
Merchant Agreement General Terms

Version 5.1 | April 2023

Suite 135, 16/F, Tower 5, The Gateway
Harbour City, Tsim Sha Tsui
Kowloon, Hong Kong SAR
China

This document sets out the standard terms and conditions for First Data Merchant Solutions (Hong Kong) Pte Ltd (Registration No: 1042361) (**Fiserv**) to provide acquiring services to the **Company**.

This Merchant Agreement is comprised of

1. The Collection Statement;
2. Schedules to these General Terms;
3. These General Terms;
4. The Merchant Application Form (the **Application**) signed by the Company; and
5. The RAM Terms of Use.

(Together, the **Agreement** or **Merchant Agreement**).

If there are any inconsistencies, the document higher in the list will prevail to the extent of such inconsistency.

1. Acquiring Services

Fiserv will acquire the Company's electronic transactions for payment organisations and networks identified below (**Acquiring Services**).

1.1 Networks

Fiserv will provide the Company with Acquiring Services for the networks as selected in the Application, which may include but is not limited to: Visa, MasterCard, UnionPay International, Japan Credit Bureau, BoC Pay, and/or others as agreed by the Parties in writing (collectively, the **Networks**).

1.2 Additional Card Acquiring Services

- a) **Additional Cards.** Fiserv will provide the Acquiring Services to the Company also for its transactions that are initiated with Cards issued by additional networks (other than those falling under clause 1.1 that are identified in this Agreement (**Additional Card Networks**)). A **Card** is a card, code, device, or other means allowing access to a credit, debit, prepaid, stored value, or similar account. An **Additional Card** is a Card as selected in the Application, which may include but is not limited to: American Express Company (or its affiliates), Discover/Diners Club International, FPS, EPS, PayMe, Alipay, WeChat Pay and/or others as agreed by the Parties in writing.
- b) **Additional Card Network Agreements.** Payment transactions for Additional Cards are subject to separate agreements (**Additional Card Network Agreements**) between the Company and (i) the relevant Additional Card Networks, or (ii) applicable **Third-Party Additional Card Acquirer**. **Third-Party Additional Card Acquirer** being a third-party selected in the Application (or applicable legal entity thereof) duly authorised to provide acquiring services for certain Additional Cards or others as agreed by the Parties in writing. The Company will comply with the terms of its Additional Card Network Agreements and obtain any consents required by these Additional Card Networks to submit Additional Card transactions to Fiserv for processing. The Company will promptly notify Fiserv if any of its Additional Card Network Agreements expire or terminate. Fiserv will not be obligated to process the Company's Additional Card transactions if the Company does not have an effective Additional Card Network Agreement in place. **Fiserv has no responsibility to the Company for an Additional Card Network's (or Third-Party Additional Card Acquirer's) performance obligations, responsibilities, or liabilities to the Company under or in connection with their Additional Card Network Agreements.**
- c) **Processing.** Fiserv will only provide the Company with data capture and authorisation processing services for transactions initiated with Additional Cards; Fiserv will not provide settlement services for the Additional Card Networks. Fiserv will submit settlement files or data for Additional Card transactions to the appropriate Additional Card Networks or Third-Party Additional Card Acquirer on behalf of the Company. Additional Card transactions will be settled directly between the Company and the corresponding Additional Card Network or Third-Party Additional Card Acquirer according to their Additional Card Network Agreements.

- d) **Additional Card Network Rules.** The Company will comply with all applicable rules, requirements and standards of each of the Additional Card Networks and Third-Party Additional Card Acquirer (together, the **Additional Card Network Rules**).

1.3 Network Rules and Industry Regulations

The Company will comply with all rules, requirements and standards of each of the Networks (together, **Network Rules**) and any regulations, requirements and standards issued by a governmental authority or industry body (together, **Industry Regulations**). The Company acknowledges that it has access to Fiserv's payment acceptance guide (**Payment Acceptance Guide**), which may be updated from time to time, can be found on the Fiserv website and will assist the Company with properly accepting and submitting its transactions for processing, but is not part of this Agreement. Under Network Rules, the Company does not own the Card account, Cardholder, personal, or other payment transaction information generated when a Card transaction is processed using the Acquiring Services. The Company will not use, retain, disclose, sell, or disseminate any Card or Cardholder information (including, names, addresses and Card account numbers) obtained in connection with payment transactions except for (1) authorising, processing and settling transactions; or (2) resolving chargebacks, retrieval requests, or similar issues related to its transactions. The Company will not reproduce electronically captured Cardholder signatures except as requested by Fiserv or the Networks. A **Cardholder** is the individual who was issued a Card.

1.4 Locations

The Company must be domiciled in Hong Kong as required by applicable Laws and Network Rules to submit transactions to Fiserv. Fiserv will perform the Acquiring Services for payment transactions submitted from all the Company's locations in Hong Kong.

1.5 Submitting Transactions

The Company is responsible for:

- a) Properly transmitting the transaction data (including all transaction detail required by the Networks) to Fiserv's systems using the format and specifications provided by Fiserv (the Company will maintain and update the systems that it uses to accommodate changing Network requirements and industry requirements as specified by Fiserv);
- b) All payment transactions submitted for processing under its merchant identification numbers (**MIDs**), including, without limitation, all returns, refunds, or chargebacks, whether charged back by Cardholders or Card issuers;
- c) Preventing its employees and others from submitting returns or refunds that do not reflect valid returns or refunds corresponding to prior transactions; and
- d) Retaining transaction records according to the timelines required by the Network Rules, Industry Regulations or applicable Laws.

