



# Worldpay Tri-Partite Agreement

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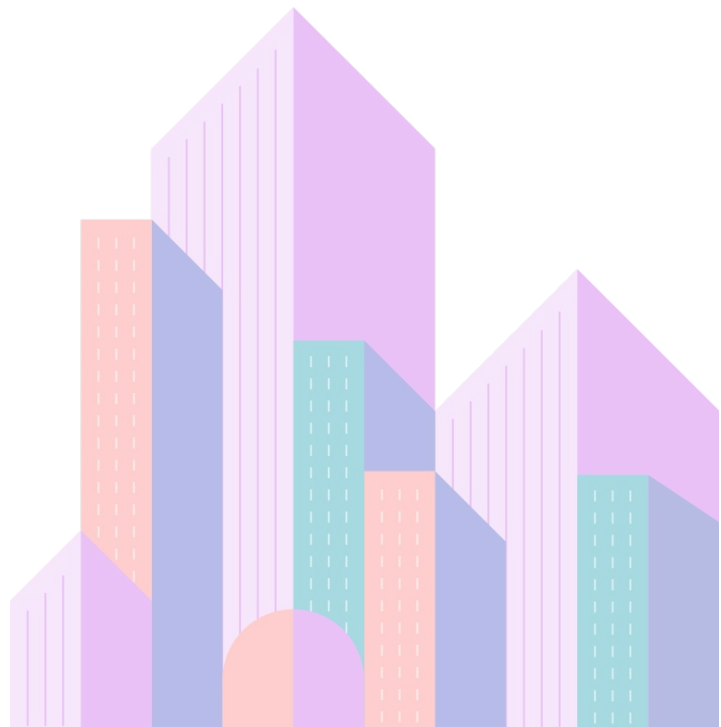
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WorldPay Tripartite Agreement V1.0



# Tripartite Aggregator Agreement

## BETWEEN

- (1) Payrix Australia Pty Ltd (ABN 63 135 196 397) , having its registered office at Level 1, 2 Clunies Ross Court, Eight Mile Plains, Queensland 4113, ("**Aggregator**");
- (2) You the business as identified on the application form ( "**Merchant**"); and,
- (3) Worldpay (UK) Limited, a company incorporated in England, having its registered office at The Walbrook Building, 25 Walbrook, London EC4N 8AF, registration number: 07316500 ("**Worldpay**").

## RECITALS:

- (A) Merchant desires to accept Cards as payment for goods and services. Aggregator and Worldpay desire to offer card processing and related services to Merchant.
- (B) Aggregator and Merchant have entered into an agreement for the provision of certain services, including the processing of Transactions (the "**Aggregator/Merchant Agreement**"). Worldpay is the service provider with which Aggregator has entered into a separate agreement to assist Aggregator in processing Merchant's Transactions on a domestic basis in Australia (the "**Aggregator Agreement**").
- (C) In certain circumstances mandated by the Scheme Rules, Worldpay is required to enter into a direct agreement with Merchant regarding the processing of Merchant's Transactions.

**THEREFORE:** it is agreed as follows:

### 1. Definitions:

"Applicable Law" means all laws or regulations (and including the requirements of any regulatory authority) applicable to a party or to any Transaction or refund for the time being in force in any jurisdiction;

"Aggregator/Merchant Agreement" has the meaning set out in Recital B;

"Assessments" means any assessment, fine, or similar charge of any nature which a Card Scheme levies on the Merchant, the Aggregator or Worldpay at any time, directly or indirectly in respect of the Acquiring Services;

"Authorisation" means Worldpay's provision to the Aggregator at the time of the Transaction of confirmation from the relevant Card Issuer as to whether or not the Card used to pay for the Transaction has sufficient funds available for the relevant Transaction and has not been blocked for any reason or listed as lost, stolen or as having had its security compromised;

"Card" means a credit, debit, charge, purchase or other payment card issued by a Card Issuer under a Card Scheme whose payments Worldpay is able to process (as notified by Worldpay to Aggregator from time to time).

