xplor may charge Client for any such efforts.

11.7 Client must notify Xplor promptly after becoming aware (and in any event within 13 months of the Transaction) of any Transaction or Refund which has not been correctly executed or which is unauthorised.

12. **CLIENT OBLIGATIONS**

12.1 Client will:

12.1.1 cooperate fully with Xplor and provide such information, access and assistance as Xplor may reasonably require in the performance of this Agreement (including providing all information Xplor deems necessary to comply with anti-money laundering and sanctions Applicable Laws);

12.1.2 ensure that it meets any dependencies notified by Xplor to Client from time to time (including the minimum technical requirements for user IT equipment, network access and other matters not in Xplor's control);

12.1.3 carry out its obligations under this Agreement, and access and use the Services, in accordance with all Applicable Law;

12.1.4 comply with all Network Rules, Card Schemes, Direct Debit Schemes and Payments User Guide;

12.1.5 save as expressly set out in this Agreement, be solely responsible (at its own cost) for the provision of all equipment, software, systems and telecommunications facilities which are necessary to enable it to receive the Services; and

12.1.6 on request, provide Xplor with evidence of compliance with the warranties and undertakings set out in Clause 12.2, including the accounting records relating to the permanent establishment/business registration as the case may be.

12.2 Client warrants and undertakes that it:

12.2.1 has a permanent establishment and/or business registration in the country referenced as its address in this Agreement which is where the Services are provided;

12.2.2 will abide by all relevant accounting principles as they apply to it and record the Transactions that Xplor processes for it in the accounting records of the permanent establishment/business registration as the case may be fully and properly in accordance with those principles, the Network Rules and any Direct Debit Scheme;

12.2.3 pays all relevant taxes as required by Applicable Law and the Network Rules relating to the Transactions submitted to Xplor for processing by the permanent establishment/business registration as the case may be; and

12.2.4 to the extent any Network Rules, Card Scheme, Direct Debit Scheme or Applicable Law require a change in the location of Client or contracting entities (such as the execution by Client of a novation agreement replacing Client with an Affiliate), Client undertakes to comply with such requirements and will execute all such documents as reasonably required by Xplor in order to ensure such compliance.

12.3 Client confirms that, to the extent that it is not a consumer, a micro-enterprise or a charity within the meaning of the Payment Services Regulations 2017, as amended from time to time, it agrees that none of the provisions of Part 6, nor regulations 66(1), 67(3) and (4), 75, 77, 79, 80, 83, 91, 92 and 94 of the Payment Services Regulations 2017 (or any equivalents provisions which have been implemented in the

jurisdiction where Client is incorporated or any other relevant jurisdiction) applies to this Agreement.

12.4 Without prejudice and in addition to any other rights and remedies available to Xplor under this Agreement, Client indemnifies and holds Xplor and its Affiliates harmless from and against any and all Liabilities suffered or incurred by Xplor and/or its Affiliates arising out of or in connection with:

12.4.1 any breach by Client of Clauses 4, 12.1, 12.2 or any security breach, compromise or theft of Transaction Data or Access ID held by Client or on Client's behalf (other than by Xplor);

12.4.2 any Transaction, disputed Transaction, Representment, Retro-Charge, Assessment, Reversed Payment, Refund, Original Credit Transaction and/or Chargeback; and

12.4.3 Client's failure to comply with the PCI SSC or any Network Rule or Direct Debit Scheme.

except to the extent that the Liability is caused by the fraud, wilful misconduct or negligence of Xplor

13. CLIENT BANK ACCOUNT

13.1 Client will open and maintain the Client Bank Account throughout the Term and for such period as may be required thereafter. Client will provide Xplor with at least 30 days' notice in writing of any change to the Client Bank Account (other than general administrative changes) which it or a third party (including the relevant bank) wishes to make. Xplor will be under no obligation to make any changes to the Client Bank Account until Client has provided Xplor with all information Xplor reasonably requires in order to complete its anti-money laundering and sanctions Applicable Laws in respect of such change.

