

# MERCHANT AGREEMENT

## GENERAL TERMS

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

This Merchant Agreement is comprised of

- (1) the Collection Statement;
- (2) these General Terms;
- (3) the First Data Merchant Application Form (the **Application**) signed by the Company;
- (4) the RAM Terms of Use; and
- (5) any additional document referred to in the previous three documents of this list (as and where applicable)

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

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

### 1. ACQUIRING SERVICES.

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

1.1 **Networks.** First Data will provide the Company with Acquiring Services for the following Networks: Visa, MasterCard, UnionPay International, Japan Credit Bureau, Diners, and Discover, unless the Company selects otherwise in the Application, or the parties agree otherwise in writing.

#### 1.2 **Additional Card Acquiring Services.**

(a) **Additional Cards.** First Data 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 (or its affiliates) 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 First Data for processing. The Company will promptly notify First Data if any of its Additional Card Network Agreements expire or terminate. First Data 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. **First Data 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.** First Data will only provide the Company with data capture and authorisation processing services for transactions initiated with Additional Cards; First Data will not provide settlement services for the Additional Card Networks. First Data 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 that it has access to First Data's payment acceptance guide (**Payment Acceptance Guide**), which may be updated from time to time, can be found on the First Data website, and 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 First Data or the Networks. A **Cardholder** is the individual who was issued a Card.
- 1.4 **Locations.** The Company must be domiciled in Hong Kong as required by applicable Laws and Network Rules to submit transactions to First Data. First Data will perform the Acquiring Services for payment transactions submitted from all the Company's locations in Hong Kong.
- 1.5 **Submitting Transactions.** The Company is responsible for:
- (a) properly transmitting the transaction data (including all transaction detail required by the Networks) to First Data's systems using the format and specifications provided by First Data (the Company will maintain and update the systems that it uses to accommodate changing Network requirements and industry requirements as specified by First Data);
  - (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 First Data 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 First Data 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 First Data 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 First Data, that First Data will use in connection with the **Services** (being all services provided by First Data under this Agreement). The Company authorises First Data 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 First Data's obligations, and successful debits to any of the Settlement Accounts will satisfy the Company's obligations under this Agreement.
  - (c) First Data 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. First Data will initiate the transfer no earlier than two (2) banking days after the transaction (for transactions submitted before merchant cut-off on the prior banking day) if reasonably practicable but is not responsible for any delays, failures or errors caused by the Networks, Hong Kong's payment systems, the Company's financial institution, or telecommunications networks. It will depend on the Company's financial institution when funds will be available in the Company's bank account.
  - (d) The Company does not have a property or ownership interest in any proceeds of transactions or funds received by First Data 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.
  - (e) 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.
  - (f) The Company must promptly notify First Data 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 First Data of changes to, the Settlement Account. First Data is not responsible for settlement errors that arise if the Company provides inaccurate information about, or fails to notify First Data of changes to, the Settlement Account.
- 1.10 **MATCH Reporting.** Under some circumstances, First Data 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 First Data 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, First Data grants the Company a revocable, royalty free, non-exclusive, limited license that cannot be assigned, transferred, or further sublicensed, to use the Networks' trademarks and service marks (together, **Protected Marks**) in Hong Kong, according to the applicable Network Rules. This license does not grant the Company any other intellectual property right, title, interest, or claim (express or implied, by estoppel, or otherwise) to the Protected Marks. The Company will not take any action that impairs an owner's intellectual property rights in its Protected Marks.
- (b) The Company will discontinue use of the Networks' decals, promotional, or other materials after termination of this Agreement. The Company will not indicate that its products or services are endorsed by any of the Networks.
- (c) Save for the limited license granted under clause 1.11, nothing in this Agreement shall be interpreted as granting to the Company a license to use First Data's intellectual property. The Company shall promptly notify First Data of any infringement or threatened infringement or of any challenges to the validity or ownership of any of First Data's intellectual property, and the Company will provide reasonable assistance to First Data, at First Data's reasonable expense, in connection with First Data's defence to such challenges.
- (d) First Data may include the Company's name, description, and hyperlinks to the Company's website, on First Data's website and other marketing material.