1.6 Transaction Acceptance

The Company will only accept and submit transactions where:

- a) The transaction represents a genuine sale of the Company's goods or services to the Cardholder;
- b) The transaction is not materially different than the transactions the Company has described to Fiserv with regard to the products or services sold, the procedures for payments acceptance, or the fulfilment of obligations to the Cardholder;
- c) The transaction complies with all requirements of the applicable Network Rules and Industry Regulations, the laws of all relevant jurisdictions and all other requirements of this Agreement;
- d) The transaction is not a duplicate of any other transaction;
- e) The transaction is authorised by the rightful Cardholder for the amount of the transaction in satisfaction of the Cardholder's obligation to the Company;
- f) The transaction is in payment of goods or services provided simultaneously with the payment transaction (except for delayed delivery, advance deposit, or other partial transactions specifically allowed under the Network Rules and Industry Regulations and explicitly authorised by Fiserv in writing);

- g) The transaction is not a refinancing of an existing obligation;
- h) The transaction is valid, collectible and is not subject to any dispute, setoff, or counterclaim; and
- i) In the case of a refund, the transaction is submitted to reimburse the Cardholder for a sale transaction that was previously submitted.

1.7 Transaction Representation and Warranty

The Company represents and warrants that each transaction that it submits will comply with this clause.

1.8 Transaction Receipts

The Company will provide Fiserv a copy of any transaction receipts upon request.

1.9 Settlement

- a) The Company will identify a bank account held in the Company's name (the **Settlement Account**), unless otherwise expressly agreed by Fiserv, that Fiserv will use in connection with the **Services** (being all services provided by Fiserv under this Agreement). The Company authorises Fiserv to initiate: (1) credits to the Settlement Account for proceeds of transactions submitted; and (2) debits to the Settlement Account for any amounts that may be owed or required to be paid under this Agreement.
- b) The Company may identify more than one bank account as the Settlement Account. If the Company designates more than one Settlement Account, credits to any of these Settlement Accounts will satisfy Fiserv's obligations and successful debits to any of the Settlement Accounts will satisfy the Company's obligations under this Agreement.
- c) Fiserv will initiate a transfer to the Settlement Account of the value of all valid sales and cash out transactions for the Company's Card payment transactions, less any amounts due from Company for refunds, chargebacks, other debits or monies withheld to fund a Reserve in accordance with clause 6.1. Fiserv will initiate the transfer no earlier than two (2) banking days after the transaction (for transactions submitted before merchant cut-off on the prior banking day) if reasonably practicable but is not responsible for any delays, failures or errors caused by the Networks, Hong Kong's payment systems, the Company's financial institution, or telecommunications networks. It will depend on the Company's financial institution when funds will be available in the Company's bank account.
- d) Fiserv may, if it deems fit, pre-fund (**Pre-Fund**) any transfer or deposits into the Settlement Account using its own money prior to the receipt of payment by Fiserv through the Networks. Where Fiserv Pre-Funds any transfers or deposits into the Settlement Account prior to its receipt of the equivalent amounts through the Networks, then Fiserv (and not the Company) will be fully entitled to those equivalent amounts subsequently received through the Networks and accordingly, Fiserv will not be obliged to pay those equivalent amounts into the Settlement Account.
- e) The Company does not have a property or ownership interest in any proceeds of transactions or funds received by Fiserv in connection with the Company's transactions (including any funds held in a Reserve in accordance with clause 6.1) until those funds are transferred to the Settlement Account.
- f) After funds have been deposited into the Settlement Account, Cardholders, Card issuers and the Networks still have the right to require reimbursement of transactions, to impose obligations relating to violations of the Network Rules, to assess additional interchange or other assessments and to impose fees, fines, or charges relating to the qualification of transactions and the Settlement Account may be debited for these amounts at a later date.
- g) The Company must promptly notify Fiserv if it fails to receive any settlement funding or if there are any changes to the Settlement Account. Transfer of settlement funds may be delayed or misdirected if the Company provides inaccurate information about, or fails to notify Fiserv of changes to, the Settlement Account. Fiserv is not responsible for settlement errors that arise if the Company provides inaccurate information about, or fails to notify Fiserv of changes to, the Settlement Account.

1.10 MATCH Reporting

Under some circumstances, Fiserv may be required to report the Company to the Member Alert to Control High Risk (**Match**) listing or similar listings maintained by the Networks. The Company agrees that Fiserv will not be liable for any losses, damages, or liabilities that may result from that reporting.

1.11 Mark License; Network Decals

- a) For the duration of this Agreement, Fiserv grants the Company a revocable, royalty free, non-exclusive, limited license that cannot be assigned, transferred, or further sublicensed, to use the Networks' trademarks and service marks (together, **Protected Marks**) in Hong Kong, according to the applicable Network Rules. This license does not grant the Company any other intellectual property right, title, interest, or claim (express or implied, by estoppel, or otherwise) to the Protected Marks. The Company will not take any action that impairs an owner's intellectual property rights in its Protected Marks.
- b) The Company will discontinue use of the Networks' decals, promotional, or other materials after termination of this Agreement. The Company will not indicate that its products or services are endorsed by any of the Networks.
- c) Save for the limited license granted under clause 1.11a), nothing in this Agreement shall be interpreted as granting to the Company a license to use Fiserv's intellectual property. The Company shall promptly notify Fiserv of any infringement or threatened infringement or of any challenges to the validity or ownership of any of Fiserv's intellectual property and the Company will provide reasonable assistance to Fiserv, at Fiserv's reasonable expense, in connection with Fiserv's defence to such challenges.
- d) Fiserv may include the Company's name, description and hyperlinks to the Company's website, on Fiserv's website and other marketing material.

1.12 Equipment

Where the Company uses any **Equipment** (that is any terminals or related hardware used by the Company for the purpose of creating, transmitting, reading, or processing, transaction data for the purposes of facilitating transactions under this Agreement but not power outlets and telecommunication lines), it shall comply with the terms of Schedule A to this General Terms.