13.2 Any Remittance or Outward Payment made by Xplor to the Client Bank Account in the name of any person will constitute good receipt by Client of the sum due and owing by Xplor to it in relation to Xplor's liability to Client in respect of the Services.

14. AUDIT RIGHT

14.1 Where Xplor is required by law and/or regulation, a Regulatory Authority, Card Scheme, Network Rule, Direct Debit Scheme, Acquirer or bank to undertake an audit, Client will:

14.1.1 permit Xplor and/or its duly authorised representatives to access during business hours such premises or systems on which Client's business trades or where Client's records or stock are located and to take and retain copies of all such records to ascertain if Client is performing its obligations hereunder; and

14.1.2 provide all reasonable cooperation in relation to such an audit.

14.2 Client will pay any costs and charges incurred by Xplor in respect of such audit.

15. DATA PROTECTION

15.1 Client will ensure that, in respect of all Transaction Personal Data provided to Xplor, and in respect of the use of that Transaction Personal Data:

15.1.1 all necessary fair processing notices have been provided to and consents obtained from data subjects (including Buyers) by Client, including to specify Xplor as a recipient of the Transaction Personal Data in respect of the data subject's Personal Information and to provide a link to the Xplor Privacy Notice or to include a statement that the Xplor Privacy Notice can be found on Xplor's website; and

15.1.2 all necessary steps have been taken to ensure that Transaction Personal Data has been collected and processed in accordance with the principles set out in Data Protection Legislation, including in particular those relating to: (a) lawful, fair and transparent processing; (b) specified, legitimate and explicit purposes of processing; and (c) adequate, relevant and not excessive processing.

15.2 If either party receives any complaint, notice or communication from a supervisory authority which relates directly to:

15.2.1 the other party's processing of the Transaction Personal Data; or

15.2.2 a potential failure by the other party to comply with Data Protection Legislation in respect of the Services,

the receiving party will, to the extent permitted by Applicable Law, promptly notify the other party and provide such information as it will reasonably request in that regard.

15.3 Xplor may make periodic searches of, and provide information about Client to credit reference, market research, customer feedback and fraud prevention agencies, its Affiliates, Acquirers, Other Payment Service providers, Card Schemes, banks and agents. Client acknowledges that any information provided to credit reference agencies may be used by other credit providers to take decisions about Client. Further information about how Xplor uses this information can be found in the Xplor Privacy Policy.

15.4 If a data subject makes a written request to either party to exercise any of their rights under Data Protection Legislation in respect of Transaction Personal Data, the receiving party will respond to that request in accordance with Data Protection Legislation. To the extent the request concerns processing of Transaction Personal Data undertaken by the other party, the receiving party will:

15.4.1 promptly and without undue delay forward the request to the other party; and

15.4.2 cooperate and provide reasonable assistance in relation to that request to enable the other party to respond in accordance with Data Protection Legislation.

15.5 Client acknowledges that Xplor may disclose information which may include Transaction Personal Data to any supervisory authority, law enforcement authority or Regulatory Authority.

16. PCI SSC AND DATA

16.1 Without prejudice to the provisions of Clause 15, Client and Xplor will each comply with all PCI SSC rules, regulations and/or standards as required of them respectively, directly or indirectly, by the Card Schemes.

16.2 Client represents, warrants and undertakes that no security breach relating to Transaction Data processed by or on behalf of Client has occurred before, and remains unremedied on, the Commencement Date.

16.3 Client will not "store" (as such term is used in the PCI SSC standards), at any time:

16.3.1 a Card's verification value in the Card's magnetic stripe, on the Card, in or next to its signature panel, or in the Card's magnetic stripe image in a chip application;

16.3.2 a PIN verification value in a Card's magnetic stripe;

16.3.3 the full contents of any track from a Card's magnetic stripe (on the Card, in a chip or elsewhere);

16.3.4 any other data (including any Sensitive Authentication Data) that any of the Card Schemes mandate from time to time as data that cannot be stored;

16.3.5 any account numbers or security codes associated with a Buyer's use of the Direct Debit Payments Services; or

16.3.6 any other data that a bank mandates from time to time as data that cannot be stored.

