LAYBUY HOLDINGS LIMITED

MERCHANT AGREEMENT

SCHEDULE 1 - MERCHANT DETAILS	
Full Legal Name:	(the **"Merchant"**)
Physical Person:	
Contact Person:	
Contact Person Mobile Number:	
Email Address:	

SCHEDULE 2 - SPECIAL TERMS	
Commencement Date:	
Products:	
Services:	

AGREEMENT AND EXECUTION

Laybuy Holdings Limited ("Laybuy") grants the Merchant a licence to use its Platform to offer the Products and Services for sale, and the Merchant appoints Laybuy as a distributor of the Products and Services, on the terms set out in this Agreement (including the attached Terms and Conditions).

Date of Agreement:

Signed by Laybuy Holdings Limited: *Signature* _____ *In the presence of* _____ *Name of witness:* *Occupation of witness:* *Address of witness:*	**Signed by:** _____ *Signature* _____ *In the presence of* _____ *Name of witness:* *Occupation of witness:* *Address of witness:*

TERMS AND CONDITIONS

1. INTERPRETATION

1.1. Definitions: In this Agreement, unless the context otherwise requires:

"Agreement" means this Agreement.

"AML/CFT Act" has the meaning in clause 13.1.

"Commencement Date" means the date specified in Schedule 2 at the front of this Agreement.

"Commission" means the commission fee specified in clause 5.1(b).

"Consumer" means an individual that has been approved by Laybuy to use the Platform.

"Dispute" has the meaning in clause 11.1.

"Documentation" means any operating manuals, user guides and other written information provided by Laybuy to the Merchant in connection with the Platform.

"GST" means goods and services tax chargeable, or to which a person may be liable, under the Goods and Services Tax Act 1985, and any penalties, additional tax or interest payable in respect thereof.

"Intellectual Property Rights" means all title, interests and other proprietary rights in and to:

(a) trademarks, service marks, brand names, certification marks, trade dress, trade names and other indications of origin, and the goodwill associated with the foregoing;

(b) inventions, discoveries and ideas, whether patentable or not;

(c) patents and all reissues, divisions, continuations-in-part, renewals and extensions thereof;

(d) trade secrets;

(e) writings and other works, whether or not protectable by copyright or other law;

(f) copyrights, database rights, or mask works;

(g) know-how, technical information, processes, practices and systems, whether protectable by patent, copyright, trade secret or other law; and

(h) any other intellectual property or similar proprietary rights or interests which may exist in any jurisdiction,

and in each case, including all registrations thereof, applications therefor and renewals, modifications, translations and extensions thereof, in any jurisdiction, and any claims or causes of action arising out of or related to any infringement or misappropriation of any of the foregoing.

"Merchant" means the person specified in Schedule 1 at the front of this Agreement.

"Platform" means the online payment platform operated by Laybuy and includes, without limitation, Laybuy's website (www.laybuy.com), the Documentation and all the Intellectual Property Rights in and relating to such platform.

"Platform Information" has the meaning in clause 8.1.

"Products" means the Merchant's product(s) (if any) specified in Schedule 2 at the front of this Agreement and such other product(s) approved in writing by the parties, from time to time, for sale via the Platform.

"Purchase Price" has the meaning in clause 3.1(b).

"Services" means the Merchant's service(s) (if any) specified in Schedule 2 at the front of this Agreement and such other service(s) approved in writing by the parties, from time to time, for sale via the Platform.

"Updates" means all improvements, modifications, variations and enhancements or additions to, or developments of, the Platform.

"Working Day" means a day on which registered banks are open for business in Auckland, New Zealand which is not a Saturday, Sunday or public holiday.

1.2. Interpretation: Unless the context otherwise requires, or as specifically provided otherwise, in the interpretation of this Agreement:

(a) headings are to be ignored;

(b) references schedules are to those in this Agreement;

(c) references clauses are to those in these Terms and Conditions;

(d) "written" and "in writing" include any means of reproducing words, figures or symbols in a tangible and visible form;

(e) the singular includes the plural and vice versa;

(f) "include" or any form of that word is to be construed as if followed by "without limitation";

(g) a reference to a person includes an individual, firm, company, corporation or unincorporated body of persons, or any governmental or regulatory authority, in each case whether or not having separate legal personality, and a reference to a company includes a person;

(h) references to monetary amounts are to New Zealand dollars;

(i) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agree ment or any part of it; and

(j) any covenant not to do anything also constitutes an obligation not to suffer, permit or cause that thing to be done.