1.13 Gateway Services

To facilitate the processing of transactions online, Fiserv may provide the Company its online processing system that provides an interface for the transmission of transaction data between Fiserv and the Company in connection with the Acquiring Services or Third-Party Services (the **Gateway Services**). Where the Company uses the Gateway Services, it shall comply with the terms of Schedule B to this General Terms.

1.14 Instalment Payment Program

Schedule C shall apply to all Instalment Purchases (as defined in Schedule C to this General Terms).

1.15 Third-Party Services

Third-Party Services are services provided by a party other than Fiserv to the Company that use, are connected to, or are ancillary to, the Acquiring Services. Fiserv does not recommend, endorse, or approve, any Third-Party Service. The Company's use of Third-Party Services is governed by the Company's agreement with the providers of such **Third-Party Services** (the **Third-Party Services Providers**) and not this Agreement. **Fiserv bears no responsibility or liability arising out of or in connection with the Third-Party Services.**

2. Financial Information; Audit

The Company will promptly provide any financial or other information reasonably requested by Fiserv to perform credit risk, security, qualification, regulatory (including but not limited to anti-money-laundering and sanctions monitoring) and Network compliance tasks and other reviews related to the provision of the Services, transactions submitted, fulfilment of obligations to Fiserv or Cardholders, or the financial condition of the Company. The Company authorises Fiserv to obtain information from third parties when performing credit risk, security, qualification and other reviews. Fiserv may perform a reasonable audit of the Company's records related to its performance under this Agreement with 30 days' advance written notice to the Company, during the Company's normal business hours and at Fiserv expense.

3. Notice of Material Changes; Third Parties

The Company will provide Fiserv with reasonable advance notice of any material change in the nature of the Company's business (including any change in control or merger, any liquidation, any transfer or sale of substantially

all of its assets, or any change to the Company's operations that would materially affect the products or services sold, the procedures for payments acceptance, or the fulfilment of obligations to a Cardholder). The Company will provide Fiserv with written disclosure identifying the third parties, systems and services the Company uses to receive, transmit, process, or otherwise manage information or its information technology systems (for example, without limitation, gateways, encryption or firewall providers) related to the transaction information or payment data processed in connection with this Agreement (these third parties must be registered providers with the Networks).

4. The Company's Payment Obligations

4.1 Payment Obligations

The Company will pay Fiserv for:

- a) All fees and charges for the Services as set out in the Application;
- b) All transactions that are charged back by Cardholders, Card issuers, or the Networks;
- c) All refunds submitted in connection with the Company's transactions; and
- d) All costs, liabilities, or other obligations imposed on Fiserv by the Networks or other third parties as a result of transactions submitted by the Company or the actions taken (or not taken) by the Company or its third party service providers (including but not limited to any Third-Party Services Providers).

All such sums as outlined in (a) to (d) of this clause 4.1 will be owed to Fiserv, and the Company shall be liable to Fiserv for such sums until these have been finally and irrevocably paid to Fiserv in full.

4.2 Fees Account

The Company will keep a bank account (**Fees Account**) and authorises Fiserv to debit the Fees Account in respect of any of the Company's payment obligations. The Fees Account can be the same as the Settlement Account. The Company will execute a direct debit authority and will reimburse Fiserv for the amount of charges incurred as a result of any direct debit being rejected. Where there are insufficient funds in the Fees Account or where any debit from the Fees Account cannot be processed for any reason (whether such debit has been rejected or otherwise), Fiserv reserves the sole and absolute right to set off and/or deduct the equivalent amount from the Reserve, or from any other funds otherwise payable to the Company under this Agreement.

4.3 Adjustment

Fiserv may adjust the fees and charges for the Services upon 30 days' advance written notice.

5. Taxes

5.1 General

Unless otherwise expressly stated, all consideration to be provided under this Agreement is expressed exclusive of taxes (**Taxes**), including goods and services tax. If Taxes are payable by Fiserv on any supply made under this Agreement, the Company will pay Fiserv an amount equal to the Taxes payable on the supply, in addition to the amount payable in respect of that supply.

5.2 Tax Invoice

Where required by law, Fiserv will invoice the Company in arrears and will issue a valid tax invoice. Payment will be due within 30 days from the date of the invoice.

5.3 Withholding Tax

All payments to be made by the Company shall be made free and clear of and without deduction of any taxes unless the Company is required to make such a payment subject to the deduction or withholding of tax, in which case the sum payable by the Company (in respect of which such deduction or withholding is required to be made) shall be increased to the extent necessary to ensure that Fiserv receives a sum net of any withholding or deduction equal to the sum which it would have received had no such deduction or withholding been made or required to be made.