16.4 Client must notify Xplor of all third parties who have access to Cardholder data on behalf of Client (i.e., store, process or transmit Cardholder data). Client acknowledges such third parties are required by the Card Schemes to be registered, and Client will cooperate with Xplor in completing such registration and be responsible for all fees imposed by the Card Schemes in connection therewith. Client will notify Xplor immediately if it becomes aware of or suspects any security breach relating to Transaction Data and will also (and without prejudice to any other remedy Xplor have in respect thereof) immediately identify and resolve the cause of such security breach and take any steps that Xplor may reasonably require of Client to do so, including the procurement (at Client's cost) of forensic reports from third parties reasonably recommended by Xplor.

16.5 Without prejudice to Clause 21, and subject to the requirements of the PCI SSC, Client will retain legible copies of all Transaction Data for a minimum period of 18 months from the date of the relevant Transaction, Chargeback, Retro-Charge, Representment or Reversed DD Payment to which it relates.

16.6 Client will provide Xplor with copies of such Transaction Data relating to any Transaction, Chargeback, Retro-Charge, Representment or Reversed Payment as Xplor may reasonably request, in each case in such format as specified by Xplor and within 7 Business Days of such request.

17. **FEES**

17.1 Xplor will invoice Client for, and Client will pay, the Fees in accordance with the payment terms set out in the Order Form, on the relevant invoice or as otherwise notified by Xplor to Client .

17.2 Without limiting any other right or remedy of Xplor, if Client fails to pay any Fees by its due date for payment:

17.2.1 Client will pay interest on the overdue amount at the rate of 4% per annum above the Commonwealth Bank Corporate Overdraft Reference Rate from time to time. Such interest will accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. Client will pay the interest together with the overdue amount;

17.2.2 Xplor will be entitled to suspend performance of its obligations under this Agreement without liability until such non-payment is remedied; and

17.2.3 Client will pay to Xplor any and all reasonable collection costs incurred by Xplor in collection of late payment together with the overdue amount.

17.3 In this Agreement all sums payable are stated exclusive of any applicable GST or other sales tax, which will be payable by Client in addition at the prevailing rate.

17.4 Payments by Client to Xplor will be made without deduction or withholding unless required by law. If any deduction or withholding is required by law, Client will pay such additional sum as is required to ensure that the net amount received and retained by Xplor equals the amount that would have been received without such deduction or withholding.

17.5 The Fees for handling each Chargeback, Reversed Payment or Defaulted Transaction are payable upon the earlier to occur of the receipt by Xplor of:

17.5.1 a Chargeback, Reversed Payment or Defaulted Transaction; and

17.5.2 a request for information from a Card Scheme, Other Payment Service Provider or Direct Debit Scheme in relation to a potential Chargeback/Reversed Payment/Defaulted Transaction irrespective of whether the Chargeback/Reversed Payment/Defaulted Transaction subsequently occurs.

17.6 Xplor will be entitled to deduct Xplor Payments owing to Xplor from any amount owed by Xplor to Client. Client authorises Xplor to debit the Client Bank Account for all Xplor Payments, will establish and maintain a direct debit mandate (or equivalent instruction), authorising Xplor to debit from the Client Bank Account all Xplor Payments and will ensure that the Client Bank Account at all times has a credit balance sufficient to meet the Xplor Payments.

17.7 Xplor will, if practicable, notify Client in advance of any Xplor Payments which Xplor intends to debit from the Client Bank Account.

17.8 If the amount of Permitted Deductions or Xplor Payments (including following termination of this Agreement or the provision of the Services) exceeds the amount payable by Xplor to Client, Xplor may invoice Client for the difference and such invoice will be immediately due and payable.

17.9 Xplor may at any time require that Client procures, within 30 days of receiving Xplor's request, that Client provides Xplor with a guarantee, indemnity, cash reserve or other security in such form as Xplor may reasonably require to secure to Xplor's reasonable satisfaction the performance of Client's obligations (including its payment obligations and contingent or potential obligations) from time to time under this Agreement (**Security**). Xplor will be entitled to charge Client for its reasonable external costs incurred in obtaining the Security referred to in this Clause 17.9.

