

DATED 3 DECEMBER 2024

(1) WALTER HUGH MERRICKS CBE

-and-

(2) MASTERCARD INCORPORATED

(3) MASTERCARD INTERNATIONAL INCORPORATED

(4) MASTERCARD EUROPE S.A.

SETTLEMENT AGREEMENT

THIS AGREEMENT (the “**Agreement**”) is made on 3 December 2024

BETWEEN:

- (1) **MR WALTER HUGH MERRICKS CBE**, of a private residential address in London, United Kingdom, in his capacity as class representative pursuant to the Collective Proceedings Order made on 18 May 2022, for and on behalf of the Class as defined in this Agreement (referred to as “**Mr Merricks**” or the “**Class Representative**”);

AND

- (2) **MASTERCARD INCORPORATED**, a company incorporated and registered in Delaware with registered address 2000 Purchase Street, Purchase, New York 10577, USA;
- (3) **MASTERCARD INTERNATIONAL INCORPORATED**, a company incorporated and registered in Delaware with registered address 2000 Purchase Street, Purchase, New York 10577, USA; and
- (4) **MASTERCARD EUROPE S.A.**, a private limited liability company incorporated in Belgium with the registered BCE number 0448038446 with registered address Chaussée de Tervuren 198A, B-1410, Waterloo, Belgium.

(together referred to as “**Mastercard**”).

Each of the above being a “**Party**” and together the “**Parties**”.

WHEREAS

- (A) Mastercard operates worldwide payment card schemes under the brands Mastercard, Maestro and Cirrus on the basis of rules and standards published from time to time.
- (B) On 19 December 2007, the European Commission issued an infringement decision in COMP/34.579 Mastercard, COMP/36.518 EuroCommerce and COMP/38.580 Commercial Cards (the “**EC Decision**”), which related to Mastercard’s Intra-EEA fallback multilateral interchange fees in force between 22 May 1992 and 19 December 2007 (the date of the EC Decision) (the “**EEA MIFs**”). Mastercard did not withdraw the EEA MIFs until 21 June 2008.
- (C) On 6 September 2016, Mr Merricks filed an application against Mastercard in the Tribunal (as defined below) to allow him to continue proceedings as opt-out collective proceedings under section 47B of the Competition Act 1998 (the “**Act**”), under Tribunal case number 1266/7/7/16 (the “**Proceedings**”). The claims combined in the Proceedings comprise follow-on damages claims under section 47A of the Act for damages allegedly caused by the infringement found in the EC Decision.
- (D) On 18 May 2022, the Tribunal made a collective proceedings order which certified the Proceedings as collective proceedings and authorised Mr Merricks to act as the class representative (the “**Collective Proceedings Order**”).
- (E) There have been a number of judgments in the Proceedings that have narrowed the issues that remain in dispute, and in relation to which there have been corresponding

costs orders. These judgments affect the alleged quantum and/or future prospects of the Proceedings. Mr Merricks has discontinued his claims in respect of transactions made with Solo debit cards and domestic transactions in the United Kingdom involving Debit Mastercard. The Parties have also exchanged open correspondence on the remaining open issues, covering both the substantive issues in the Proceedings and amendments that have been made to Mr Merricks' litigation funding agreement dated 5 June 2019, as amended and restated (the "**LFA**"). The Parties are presently engaged in a trial on merchant and acquirer pass-on.

