Merchant Agreement

General Terms

This document sets out the standard terms and conditions for First Data Merchant Solutions Australia Pty. Ltd. ABN 51 115 245 531 (a corporation within the Fiserv Inc. group of companies, herein referred to as **Fiserv**) to provide acquiring services to its customers (the **Merchant**).

This Merchant Agreement is comprised of

1. The Collection Statement;

2. These General Terms;

3. The Merchant Application Form (**Application**) signed by the Merchant;

4. Any additional document listed in the Application (as and where applicable)

(Together, the **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 Merchant's electronic transactions for payment organisations and networks identified below (**Acquiring Services**). Fiserv will be the Merchant's exclusive provider of the Services during the Term of this Agreement.

1.1 Networks

Fiserv will provide the Merchant with Acquiring Services for Visa®, Mastercard®, eftpos, American Express, UnionPay®International and other networks as agreed (**Networks**).

1.2   Additional card acquiring services

a. **Additional Cards.** Fiserv will provide the Acquiring Services to the Merchant 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. 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 issued by JCB International Co Ltd and Diners Club International Ltd and others as agreed.

b. **Additional Card Network Agreements.** Payment transactions for Additional Cards are subject to separate agreements between the Merchant and the Additional Card issuing Networks (**Additional Card Network Agreements**). The Merchant will comply with the terms of its Additional Card Network Agreements and obtain any consents required by these Networks to submit Additional Card transactions to Fiserv for processing. The Merchant will promptly notify Fiserv if any of its Additional Card Network Agreements expire or terminate. Fiserv will not be obligated to process the Merchant's Additional Card transactions if the Merchant does not have an effective Additional Card Network Agreement with the applicable Additional Card Network. **Fiserv has no responsibility to the Merchant for an Additional Card Network's**

performance obligations, responsibilities or liabilities to the Merchant under their Additional Card Network Agreements.

c. **Processing.** Fiserv will only provide the Merchant 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 for Additional Card transactions to the appropriate Additional Card Networks on behalf of the Merchant. Additional Card transactions will be settled directly between the Merchant and the corresponding Additional Card Network according to their Additional Card Network Agreements.

1.3   Network rules and industry regulations

The Merchant will comply with all rules, requirements and standards of each of the Networks (together, **Network Rules**), any regulations, requirements and standards issued by a governmental authority or industry body (together, **Industry Regulations**) and any conditions, requirements and standards specified under Schedule C: Compliance Schedule of this Agreement (**Compliance Schedule**). The Merchant acknowledges receipt of Fiserv's current payments acceptance guide (**Payment Acceptance Guide**), which will assist the Merchant with properly accepting and submitting its transactions for processing. Under Network Rules, the Merchant does not own the Card account, Cardholder, personal or other payment transaction information generated when a payment transaction is processed using the Acquiring Services. The Merchant 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 Merchant 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 Merchant must be domiciled in Australia 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 Merchant's locations in Australia.

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 Merchant 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 Merchant will only accept and submit transactions where:

a. The transaction represents a genuine sale of the Merchant's goods or services to the Cardholder;

b. The transaction is not materially different than the transactions the Merchant 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 Merchant;

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 Merchant has conducted proper checks to ensure that there is valid and legal use of the card being used and Merchant has no wilful knowledge of any suspicious, improper or illegal circumstances surrounding the card and the transaction.

i. The transaction is valid, collectible and is not subject to any dispute, set-off or counterclaim; and

j. 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 Merchant represents and warrants that each transaction that it submits will comply with this Section 1.