17.10 Any tax payable in respect of the Payment Services provided or payments made under this Agreement (other than tax payable on Xplor's net income, profit or gains) will be payable by Client. In the event that Xplor is liable, or Xplor and Client are jointly liable to a tax authority for any tax, such sums will be payable by Client. Xplor may, at its sole discretion, but will not be obliged to, pay any such tax to the relevant tax authority. In the event that Xplor pays any such tax, Client agrees to immediately indemnify Xplor, and hold Xplor harmless, against and reimburse Xplor for, such sums. Xplor may, at its sole discretion, deduct such sums from any amounts held by Xplor and owed to Client.

17.11 Subject to Clause 17.10, any Remittance or Outward Payment will be made without a deduction or withholding for, or on account of, tax imposed or levied on behalf of a tax authority (**Tax Deduction**) unless such Tax Deduction is required by Applicable Law, in which case Xplor will make such Tax Deduction required by Applicable Law and will pay such amounts as are due to the relevant tax authority required in connection with the Tax Deduction within the time provided for by Applicable Law. For the avoidance of doubt, Xplor will not be obliged to increase or gross-up any payment on account of any Tax Deduction and will pay the Remittance to Client net of any such Tax Deduction. At Client's request, Xplor will provide confirmation that the Tax Deduction has been made and/or that the appropriate payment has been paid to the relevant tax authority.

18. **INTELLECTUAL PROPERTY RIGHTS**

18.1 Client acknowledges and agrees that:

18.1.1 as between the parties, all rights (including all Intellectual Property Rights) in and to the Services and any Proprietary Materials will at all times be and remain the property of Xplor (or its licensors), including any modifications made in response to any feedback or suggestions from Client; and

18.1.2 any rights in and to the Services and the Proprietary Materials not expressly granted to Client under this Agreement are reserved to Xplor and any uses not expressly permitted are prohibited.

18.2 Xplor will be entitled to make reasonable use of, and reference to, Client's name and trade or service marks in any promotional or corporate material relating to Xplor's services.

18.3 Each party agrees to execute such documents and/or do such things as the other may reasonably require during the Term, or at any time after termination or expiry of this Agreement, to give effect to the provisions of this Clause 18.

19. **LIABILITY**

19.1 Nothing in this Agreement will exclude or limit either party's liability in respect of: (a) death or personal injury caused by the negligence of that party; (b) fraud (including fraudulent misrepresentation); or (c) any liability which may not otherwise be lawfully excluded or limited.

19.2 Subject to Clause 19.1, Xplor will not be liable in contract, tort (including negligence, breach of statutory duty, liability under indemnities or otherwise) or otherwise in connection with this Agreement for: (a) any special, incidental, punitive, consequential or indirect, loss, damage, cost, and/or expense whatsoever; or (b) any lost profits, lost goodwill (or any other damage to reputation), loss of revenue, loss of business, loss of contracts, loss of anticipated savings, business interruption, loss of opportunity, loss of bargain, or lost or corrupted data, in each case regardless of whether any of these types of losses are direct, indirect or consequential. In each case, even if a party is aware of the possibility that such losses might be incurred.

19.3 Subject to Clause 19.1, Xplor's aggregate liability in contract, tort (including negligence, breach of statutory duty, liability under indemnities or otherwise) or otherwise under or in connection with any and all claims made relating to this Agreement will be limited to an amount equal to the Fees (excluding GST and any third party fees) paid in the 12 month period immediately preceding the date of the first such claim.

19.4 Xplor will have no liability in respect of: (a) any delay or failure to perform its obligations under this Agreement to the extent the same results from Client's acts or omissions; or (b) any Liabilities suffered by Client which arises directly or indirectly from Xplor's compliance with Client's instruction, or any of the data received by Xplor being inaccurate or incomplete.