1.12 **Equipment.** Where the Company 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, First Data may provide the Company its online processing system that provides an interface for the transmission of transaction data between First Data and the Company in connection with the Acquiring Services (the **Gateway Services**). Where the Company uses the Gateway Services, it shall comply with the terms of Schedule B to this General Terms.

## 2. **FINANCIAL INFORMATION; AUDIT.**

The Company will promptly provide any financial or other information reasonably requested by First Data to perform credit risk, security, qualification, regulatory (including anti-money-laundering and sanctions monitoring), and Network compliance tasks and other reviews related to the provision of the Services, transactions submitted, fulfilment of obligations to First Data or Cardholders, or the financial condition of the Company. The Company authorises First Data to obtain information from third parties when performing credit risk, security, qualification, and other reviews. First Data 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 First Data's expense.

## 3. **NOTICE OF MATERIAL CHANGES; THIRD PARTIES.**

The Company will provide First Data 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 First Data 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 (e.g., without limitation, gateways, encryption or firewall providers) related to the transaction information or payment data processed in connection with this Agreement (these third parties must be registered providers with the Networks).

#### 4. THE COMPANY'S PAYMENT OBLIGATIONS.

- 4.1 **Payment Obligations.** The Company will pay First Data 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 First Data 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 First Data 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 First Data for the amount of charges incurred as a result of any direct debit being rejected.
- 4.3 **Adjustment.** First Data may adjust the fees and charges for the Services upon 30 days' advance written notice.

#### 5. TAXES.

- 5.1 **General.** Unless otherwise expressly stated, all consideration to be provided under this Agreement is expressed exclusive of taxes (**Taxes**), including goods and services tax. If Taxes are payable by us on any supply made under this Agreement, the Company will pay us an amount equal to the Taxes payable on the supply, in addition to the amount payable in respect of that supply.
- 5.2 **Tax Invoice.** Where required by law, First Data will invoice the Company in arrears and will issue a valid tax invoice. Payment will be due within 30 days from the date of the invoice.
- 5.3 **Withholding tax.** All payments to be made by the Company shall be made free and clear of and without deduction of any taxes unless the Company is required to make such a payment subject to the deduction or withholding of tax, in which case the sum payable by the Company (in respect of which such deduction or withholding is required to be made) shall be increased to the extent necessary to ensure that First Data 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.** First Data may require the Company to fund a cash reserve (**Reserve**) in an amount that reflects First Data's assessment of risk, as it may determine in its discretion from time-to-time. The Reserve is a payment obligation of First Data, established by holding back transaction proceeds or debiting the Settlement Account in order to potentially offset any obligations that the Company may have to First Data. The Reserve is not a segregated fund that the Company may claim to own and is not held by First Data on trust for the Company. First Data 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) First Data will notify the Company if a Reserve is established (including its amount) or if the amount of the Reserve is modified.
  - (c) First Data may set off any obligations that the Company owes to First Data (or its affiliates) from the Reserve.

(d) Although the Company acknowledges that the Reserve is a general obligation of First Data, and not a specifically identifiable fund, if any person claims that the Reserve is an asset of the Company that is held by First Data, the Company grants and acknowledges that First Data has a security interest in the Reserve and, at First Data's request, will provide documentation to reflect this security interest and cooperate with First Data to perfect the security interest.

6.2 **Setoff and Priority.** All funds that First Data owes to the Company under this Agreement are subject to the Company's payment obligations under this Agreement. First Data may set off amounts (i) the Company owes to First Data under this or any other agreement; or (ii) any amount the Company owes to First Data's affiliates under this Agreement or any other agreement; against any funds that First Data owes to the Company.

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

## 7. STATEMENTS, REPORTING.

First Data 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 First Data of any errors within 60 days following the date (i) it first has access to the Statement, or portion of the Statement, containing the error; or (ii) the date of the Statement containing the error; whichever is earlier. The reporting of any errors will enable First Data to recover amounts or prevent the errors from continuing. First Data will have no obligation to provide refunds for, or otherwise make good, errors that the Company reports more than 60 days following the date (i) it first has access to the Statement, or portion of the Statement, containing the error; or (ii) the date of the Statement containing the error; whichever is earlier. The Company and First Data will work together to resolve issues or disputes that arise in connection with the Statements, or the funds credited or debited to the Settlement Account.