2. PLATFORM LICENCE AND DISTRIBUTOR APPOINTMENT

2.1. Licence: Laybuy grants the Merchant a non-exclusive and non-transferrable licence to offer for sale the Products and Services via the Platform during the term of this Agreement on the terms set out in this Agreement.

2.2. Appointment as Merchant: The Merchant appoints Laybuy as a non-exclusive distributor of the Products and Services during the term of this Agreement on the terms set out in this Agreement.

3. PLATFORM OPERATION

3.1. Platform operation: The purchase of a Product or Service using the Platform shall occur as follows:

(a) the Consumer shall identify a Product or Service the Consumer wishes to purchase using the Platform and instruct Laybuy to purchase that Product or Service on the Consumer's behalf from the Merchant;

(b) Laybuy shall pay the full amount of purchase price for the Product or Service inclusive of GST, delivery costs, booking fees, service charges and other fees ("Purchase Price") to the Merchant less the Commission;

(c) the Merchant shall arrange for delivery of the Product or Service to the Consumer at the Merchant's cost and expense, and, in the case of a Product, it shall become the exclusive property of the Consumer on delivery; and

(d) Laybuy shall recover the full amount of the Purchase Price from the Consumer.

4. MERCHANT'S OBLIGATIONS

4.1. Obligations: The Merchant shall:

(a) use the Platform in accordance with the operating procedures determined by Laybuy from time to time;

(b) supply all information required by Laybuy to enable Laybuy to perform its obligations, and to enable Laybuy to receive all rights and benefits afforded to it, under this Agreement;

(c) accept and meet all orders it receives from Consumers for Products where it has stock available;

(d) provide the Services it offers for sale;

(e) immediately notify the Consumer by email if it cannot meet a Consumer's order; and

(f) retain responsibility for the quality and delivery of the Products or Services purchased, including but not limited to any and all warranties.

4.2. Delivery:

(a) The Merchant shall be solely responsible and liable for the delivery of a Product or Service purchased to the Consumer. To the extent that the Merchant seeks to pass on all costs, expenses or fees associated with the delivery of a Product or Service to a Consumer, that cost, fee or expense must be incorporated into the Purchase Price.

(b) The delivery of:

(i) a Product shall be made as close to the date of the Consumer's order as possible and, in any event, within the timeframe communicated to the Consumer at the time of order; and

(ii) the performance of a Service shall be made at the time, and on the date, specified by the Consumer in the Consumer's order or, if no time or date is specified, as close to the date of the Consumer's order as possible and, in any event, within the timeframe communicated to the Consumer at the time of order.

4.3. Risk: Laybuy accepts no risk or liability whatsoever in connection with the delivery of the Products or Services to Consumers.

5. PRICES AND PAYMENT

5.1. Price:

(a) The Merchant shall be entitled, at its sole discretion, to set the purchase price for each Product or Service it sells to a Consumer via the Platform.

(b) At the same time a Consumer purchases a Product or Service using the Platform, the Merchant shall pay Laybuy a commission fee equal to 4.75% of the Purchase Price (the "Commission") for assisting to procure the sale of the Product or Service. For clarity, the Purchase Price includes all delivery costs, booking fees, service charges and other fees charged to the Consumer in connection with the sale of the Product or Service.

5.2. Payment: Payment of the Commission shall be satisfied by Laybuy deducting the Commission from the Purchase Price and paying the balance of the Purchase Price to the Merchant. While Laybuy intends to use all reasonable endeavours to pay balances owed to merchants at the end of each day, Laybuy shall ensure it pays the balance to the Merchant within two Working Days from the time the Customer purchases the relevant Product or Service. Notwithstanding this, the Merchant's timing of receipt of payment from Laybuy will depend on bank processing times.

5.3. No set-off: The Merchant shall make all payments to Laybuy under this Agreement in full without deductions, set-off or withholding of any kind.