19.5 Except as expressly set out in this Agreement, Xplor makes no representation, warranty or guarantee as to the Services. The Services are provided "as is" and, subject to Clause 19.1, all warranties, conditions, terms, obligations, undertakings and representations, whether in each case express or implied by statute, common law, custom, trade usage, course of dealing or otherwise (including implied conditions of satisfactory quality and reasonable fitness for purpose) are excluded from this Agreement to the fullest extent permissible by Applicable Law.

19.6 Where there is more than one Client, each Client will be liable under this Agreement jointly and severally.

19.7 Neither party will be liable for any failure, reduction in service or delay in performing its obligations under this Agreement if and to the extent that such failure, reduction in service or delay is the result of any event or circumstance that is outside the reasonable control of the affected party (a **Force Majeure Event**). Where a party's performance is or may be affected by a Force Majeure Event, it will inform the other party as soon as reasonably practicable after becoming aware of the Force Majeure Event. This Clause 19.7 does not apply to any obligation of either party to make payment to the other.

19.8 Subject to Clause 19.1, to the extent that Xplor's liability cannot be wholly excluded, and to extent permitted by law, its liability under this Agreement shall be limited (at its option) to:

19.8.1 the replacement or re-supply of the Services; or

19.8.2 the cost of having the Service replaced or re-supplied.

20. **TERMINATION**

20.1 Either party (the **Terminating Party**) will be entitled to terminate this Agreement immediately on written notice to the other party if the other party (the **Defaulting Party**):

20.1.1 is in material breach of this Agreement (being a single event which is, or a series of events which are together, a material breach) and either such breach is not capable of remedy or, if the breach is capable of remedy, the Defaulting Party has failed to remedy such breach within 14 business days of receiving written notice from the Terminating Party requiring it to do so; or

20.1.2 suffers an Insolvency Event.

20.2 Xplor will have the right to terminate this Agreement (in whole or part) or terminate or suspend the provision of the Services immediately by written notice to Client:

20.2.1 if Client breaches Clause 12.1 or 17.1 and, in the case of Clause 17.1, has not rectified that breach within fourteen (14) days of having been notified by Xplor to do so;

20.2.2 if Client either (a) by virtue of its activities; or (b) undergoes a Change of Control that, in Xplor's reasonable opinion, could bring Xplor into disrepute;

20.2.3 if Xplor is required to do so under Applicable Law or reasonably believes (in its reasonable opinion) that a Transaction or the provision of the Services may be contrary to Applicable Law;

20.2.4 if any Regulatory Authority has taken action or made statements, orders, requests, directives or demands regarding the activities of Client and Xplor reasonably determines such activities may harm or adversely affect the reputation or goodwill of Xplor if Xplor continues to process Transactions under this Agreement;

20.2.5 if Xplor reasonably considers that any act or omission of Client falls within a Reason Code which would ordinarily lead to Client being listed on as "high-risk" (or equivalent) on any Card Scheme, Other Payment Service, Network Rules, Direct Debit Scheme, bank or a Regulatory Authority black list;

20.2.6 upon the occurrence of either a material Assessment or multiple Assessments;

20.2.7 if so instructed by a Card Scheme, Other Payment Service provider, an Acquirer, Direct Debit Scheme, bank or Regulatory Authority;

20.2.8 if Client undergoes a Change of Control that, in Xplor's reasonable opinion, could cause Xplor a material concern (reputational or otherwise) under Applicable Law;

20.2.9 upon a material positive or negative fluctuation month-on-month in Transaction volumes or the average value of its Transactions or the occurrence of such other event as may, in Xplor's reasonable opinion, give rise to a significant increase in Xplor's risk profile; or

20.2.10 if Xplor, acting reasonably, considers that the total value of Refunds, Chargebacks, Reversed Payments and/or declined Transactions is excessive relative to expected volume,

provided that, in respect of each of Clauses 20.2.9 or 20.2.10, account will be taken of historical figures and trends including seasonality of sales and yearly sales growth.