"Cardholder" the authorised user of a Card;

"Card Issuer" means an organisation which issues a Card to a Cardholder;

"Card Scheme" means schemes governing the issue and use of Cards, as approved by Worldpay from time to time;

"Chargeback" a Transaction that is partially or fully returned by a Card Issuer, resulting in a financial liability to Worldpay, including any circumstances where a Card Issuer or a Card Scheme either:

- (a) Refuses to settle a Transaction;

(b) Demands payment from Worldpay in respect of a disputed Transaction that has been settled;

(c) Demands payment from Worldpay in respect of a disputed Transaction;

in each case notwithstanding any Authorisation;

“Insolvent” in relation to a Party, means (a) the Party is unable to pay its debts as they fall due;

(b) or an execution or other process issued on a judgment, decree or order of any court in favour of a creditor of that Party is returned unsatisfied in whole or in part; or (c) the value of the Party’s assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities; or (e) the Party is the subject of: (i) a petition for an administration order or an application for an administration order, or if an administrator is appointed to it; or (ii) any step to enforce security over, or a distress, execution or other similar process is levied or served against, the whole or a substantial part of the relevant Party’s assets or undertaking, including the appointment of a receiver, administrative receiver, manager or similar officer to enforce that security; or (f) the Party passes a resolution for its winding up, a court of competent jurisdiction makes an order for its winding up or there is a presentation of a petition for the Party’s winding up which is not dismissed within seven (7) days; or (g) the Party suffers or is subject to any equivalent event, circumstance or procedure to those set out above in this definition in any jurisdiction and “Insolvency” shall be construed accordingly;

“Merchant Operating Instructions” means any instructions, guidance or manuals made available by Worldpay at <http://www.streamline.com/support/> and <http://www.worldpay.com/support/>;

“PCI SSC”: 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, as updated from time to time;

“Scheme Rules” means all applicable rules, regulations and operating guidelines issued by the Card Schemes from time to time relating to Cards or Transactions (including the Merchant Operating Instructions and such rules, regulations and guidelines posted on [www.visaeurope.com](http://www.visaeurope.com) and [http://www.mastercard.com/us/merchant/pdf/BM-Entire\\_Manual\\_public.pdf](http://www.mastercard.com/us/merchant/pdf/BM-Entire_Manual_public.pdf)) and all amendments, changes and revisions made thereto from time to time;

“Transaction” means any transaction between the Merchant and a third party where a Card is used as the method of payment and in relation to which the Acquiring Services are supplied.

## 2. Nature of this Agreement

Worldpay’s obligations under this Agreement are limited exclusively to the processing of Merchant’s Transactions in **Australia and the receipt** and disbursement of related funds to Merchant on Aggregator’s behalf for the purpose set out in Recital C (the **“Acquiring Services”**). All other obligations relating to the provision of the services under the Aggregator/ Merchant Agreement are the responsibility of the Aggregator and any issue, dissatisfaction, dispute and/or service dispute of the Merchant relating to any services provided to the Merchant should be notified to and brought against the Aggregator in the first instance.

## 3. Merchant’s Obligations

A. Merchant shall at all times comply with: (a) the provisions of this Agreement; (b) the Scheme Rules; and (c) all Applicable Law, including those requirements which apply to the sale of goods and/or services by the Merchant in connection with the Transactions.