5.4. Consumer credit limit: Laybuy shall, at its sole discretion, set a credit limit for each Consumer, and Laybuy reserves the right to change such credit limit at any time.

6. COMPLAINTS, RETURNS AND REFUNDS

6.1. Complaints:

(a) The Merchant acknowledges that:

(i) Laybuy's terms and conditions with the Consumers provide that all complaints, concerns or other issues with a Product or Service that a Consumer may have are to be made by the Consumer directly to the Merchant; and

(ii) the Merchant shall be solely responsible for dealing with all such complaints, concerns and other issues from a Consumer on the same basis as if it had sold the Product or Service directly to the Consumer.

(b) The Merchant shall deal with all complaints, concerns or other issues raised by a Consumer, or Laybuy, in respect of a Product or Service supplied, or to be supplied, to a Consumer by the Merchant promptly.

(c) The Merchant shall inform Laybuy in writing if a Consumer's complaint, concern or other issue has not been resolved to the Consumer's satisfaction.

6.2. Returns and replacements: If:

(a) a Product is returned to the Merchant by the Consumer and a replacement product or products is not accepted by the Consumer for that returned Product; or

(b) the Service is not provided to the Consumer or not provided to the Consumer's reasonable satisfaction,

and the Merchant agrees to provide a refund to the Consumer in respect of the same, the Merchant shall advise Laybuy, as the case may be, that:

(c) the Product has been returned by the Consumer and not replaced; or

(d) the Consumer has not received the Service paid for or the Consumer is to be provided with a refund as the Consumer was not satisfied with the Service,

and refund to Laybuy an amount equal to the Purchase Price paid by the Consumer for the relevant Product or Service returned (and, for the avoidance of doubt, without the Merchant deducting the Commission).

6.3. No refunds directly to Consumers: The Merchant shall not make any refund payments directly to the Consumer in respect of any Product or Service purchased.

7. MERCHANT'S REPRESENTATIONS, WARRANTIES AND INDEMNITY

7.1. Merchant's representations and warranties:

(a) The Merchant must comply with, and meet all its obligations under, all applicable laws in respect of the sale of the Products and Services (including, but not limited to, the Consumer Guarantees Act 1993 and the Fair Trading Act 1986).

(b) If the Merchant provides any representations or warranties in respect of a Product or Service, it must comply with such representations and warranties in respect of the Products and Services supplied to the Consumers.

(c) The Merchant shall ensure the quality of the Products and Services is continually maintained throughout the term of this Agreement.

7.2. Acknowledgment: The Merchant acknowledges that Laybuy shall have no responsibility or liability whatsoever to repair or replace any damaged or defective Product, or to perform any Service, that has not met the Consumer's expectations.

7.3. Returns policy: The Merchant shall have a returns policy which is made available to Consumers on its website, and on request, and the Merchant must strictly adhere to that returns policy in its dealings with the Consumers.

7.4. Indemnity: The Merchant indemnifies and holds harmless Laybuy from all costs, damages, expenses, losses or other liability, including reasonable legal fees, which may be sustained by or claimed against Laybuy by a Consumer, or any other person, arising out of:

(a) the Merchant's failure to comply with the law;

(b) any breach of the Merchant's express or implied representations or warranties to the Consumer;

(c) any breach of the representations and warranties in this Agreement; and/or

(d) any breach of any of the Merchant's other obligations contained in, or implied by, this Agreement.

8. INTELLECTUAL PROPERTY

8.1. Platform ownership: All Intellectual Property Rights in and related to the Platform (including, but not limited to, any Updates) and any data, analytics, research or other information contained in, displayed on or generated by the Platform or otherwise prepared by Laybuy with data or information from the Merchant's, or any other user's, access to and/or use of the Platform (collectively the "Platform Information") shall be, and shall remain, the exclusive property of Laybuy, and the Merchant shall not obtain any Intellectual Property Rights in or to the Platform or the Platform Information.