## 8. PRIVACY AND CONFIDENTIAL INFORMATION.

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

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

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

8.4 **Publicity.** First Data and the Company may publicly indicate they have entered into a contract with each other.

## 9. DATA SECURITY.

### 9.1 *Unauthorised Access.*

- (a) The Company is responsible for any unauthorised access to any transaction data from the Company or from third parties retained by or on behalf of the Company.
- (b) First Data is responsible for any unauthorised access to the Company's transaction data on First Data'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 First Data 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) First Data 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 First Data. If requested by First Data, 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, First Data, 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 First Data require in connection with the investigation and remediation of a Security Incident.
- (c) The Company will reimburse First Data for all fines, fees, penalties, assessments, or other obligations of any kind imposed by a Network on First Data due to a Security Incident caused by the Company or its third party service providers (together, **Network Security Fees**).

9.4 **Data Use.** First Data 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. First Data may also use transaction data obtained from providing the Services under this Agreement in aggregated and anonymised form (as required by applicable Laws) for research and development, or to provide services generally.

## 10. TERM, TERMINATION AND SUSPENSION.

10.1 **Term.** This Agreement commences at the earliest of (1) First Data assigning a MID to the Company; (2) the Company commencing the submission of transactions to First Data for processing; or (3) the Company taking delivery of equipment supplied by First Data; (that date, the **Effective Date**) and will continue until the 3<sup>rd</sup> anniversary of the date First Data first assigns a MID to the Company (such period, the **Initial Term**) unless terminated as allowed under this Agreement. This Agreement will renew for successive 3 months periods (each a **Renewal Term**), unless either party gives the other 60 days' advance written notice of non-renewal before the end of the Initial Term. Either party may terminate this Agreement

for any reason (without cause) during a Renewal Term by giving the other 30 days' advance written notice of termination. Together, the Initial Term and any Renewal Term(s) are the **Term** of this Agreement.

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

10.3 **Risk Termination.** First Data 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 First Data;
- (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 First Data);
- (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 First Data; or
- (k) a Network or a governmental authority, instructs First Data to limit, suspend its performance under or terminate this Agreement (in which case the Early Termination Fee will not apply).

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

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



- 10.5 **Change Termination.** The Company may terminate this Agreement by giving 30 days' written notice if First Data increases (in aggregate) the fees and charges payable by the Company, or if First Data gives notice of or publishes an amendment of the terms of this Agreement, that materially diminishes the Company's rights or increases the Company's obligations under this Agreement. This termination right will not arise where a change is due to a change in Laws and has to be exercised within 30 days from a notice or publication.
- 10.6 **Termination for inactivity.** First Data will have the right to terminate this Agreement immediately upon notice to the Company if no transaction has been submitted for a period of 90 days or more.
- 10.7 **Effect of Termination.** The following clauses shall survive termination of this Agreement for any reason whatsoever:
- (a) clause 1.5(d);
  - (b) clauses 1.11 to 1.13;
  - (c) clause 2;
  - (d) clause 4;
  - (e) clause 5;
  - (f) clause 6;
  - (g) clause 8;
  - (h) clause 9;
  - (i) clause 10.4;
  - (j) clause 10.7;
  - (k) clause 11; and
  - (l) clause 12.

## 11. INDEMNITY AND LIABILITY.

- 11.1 **Indemnity.** The Company will indemnify First Data (including their respective affiliates, directors, officers, managers, and employees) for losses, damages, costs, or expenses (together, **Losses**) due to third party claims that result from the Company's negligence, wilful misconduct, infringement of any third party's intellectual property rights, or breach of this Agreement.
- 11.2 **Process.** First Data will promptly notify the Company of any third party claim that is subject to indemnification under this Agreement. The Company will have the opportunity to defend these claims using counsel it selects and will have the authority to enter into a settlement for monetary damages provided that it pays such amounts. The parties will cooperate with regard to any other conditions of settlement as well as in providing records, access to personnel or other information reasonably necessary to defend any indemnified claims. First Data shall take reasonable steps to mitigate the liability, loss or damage giving rise to the claim and shall not make any admission or other statement to the third party which may be directly or indirectly prejudicial to the defence of the claim (including the issue of liability) unless agreed with the Company.
- 11.3 **Exclusion of Damages.** First Data will not be liable to the Company for lost profits, revenues, or business opportunities, expected savings, opportunity costs, loss of goodwill, image or reputation, nor any exemplary, punitive, special, indirect, incidental, or consequential damages under this Agreement; regardless of whether these damages were foreseeable or the Company was advised they were possible.