6. Reserve, Security and Set-off

6.1 Reserve

- a) Fiserv may require the Company to fund a cash reserve (**Reserve**) in an amount that reflects Fiserv's assessment of risk, as it may determine in its discretion from time-to-time. The Reserve is a payment obligation of Fiserv, which may be established by holding back transaction proceeds, or debiting the Settlement Account, or by the Company's provision of any Reserve amount to Fiserv by any other method requested by Fiserv, in order to set-off any liabilities or obligations that the Company may have or owe to Fiserv. The Reserve is not a segregated fund that the Company may claim to own and is not held by Fiserv on trust for the Company. Fiserv is obligated to pay to the Company any amounts remaining from the Reserve after all other then-current and contingent liabilities or obligations related to the Company's payment transactions have expired (as provided for under the Network Rules, Industry Regulations or this Agreement).
- b) The obligations due to the Company from the Reserve will not accrue interest. Fiserv may at its sole and absolute discretion, at any time without giving notice to the Company, establish a Reserve and modify the amount in the Reserve.
- c) Fiserv may, at any time and without giving notice to the Company, set off any liabilities or obligations that the Company owes to Fiserv (or its affiliates) from the Reserve. The liabilities or obligations of the Company owed or owing to Fiserv that may be set off from the Reserve include (but are not limited to) the liabilities or obligations described in clause 4.1. Fiserv shall be entitled to withdraw such amount(s) which is/are equal to the liabilities owed or owing to Fiserv (or its affiliates) from the Reserve to satisfy the set-off of these liabilities or obligations. Consequently, the amount of the Company's Reserve will be reduced by the corresponding amount which has been withdrawn by Fiserv. The Company acknowledges that the Reserve is a general obligation of Fiserv and not a specifically identifiable fund, if any person claims that the Reserve is an asset of the Company that is held by Fiserv, the Company grants and acknowledges that Fiserv has a security interest in the Reserve and, at Fiserv's request, will provide documentation to reflect this security interest and cooperate with Fiserv to perfect the security interest.
- d) Fiserv is only obligated to pay to the Company any amounts remaining from the Reserve after all other liabilities or obligations of the Company related to the Company's payment transactions have (whichever is the later): (a) expired (as provided for under the Network Rules, Industry Regulations or this Agreement); or (b) have been satisfied in full.

6.2 Setoff and Priority

All funds that Fiserv owes to the Company under this Agreement are subject to the Company's liabilities and obligations under this Agreement. Fiserv may set off against any funds that Fiserv owes to the Company, liabilities or obligations of the Company which: (i) the Company owes to Fiserv under this Agreement or any other agreement; or (ii) the Company owes to Fiserv's affiliates under this Agreement or any other agreement.

6.3 Security and Security Interest

Fiserv may from time to time request security from the Company or a guarantor to secure performance of the Company's obligations under this Agreement. The Company shall do all things necessary to put in place enforceable security as requested by Fiserv.

7. Statements, Reporting

Fiserv will provide the Company with statements or electronic reporting (**Statements**) reflecting the fees, settlement amounts and other information related to the Services. The Company must review the Statements and inform Fiserv of any errors within 60 days following the date (whichever is the earlier): (i) it first has access to the Statement, or portion of the Statement, containing the error; or (ii) the date of the Statement containing the error. The reporting of any errors will enable Fiserv to recover amounts or prevent the errors from continuing. Fiserv will have no obligation to provide refunds for, or otherwise make good, errors that the Company reports more than 60 days following the date (whichever is the earlier): (i) it first has access to the Statement, or portion of the Statement, containing the error; or

(ii) the date of the Statement containing the error. The Company and Fiserv will work together to resolve issues or disputes that arise in connection with the Statements, or the funds credited or debited to the Settlement Account.

8. Privacy and Confidential Information

8.1 Privacy

Each party will comply with the Personal Data (Privacy) Ordinance and will treat personal information collected from individuals in accordance with any applicable Laws, rules, regulations, or guidelines, relating to such personal information.

8.2 Confidentiality

Neither party will disclose non-public information about the other party's business (technical specifications, customer lists, or information relating to a party's operational, strategic, or financial matters) (together, **Confidential Information**). Confidential Information does not include information that: (1) is or subsequently becomes publicly available (through no fault of the recipient); (2) the recipient lawfully possesses before its disclosure; (3) is independently developed without reliance on the discloser's Confidential Information; or (4) is received from a third party that is not obligated to keep it confidential. Each party will implement and maintain reasonable safeguards to protect the other party's Confidential Information.

8.3 Disclosure

The recipient may disclose the other party's Confidential Information: (1) to its directors, officers, personnel and representatives (including those of its affiliates, subcontractors or vendors) that need to know it in connection with the recipient's performance under this Agreement as well as the purposes set out in the Collection Statement and are bound by confidentiality obligations materially similar to those required under this Agreement; and (2) in response to a subpoena, court order, request from a regulator, or as required under applicable Laws, Network Rules or Industry Regulations.

8.4 Publicity

Fiserv and the Company may publicly indicate they have entered into a contract with each other.

9. Data Security

9.1 Unauthorised Access

- a) The Company is responsible for any unauthorised access to any transaction data from the Company or from third parties retained by or on behalf of the Company.
- b) Fiserv is responsible for any unauthorised access to the Company's transaction data on Fiserv systems.

9.2 Compliance with Standards

- a) The Company must comply with Payment Card Industry Data Security Standards (**PCI DSS**) and obtain timely certification of its systems and processes (which must be maintained during the Term) as required under the Network Rules and Industry Regulations. The Company must also comply with all additional standards that the Networks and Industry Regulations may require. The Company will allow the Networks or Fiserv to audit its data security compliance, including PCI DSS and information technology systems related to the Services provided under this Agreement. The Company is responsible for its service providers' compliance with the same requirements.
- b) Fiserv must comply with all PCI DSS requirements and the Network Rules and Industry Regulations that apply to its performance under this Agreement.

9.3 Security Incident

- a) If the Company becomes aware that there has been unauthorised access to transaction data (a **Security Incident**), it will promptly notify Fiserv. If requested by Fiserv, the Company will retain a reputable firm that is

certified and approved by the Networks that provides forensic information security services and risk assessments in order to: (1) assess the nature and scope of the Security Incident; and (2) identify the access controls or transaction data involved in the Security Incident. The Company will take appropriate steps to contain, control, stop and remediate any Security Incident.