1.8 Transaction receipts

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

1.9 Settlement

a. The Merchant will identify a bank account held in the Merchant's name (the Settlement Account), unless otherwise expressly agreed by Fiserv, that Fiserv will use in connection with all Services. The Merchant 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 Merchant may identify more than one bank account as the Settlement Account. If the Merchant 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 Merchant'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 Merchant's Card payment transactions, less any amounts due from Merchant for refunds, chargebacks, other debits or monies withheld to fund a Reserve in accordance with clause 6.1.

d. Unless otherwise indicated in the Application, Fiserv will initiate a transfer to the Settlement Account as follows:

Merchant Transaction Submission	Fiserv Transaction Settlement
Monday	Tuesday
Tuesday	Wednesday
Wednesday	Thursday
Thursday	Friday
Friday	Monday
Saturday	Tuesday
Sunday	Tuesday

***Public Holidays**. In the event of a Public Holiday falling on a Merchant Transaction Submission day, Fiserv will initiate transfer to the Settlement Account on the next banking day following the corresponding Fiserv Transaction Settlement day as mentioned above.

e. Fiserv is not responsible for any delays, failures or errors caused by the Networks, the Australian payment system, the Merchant's financial institution or telecommunications networks. It will depend on the Merchant's financial institution when funds will be available in the Merchant's bank account.

f. The Merchant does not have a property or ownership interest in any proceeds of transactions or funds received by Fiserv in connection with the Merchant's transactions (including any funds held in a Reserve in accordance with clause 6.1) until those funds are transferred to the Settlement Account.

g. 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.

h. The Merchant 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 Merchant 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 Merchant provides inaccurate information about or fails to notify Fiserv of changes to, the Settlement Account.

i. **Delay Funding.** Fiserv may cause the transfer of settlement funds into the Settlement Account to be delayed to the Merchant, either in whole or in part, if Fiserv:

　i. Suspects in any way that fraud has occurred with regard to any Transaction;

　ii. Suspects (at its sole discretion) any activity at all which Fiserv considers to be suspicious in nature;

iii. Considers that any particular chargeback concerning the Merchant warrants such a delay;

iv. Is concerned about the Merchant's financial stability or

v. Fails to receive adequate information from the Merchant as requested by Fiserv.

1.10 MATCH Reporting

Under some circumstances, Fiserv may be required to report the Merchant to the Member Alert to Control High Risk (**MATCH**) listing or similar listings maintained by the Networks. The Merchant 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 Merchant 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 Australia according to the applicable Network Rules. This license does not grant the Merchant any other intellectual property right, title, interest or claim (express or implied, by estoppel or otherwise) to the Protected Marks. The Merchant will not take any action that impairs an owner's intellectual property rights in its Protected Marks.

b. The Merchant will discontinue use of the Networks' decals, promotional or other materials after termination of this Agreement. The Merchant will not indicate that its products or services are endorsed by any of the Networks.

c. Save for the limited license granted under clause 1.11, nothing in this Agreement shall be interpreted as granting to the Merchant a license to use Fiserv's intellectual property. The Merchant 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 Merchant 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 Merchant's name, description, and hyperlinks to the Merchant's website, on Fiserv's website and other marketing material.

1.12 Equipment

Where the Merchant uses any Equipment (i.e. any terminals or related hardware used by you 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 Merchant its online processing system that provides an interface for the transmission of transaction data between Fiserv and the Merchant in connection with the Acquiring Services (the **Gateway Services**). Where the Merchant uses the Gateway Services, it shall comply with the terms of Schedule B to this General Terms.

2 Financial Information; Audit

The Merchant will promptly provide any financial or other information reasonably requested by Fiserv to perform credit risk, security and qualification, regulatory 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 Merchant. The Merchant 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 Merchant's records related to its performance under this Agreement with 30 days' advance written notice to the Merchant, during the Merchant's normal business hours, and at Fiserv's expense.

3 Notice of Material Changes;Third-Parties

The Merchant will provide Fiserv with reasonable advance notice of any material change in the nature of the Merchant'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 Merchant'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 Merchant will provide Fiserv with written disclosure identifying the third parties, systems, and services the Merchant 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 Merchant's Payment Obligations

4.1 Payment obligations

The Merchant 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 Merchant'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 Merchant or the actions taken (or not taken) by the Merchant or its third- party service providers.

4.2 Fees account

The Merchant will keep a bank account (**Fees Account**) and authorises Fiserv to debit the Fees Account in respect of any of the Merchant's payment obligations. The Fees Account can be the same as the Settlement Account. The Merchant 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.