20.3 Notwithstanding any other term of this Agreement if (a) Client terminates this Agreement other than pursuant to Clause 20.1 or (b) Xplor terminates this Agreement pursuant to Clause 20.1 or 20.2 in each case prior to the expiry of the Initial Term then, in addition to any outstanding Fees owed at termination, Client shall pay Xplor the Early Termination Fee. Client acknowledges that the Early Termination Fee corresponds to the establishment costs incurred by Xplor and not otherwise passed through to Client. If Client requires Xplor to transfer any of the Payment Mandates to a new provider (whether on termination of this Agreement or otherwise), it shall pay Xplor the Bulk Transfer Fee and it acknowledges that Xplor will only carry out such transfer i) having received payment from the Client of the Bulk Transfer Fee and ii) being satisfied that the Client's new provider is compliant with all Applicable Law and PCI DSS).

20.4 Either party may immediately terminate this Agreement or terminate/suspend the Services if the other ceases to be in compliance with its obligations under Clause 16.

20.5 If Xplor exercises any right under this Agreement to suspend its processing of a Transaction, then Xplor will, to the extent it is permitted to do so by Applicable Law, the Network Rules and any Direct Debit Scheme, notify Client of such suspension and the reasons for it.

20.6 If Xplor considers that any act or omission of Client leading to the termination/suspension of this Agreement or termination/suspension of the Services falls within a Reason Code, Xplor may, in addition to providing details of such act or omission to Client, notify any termination/suspension and the Reason Code forming the grounds for termination/suspension to a Card Scheme, Other Payment Service or any Direct Debit Scheme, who may make such information available to the Card Issuer, Other Payment Service provider, banks, crime enforcement authorities and/or any Regulatory Authority.

20.7 On expiry or termination of this Agreement:

20.7.1 all licences granted by Xplor under this Agreement will terminate and Client will immediately cease accessing and/or using the Services;

20.7.2 all outstanding invoices and any un-invoiced sums attributable to the period up to termination shall become immediately due and payable;

20.7.3 all provisions of this Agreement will cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue will continue in full force and effect. Without prejudice to the foregoing, the following Clauses of these Terms of Service will continue to be enforceable despite termination of this Agreement or the provision of the Services: 4, 5.3, 9, 10, 12.3, 17.8, 17.10, 16.5, 16.6, 20.6 and 20.7; and

20.7.4 Client shall pay the Bulk Transfer Fees where applicable.

20.8 Termination or expiry of this Agreement will not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry.

21. CONFIDENTIALITY

21.1 Subject to Clause 21.2, each party undertakes to the other that:

21.1.1 it will treat as confidential: (a) the contents (including the financial details) of the Order Form; and (b) all information relating in any manner to the business and/or affairs of the other party or its Affiliates which may be communicated to it under or in connection with this Agreement (**Confidential Information**);

21.1.2 it will not use, or disclose to any person, any Confidential Information except as follows:

(a) each party may disclose Confidential Information as required by Applicable Law, a court of competent jurisdiction or any governmental, stock exchange (where applicable and in accordance with listing rules) or regulatory authority provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as reasonably possible; and/or

(b) each party may disclose Confidential Information: (i) to its professional advisors;

and/or (ii) as agreed by the other party in writing.

21.2 Clause 21.1 does not apply to any information which the recipient party can evidence is: (a) in the public domain through no fault of the recipient party; (b) obtained by the recipient party from an unrestricted third party; or (c) has already been independently generated by the recipient party.

21.3 To the extent that Client is subject to the requirements of the Freedom of Information Legislation, Xplor will provide such necessary assistance and cooperation as is reasonably requested by Client to enable Client to comply with its obligations under such legislation.

22. **GENERAL**

22.1 Each party represents, warrants and undertakes to the other that it has full capacity and authority to enter into and to perform this Agreement.

22.2 Any notice given under this Agreement will be in writing and served by hand, prepaid recorded or special delivery, prepaid international recorded airmail or email to the relevant party at the address stated below, or such other address as the relevant party may notify in accordance with this Clause. Any such notice will be deemed served at the time of delivery (provided that, in the case of notice by email, no automated delivery failure notice is received by the sender).