- b) The Company will provide reasonable details regarding the Security Incident to and cooperate with, Fiserv, any Networks, governmental authorities or industry bodies and the forensics firms that are involved in the investigation and remediation of a Security Incident. The Company will take all actions that the Networks, governmental authorities, industry bodies or Fiserv require in connection with the investigation and remediation of a Security Incident.
- c) The Company will reimburse Fiserv for all fines, fees, penalties, assessments, or other obligations of any kind imposed by a Network on Fiserv due to a Security Incident caused by the Company or its third party service providers (including but not limited to any Third-Party Services Providers) (together, **Network Security Fees**).

9.4 Data Use

Fiserv may use transaction data obtained from providing the Services to the Company to fulfil performance obligations under this Agreement and investigate fraud, or suspected fraud, related to the Company's transactions. Fiserv may also use transaction data obtained from providing the Services under this Agreement in aggregated and anonymised form (as required by applicable Laws) for research and development, or to provide services generally.

10. Term, Termination, and Suspension

10.1 Term

This Agreement commences at the earliest of (1) Fiserv assigning a MID to the Company; (2) the Company commencing the submission of transactions to Fiserv for processing; or (3) the Company taking delivery of Equipment supplied by Fiserv; (that date, the **Effective Date**) and will continue until the third anniversary of the date Fiserv first assigns a MID to the Company (such period, the **Initial Term**) unless terminated as allowed under this Agreement. This Agreement will renew for successive 3 months periods (each a **Renewal Term**), unless either party gives the other 60 days' advance written notice of non-renewal before the end of the Initial Term. Either party may terminate this Agreement for any reason (without cause) during a Renewal Term by giving the other 30 days' advance written notice of termination. Together, the Initial Term and any Renewal Term(s) are the **Term** of this Agreement.

10.2 General Termination

Either the Company or Fiserv may terminate this Agreement by giving 30 days' advance written notice if the other materially breaches this Agreement and fails to remedy the breach within 30 days of receiving notice of it. A party may only exercise this right within 60 days of becoming aware of a material breach. At any time during the Term, Fiserv may terminate this Agreement by prior written notice stipulating the date upon which termination is to take effect, without having to assign any reason for such termination.

10.3 Risk Termination

Fiserv may immediately suspend or terminate this Agreement, in its sole discretion, upon notice if:

- a) the Company engages in fraud, misrepresentation, or intentional misconduct related to its performance under this Agreement;
- b) the Company experiences excessive chargebacks, irregular, or fraudulent payment transactions (based on Network thresholds), or if Fiserv is of the opinion that the Company has engaged in business practices creating or which is reasonably likely to create excessive risk for Cardholders or Fiserv;
- c) Fiserv is of the opinion that the Company has experienced, or is reasonably likely to experience, a material adverse change in its financial condition (including the failure to pay any of its debts or if the Company's accountants fail to deliver an unqualified audit opinion with respect to the Company's and its consolidated subsidiaries' annual financial statements when requested by Fiserv);
- d) the Company fails to provide notice of a material (as determined by Fiserv in its sole opinion) change in the nature of its business;

- e) the Company fails to disclose the third parties or systems it uses in connection with the transaction information or payment data processed under this Agreement;
- f) the Company fails to fund a Reserve when required under this Agreement;
- g) the Company experiences a Security Incident or fails to comply with PCI DSS or a material Network requirement;
- h) Fiserv is of the opinion that the Company has materially changed its operations, products, services, or procedures for payments acceptance;
- i) the Company fails to satisfy a review or audit conducted under this Agreement;
- j) the Company sells substantially all (as determined by Fiserv in its sole opinion) of its assets, undergoes a change in ownership or control, merges, or effects an assignment without obtaining the prior consent of Fiserv; or
- k) A Network or a governmental authority, instructs Fiserv to limit, suspend its performance under or terminate this Agreement (in which case the Early Termination Fee will not apply).

Together, the events described in this clause are **Default Events**.

10.4 Early Termination Fee

Fiserv will suffer substantial injury and it would be difficult to determine the damages, if this Agreement is terminated before the end of the Initial Term due to any Default Event. Fiserv and the Company agree an accurate reflection of the damages payable to Fiserv caused by such early termination of this Agreement is an amount equal to 80% of the average monthly fees paid to Fiserv during the 12-month period preceding the termination (or, if less than 12 months have elapsed, the average monthly fees during the period expired) multiplied by the number of months (including partial months) remaining in the Term (the **Early Termination Fee**).

10.5 Change Termination

The Company may terminate this Agreement by giving 30 days' written notice if Fiserv increases (in aggregate) the fees and charges payable by the Company, or if Fiserv gives notice of or publishes an amendment of the terms of this Agreement, that materially diminishes the Company's rights or increases the Company's obligations under this Agreement. This termination right will not arise where a change is due to a change in Laws and has to be exercised within 30 days from a notice or publication.

10.6 Termination for Inactivity

Fiserv will have the right to terminate this Agreement immediately upon notice to the Company if no transaction has been submitted for a period of 90 days or more.

10.7 Effect of Termination

The following clauses shall survive termination of this Agreement for any reason whatsoever:

- a) Clause 1.5d);
- b) Clauses 1.12 to 1.14;
- c) Clause 2;
- d) Clause 4;
- e) Clause 5;
- f) Clause 6;
- g) Clause 8;
- h) Clause 9;
- i) Clause 10.4;
- j) Clause 10.7;
- k) Clause 11; and

l) Clause 12.

11. Indemnity and Liability

11.1 Indemnity

The Company will indemnify Fiserv (including their respective affiliates, directors, officers, managers and employees) for losses, damages, costs, or expenses (together, **Losses**) due to third party claims that result from the Company's negligence, wilful misconduct, infringement of any third party's intellectual property rights, or breach of this Agreement.