- (G) Mr Merricks has at all times had regard to and has acted in good faith in accordance with: (i) his overriding duty to act in the best interests of the Class (as defined below) pursuant to the Tribunal Rules and the LFA; and (ii) his obligations to the Funder (as defined below) under the LFA.
- (H) The Parties have reached a full and final agreement regarding: (i) the payment by Mastercard of the Settlement Sum (as defined below) to the Class Representative (on behalf of the Class); and (ii) the discontinuance of the Proceedings with releases and waivers in respect of any Claims that Mr Merricks, any Represented Persons, or any other member of the Class may have against Mastercard and the Mastercard Related Parties (as defined below) subject to the approval of any Settlement Approval Application (as defined below) and grant of a CSAO (as defined below) on that basis by the Tribunal.
- (I) Having regard to all relevant considerations, including the stage the Proceedings have reached, Mr Merricks considers that the settlement is in the best interest of the Class.
- (J) Mr Merricks has sought Funder support for the Settlement Sum, including by agreeing to engage the non-binding KC process as provided for in the LFA. The Funder did not engage with that process and instead threatened to: (i) commence arbitration proceedings against Mr Merricks alleging a breach of the LFA; and (ii) seek urgent injunctive relief to prevent Mr Merricks from seeking Tribunal approval of the Settlement Sum. On 29 November 2024, Mr Merricks was served with a Request for Arbitration and an application seeking expedited formation of an arbitral tribunal under the London Court of International Arbitration 2020 Rules (the "**Arbitration**"). Mr Merricks rejects the allegations made in the Arbitration. However, Mr Merricks does not have the financial means to defend himself and does not consider that he should put his personal assets at risk in an arbitration that he considers to be entirely without merit. For that reason, he has sought, and Mastercard has agreed to make available, a sum of up to ten million pounds (£10,000,000.00) to allow Mr Merricks to defend the Arbitration that has been commenced against him, as provided for at Clause 9 of this Agreement (the "**Arbitration Sum**").
- (K) Matters of distribution of the Settlement Sum to the Class are matters for the Tribunal approval process pursuant to Rule 94 of the Tribunal Rules and are therefore not addressed by this Agreement.

DEFINITIONS

In this Agreement, unless the context otherwise requires, the following words and expressions have the following meanings:

“**Claims**” means causes of action, claims, counterclaims, liabilities, rights, demands, debts and set-offs, whether in this jurisdiction or any other, whether or not presently known to any Party or to the law, in relation to any time period, including but not limited to claims arising from rights acquired from third parties, and whether in law or equity, in respect of the infringement found in the EC Decision and the unlawful conduct alleged in the Proceedings, including any claim for interest or costs.

“**Class**” has the meaning set out in paragraph 3.3 of the Collective Proceedings Order.

“**CSAO**” means an opt-out collective settlement approval order made by the Tribunal, pursuant to Rule 94 of the Tribunal Rules.

“**Funder**” means Innsworth Capital Limited of 44 Esplanade, St Helier, Jersey, JE4 9WG (with company number 125002).

“**Mastercard Members**” means every issuing or acquiring member or customer financial institution of Mastercard (solely in their capacities as members or customer financial institutions of Mastercard and solely with respect to their volume of transactions using Mastercard and Maestro debit and credit cards).

“**Mastercard Related Parties**” means Mastercard’s parent, associated companies, subsidiaries, assigns, transferees, representatives, principals, agents, officers and directors or any of them from time to time.

“**Payment Account**” means the bank account to be set up by Epiq Systems Ltd for the purposes of receiving payment of the Settlement Sum on behalf of the Class and distribution to the Class, subject to appropriate escrow or any other arrangements, as approved by the Tribunal, and which will be available for inspection by Mastercard.

“**Primary Terms**” means the terms in Clauses 4.2(a) and 4.2(b).

“**Represented Persons**” means members of the Class who, in accordance with Rule 82 of the Tribunal Rules: (i) have not opted out of the Proceedings; or (ii) if not domiciled in the United Kingdom at the domicile date in the Proceedings (i.e. 6 September 2016), have opted into the Proceedings.

“**Settlement Final Date**” means the business day after all of the following conditions have been satisfied: (i) the Tribunal has granted a CSAO that includes the Primary Terms; (ii) in the event that there is a challenge (via appeal, judicial review or otherwise) to that CSAO, the Tribunal’s CSAO is affirmed without modification to the Primary Terms; and (iii) the CSAO that includes the Primary Terms and any subsequent judgments or orders (following an appeal, judicial review or otherwise) affirming the CSAO are no longer subject to further court or Tribunal review by re-hearing, appeal, judicial review or otherwise.

“**Settlement Sum**” means two hundred million pounds (£200,000,000.00), which is inclusive of: (i) interest; and (ii) all of the Parties’ fees, costs and expenses that have been or will be incurred in the future in pursuing the Proceedings.

“**Settlement Approval Application**” means any joint application on behalf of the Parties for a CSAO, pursuant to Rule 94 of the Tribunal Rules and for the purpose of

giving full effect to the provisions of this Agreement.

“**Tribunal**” means the United Kingdom Competition Appeal Tribunal.

“**Tribunal Rules**” means the Competition Appeal Tribunal Rules 2015 (SI 2015 No. 1648).