4.3 GST Exclusive consideration

Fees and charges are quoted exclusive of goods and services tax (**GST** and **GST Exclusive Consideration**). Where any fees and charges are expressed to be inclusive of GST and the applicable GST rate changes, the fees and charges will be automatically adjusted to reflect the new rate.

4.4 Adjustment

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

5 Taxes

5.1 General

Fiserv and the Merchant will pay their own taxes.

5.2 Tax invoice

Fiserv will invoice the Merchant in arrears and will issue a valid tax invoice. Payment will be due within 30 days from the date of the invoice. The parties agree that either party, as a recipient of supplies under this Agreement, such as refunds and other adjustments, may from time to time issue recipient-created tax invoices (**RCTIs**) and submit RCTIs to the other party.

5.3 GST Payment

Where GST is imposed on any supply made under this Agreement by Fiserv to the Merchant, the Merchant must pay or provide the GST Exclusive Consideration for the supply and, in addition to and at the same time as the GST Exclusive Consideration is payable or to be provided, an additional amount calculated by multiplying the value of that GST Exclusive Consideration (without deduction or set-off) by the prevailing GST rate. This clause does not apply to a supply for which a GST inclusive consideration has been agreed unless the supply is made after a change to the GST rate has been effected and the agreed GST inclusive consideration has not had the GST rate change taken into account, in which case the consideration payable for the supply shall be calculated pursuant to this clause. If the amount of GST recovered by Fiserv from the Merchant differs from the amount of GST payable at law by Fiserv (or an entity grouped with Fiserv for GST purposes) in respect of the supply, the amount payable by the Merchant to Fiserv will be adjusted accordingly.

5.4 Reimbursements

Where one party (**Payer**) is liable to reimburse another party (**Payee**) for any expenditure incurred by the Payee (**Expenditure**), the amount reimbursed by the Payer will be the GST exclusive Expenditure plus any GST payable to the Payee by the Payer.

5.5 Withholding tax

All payments to be made by the Merchant shall be made free and clear of and without deduction of any taxes unless the Merchant is required to make such a payment subject to the deduction or withholding of tax, in which case the sum payable by the Merchant (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

Fiserv may require the Merchant 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, established by holding back transaction proceeds or debiting the Settlement Account in order to potentially offset any obligations that the Merchant may have to Fiserv. The Reserve is not a segregated fund that the Merchant may claim to own and is not held by Fiserv on

trust for the Merchant. Fiserv is obligated to pay to the Merchant any amounts remaining from the Reserve after all other then-current and contingent liabilities or obligations related to the Merchant's payment transactions have expired (as provided for under the Network Rules, Industry Regulations or this Agreement).

a. The obligations due to the Merchant from the Reserve will not accrue interest.

b. Fiserv will notify the Merchant if a Reserve is established (including its amount) or if the amount of the Reserve is modified.

c. Fiserv may set off any obligations that the Merchant owes to Fiserv from the Reserve.

d. Although the Merchant 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 Merchant that is held by Fiserv, the Merchant 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.

6.2 Setoff and priority

All funds that Fiserv owes to the Merchant under this Agreement are subject to the Merchant's payment obligations under this Agreement. Fiserv may set off amounts the Merchant owes to Fiserv against any funds that Fiserv owes to the Merchant.

6.3 Security and security interest

Fiserv may from time to time request security from the Merchant or a guarantor to secure performance of the Merchant's obligations under this Agreement. Fiserv may determine that this Agreement, a transaction or any security provided creates a security interest for purposes of the Personal Property Securities Act (**PPSA**). The Merchant will do anything necessary to provide documentation to reflect any security or perfect any security interest.

6.4 Refund Limit

Fiserv may from time to time and at its sole discretion, adjust the refund limit on the Merchant's account without notice and as it considers appropriate.

7 Statements, Reporting

Fiserv will provide the Merchant with statements or electronic reporting (**Statements**) reflecting the fees, settlement amounts, and other information related to the Services. The Merchant must review the Statements and inform Fiserv of any errors within 60 days following the date that the error was, or should have been, reported. 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 errors that the Merchant reports more than 60 days after it was, or should have been, reported. The Merchant 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 Privacy Act Cth (1988) and will treat personal information collected from individuals in Australia, used, and disclosed in accordance with the Australian Privacy Principles.