8.2. Rights to use: The Merchant shall:

(a) not have any right to use the Platform except for the purpose of this Agreement;

(b) not sell, lease, license, transfer, dispose of, provide or otherwise make available to any third party any form of access to or use of the Platform other than as permitted by this Agreement; and

(c) protect and safeguard Laybuy's Intellectual Property Rights in and

to the Platform by using the same degree of care that the Merchant would use to protect its own Intellectual Property Rights, but in any event with no less than a reasonable degree of care.

8.3. **No copies:** The Merchant must not copy, reverse engineer, decompile, disassemble, attempt to derive the source code of, modify, create derivative works of, re-post to other applications or websites, change, or otherwise distribute, license, sub-licence or transfer in any form any aspect of the Platform.

8.4. **Infringement claims:** If any person claims the Merchant's use of the Platform infringes a person's Intellectual Property Rights, the Merchant must immediately notify Laybuy and allow Laybuy to deal with that claim which may, at Laybuy's absolute discretion, include Laybuy, amongst other things, settling or modifying the Platform to the extent necessary to avoid or minimise the claim.

8.5. **Laybuy's trade marks:** During the term of this Agreement, Laybuy grants the Merchant a non-exclusive licence to use Laybuy's trade marks, whether or not registered, in connection with the promotion and sale of the Products and Services to Consumers subject to any restrictions on use which Laybuy may advise the Merchant of in writing from time to time.

8.6. **Merchant's trade marks:** During the term of this Agreement, the Merchant grants Laybuy a non-exclusive licence to use the Merchant's trade marks, whether or not registered, in connection with the promotion and sale of the Products and Services to Consumers and the Platform (including, but not limited to, using such trade marks on the Platform or in any advertising for the Platform) subject to any restrictions on use which the Merchant may advise Laybuy of in writing from time to time.

8.7. **Upgrades:** Laybuy may, from time to time, issue Upgraded versions of the Platform, and/or may automatically Upgrade the current version of the Platform, without notice to the Merchant. If the Merchant uses the Platform after such Upgrade, the Merchant shall be deemed to have consented to any such Upgrade.

9. TERM AND TERMINATION

9.1. **Term:** This Agreement shall commence on the Commencement Date and continue until either party provides the other party at least three months' notice in writing of termination.

9.2. **Product or Service withdrawal:** For any reason, and without notice to the Merchant, Laybuy reserves the right at any time to suspend, withdraw or otherwise prohibit Consumers from purchasing one or more of the Products or the Services using the Platform.

9.3. **Termination: This Agreement may be terminated:**

(a) by either party by notice in writing to the other party if the other party is in default as specified in clause 9.4; or

(b) by agreement in writing at any time between the parties.

9.4. **Default:** A party shall be in default under this Agreement if:

(a) that party breaches, or fails to perform properly or promptly, any material obligation of that party under this Agreement and, where that breach is capable of remedy, fails to remedy the breach or perform the obligation within 10 Working Days (inclusive of the date of receipt) after receiving written notice thereof from the other party (and, for the avoidance of doubt, any failure by a party to pay any amount on its due date shall be a breach of a material obligation by that party); or

(b) that party:

(i) is, becomes, or is deemed to be, insolvent; or

(ii) makes an assignment for the benefit of, or enters into or makes any arrangement or composition with, that party's creditors; or

(iii) goes into receivership or has a receiver, administrator, trustee or statutory manager or similar official appointed in respect of that party or that party's property.

9.5. **Consequences of termination or expiry:** On and following termination or expiry of this Agreement for any reason:

(a) the termination or expiry shall be without prejudice to either party's rights and remedies in respect of a breach by the other party of this Agreement, where the breach occurred before the termination or expiry;

(b) each party shall immediately cease using the other party's trade marks; and

(c) the provisions of clauses 8, 9, 10, 11 and 13.8 of this Agreement, together with such other clauses of this Agreement as are incidental to, and required in order to give effect to, those clauses, and any other clauses that are, by their nature, intended to survive the termination or expiry of this Agreement, shall remain in full force and effect.

10. LIABILTY AND DISCLAIMERS

10.1. **No consequential loss:** Neither party shall be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind suffered or incurred by the other party arising directly or indirectly from the performance or non-performance of its obligations under this Agreement, any breach of its obligations under or in connection with this Agreement or from any negligence, misrepresentation or other act or omission on its part.