“**VAT**” means the tax as provided in the Value Added Tax Act 1994 or equivalent taxes applicable in other jurisdictions.

1. NO ADMISSION

1.1 The Parties agree that this Agreement is entered into without any admission of liability by Mastercard, and that Mastercard denies that the Represented Persons or any other member of the Class have suffered any loss or damage as a result of the conduct alleged by the Class Representative in the Proceedings.

1.2 The Parties agree that neither:

- (a) this Agreement;
- (b) any statement made by, or correspondence between, the Parties in the negotiation of this Agreement;
- (c) any document included in any Settlement Approval Application; nor
- (d) any statement made by, or correspondence between, the Parties in relation to any Settlement Approval Application;

shall be deemed, construed or relied on as an admission by or evidence against any Party or evidence of the truth of any of any allegation by any Party.

2. SETTLEMENT

2.1 Subject to the Tribunal granting a CSAO which includes the Primary Terms, Mastercard agrees to pay the Settlement Sum to the Payment Account in full and final settlement of the Proceedings against Mastercard, within twenty-eight (28) days of the date of the CSAO and subject to the conditions in Clause 5 as regards payment of the Settlement Sum.

2.2 The Settlement Sum shall be held in the Payment Account and not released except:

- (a) on the Settlement Final Date and in accordance with any CSAO; or
- (b) in the event that any CSAO is overturned or quashed following a challenge, in which case the Settlement Sum shall be returned to Mastercard within twenty-eight (28) days of the date on which the CSAO is overturned or quashed, including any interest earned on the Settlement Sum, less any charges, taxes or any amount that was paid in respect of the Settlement Sum as a result of it being held until the Settlement Final Date.

3. NOTIFICATION OF AGREEMENT

3.1 Within one (1) business day of the date of this Agreement, the Parties shall jointly inform the Tribunal that the Agreement has been reached.

4. SETTLEMENT APPROVAL APPLICATION

- 4.1 The Parties shall work together expeditiously and with best endeavours to prepare, file and pursue a Settlement Approval Application or, if necessary, a further Settlement Approval Application or Applications for determination by the Tribunal.
- 4.2 The Parties agree that the Settlement Approval Application or Applications will seek approval of:
- (a) the Settlement Sum, and no other total settlement amount, as just and reasonable in all of the relevant circumstances;
 - (b) a CSAO that has the effect of:
 - (i) discontinuing the Proceedings; and
 - (ii) to the maximum extent permitted by law:
 - (A) fully releasing and forever discharging Mastercard and the Mastercard Related Parties from time to time from all or any Claims that any Represented Person may have against Mastercard and the Mastercard Related Parties; and
 - (B) waiving any Claims that any Represented Person may have against Mastercard and the Mastercard Related Parties and the Mastercard Members.
- 4.3 The Parties shall continue to prepare, file and pursue Settlement Approval Applications incorporating the Primary Terms unless and until the Tribunal refuses to grant any Settlement Approval Application on the basis that it is not satisfied that all or any of the Primary Terms are just and reasonable under Rule 94(8) of the Tribunal Rules.
- 4.4 The Parties shall work together with best endeavours, pursuant to Clauses 4.1 to 4.3 above, to secure a CSAO from the Tribunal expeditiously and prior to the scheduled commencement of “Trial 2B” in the Proceedings in March 2025.
- 4.5 Should a CSAO that contains the Primary Terms be subject to challenge via appeal, judicial review or otherwise by any third party, the Parties shall work together with best endeavours, in the circumstances, to uphold the CSAO as made by the Tribunal.
- 4.6 The Parties agree not to challenge a CSAO that contains the Primary Terms by way of appeal, judicial review or otherwise.

5. PAYMENT ARRANGEMENTS

- 5.1 The Class Representative shall provide Mastercard with relevant payment information regarding the Payment Account in order to make payment of the Settlement Sum pursuant to Clause 2.1. The Class Representative shall also provide promptly thereafter any additional information that Mastercard may reasonably request in order to facilitate payment of the Settlement Sum.
- 5.2 In no event shall Mastercard, or any Mastercard Related Parties, have any obligation, responsibility or liability arising from, or relating to, the administration, maintenance,

preservation, investment, use, allocation, adjustment, distribution, disbursement, or disposition of the Settlement Sum following payment.