11.2 Process

Fiserv will promptly notify the Company of any third party claim that is subject to indemnification under this Agreement. The Company will have the opportunity to defend these claims using counsel it selects and will have the authority to enter into a settlement for monetary damages provided that it pays such amounts. The parties will cooperate with regard to any other conditions of settlement as well as in providing records, access to personnel or other information reasonably necessary to defend any indemnified claims. Fiserv shall take reasonable steps to mitigate the liability, loss or damage giving rise to the claim and shall not make any admission or other statement to the third party which may be directly or indirectly prejudicial to the defence of the claim (including the issue of liability) unless agreed with the Company.

11.3 Exclusion of Damages

Fiserv will not be liable to the Company for lost profits, revenues, or business opportunities, expected savings, opportunity costs, loss of goodwill, image or reputation, nor any exemplary, punitive, special, indirect, incidental, or consequential damages under this Agreement; regardless of whether these damages were foreseeable or the Company was advised they were possible.

11.4 Limitation of Liability

Fiserv's aggregate liability to the Company for losses arising from any cause (regardless of the form of action or legal theory) in connection with this Agreement will be limited to HKD 400,000.00 (**Liability Cap**). The Liability Cap will not apply to Fiserv's obligation to remit the proceeds of the Company's Card transactions that are processed under this Agreement (after accounting for all offsetting obligations). Fiserv shall not be liable for any loss, expenses or damage whatsoever caused by: (i) the failure for whatever reason of a Card, any Equipment, or either party's systems, to function properly or at all; or (ii) the acquisition by any person of information through any unauthorised electronic or other interception of communication in relation to a transaction.

12. General

12.1 Notices

Written notices (other than normal operations) required under this Agreement may be delivered by hand, sent by regular mail, registered mail, or courier (all pre-paid). Additionally, Fiserv may provide written notice to the Company by email.

- a) If delivered by hand or sent by registered mail or courier, notices will be effective on written acknowledgement of receipt by an authorised employee, agent or representative or the receiving party. If sent by regular mail, 3 Business Days after the date of mailing.
- b) Copies of all notices may be sent through email to the email address notified by a party.
- c) Notices to the Company will be valid when sent to the Company details set out in the Application or to the Company's registered address. Notices to Fiserv will be sent to:

Fiserv Merchant Solutions (Hong Kong) Pte Ltd

Attn: Legal Counsel

Suite 135, 16/F, Tower 5, The Gateway
Harbour City, Tsim Sha Tsui
Kowloon, Hong Kong SAR

12.2 Providers

Each party is responsible for the performance of any third parties it uses in connection with the Services and their compliance with the terms of this Agreement.

12.3 Waivers

A party's waiver of a breach of this Agreement will not be considered a waiver of a subsequent breach. A party's delay or failure to exercise any of its rights under this Agreement will not be a waiver of those rights unless otherwise expressly provided for under this Agreement.

12.4 Compliance with Law, Choice of Law

The parties will comply with all laws, rules (including Network Rules) and regulations (including Industry Regulations), (together **Laws**), that are applicable to their respective obligations under this Agreement. This Agreement will be governed by the laws of Hong Kong. The courts of Hong Kong will be the proper venue for legal proceedings brought in connection with this Agreement.

12.5 Introducers, Networks, Additional Card Networks, Third-Party Additional Card Acquirers and/or Third-Party Service Providers

The Company acknowledges that Fiserv may pay amounts to other parties for referring the Company to Fiserv. Fiserv may share information, including Confidential Information, with the introducer as well as Networks, Additional Card Networks, Third-Party Additional Card Acquirers and/or Third-Party Services Providers, and the Company authorises Fiserv to share such information with these parties.

12.6 Entire Agreement, Counterparts

The defined term Agreement includes its schedules, addenda and any amendments (capitalised terms used in the schedules, addenda, or amendments without definition will have the meanings given to them in this Agreement). This Agreement is the entire agreement between the parties and replaces any prior agreements or understandings (written or oral) with respect to its subject matter.

12.7 Amendments

Fiserv may, by written notice to the Company and/or by posting the amended terms on its website, amend this Agreement.

12.8 Assignment, Novation

The Company may not assign rights under this Agreement or novate this Agreement without Fiserv's written consent. Fiserv may assign, novate or transfer its rights or obligations under this Agreement to its affiliate, or another financial or other institution that is a member of the Networks. The Company agrees (1) to a novation by written notice to the Company where the new contract is on the same terms and conditions as the existing agreement, the new party assumes the rights and obligations of the outgoing party and the outgoing party is released from those rights and obligations and (2) to enter into such documents as Fiserv may reasonably require in order to effect such assignment, novation or transfer. This Agreement will be enforceable against a party's permitted successors or assigns.

12.9 Force Majeure

No party shall be liable to the other for any delay in the performance or inability to perform any of its obligations under this Agreement to the extent that such delay or inability is caused by an event beyond its control.

Schedule A: Equipment

This Schedule sets out additional terms and conditions that apply if the Company uses Equipment to process transactions under this Agreement.