B. Merchant shall:

a. in relation to Transactions, only accept payments from and/or make refunds to Merchant’s customers in connection with goods and/or services which Merchant has sold and supplied to those customers, and only pay such refunds to the customer using the payment method used by the customer for the original Transaction;

- b. only accept payments and/or make refunds in respect of goods and/or services the sale and supply of which commonly falls within Merchant's business as identified to the Aggregator;
  - c. submit Transactions to Worldpay promptly and in any event within two (2) days of entry into them;
  - d. prominently display on each of its premises, trading venues and/or websites where the Merchant accepts Transactions, all applicable Card and Card Scheme identification, as required by and in accordance with, the Card Schemes;
  - e. notify Aggregator in writing of the URL of any website where Merchant accepts or states that it will accept payments by Card, such notification to be made before the Merchant accepts any such payments;
  - f. only accept payments in respect of Transactions which a customer of Merchant has authorised in accordance with Applicable Law, the Scheme Rules and any other information or instructions provided by Worldpay and/or the Aggregator from time to time;
  - g. prominently and unequivocally inform its customers of its identity at all points of interaction with a customer (including prominently displaying the company name and any trading name on any website and identifying such name as the Merchant and as the name that will appear on the customer's statement), so that the customer can readily identify it as the counterparty to the relevant Transaction;
  - h. offer its customers a documented complaints procedure and customer service contact point accessible by e-mail and/or telephone;
  - i. not submit any Transactions which are or which Merchant should have known were illegal or fraudulent; and
  - j. refrain from doing anything which Worldpay reasonably believes to be disreputable or capable of damaging the reputation or goodwill of Worldpay or any Card Scheme.
- C. Merchant accepts that an Authorisation is not a guarantee that the person submitting the Transaction is, in fact, the Cardholder, nor is an Authorisation a representation from Worldpay or Aggregator that the Transaction will not be subject to Chargebacks.

#### 4. Payment of Funds Due to Merchant

- A. Subject to the terms of this Agreement, Worldpay will initiate a payment to the designated account (as made known to Worldpay by the Aggregator) of an amount equal to the value of Transactions processed by Worldpay for the Merchant under this Agreement (less deductions for refunds, Assessments, Chargebacks, Chargeback costs, fees or other Merchant liabilities (whether actual or anticipated) under this Agreement or the Aggregator/Merchant Agreement). Any obligation of Worldpay to remit funds under this Agreement is subject to any rights of Worldpay under the Aggregator Agreement.
- B. Merchant acknowledges and accepts that Worldpay shall not have an obligation to make any remittance or payment direct to Merchant. Merchant agrees that any remittance or payment made to Aggregator by Worldpay under this Agreement will be deemed good receipt by Merchant of the sums due from Worldpay to Merchant in relation to Worldpay's liability to Merchant under this Agreement. Merchant shall indemnify Worldpay and hold Worldpay indemnified against all losses, costs, claims, demands, expenses (including legal expenses) and liabilities of any nature (including any re-settlement obligations under the Scheme Rules) arising from or relating to the payment of funds by Worldpay into an account in the name of Aggregator in accordance with the terms of this Agreement.
- C. Throughout the term of this Agreement and after its termination for any reason, Worldpay shall be entitled to defer (for such period as it shall in its reasonable discretion consider appropriate) the date upon which the payment of funds in respect of Transactions would (but for this clause) be due in order to protect its position with respect to actual or anticipated Chargebacks, Assessments, refunds, Chargeback costs, fees, fraud, illegal activity or any other liability of Merchant or relating to any Transactions or under this Agreement or the Aggregator/Merchant Agreement, whether actual or anticipated. Amounts so deferred may be set-off against any actual Chargebacks, Assessments, refunds, Chargeback costs, fees or any other liability of Merchant.

D. The Merchant understands and acknowledges that during the term of this Agreement and after its termination for any reason whatsoever, the Merchant shall continue to bear total responsibility for all Chargebacks, Chargeback costs, refunds, Assessments, fees, fraud and illegal activity resulting in any way from Transactions processed pursuant to this Agreement and all other amounts then due or which thereafter may become due under this Agreement.

## 5. Payment Card Industry Data Security Standard (PCI).

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

## 6. Use of Trademarks

Merchant's use of Card Scheme trademarks must fully comply with the Scheme Rules. Merchant's use of Scheme promotional materials will not indicate directly or indirectly that the Card Scheme endorses any goods or services other than their own and Merchant may not refer to any Card Scheme in stating eligibility for Merchant's products or services. Merchant's use of Card Scheme trademarks shall terminate immediately on termination of the Aggregator Agreement or the Aggregator/Merchant Agreement or as directed by the Card Schemes.