- 5.3 Following payment of the Settlement Sum, all taxes (if any) with respect to the Settlement Sum, the administrative costs of paying such taxes, and any other costs of establishing, maintaining, or administering the Settlement Sum are the responsibility of the Class Representative.
- 5.4 Subject to Clauses 8 and 9, the payment described in Clause 2.1 shall exhaust and fully satisfy any and all payment obligations under this Agreement of Mastercard, and any Mastercard Related Parties.

6. STATUS OF PROCEEDINGS

- 6.1 Subject to any order of the Tribunal, the Parties agree to continue the Proceedings until the Tribunal has granted the CSAO that contains the Primary Terms, at which point the Proceedings will be discontinued in accordance with the terms of this Agreement.

7. AGREEMENT NOT TO SUE

- 7.1 The Class Representative agrees not to make any new claim and/or commence any new proceedings against Mastercard or the Mastercard Related Parties or the Mastercard Members in respect of the Claims, in his own capacity or on behalf of Represented Persons or any other members of the Class.

8. COSTS

- 8.1 Subject to the Tribunal granting a CSAO which includes the Primary Terms, each of the Parties shall bear its own costs, fees or other expenses of whatever nature incurred by it in connection with the Proceedings, including any future costs incurred by the Parties prior to the granting of a CSAO by the Tribunal, as well as those incidental to the negotiation, preparation, execution and carrying into effect of this Agreement and any Settlement Approval Application (including the costs incurred in connection with steps taken following the Tribunal's approval of any Settlement Approval Application, such as notification and distribution), save in respect of any costs, fees or other expenses of whatever nature that may be incurred by the Parties in enforcing the terms of the Agreement and as otherwise expressly provided in this Agreement.
- 8.2 In the event that the Funder refuses to cover any costs, fees or other expenses incurred by Mr Merricks that are necessary to obtain the CSAO and to give effect to this Agreement, subject to any order or direction of the Tribunal, the Parties agree that such costs, fees, or other expenses, may be paid out of the Settlement Sum.
- 8.3 For the avoidance of any doubt, nothing in this Agreement shall affect or reverse any costs payments that have already been made in the Proceedings, which each receiving Party shall retain.

9. ARBITRATION UNDER THE LFA

- 9.1 Mastercard agrees to make available to Mr Merricks a sum of up to ten million pounds (£10,000,000.00) for use exclusively in relation to any costs incurred and/or for the resolution of the Arbitration.

- 9.2 Mastercard agrees to pay the fees, expenses and costs and/or sum(s) incurred by Mr Merricks in relation to the Arbitration up to the level of the Arbitration Sum at the later of: (i) the Tribunal granting a CSAO that contains the Primary Terms; or (ii) within twenty-eight (28) days of written notice by Mr Merricks to Mastercard that those fees, expenses and costs and/or sum(s) have been incurred.
- 9.3 Mr Merricks agrees to diligently, proportionately and with due care, defend any claims made by the Funder in the Arbitration and provide reasonable and timely updates to Mastercard, including consulting Mastercard as regards any proposed resolution of the same.

10. CONFIDENTIALITY

- 10.1 The Parties agree that this Agreement will form part of any Settlement Approval Application which will be filed with the Tribunal and made available to Represented Persons (and their legal advisors or representatives) on request. The Agreement will cease to be confidential from the date of the Settlement Approval Application.
- 10.2 Unless otherwise stipulated in this Agreement or ordered by the Tribunal, until the Parties file the Settlement Approval Application, the terms of this Agreement and the substance of all negotiations in connection with this Agreement are confidential to the Parties, their advisors and the Funder, who shall not disclose them to, or otherwise communicate them to, any third party without the prior written consent of the other Parties. However, it shall not be a breach of this Clause 10.2 for any Party, prior to the date of the Settlement Approval Application:
- (a) to confirm to any person:
 - (i) that the Parties are no longer in dispute with each other and have settled the Proceedings to the satisfaction of the Parties; and
 - (ii) the amount of the Settlement Sum that has been agreed subject to approval by the Tribunal; and
 - (b) to disclose the Agreement:
 - (i) if the disclosure is to be made to Mastercard's parent company or the parent company's subsidiaries, legal or other professional advisors, auditors or insurers;
 - (ii) if it is required by operation of law or by regulation, including pursuant to United States securities law;
 - (iii) if it is required by order from a court of competent jurisdiction or regulator;
 - (iv) if it is information that has already come into the public domain otherwise than by breach of this Agreement; and
 - (v) if it is otherwise done with the prior written consent of all other Parties.