10.2. **Maximum liability:** Notwithstanding anything else in this Agreement, Laybuy's liability, whether in contract or pursuant to any cancellation of this Agreement or in tort or otherwise, in respect of any and all claims for costs, damages, expenses, injury, loss or other liability arising from breach of any of Laybuy's obligations arising under or in connection with this Agreement, from any cancellation of this Agreement or from any negligence, misrepresentation or other act or omission on Laybuy's part, or the part of Laybuy's employees, agents or contractors, shall not in aggregate exceed the aggregate value of the Commissions received by Laybuy from the Merchant in the 30 day period prior to the event giving rise to the claim.

10.3. **Notice of claims:** Laybuy shall not be liable to the Merchant in respect of any matter whatsoever unless notice in writing of any claim is received by Laybuy within 10 Working Days of the date the Merchant becomes, or should reasonably have become, aware of the matter giving rise to the claim.

10.4. **Limitation extension:** All provisions of this Agreement which limit or exclude Laybuy's liability shall be for the benefit of, and enforceable by, each of Laybuy's employees, agents and contractors and the provisions of the Contracts (Privity) Act 1982 shall apply accordingly.

10.5. **Platform status:** The Platform shall be provided "as is" and on a "as available" basis without representations or warranties of any kind either express or implied by Laybuy. To the extent permitted by law, Laybuy disclaims all warranties, express or implied in connection with the Platform, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, non-infringement, uninterrupted use or being error-free.

10.6. **Statutory exclusions:** The Merchant acknowledges that it is acquiring access to, and use of, the Platform, in trade, and therefore it agrees that:

(a) the provisions of the Consumer Guarantees Act 1993; and

(b) sections 9, 12A, and 13 of the Fair Trading Act 1986,

shall not apply to this Agreement.

10.7. **Maintenance:** The Merchant acknowledges the Platform may be unavailable from time to time due to errors, defects and/or maintenance.

10.8. **Platform use:** Laybuy shall not be responsible or otherwise liable for any:

(a) corruption or loss of data or other content which the Merchant or any other person may experience; or

(b) software, network, computer system, hardware, devices or other equipment that may be harmed,

as a result of, or otherwise in connection with, the Merchant's use of the Platform.

10.9. **No representations:**

(a) Laybuy does not represent or warrant that:

(i) the Platform shall function uninterrupted, that it shall be error-free, that defects shall be corrected or that the Platform, or the server that makes it available, shall be free of any virus or other harmful elements; or

(ii) the Platform shall be compatible with any particular computer or mobile device.

(b) The Merchant acknowledges that it has not relied on any representation and/or warranty made by Laybuy which has not been expressly stated or referred to in this Agreement.

11. DISPUTE RESOLUTION

11.1. Good faith negotiations: If any dispute or difference (a "Dispute") arises out of or in connection with this Agreement (including any question as to its validity or termination), the parties shall, following written notice of the Dispute (giving reasonable detail of the nature thereof) by one party to the other, endeavour to resolve the Dispute by agreement between them through good faith negotiations.

11.2. Determination by arbitration: If the Dispute is not resolved pursuant to clause 11.1 within 20 Working Days after service of the notice requiring negotiation thereunder, either party may, by written notice to the other, require that the Dispute be determined under the Arbitration Act 1996 by a sole arbitrator to be appointed by the parties. If the parties are unable to agree on the appointment within five Working Days of the written notice under this clause 11.2, the arbitrator shall be appointed, on the application of either party, by the President for the time being of the New Zealand Law Society or his or her nominee. The costs of the arbitration shall, subject to any contrary determination by the arbitrator (it being the intent that the party who is found to be at fault or incorrect in the arbitration shall bear costs), be borne equally by the parties. The determination of the arbitrator shall be final and binding on the parties and there shall be no right of appeal.