## 7. Termination

- A. This Agreement is effective upon its signature by all parties and continues so long as the Aggregator Agreement and the Aggregator/Merchant Agreement remains in force but shall automatically terminate without notice on termination of the Aggregator Agreement or the Aggregator/Merchant Agreement for any reason, provided that those terms which by their nature are intended to survive termination (including without limitation, indemnification obligations and limitations of liability) shall survive. This Agreement may be terminated by Worldpay at any time (i) in accordance with the Aggregator Agreement; or (ii) following a breach of any of Merchant's obligations under this Agreement or the Aggregator/Merchant Agreement; or (iii) upon the Insolvency of Merchant; or (iv) upon a breach of the Scheme Rules by Merchant; or (v) as required by Applicable Law; or (vi) as directed by the Card Schemes. This Agreement may be terminated by Merchant based on a material breach of any of Worldpay's obligations under this Agreement.
- B. Worldpay may terminate this Agreement without cause with two (2) months' written notice.
- C. Merchant may terminate this Agreement without cause with one (1) month's written notice.

## 8. Indemnification

Merchant agrees to indemnify and hold Worldpay harmless from and against all losses, liabilities, damages and expense: (a) resulting from any breach of any warranty, covenant or agreement

or any misrepresentation by Merchant under this Agreement; (b) arising out of Merchant's or its employees' negligence or willful misconduct, (c) arising in connection with Transactions processed by Worldpay under this Agreement or otherwise arising from Merchant's provision of goods and services to Cardholders or customers (including without limitation any Chargebacks);

(d) resulting from any Assessments or arising out of any third party claims against Worldpay as a result of Merchant's acts or omissions; (e) arising in connection with any security breach, compromise or theft of Transaction data held by Merchant on the Merchant's behalf; (f) arising in connection with Merchant's failure to comply with PCI SSC; or arising in connection with any allegation of fraud in connection with Merchant's business.

## 9. Data

The Merchant hereby authorises (and/or shall secure the rights for) Worldpay to store, use, share and release data, provided or generated pursuant to this Agreement to any person (i) for the purpose of fulfilling Worldpay's obligations under this Agreement; (ii) as required by a Scheme Rule or Applicable Law; (iii) to assess financial and insurance risks arising in connection with this Agreement; (iv) to recover debt or in relation to the Merchant's Insolvency; (v) in aggregated (anonymous and generalised) format to facilitate analysis and comparisons; (vi) to investigate, prevent and/or detect fraud or crime; or (vii) to mitigate information security risk, sector risk or credit risk.

## 10. Audit

The Merchant will: (a) permit Worldpay and/or its duly authorised representatives to access during business hours such premises or systems on which the Merchant's business trades or where the Merchant's records or stock are located and to take and retain copies of all such records to ascertain if the Merchant is performing its obligations hereunder; and (b) provide all reasonable cooperation in relation to such audit.

## 11. Assignment

- A. This Agreement may not be assigned by Merchant or Aggregator without the prior written consent of Worldpay. Worldpay may assign its rights under this Agreement without Merchant's or the Aggregator's consent.
- B. Worldpay shall be entitled to novate any or all of its rights and obligations (as appropriate) under this Agreement to a third party at any time on giving the Merchant and Aggregator at least sixty (60) days notice. If Worldpay does this Merchant or Aggregator shall be entitled to terminate the Agreement within sixty (60) days of receiving the notice of the novation. Merchant and Aggregator will be deemed to have accepted the novation of the Agreement to a third party by Worldpay sixty (60) days from receipt of the notice.