11. NON-DISPARAGEMENT

- 11.1 At any time prior to final refusal of any and all Settlement Approval Applications pursuant to this Agreement (including the expiry of any period for challenge, via appeal, judicial review or otherwise), each Party undertakes that neither it, nor any of its legal advisers, will directly or indirectly make, or cause to be made, any disparaging statement about the other Party concerning the Proceedings, this Agreement, or the interactions between the Parties that led to this Agreement.

12. WARRANTIES AND AUTHORITY

- 12.1 Each Party warrants and represents to the others that it has full authority to execute, deliver and perform this Agreement.

13. ASSIGNMENT

- 13.1 No Party may assign any of its obligations or any benefits created by or arising under this Agreement without the prior written consent of the other Parties.

14. INVALIDITY

- 14.1 If any provision, or any part of any provision, of this Agreement shall be or become illegal, invalid or unenforceable in any respect then the remainder of that provision and/or all other provisions of this Agreement shall remain valid and enforceable.

15. AMENDMENTS

- 15.1 No amendment or variation of the terms of this Agreement shall be effective unless it is made or confirmed in a written document signed by the Parties.

16. ENTIRE AGREEMENT

- 16.1 This Agreement constitutes the whole agreement between the Parties in relation to the settlement of the matters set out herein and each Party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement. Nothing in this Agreement shall limit or exclude any liability for fraud.

17. THIRD PARTY RIGHTS

- 17.1 A person or entity 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.

18. VAT

- 18.1 Should the Class Representative be required to pay VAT over the Settlement Sum in accordance with local tax laws, this shall not increase the liability of Mastercard, but will be paid out of the Settlement Sum.

19. COUNTERPARTS

- 19.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 19.2 Transmission of an executed counterpart of this Agreement by e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement.
- 19.3 No counterpart shall be effective until each Party has executed and delivered at least one counterpart.

20. EXECUTION

- 20.1 The Parties agree that this Agreement may be executed by any Party by way of electronic signature (whatever form the electronic signature takes) and that this method of electronic signature is conclusive of such Party's intention to be bound by this Agreement as if signed in manuscript. Neither this Agreement nor any provision herein shall be denied legal effect, validity or enforceability because it was executed by use of an electronic signature.

21. FURTHER ACTIONS

- 21.1 At any time after the date of this Agreement the Parties shall execute such documents and do any such other acts and things as may be required for the purposes of giving full effect to the provisions of this Agreement.

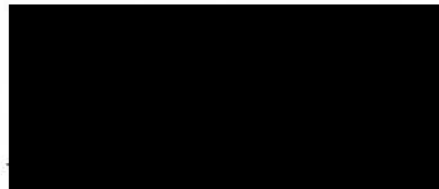
22. GOVERNING LAW AND JURISDICTION

- 22.1 This Agreement shall be governed by and construed in accordance with English law and each Party irrevocably submits to the exclusive jurisdiction of the English courts to resolve any dispute which may arise under or in connection with this Agreement.

This Agreement has been entered into on the date stated at the beginning.

SIGNED by **WALTER MERRICKS**)
CBE,)
an individual, in his capacity as the Class)
Representative:)

Signature:



SIGNED on behalf of **MASTERCARD**)
INCORPORATED,)
a company incorporated in Delaware,)
acting by [REDACTED] a person)
who, in accordance with the laws of that)
territory, is acting under the authority of)
the company:

Authorised Signatory signature:

[REDACTED]

SIGNED on behalf of **MASTERCARD**)
INTERNATIONAL)
INCORPORATED,)
a company incorporated in Delaware,)
acting by [REDACTED] a person)
who, in accordance with the laws of that)
territory, is acting under the authority of)
the company:

Authorised Signatory signature:

[REDACTED]

SIGNED on behalf of **MASTERCARD**)
EUROPE S.A.,)
a company incorporated in Belgium, acting)
by [REDACTED] a person who, in)
accordance with the laws of that territory, is)
acting under the authority of the company:)

Authorised Signatory signature:

[REDACTED]