1. Equipment may consist of equipment supplied by Fiserv (**Supplied Equipment**) or, the Company's own Equipment (**Company Equipment**). In processing transactions using Equipment, the Company shall only use Equipment that has been approved by Fiserv.
2. The Company shall ensure that the Company Equipment complies with all applicable Laws, policies and certification procedures that may be specified by Fiserv from time to time. The Company is, notwithstanding any approval from Fiserv, solely responsible for maintaining, repairing and replacing, the Company Equipment.
3. The Company is responsible for ensuring that any devices, hardware, or software, which it uses in conjunction with the Equipment has been adequately tested and is compatible with the Equipment.
4. The Company shall indemnify Fiserv against any losses, liabilities, damages and expenses, arising out of the use of (i) the Company Equipment, or (ii) any other devices, hardware, or software, that the Company uses in conjunction with the Equipment.
5. The Company must operate and keep all Equipment in accordance with this Agreement and specifically, the Payments Acceptance Guide and any other instructions Fiserv may provide the Company. The Company is responsible for keeping all Equipment in good working order. The Company must safeguard the Supplied Equipment from loss, damage, unauthorised use, misuse, or theft. The Company must notify Fiserv immediately regarding any damage to or loss of the Supplied Equipment.
6. The Company shall not alter, modify, the Supplied Equipment, or the installation site of the Supplied Equipment, without Fiserv's consent.
7. Fiserv may replace any Supplied Equipment with other equipment of the same or similar type. The substitute Equipment shall then be subject to this Agreement. If the Company requests changes to the Supplied Equipment, Fiserv shall be entitled to charge the Company fees determined in its discretion to effect the requested changes.
8. All Supplied Equipment remains the property of Fiserv. If this Agreement is terminated, or if Fiserv requests, the Company shall, in the manner prescribed by Fiserv, return the Supplied Equipment (a) in good working order (fair and tear excepted); (b) cleaned and with markings removed; AND (c) free from cracks, dents, scratches and stains; failing which Fiserv may impose fees, determined in its discretion, on the Company.
9. Additional Cards may only be used with Equipment upon Fiserv's written consent.
10. The Company must not give, rent, lease, sub-license, sell to any third party, or grant any form of security or encumbrance over, or cease to be in possession of any part of, the Supplied Equipment. The Company shall not permit any third party, other than its authorised employees, to use the Equipment.
11. The Company shall allow Fiserv, during business hours and with reasonable notice, to have access to the Equipment for inspection and maintenance purposes.
12. To the extent permitted by law, all warranties and representations, by Fiserv of any kind with respect to the Supplied Equipment, including without limitation any implied warranties of satisfactory quality and fitness for a particular purpose, are excluded. Additionally, Fiserv does not warrant or represent that the Supplied Equipment will perform uninterrupted, error-free, with impenetrable security, or with flawless verification of the Cardholder or any other aspect of the transaction.

Schedule B: Gateway Services

This Schedule sets out additional terms and conditions that apply if the Company uses the Gateway Services.

1. The Gateway Services include protocols, software components and other interfaces and software related to the Gateway Services (the **Gateway Software**). Fiserv may also provide **Gateway Documents** in connection with the Gateway Services. The Gateway Documents comprise of any and all manuals, operating policies, procedures and other written materials or instructions that are provided in connection with the Gateway Services.
2. The Company shall not use the Gateway Services in any way, other than in accordance with this Agreement and any other instructions Fiserv may provide in writing.
3. The Company shall not attempt to circumvent any applicable security measures of the Gateway Services, including by disassembling, decompiling, decrypting, extracting, reverse engineering, or modifying the Gateway Software. The Company shall not apply procedures or processes to the Gateway Software in order to ascertain, derive and/or appropriate for any reason or purpose, the source code or source listings for any Gateway Software, or any algorithm, process, procedure, or other information, contained in the Gateway Software.
4. The Company shall not allow any third party to access the Gateway Services except its authorised employees or contractors, both of which must be subject to a confidentiality agreement no less restrictive in every aspect than the confidentiality provisions in this Agreement.
5. The Company shall not remove or alter in any way whatsoever any copyright notice or acknowledgements appearing on any element of the Gateway Services save to extent approved by Fiserv in writing.
6. The Company shall ensure that all user credentials (including passwords) for the Gateway Services are kept confidential. It shall not allow any other party to use such user credentials unless permitted by Fiserv. The Company shall be liable for all acts and omissions done under user credentials that are assigned to the Company. The Company shall notify Fiserv immediately if the Gateway Services have been compromised.
7. The Company shall be responsible for updating its systems, at its own cost, to ensure that its systems are compatible with the Gateway Services and any updates thereto. The Company is responsible for the correct functioning of its systems and shall be responsible for the technical support and integration of its systems into the Gateway Services. The Company shall be responsible for the costs of development of its systems and the integration of its system into the Gateway Services.
8. Fiserv may in its absolute discretion, without prior notice, suspend the Gateway Services for a reasonable period of time for any reason including system maintenance or upgrades.
9. For the duration of this Agreement, Fiserv grants the Company a personal, non-exclusive and non-transferable right to use the Gateway Services, the Gateway Software and the Gateway Documents, strictly for the purpose of Fiserv's provision of Acquiring Services. All intellectual property rights associated with the Gateway Services are reserved for Fiserv and its licensor (as the case may be).
10. Save for the limited license granted under clause 9 of this Schedule, nothing in, or arising out of, this Agreement grants the Company any other intellectual property rights relating to the Gateway Services, the Gateway Documents, or the Gateway Software.
11. To the extent permitted by law, all warranties and representations, by Fiserv of any kind with respect to: (a) the Gateway Services; (b) the Gateway Software; and (c) the Gateway Documents; including without limitation any implied warranties of satisfactory quality or fitness for a particular purpose, are excluded. Additionally, Fiserv does not warrant or represent that the Gateway Services or the Gateway Software will perform uninterrupted, error-free, with impenetrable security, or with flawless verification of the Cardholder or any other aspect of the transaction.

Schedule C: Instalment Payment Program Transactions

This Schedule sets out additional terms and conditions that apply if the Company processes Program transactions under the Agreement.