## 12. Warranty Disclaimer

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

## 13. Liability

- A. Notwithstanding anything in this Agreement to the contrary, in no event shall Worldpay, or its affiliate(s) or any of its or their respective directors, officers, employees, agents or subcontractors, be liable for loss of profits, loss of data,

loss of customer business or goodwill, losses incurred by third parties or any indirect or consequential loss or damage, howsoever arising each of which is hereby excluded by agreement of the parties, regardless of whether such damages were foreseeable or whether Worldpay has been advised of the possibility of such damages. Notwithstanding anything in this Agreement to the contrary, in no event shall Worldpay be liable or responsible for any delays or errors in its performance of the services caused by Worldpay's service providers or other parties or events outside of Worldpay's reasonable control, including the acts or omissions of the Aggregator.

- B. Notwithstanding anything in this Agreement to the contrary, Worldpay's aggregate liability for all losses, claims, damages or expenses whatsoever arising out of or related to this Agreement and irrespective of whether arising in contract, tort (including negligence) or otherwise shall not exceed the total amount of fees paid by Merchant to the Aggregator under the Aggregator/Merchant Agreement during the immediately preceding six calendar months of the event giving rise to the relevant claim, expressed as a pound sterling amount at the then prevailing exchange rate, if applicable.
- C. Aggregator agrees to indemnify Worldpay for all losses, damages or expenses Worldpay incurs arising out of any claim or dispute brought against Worldpay under this Agreement.
- D. Nothing in this Agreement shall exclude or limit any liability of any party for death or personal injury caused by negligence or fraud, deceit or fraudulent misrepresentation, howsoever caused

## 14. Entire Agreement

Save as set out in the Merchant/Aggregator Agreement and (as between Worldpay and the Aggregator) the Aggregator Agreement, this Agreement contains the entire agreement and understanding of the parties and it supersedes all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of this Agreement. In the event of any conflict between the terms of this Agreement and terms of the Aggregator/Merchant Agreement in so far as they relate to the processing of Transactions, this Agreement shall have precedence.

## 15. Miscellaneous

- A. All notices and other communications required by this Agreement to be in writing must be sent to the recipient by registered pre-paid post, facsimile or email. The notice or communication shall be deemed to be duly received by the recipient if sent by post within the United Kingdom, 2 business days (7 business days for air mail) after posting; or if sent by facsimile, upon receipt by the sender of an acknowledgment or transmission report generated by the machine from which the facsimile was sent and if sent by email, upon receipt by the sender of an acknowledgment or generated report the email was received by recipient.
- B. All notices and other communications must be sent to the recipient at the address, facsimile number or email address notified by any Party in writing (which shall include email) for such purpose. Any notice of termination of this Agreement shall be served by letter.
- C. Worldpay and the Aggregator (acting together and in writing) shall be entitled to vary the provisions of this Agreement from time to time by giving Merchant at least two (2) months' prior written notice. If Worldpay and the Aggregator do this, Merchant shall be entitled to terminate the Agreement immediately by providing written notice, provided that such notice is served within two (2) months of Merchant receiving the notice of variation. Otherwise, Merchant will be deemed to have accepted any variation of the provisions of this Agreement two (2) months from receipt of the notice.
- D. This Agreement is not intended: to create a partnership, joint venture or legal relationship between the Merchant, the Aggregator and Worldpay where such relationship would impose liability upon one of them for the act(s) or failure(s) to act of the other(s); to authorise one of them to act as agent for the other(s); or to provide authority to make representations, act in the name of/on behalf or otherwise bind the other(s).
- E. 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 term of this Agreement.

- F. Any delay or waiver by any party in exercising its rights under this Agreement does not limit or restrict the future exercise or enforceability of those rights.
- G. Worldpay is authorised and regulated by the Financial Conduct Authority (registration number 530923).
- H. Nothing in this Agreement excludes or restricts a party's rights, remedies or liability under the law governing this Agreement regarding fraud or any misrepresentation made by or on behalf of the other.
- I. This Agreement and any disputes shall in all respects be exclusively governed by and interpreted in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the courts of England in relation to any disputes hereunder.