8.2 Confidentiality

Neither party will disclose non-public information about the other party's business (including the terms of this Agreement, 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 Merchant may publicly indicate they have entered into a contract with each other.

9 Data Security

9.1 Unauthorised access

a. The Merchant is responsible for any unauthorised access to any transaction data from the Merchant or from third parties retained by or on behalf of the Merchant.

b. Fiserv is responsible for any unauthorised access to the Merchant's transaction data on Fiserv's systems.

9.2 Compliance with standards

a. The Merchant 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 Merchant must also comply with all additional standards that the Networks and Industry Regulations may require. The Merchant 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 Merchant 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 Merchant becomes aware that there has been unauthorised access to transaction data (a **Security Incident**), it will promptly notify Fiserv. If requested by Fiserv, the Merchant 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 Merchant will take appropriate steps to contain, control, stop and remediate any Security Incident.

b. The Merchant 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 Merchant 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 Merchant 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 Merchant or its third-party service providers (together, **Network Security Fees**).

9.4 Data use

Fiserv may use transaction data obtained from providing the Services to the Merchant to fulfil performance obligations under this Agreement and investigate fraud or suspected fraud, related to the Merchant'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 and Termination

10.1 Term

This Agreement commences at the earlier of (1) Fiserv advising the Merchant that it has approved the Merchant's Application; (2) Fiserv assigning a MID; (3) the Merchant commencing to process transactions; or (4) the Merchant taking delivery of equipment supplied by Fiserv (that date, the **Effective Date**) and will continue for the **Initial Term** or any other period set out in the Application 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

Fiserv may terminate this Agreement in its entirety at any time and for no particular reason by providing Merchant with 30 days' written notice.

10.3 Breach termination

Either the Merchant 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 must exercise this right within 60 days of becoming aware of a material breach.

10.4 Risk termination

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

Merchant:

a. Engages in fraud, misrepresentation or intentional misconduct related to its performance under this Agreement;

b. Experiences excessive chargebacks, irregular or fraudulent payment transactions (based on Network thresholds) or engages in business practices creating excessive risk for Cardholders or Fiserv;

c. Experiences a material adverse change in its financial condition (including the failure to pay any of its debts or if the Merchant's accountants fail to deliver an unqualified audit opinion with respect to the Merchant's and its consolidated subsidiaries' annual financial statements when requested by Fiserv);

d. Fails to provide notice of a material change in the nature of its business;

e. Fails to disclose the third-parties or systems it uses in connection with the transaction information or payment data processed under this Agreement;

f. Fails to fund a Reserve when required under this Agreement;

g. Experiences a Security Incident or fails to comply with PCI DSS or a material Network requirement;

h. Materially changes its operations, products, services or procedures for payments acceptance;

i. Fails to satisfy a review or audit conducted under this Agreement;

j. Sells substantially all 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.**

10.5 Early termination fee

Fiserv will suffer substantial injury, and it would be difficult to determine the damages, if the Merchant breaches this Agreement's exclusivity requirements or this Agreement is terminated before the end of the Initial Term due to any Default Event. Fiserv and the Merchant agree an accurate reflection of the damages caused by an 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**).

10.6 Change termination

The Merchant may terminate this Agreement by giving 30 days' written notice if Fiserv increases (in aggregate) the fees and charges payable by the Merchant or if Fiserv gives notice of or publishes an amendment of the terms of this Agreement that materially diminishes the Merchant's rights or increases the Merchant'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.

10.7 Deemed termination

Unless otherwise determined by Fiserv in its sole discretion to the contrary, the Merchant will be deemed to have terminated this Agreement if no Transaction has been submitted for a period of 90 days or more.

11 Indemnity and Liability

11.1 Indemnity

The Merchant 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 Merchant's gross negligence, wilful misconduct or breach of this Agreement. Fiserv will indemnify the Merchant (including its respective affiliates, directors, officers, managers and employees) for Losses due to third-party claims that result from Fiserv's gross negligence, wilful misconduct or breach of this Agreement.