1. Fiserv offers an Instalment Payment Program (the **Program**) whereby (during the Program Period) holders of any one or more Qualifying Card(s) who purchase any selected goods and/or services with their Qualifying Card(s) and who are Qualifying Cardmember's, may apply for the interest free payment by instalment arrangement for the applicable Instalment Payment Period(s).
2. By submitting Program transactions to Fiserv, the Company agrees to comply with the terms and conditions provided in this Schedule.
3. Program
 - a) Under the Program, the Instalment Purchase Price, less applicable deductions, is settled to the Company in accordance with the Agreement, whilst the Cardmember pays the Card Issuer the Instalment Purchase Price in equal monthly instalments.
 - b) A Cardmember may apply for Instalment Purchase if the Instalment Purchase Price is within the Cardmember's available instalment credit limit.
 - c) All Instalment Purchases are subject to the approval of Fiserv. The Company shall not accept any Instalment Purchase without first obtaining an authorization code from Fiserv. Fiserv shall have absolute discretion to approve or reject any Instalment Purchase, without disclosing reasons to the Company. All payments to be made under the Program shall be in Hong Kong Dollars.
 - d) No cancellation of the Instalment Purchase by the Company is permitted after Fiserv has authorised the Instalment Purchase. In exceptional cases, subject to the Cardmember's agreement, Fiserv may, in its discretion and subject to the Company paying any applicable fees, upon the Company request, refund an Instalment Purchase to the Cardmember.
4. Obligations of the Company
 - a) For the duration of the Program Period and subject to any required approvals, the Company shall ensure that all Cardmembers are offered the option to pay for their purchases from the Company through the Program.
 - b) In respect of each Instalment Purchase made at a physical store operated by the Company, the Company shall ensure that:
 - i. The Qualifying Card used for the Instalment Purchase is presented to the Company and the Company shall check that the Qualifying Card has not expired;
 - ii. The Qualifying Card for the Instalment Purchase is not altered, mutilated or otherwise tampered with in an unauthorised manner;
 - iii. The Qualifying Card used for the Instalment Purchase bears a genuine distinctive hologram device; and
 - iv. The first four digits of the account number embossed on the face of the Qualifying Card used for the Instalment Purchase are identical to the four digits printed on the face of the Qualifying Card immediately below or above them.
 - c) During the Program Period, the Company shall display prominently the marketing materials in relation to the Program as provided by Fiserv. The Company shall not use any marketing materials in connection with the Program not supplied or authorized, by Fiserv.
 - d) The Company shall not charge the Cardmember's any additional amount (other than set out in the Agreement) for making a purchase through the Program as opposed to the other means of payments.

- e) For each Instalment Purchase, the Company shall obtain the Cardmember's consent to enter into an Instalment Purchase by obtaining either (a) for point of sale transactions, the Cardmember's signatures on the charge slip or such other location Fiserv may prescribe; or (b) for online transactions, a digitally recorded consent.
- f) Fiserv shall be entitled to redirect to the Company any complaints or queries received by it in connection with the products and/or services supplied by the Company in connection with the Program.
- g) The Company shall deal with such complaints and/or queries in an efficient and expeditious manner. Fiserv shall have no liability whatsoever in connection with the products and/or services supplied by the Company in connection with the Program and/or any such complaints and/or queries in relation thereto (whether or not Fiserv has redirected such complaints and/or queries to the Company).
- h) The Company provide shall its brand name, logo, related products, services information and other related material, to Fiserv for production of marketing materials in relation to the Program and the Company authorizes Fiserv to use such brand name, logo such other related information and/or materials for this purpose during the Program Period. The Company undertakes and warrants that the use of such brand name, logo and such other related information and/or material, does not infringe any third party rights.
- i) The Company shall, in a timely manner, report to Fiserv any difficulty that the Company may have in relation to the Program.

5. Obligations of Fiserv

- a) Fiserv will pay the Company the Instalment Purchase Price (less the applicable MDR) (the **Settlement Funds**) for each Instalment Purchase in around three business days following the date of the Instalment Purchase. In addition to any rights Fiserv has elsewhere in the Agreement, Fiserv reserves the right not to settle payment of Settlement Funds in relation of a purchasing Cardmember when:
 - i. The Company fails to perform its obligations or follow the procedures with regard to such Cardmember set out herein relating to the Program;
 - ii. A dispute arises between the Company and such Cardmember in relation to the products and/or services supplied by the Company in connection with the Program; or
 - iii. The Company is otherwise in breach of the Agreement.
- b) For the avoidance of doubt, Fiserv shall be entitled to deduct and/or set-off from any monies due or becoming due to the Company, any other sums owed to Fiserv by the Company under the Agreement.
- c) Fiserv will be responsible for the provision of marketing materials relating to the Program, if any.

6. General

- a) In addition to terms defined elsewhere in the Agreement, the following definitions also apply specifically for the purposes of this Schedule:
 - i. **"Card Issuer"** means the relevant issuer of a Card, for which the Company has selected in the Application (or and/or others as agreed by the Parties in writing) to be able to accept Program transactions under the Agreement;
 - ii. **"Cardmember"** means a holder of any one or more Qualifying Card(s);
 - iii. **"Instalment Payment Period"** means the relevant period for payment by instalments of the Instalment Purchase Price;
 - iv. **"Instalment Purchase"** means any purchase of goods or services from the Company under the Program;
 - v. **"Instalment Purchase Price"** means the whole or that part of the amount of an Instalment Purchase that is payable by Instalments;
 - vi. **"Program Period"** the Term of the Merchant Agreement;

- vii. **“Qualifying Card”** means the payment cards issued by the Card Issuer, subject always to certain payment cards being excluded from the Program as determined by the Card Issuer in its absolute discretion from time to time;
 - viii. **“Qualifying Cardmember’s”** are Cardmember’s with good credit records as determined by the Card Issuer in accordance with its selection criteria from time to time, subject always to the Card Issuer exclusion of certain Cardmember’s from the Program in its absolute discretion from time to time.
- b) This Schedule may be terminated or amended by Fiserv immediately upon written notice to the Company.
 - c) The Company will promptly notify Fiserv of any breach of this Schedule.