Xplor

Attention: Account Management with a copy to The Legal Department

Address: Registered office set out in the Order Form

Email: account.m@debitsuccess.com with a copy to legal@xplortechnologies.com

Client

Attention: Client

Address: Registered office set out in Order Form

Email: As set out in Order Form

22.3 In addition to formal notices given in accordance with Clause 22.2, it is agreed between the Parties that Xplor may communicate with Client from time to time in relation to its use of and Xplor's provision of the Services by means of newsletters, emails, SMS or text message and messages on its website. It is agreed between the Parties that Xplor may also communicate with Client through products such as the Client Portal. Such communications may include notification of changes to the operating instructions or Network Rules, or new or replacement products or services in connection with the Services

22.4 Where Client provides an email address, Client agrees that Xplor may send notices to and rely on the authenticity of communications it receives from that email address as being from and binding on Client. Client must ensure only it and/or persons with authority to act on its behalf have access to its email addresses, that they are kept secure and that it contacts us immediately if it becomes aware or suspects any relevant unauthorised use or security compromise.

22.5 If any court finds that any part of this Agreement is illegal, invalid or unenforceable, that part will be considered removed, but no other part of this Agreement will be affected. If possible, the affected part will be replaced by such valid lawful and enforceable provision as most closely achieves the affected part's original legal, economic or commercial purpose.

22.6 Client may not charge, assign, novate, transfer or otherwise part with any of its rights or obligations under this Agreement without Xplor's prior written consent (not to be unreasonably withheld or delayed).

22.7 Xplor may, on written notice to Client, charge, assign, novate, or otherwise transfer any of its rights or obligations under this Agreement without consent, provided such action will not, in Xplor's reasonable opinion, cause detriment to Client.

22.8 This Agreement supersedes any previous version of it agreed between the parties in relation to its subject matter.

22.9 Subject to Clause 3.10, this Agreement may only be varied by a written document signed by both parties.

22.10 No one other than a party to this Agreement, their successors and permitted assignees and Xplor's Affiliates, will have any right to enforce any of the terms of this Agreement.

22.11 This Agreement will not be deemed to constitute a partnership or joint venture or contract of employment between the parties.

22.12 This Agreement is drafted in the English language. Any translations of this Agreement are provided/produced for convenience only. In the event of any conflict between the English language version of this Agreement and any translation, the English language version will prevail.

22.13 The Order Form may be executed in counterparts, each of which when executed will constitute a duplicate original, but all the counterparts will together with these Terms of Service constitute the one Agreement. Delivery of an executed counterpart by electronic mail will be as effective as delivery of a manually executed counterpart. Each party has the option to sign the Order Form by means of an electronic signature system. A party that elects to use such system warrants that the person signing the Order Form on behalf of that party has the requisite authority to bind that party by means of that system. By affixing electronic signatures, the signatories acknowledge and agree that they intend to bind the parties. Any electronic signature constitutes valid signature and will be construed as (and given equal evidentiary weight as) the signatory having signed the document as an original in manuscript.

22.14 On notice of any dispute, each party will appoint a senior decision-maker who will use all reasonable endeavours in good faith to settle any dispute arising in connection with this Agreement. If the matter is not resolved by such senior decision-makers within fourteen (14) days of notice of the dispute, either party may issue proceedings pursuant to Clause 22.15. Nothing in this Clause 22.14 will prevent or restrict a party from seeking injunctive relief in the courts or commencing proceedings where this is reasonably necessary to avoid any loss of a claim due to the statutes of limitations.

22.15 This Agreement (and any non-contractual obligations relating to it) will be governed by and construed in accordance with the laws of New South Wales and the courts of New South Wales will have non-exclusive jurisdiction, and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts. regarding any disputes arising from or in connection with this Agreement.

22.16 Each party agrees that it must notify the other of any claim it may have under this Agreement within 6 months of when the asserting party first knew or reasonably should have known of the basis of the claim. Any service of process in relation to such claim must also be made within that time period, otherwise the claim is extinguished.