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

## 12. GENERAL.

12.1 **Notices.** Written notices (other than normal operations) required under this Agreement may be delivered by hand, sent by regular mail, registered mail, or courier (all pre-paid).

(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.

(c) Notices to the Company will be valid when sent to the Company details set out in the Application or to the Company's registered address. Notices to First Data will be sent to:

First Data Merchant Solutions (Hong Kong) Pte. Ltd.  
Attn: Legal Counsel  
Suite A135 & A136  
16/F, Sun Life Tower  
The Gateway, Harbour City  
Tsimshatsui, Kowloon, Hong Kong

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

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

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

12.5 **Introducers.** The Company acknowledges that First Data may pay amounts to other parties for referring the Company to First Data, that First Data may be required to share information, including Confidential Information, with the introducer and the Company authorises First Data 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.

12.7 **Amendments.** First Data 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 First Data's written consent. First Data may assign, novate or transfer its rights or obligations under this Agreement to its affiliate, or another financial or

other institution that is a member of the Networks. The Company agrees (1) to a novation by written notice to the Company where the new contract is on the same terms and conditions as the existing agreement, the new party assumes the rights and obligations of the outgoing party and the outgoing party is released from those rights and obligations, and (2) to enter into such documents as First Data 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 Company uses Equipment to process transactions under this Agreement.

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

1. The Gateway Services include protocols, software components and other interfaces and software related to the Gateway Services (the **Gateway Software**). First Data may also provide **Gateway Documents** in connection with the Gateway Services. The Gateway Documents comprise of any and all manuals, operating policies, procedures, and other written materials or instructions that are provided in connection with the Gateway Services.
2. The Company shall not use the Gateway Services in any way, other than in accordance with this Agreement, and any other instructions First Data may provide in writing.
3. The Company shall not attempt to circumvent any applicable security measures of the Gateway Services, including by disassembling, decompiling, decrypting, extracting, reverse engineering, or modifying the Gateway Software. The Company shall not apply procedures or processes to the Gateway Software in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings for any Gateway Software, or any algorithm, process, procedure, or other information, contained in the Gateway Software.
4. The Company shall not allow any third party to access the Gateway Services except its authorised employees or contractors, both of which must be subject to a confidentiality agreement no less restrictive in every aspect than the confidentiality provisions in this Agreement.
5. The Company shall not remove or alter in any way whatsoever any copyright notice or acknowledgements appearing on any element of the Gateway Services save to extent approved by First Data in writing.
6. The Company shall ensure that all user credentials (including passwords) for the Gateway Services are kept confidential. It shall not allow any other party to use such user credentials unless permitted by First Data. The Company shall be liable for all acts and omissions done under user credentials that are assigned to the Company. The Company shall notify First Data immediately if the Gateway Services have been compromised.
7. The Company shall be responsible for updating its systems, at its own cost, to ensure that its systems are compatible with the Gateway Services and any updates thereto. The Company is responsible for the correct functioning of its systems, and shall be responsible for the technical support and integration of its systems into the Gateway Services. The Company shall be responsible for the costs of development of its systems and the integration of its system into the Gateway Services.
8. First Data 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, First Data grants the Company a personal, non-exclusive and non-transferable right to use the Gateway Services, the Gateway Software, and the Gateway Documents, strictly for the purpose of First Data's provision of Acquiring Services. All intellectual property rights associated with the Gateway Services are reserved for First Data 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 Company any other intellectual property rights relating to the Gateway Services, the Gateway Documents, or the Gateway Software.
11. To the extent permitted by law, all warranties, and representations, by First Data 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, First Data 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.