



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 Company).

This Merchant Agreement is comprised of

1. The Collection Statement;
2. These General Terms;
3. The Merchant Application Form signed by the Company;
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.

1.0 Acquiring Services

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

1.1 Networks

Fiserv will provide the Company with Acquiring Services for Visa[®], Mastercard[®], eftpos, 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 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. 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 American Express Company, 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 Company and the Additional Card issuing Networks (**Additional Card Network Agreements**). The Company 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 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 with the applicable



Additional Card Network. **Fiserv has no responsibility to the Company for an Additional Card Network's performance obligations, responsibilities or liabilities to the Company under 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 for Additional Card transactions to the appropriate Additional Card Networks on behalf of the Company. Additional Card transactions will be settled directly between the Company and the corresponding Additional Card Network according to their Additional Card Network Agreements.

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 receipt of Fiserv's current payments acceptance guide (**Payment Acceptance Guide**), which will assist the Company with properly accepting and submitting its transactions for processing. Under Network Rules, the Company 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 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 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 Company'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 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 all Services. 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.
- d. Fiserv will initiate a transfer to the Settlement Account as follows:

Company 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 Company 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 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.
- f. 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.
- 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 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.

- i. **Delay Funding.** Fiserv may cause the transfer of settlement funds into the Settlement Account to be delayed to the Company, either in whole or in part, if Fiserv:
 - i. Suspects in any way that fraud has occurred with regards 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 Company warrants such a delay;
 - iv. Is concerned about the Company's financial stability or
 - v. Fails to receive adequate information from the Company as requested by Fiserv.

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. 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 Australia 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.

2.0 Financial Information; Audit

The Company 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 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's expense.

3.0 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).

4.0 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.

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.

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.

5.0 Taxes

5.1 General

Fiserv and the Company will pay their own taxes.

5.2 Tax invoice

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. 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 Company, the Company 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 the Fiserv from the Company 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 Company 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 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.

6.0 Reserve, Security and Set-off

6.1 Reserve

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, established by holding back transaction proceeds or debiting the Settlement Account in order to potentially offset any obligations that the Company may have 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).

- a. The obligations due to the Company from the Reserve will not accrue interest.
- b. Fiserv will notify the Company 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 Company owes to Fiserv from the Reserve.
- d. Although 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.

6.2 Setoff and priority

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

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. 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 Company 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 Company's account without notice and as it considers appropriate.

7.0 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 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 Company reports more than 60 days after it was, or should have been, reported. 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.

8.0 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 Company may publicly indicate they have entered into a contract with each other.

9.0 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's 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 (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.

10.0 Term and Termination

10.1 Term

This Agreement commences at the earlier of (1) Fiserv advising the Company that it has approved the Company's Application; (2) Fiserv assigning a MID; (3) the Company commencing to process transactions; or (4) the Company 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 Company with 30 days' written notice.

10.3 Breach 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 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 company:

- 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 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. 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 Company 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 Company 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 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.

10.7 Deemed termination

The Company will be deemed to have terminated this Agreement if no Transaction has been submitted for a period of 90 days or more.

11.0 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 gross negligence, wilful misconduct or breach of this Agreement. Fiserv will indemnify the Company (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 Company 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 Company'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 Company's transactions that are processed under this Agreement (after accounting for all offsetting obligations); or (2) the Company'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).

12.0 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 Company will be valid when sent to the Company details set out in the Application Form or to the Company'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 Company acknowledges that Fiserv may pay amounts to other parties for referring the Company to Fiserv, that Fiserv may be required to share information, including Confidential Information, with the introducer and the Company 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 Company. 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 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 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.