11.2 Process

The indemnified party will promptly notify the indemnifying party of any third-party claim that is subject to indemnification under this Agreement. The indemnifying party 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. The indemnified party 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 indemnifying party.

11.3 Exclusion of damages

Fiserv, and the Merchant will not be liable to each other for lost profits, revenues or business opportunities, expected savings, opportunity costs, loss of goodwill, image or reputation, (whether direct or indirect losses) nor any exemplary, punitive, special, indirect, incidental or consequential damages under this Agreement; regardless of whether these damages were foreseeable or a party was advised they were possible. Network Security Fees and other amounts for which a party is liable under this Agreement (including, without limitation, amounts imposed by a regulatory authority that are specifically due to a party's failure to perform its obligations under this Agreement) are not excluded by this clause.

11.4 Limitation of liability

Fiserv's and the Merchant's aggregate liability to the other for losses arising from any cause (regardless of the form of action or legal theory) in connection with this Agreement will be limited to AUD 50,000.00 (**Liability Cap**). The Liability Cap will not apply to: (1) Fiserv's obligation to remit the proceeds of the Merchant's transactions that are processed under this Agreement (after accounting for all offsetting obligations); or (2) the Merchant's payment obligations related to the Services, Network Security Fees and other amounts for which it is liable under this Agreement (including, without limitation, amounts imposed by a regulatory authority that are specifically due to a party's failure to perform its obligations under this Agreement).

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).

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 via email to the email address notified by a party. However, a notice will not be taken to have been delivered or received by email until delivery is effected as required under this paragraph (a).

c. Notices to the Merchant will be valid when sent to the Merchant details set out in the Application Form or to the Merchant's registered address. Notices to Fiserv will be sent to:

> First Data Merchant Solutions Australia Pty Ltd
>
> Attn: Company Secretary
>
> Level 30, 100 Mount Street
>
> North Sydney, NSW 2060
>
> Emailed notices will be sent to:
>
> CompanySecretary.ANZ@firstdata.com

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 New South Wales. The courts of New South Wales will be the proper venue for legal proceedings brought in connection with this Agreement.

12.5 Introducers

The Merchant acknowledges that Fiserv may pay amounts to other parties for referring the Merchant to Fiserv, that Fiserv may be required to share information, including Confidential Information, with the introducer and the Merchant authorises Fiserv to share the required information with the introducer.

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. Schedules, amendments or any other modifications to this Agreement related to Services need only be executed by the Merchant. This Agreement and amendments may be executed electronically and in counterparts, each of which constitutes one agreement when taken together.

12.7 Amendments

Fiserv may, by written notice to the Merchant and/or by posting the amended terms on its website, amend this Agreement and Merchant hereby consents to such future amendments.

12.8 Assignment, novation

The Merchant 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 another financial or other institution that is a member of the Networks. The Merchant agrees (1) to a novation by written notice to the Merchant 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 A sets out additional terms and conditions that apply if the Merchant uses Equipment to process transactions under this Agreement.

1. Equipment may consist of equipment supplied by Fiserv (**Supplied Equipment**) or, the Merchant's own Equipment (**Merchant Equipment**). In processing transactions using Equipment, the Merchant shall only use Equipment that has been approved by Fiserv.

2. The Merchant shall ensure that the Merchant Equipment complies with all applicable Laws, policies, and certification procedures that may be specified by Fiserv from time to time. The Merchant is, notwithstanding any approval from Fiserv, solely responsible for maintaining, repairing, and replacing, the Merchant Equipment.

3. The Merchant 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 Merchant shall indemnify Fiserv against any losses, liabilities, damages, and expenses, arising out of the use of (i) the Merchant Equipment, or (ii) any other devices, hardware, or software, that the Merchant uses in conjunction with the Equipment.

5. The Merchant 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 Merchant. The Merchant is responsible for keeping all Equipment in good working order. The Merchant must safeguard the Supplied Equipment from loss, damage, unauthorised use, misuse, or theft. The Merchant must notify Fiserv immediately regarding any damage to or loss of the Supplied Equipment.

6. The Merchant 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 Merchant requests changes to the Supplied Equipment, Fiserv shall be entitled to charge the Merchant 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 Merchant shall, in the manner prescribed by Fiserv, return the Supplied Equipment (a) in good working order (fair wear 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 Merchant.

9. Additional Cards may only be used with Equipment upon Fiserv's written consent.

10. The Merchant 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 Merchant shall not permit any third party, other than its authorised employees, to use the Equipment.

11. The Merchant 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 B sets out additional terms and conditions that apply if the Merchant 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 Merchant 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 Merchant 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 Merchant 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 Merchant 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 Merchant 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 Merchant 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 Merchant shall be liable for all acts and omissions done under user credentials that are assigned to the Merchant. The Merchant shall notify Fiserv immediately if the Gateway Services have been compromised.

7. The Merchant 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 Merchant 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 Merchant 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 Merchant 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 B, nothing in, or arising out of, this Agreement grants the Merchant 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: Compliance Schedule

This Compliance Schedule sets out additional terms and conditions that may apply to the Merchant at Fiserv's sole discretion. After signing the Application, Fiserv will notify the Merchant whether any of the following special conditions apply:

A. SPECIAL TERMS AND CONDITIONS FOR TRADING MERCHANTS

1. **3DS**

   The Merchant agrees to ensure that before any transaction is submitted to Fiserv under the Agreement, the transaction has first been screened through 3DS.

2. **DOMESTIC CARD PROCESSING ONLY IN AUSTRALIA**

   (a) The Merchant agrees and warrants that all transactions as submitted by Merchant to Fiserv during the Term will be transactions with an Australian issued Card by an Australian issuing financial institution.

   (b) The Merchant must ensure that it implements an international BIN blocking system throughout the Initial Term and any Renewal Term.

3. **AML/CTF AND KYC REQUIREMENTS**

   (a) The Merchant must at all times maintain a current, compliant and up to date license to conduct business as a securities trader in Australia. A copy of any such registrations shall be shared promptly with Fiserv prior to expiry. In case of failure to provide Fiserv with the renewed registration, Fiserv shall cease processing activity.

   (b) The Merchant must maintain an AML/CTF policy in accordance with The Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (**AML/CTF Act**) and AUSTRAC guidelines must be complied with at all times.

   (c) The Merchant must only allow for deposits and withdrawals to and from an Australia bank account. Cardholders are not permitted to utilize foreign bank accounts for deposits and withdrawals.

   (d) The Merchant agrees that Fiserv may at any time request from the Merchant a sample selection of its customer onboarding KYC documents and evidence of PEP and sanctions screening for those customers. Fiserv's collection and use of this data is solely to review and verify compliance with AML/CTF policy. Any discrepancies identified by Fiserv will be remediated immediately by the Merchant.

   (e) The Merchant must maintain and comply with an employee due diligence program which includes background screening prior to hiring, AML training at hiring and then annually;

   (f) The Merchant must complete Politically Exposed Persons (**PEP**) screening upon on boarding, and on an ongoing basis, in accordance with The Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (**AML/CTF Act**).

   (g) The Merchant must complete sanctions screening including Office of Foreign Assets Control (**OFAC**) screening of all customers at boarding and ongoing.

   (h) The Merchant must notify Fiserv of any actual or suspected breach of laws, regulations, licenses in Australia as soon as reasonably practicable.

   (i) The Merchant must notify Fiserv of any change to the beneficial ownership of the Merchant or any change in the corporate authorised representatives used by the Merchant.

   (j) The Merchant must ensure it maintains a suitably qualified compliance team who acts as an independent controller/reviewer within the Merchant's business.

   (k) The Merchant agrees to share any report obtained as a result of a periodic independent review obtained by the Merchant in accordance with regulatory requirements (e.g. independent review of the Merchant's AML program in accordance with AUSTRAC requirements). Any material observations arising from regulatory reviews must be immediately advised to Fiserv.

   (l) The Merchant must ensure its due diligence processes confirms its customers are individuals who are Australian residents over the age of 18 years.

(m) The Merchant's customers must clear KYC requirements prior to provision of a designated service as defined under the AML/CTF Act.

(n) Merchant will promptly notify Fiserv of any changes to applicable laws, Merchant activities, and Merchant systems. Such notification shall include any revisions or additions to the information provided to Fiserv (for example, legal opinion, third-party certification, change in laws) to make the information current and complete. Such notification is required within five (5) days of any such change.

(o) The Merchant agrees and understands that a breach of any of the Special Terms and Conditions as outlined in clauses 3 (a) to 3 (n) above, is a material breach of the Agreement and will result in immediate termination of the Agreement by Fiserv.

B. SPECIAL TERMS AND CONDITIONS FOR BETTING MERCHANTS

1. REGULATORY REQUIREMENTS

(a) The Merchant shall provide its regulatory license to Fiserv, upon the Variation Effective Date, and shall continue to provide the same to Fiserv as and when the regulatory license expires, for the Term of the Agreement.

(b) In addition to all other Fees payable by the Merchant under the Agreement, the Merchant will pay Fiserv a one-time application fee of AUD $1,100 (exclusive of GST) within 7 days from the Variation Effective Date for the Merchant's Scheme registration.

2. 3DS

(a) The Merchant agrees to ensure that before any transaction is submitted to Fiserv under the Agreement, the transaction has first been screened through 3DS.

(b) The Merchant understands and agrees that 3D secure and BIN blocking is a mandatory requirement to be set-up in its facility for the blocking of international BINs.

3. DOMESTIC CARD PROCESSING ONLY

(a) The Merchant agrees and warrants that all transactions as submitted by Merchant to Fiserv during the Term will be Transactions with an Australian issued Card by an Australian issuing financial institution.

(b) The Merchant understands and agrees that a breach of the Special Term and Condition 3 (a) above, is a material breach of the Agreement.

4. DOMESTIC CARD PROCESSING ONLY

(a) The Merchant must at all times maintain a current, compliant and up to date license to conduct business as an online sports bookmaker in Australia.

(b) The Merchant must maintain an AML/CTF policy in accordance with The Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (**AML/CTF Act**) and AUSTRAC guidelines must be complied with at all times.

(c) The Merchant agrees that Fiserv may at any time request from the Merchant a sample selection of its customer on-boarding KYC documents and evidence of PEP and sanctions screening for those customers. Fiserv's collection and use of this data is solely to review and verify compliance with AML/CTF policy. The Merchant will immediately remediate any discrepancies identified by Fiserv.

(d) The Merchant must maintain and comply with an employee due diligence program which includes background screening prior to hiring, AML training at hiring and then annually;

(e) The Merchant must complete Politically Exposed Persons (**PEP**) screening at on boarding and ongoing in accordance with the AML/CTF Act.

(f) The Merchant must complete sanctions screening including Office of Foreign Assets Control (**OFAC**) screening of all customers at boarding and ongoing;

(g) The Merchant must notify Fiserv of any actual or suspected breach of laws, regulations, licenses in Australia as soon as reasonably practicable.

(h) The Merchant must ensure it maintains a suitably qualified compliance team who acts as an independent controller/reviewer within the Merchant's business.

(i) The Merchant must ensure its due diligence processes confirms that its customers are individuals who are Australian residents over the age of 18 years.

(j) The Merchant's customers must clear KYC requirements prior to provision of a designated service as defined under the AML/CTF Act.

(k) The Merchant agrees that it will not associate itself with or allow its customers to place bets on any unregulated sport/s including but not limited to 'e-sports'.

(l) The Merchant agrees and understands that a breach of any of the Special Terms and Conditions as outlined in this clause 4 (a) to 4 (k) above, is a material breach of the Agreement and will result an immediate termination of the Agreement by Fiserv.

5. **SECURITY AND RESERVE**

(a) The Merchant agrees that a security reserve will be held by Fiserv in accordance with the terms and conditions as outlined in Section 6 of the Agreement (**Security Reserve**);

(b) The Security Reserve will be created by Fiserv by retaining 5% of the aggregate daily settlement funds for 90 days from the date of the first processed transaction (**Rolling Reserve**).