12. NOTICES

12.1. Notices: Any notice or other communication to be given to or by a party under this Agreement by or to the other party:

(a) may be given by personal service or email;

(b) must be in writing and:

(i) if to Laybuy, addressed as shown below:

Address: 33 Ocean View Road, Milford, Auckland 0620
Email: grohloff@laybuy.com

(ii) if to the Merchant, to the address details in Schedule 1 at the front of this Agreement,

or to such other address (if any) as the addressee may notify to the sender by notice given in accordance with this clause;

(c) shall be deemed to be given by the sender and received by the addressee:

(d) if delivered in person, when delivered to the addressee; or

(e) if sent by email, on the date and time at which it enters the addressee's information system (as shown in a confirmation of delivery report from the sender's information system, which indicates that the email was sent to the email address of the addressee notified for the purpose of this clause 12.1),

but if the delivery or receipt is on a day which is not a Working Day in the place of intended receipt or is after 5.00 pm (addressee's time), it is deemed to have been received at 9.00 am on the next Working Day in that place.

13. GENERAL

13.1. AML/CFT Act: Laybuy is a "reporting entity" for the purposes of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 ("AML/CFT Act"). Accordingly, Laybuy is required by the AML/CFT Act to collect certain information from the Merchant. If Laybuy requires information to satisfy Laybuy's legal obligations, the Merchant must provide the information Laybuy requests.

13.2. Circumstances beyond Laybuy's control: Notwithstanding any other provision of this Agreement, non-performance by Laybuy of its obligations under this Agreement shall be excused, without liability for non-performance, during the time and to the extent that such performance is prevented, wholly or partly, by any act of God, fire, earthquake, storm, flood, landslide, strike, lockout, work stoppage or other labour hindrance, explosion, water shortage or public mains electrical supply failure, sabotage, riot, civil disturbance, national emergency, terrorism, act of war or any other cause beyond Laybuy's reasonable control.

13.3. Assignment: Laybuy may novate, assign, transfer or otherwise dispose of any or all rights and/or interests of Laybuy in, and/or obligations or liabilities of Laybuy under, this Agreement without giving notice to, and without the consent of, the Merchant.

13.4. Relationship: Nothing contained in this Agreement shall be deemed to constitute any party as a partner of the other or to constitute any party as agent or legal representative of the other. No party shall have any authority to act or to assume any obligation or liability on behalf of the other party except as expressly provided. Neither party shall hold out any of its agents, employees or servants to be the agents, employees or servants of another party.

13.5. Severability: The invalidity of any of these terms, conditions or provisions shall not affect the enforceability of the other part or provisions hereof which shall continue to be valid as permitted by law.

13.6. Variation and waiver: This Agreement may only be varied in writing signed by the parties. The failure of any party to insist in any one or more instances upon strict performance of any of the terms of this Agreement, or the waiver by any party of any term or right hereunder or of any default by a party, shall not be deemed or construed as a waiver by such party of any such term, right or default in the future.

13.7. Entire Agreement: This Agreement constitutes the entire agreement and understanding (express and implied) between the parties relating to the subject matter of this Agreement and supersedes and cancels all previous agreements and understandings between the parties relating thereto, whether written or oral.

13.8. Confidentiality: Each party shall at all times keep confidential, treat as privileged, and not directly or indirectly make disclosure, or allow any disclosure or use to be made, of the subject matter or any of the terms of this Agreement, any information relating to any term or the subject matter of this Agreement, or any specific client or other information obtained directly or indirectly from the other party under or in connection with this Agreement, except to the extent:

(a) required by law;

(b) necessary to obtain the benefit of, or to carry out any obligation under, this Agreement;

(c) that the parties otherwise agree in writing, which agreement may not be unreasonably withheld or delayed;

(d) that the information is or becomes publicly available without breach by either party of its confidentiality obligations under this clause or at law; or

(e) in the case of Laybuy, it is necessary for Laybuy to share the information with its bank, or payment providers (for example, VISA or Mastercard) to enable it to fulfil its obligations under this Agreement or in connection with the Platform.

13.9. Counterparts: This Agreement may be signed in any number of counterparts, including facsimile or scanned copies, all of which shall together constitute one and the same instrument and a binding and enforceable agreement between the parties. Either party may execute this Agreement by signing any such counterpart.

13.10. Governing law: This Agreement is governed by, and shall be construed in accordance with, the laws of New Zealand and each party unconditionally and irrevocably submits to the non-exclusive jurisdiction of the courts of New Zealand in respect of all matters arising out of this Agreement and waives any right that party may have to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction.