



## MERCHANT CARD SERVICES TERMS & CONDITIONS

### 1. GENERAL.

- 1.1 This “**Agreement**” consists of these Card Services Terms & Conditions and the Merchant Application attached hereto and is made by and among Merchant, Processor and Member, in each case as named on the Merchant Application.
- 1.2 Member is a member of Visa International, Inc. (“**Visa**”), MasterCard International, Inc. (“**MasterCard**”), JCB International Co., Ltd. (“**JCB**”), China UnionPay Co. Ltd. (“**CUP**”) and any other card associations as may be specified by Processor from time to time (including their respective successors and assigns, collectively, the “**Card Associations**”). Processor is a registered independent sales organization, a member service provider or a third party processor of each Card Association as may be necessary to perform services under this Agreement.
- 1.3 Under the terms of this Agreement, Merchant will be furnished with the services and products described herein and selected by Merchant herein (collectively and individually, as applicable, the “**Services**”) with respect to transactions for sale of goods and/or services involving cards issued under the Card Associations and/or card issuers accepted by Processor for the time being (“**Card Transactions**”). Merchant agrees to be bound by this Agreement, as may be modified or amended from time to time.
- 1.4 If signed by a firm, the expression “**Merchant**” shall include the person or persons from time to time carrying on the business of such firm and, if Merchant comprises of two or more persons, the expression “**Merchant**” shall include all and each of them and their liabilities under this Agreement shall be joint and several.
- 1.5 Any reference in this Agreement to “**Merchant**”, “**Processor**”, “**Member**” or “**Depository**” shall, if the context permits or requires, be construed so as to include its and any subsequent successors, legal representatives and permitted transferees and assigns in accordance with their respective interests.
- 1.6 If the context permits or requires, words importing the masculine gender shall include the feminine and neuter genders, and words in the singular number shall include the plural number and vice versa. Any reference to a “**Clause**” shall mean a clause hereof.

### 2. SERVICE DESCRIPTIONS.

- 2.1 Processor’s card processing services, which are provided under this Agreement, consist of:
  - (a) authorization of Card Transactions;
  - (b) electronic draft capture (or collection of sales slips) of Card Transactions;
  - (c) outclearing of Card Transactions to the appropriate Card Associations and/or card issuers;

- (d) provision of information to Member to effect settlement of such transactions;
  - (e) dispute resolution with cardholders' banks; and
  - (f) transaction-related reporting, statements and products.
- 2.2 From time to time under this Agreement, upon Merchant's request, Processor may facilitate the transmission of certain payment card transactions ("**Switched Transactions**") to the respective card issuers, including but not limited to American Express®, Diners Club® and various fleet, private label and commercial cards. Switched Transactions require Processor's prior written approval and are subject to applicable pricing. Member will not effect payment to Merchant for Switched Transactions.
- 2.3 Merchant has elected to accept cards of the card types as specified on the Merchant Application. Merchant agrees to pay, and the Merchant's Account(s) (as defined in Clause 5) will be charged pursuant to Clause 5 of this Agreement for, any additional fees incurred as a result of Merchant's subsequent acceptance of transactions with any card type that it has not elected to accept on the Merchant Application (which shall be subject to Processor's agreement to process the same).

### **3. PROCEDURES.**

- 3.1 Merchant will permit holders of valid cards bearing the symbols of the cards authorized to be accepted by Merchant hereunder to charge purchases or leases of goods and services, provided that such Card Transaction complies with the terms of this Agreement. Each such transaction will be evidenced by a valid transaction record in an approved form such as a sales slip. Merchant will not present any sales slip that does not arise out of a Card Transaction between a cardholder and Merchant.
- 3.2 Merchant agrees:
- (a) to follow the Card Acceptance Guide issued by Processor and for the time being in force, which is incorporated into and made part of this Agreement;
  - (b) to be bound by the operating regulations and rules of the Card Associations, including without limitation any rules and regulations related to cardholder and transaction information security, such as Payment Card Industry (PCI) Data Security Standards, Visa's Cardholder Information Security Program and MasterCard's Site Data Protection Program.
- 3.3 Processor may, from time to time, issue written directions (via mail, email or Internet) regarding procedures to follow and forms to use to carry out this Agreement. These directions and the terms of the forms are binding as from the effective date specified in such directions and shall form part of this Agreement.

### **4. MARKETING.**

- 4.1 Merchant shall adequately display the Card Associations and card issuer service marks and promotional materials supplied by Processor or Member. Merchant shall cease to use or display such service marks in any way (including, without limitation, in promotional materials and transaction related papers or forms of Merchant) immediately upon notice from Processor or Member or upon

termination of this Agreement. Merchant shall not issue or dispatch any promotional materials which include any reference to Processor or Member or their respective names, tradenames, logos, service marks and/or trademarks without their respective prior written consents.

- 4.2 Merchant hereby irrevocably authorizes Processor and Member to include Merchant's name in any directory or promotional materials produced by Processor or Member in connection with the acceptance of the cards.

## 5. PAYMENT AND FEES.

- 5.1 Merchant agrees to pay the fees, charges and expenses described on the Merchant Application, together with any other liabilities or expenses described in this Agreement.

- 5.2 Member or Processor, as the case may be, will pay Merchant, directly or indirectly through another financial institution designated by Processor from time to time as the settlement bank (the "**Settlement Bank**"), for Card Transactions submitted under this Agreement by credit to the account(s) designated by Merchant (the "**Merchant's Account(s)**") or by delivery of a cheque or other negotiable instrument made payable to Merchant or by any other means acceptable to Member. For the avoidance of doubt, Member may be the Settlement Bank. Unless otherwise agreed by Processor and Member, Merchant will be paid within the timeframe set out on the Merchant Application for the gross amount of the Card Transactions submitted less the amount of any discount, fees and other charges (including chargebacks and adjustments) set forth in this Agreement and credit vouchers deposited (together with any taxes payable in respect thereof); provided, however, that Processor and Member do not warrant payment within this timeframe if the Merchant's Account(s) is maintained with a financial institution other than the Settlement Bank. If the amount payable to Merchant hereunder is insufficient to pay the outstanding charges described in the preceding sentence on any day and/or any other amount due or payable by Merchant to Processor or Member under this Agreement, Member or Processor shall be entitled to:

- (a) set off and deduct the outstanding amount in whole or in part from any payment due from it to Merchant; and/or
- (b) debit the outstanding amount in whole or in part from Merchant's Account(s) (or any other account of Merchant held with Member or the Settlement Bank); and/or
- (c) deduct the outstanding amount in whole or in part from subsequent credits to Merchant's Account(s); and/or
- (d) claim from Merchant the outstanding amount in whole or in part.

- 5.3 Merchant agrees to pay, and Merchant's Account(s) will be debited, for all fees, arbitration fees, fines, penalties etc. charged by the Card Associations on account of Merchant's processing hereunder. If an error occurs, Merchant's Account(s) may be debited or credited therefor.

- 5.4 Merchant represents and warrants that no one other than Merchant has any claim in respect of any Card Transaction submitted hereunder except as authorized in writing by Member and Processor. Merchant agrees that Member has the sole right to receive payment from the Card Associations on any Card Transactions submitted hereunder.

- 5.5 Merchant further represents and warrants that payment by Member or Processor, as the case may be, shall be without prejudice to any claims or rights which Member or Processor may have against Merchant and shall not constitute any admission by Member or Processor as to the performance by Merchant of its obligations under this Agreement and the amount payable to Merchant.
- 5.6 If Member or Processor suspects, on reasonable grounds, that Merchant has committed or is about to commit a breach of this Agreement, any illegal activity (including, without limitation, money laundering) or dishonesty or fraud against Member, Processor or any cardholder, Member and Processor shall be entitled to suspend all payments under this Agreement to Merchant pending enquiries by Member or Processor.
- 5.7 Merchant hereby irrevocably authorizes Processor or Member to make withdrawals from any of its Merchant Account(s) in order to give effect to Merchant's authorization contained herein to Processor or Member to debit its Merchant Account(s). Merchant hereby instructs the Depository to honor any requests made by Processor or Member under the terms of this provision. Merchant will hold harmless the Depository and indemnify it for any claims or losses it may suffer as a result of honoring withdrawal requests from Processor or Member. If requested by Processor or Member, Merchant shall give a direct debit authorization in favor of the Depository (in form and substance satisfactory to such Depository) for the above purpose. Merchant shall not be entitled to revoke the authorization granted hereunder unless and until this Agreement is terminated and there are no outstanding payments or liabilities from Merchant to Processor or Member.

## **6. EQUIPMENT AND SUPPLIES.**

- 6.1 Any advertising material, leased or rented equipment (including imprinters, authorization terminals, data capture terminals or printers), software, credit card authenticators, unused forms and Merchant deposit plastic cards provided by Processor are for the Merchant's exclusive use and will not become Merchant's property, and shall be returned to Processor on demand, upon termination of this Agreement or upon Merchant ceasing to do business, whichever is the earliest. Merchant will protect them from loss, theft, damage or any legal encumbrance and will allow Processor and its designated representatives reasonable access to Merchant's premises for their repair, servicing, replacement, removal, modification, installation and relocation.
- 6.2 Merchant acknowledges that some equipment provided under this Agreement is embedded with proprietary technology ("**Software**"). Merchant shall not obtain title, copyrights or any other proprietary right to any Software. At all times, Processor or its suppliers retain all rights to such Software, including but not limited to updates, enhancements and additions. Merchant shall not disclose such Software to any party, convey, copy, license, sublicense, modify, translate, reverse engineer, decompile, disassemble, tamper with, or create any derivative work based on such Software. Merchant's use of such Software shall be limited to that expressly authorized by Processor. Processor's suppliers are intended third party beneficiaries of this Agreement to the extent of any terms herein pertaining to such suppliers' ownership rights; such suppliers have the right to rely on and directly enforce such terms against Merchant.
- 6.3 The operating instructions will instruct Merchant in the proper use of the terminals, and Merchant shall use and operate the terminals only in such manner

and at the location where they are initially installed (unless otherwise agreed by Processor). Merchant will promptly notify Processor of any equipment malfunction, failure or other incident resulting in the loss of use of the equipment or need for repair or maintenance, whereupon Processor will make the necessary arrangements to obtain required maintenance subject to payment of agreed costs (if any) by Merchant. Merchant shall cooperate with Processor in its attempt to diagnose any problem with the terminal. In the event the Merchant's terminal requires additional Software, Merchant is obligated to cooperate and participate in a dial in down line load procedure.

- 6.4 With respect to any item of equipment leased or rented to Merchant by Processor, Merchant will not be liable for normal wear and tear, provided, however, that Merchant will be liable to Processor in the event that any leased or rented item of equipment is lost, destroyed, stolen or rendered inoperative. Merchant will indemnify Processor against any loss arising out of damage to or destruction of any item of equipment provided hereunder for any cause whatsoever. Merchant also agrees to hold harmless and indemnify Processor for any liabilities, losses, damages, disputes offsets, counterclaims, claims, demands, actions, costs, expenses and judgments Processor may suffer or incur, including reasonable attorney's fees, as a result of Merchant's use or misuse of the equipment provided hereunder.
- 6.5 All persons using any leased or rented instrument provided by Processor to Merchant shall be deemed to be agents of Merchant, and Merchant shall be fully responsible for their acts and omissions.
- 6.6 Any unused equipment in its original packaging purchased from Processor hereunder may be returned to Processor at Merchant's expense within 60 days of receipt. Merchant shall receive a refund of any money paid in connection therewith subject to a re-stocking fee of an amount equal to 20 percent of the total purchase price for the returned equipment. No refunds shall be issued for any equipment returned after 60 days.

## **7. FINANCIAL INFORMATION.**

- 7.1 Merchant agrees to furnish Processor and Member such financial statements and information concerning Merchant, its owners, principals, shareholders, partners, proprietors, directors, officers or its affiliates as Processor or Member may from time to time request. Processor and Member, or their duly authorized representatives, may examine the books and records of Merchant, including records of all transactions previously submitted hereunder.
- 7.2 Merchant agrees to retain copies of all paper and electronic transaction records and credit slips submitted to Processor for a period of 12 months from submission, or such longer period of time as may be required by the operating rules or regulations of the Card Associations, by law or by Processor as specifically requested in writing in individual cases.

## **8. CHANGE IN BUSINESS.**

Merchant agrees to provide Processor and Member 30-days prior written notice of its intent to:

- (a) transfer or sell all or any substantial part (10% or more) of its total stock or assets; or

- (b) liquidate or file for bankruptcy; or
- (c) cease business or change the basic nature of its business; or
- (d) convert all or part of its business to mail order sales, telephone order sales, Internet-based sales or other sales where the card is not physically present and processed through Merchant's terminal; or
- (e) remove or relocate any shop or office; or
- (f) make any material change in the management of Merchant; or
- (g) make any change in Merchant's legal status (such as from sole proprietorship to partnership or limited company or vice versa); or
- (h) make any change in any other material particulars relating to Merchant which have been supplied to Processor or Member in connection with this Agreement.

Upon the occurrence of any such event, the terms of this Agreement may be modified to address issues arising therefrom, including but not limited to requirements of applicable Card Associations.

## **9. TRANSFERABILITY.**

- 9.1 This Agreement is not transferable by Merchant without the written consent of Processor and Member. Any attempt by Merchant to assign its rights or to delegate its obligations in violation of this Clause shall be void.
- 9.2 Merchant agrees that the rights and obligations of Processor hereunder may be transferred by Processor to any other person without notice to Merchant. Merchant agrees that the rights and obligations of Member hereunder may be transferred by Member to any other member of the Card Associations without notice to Merchant. Merchant acknowledges that the transferable rights of Processor and Member hereunder shall include, but shall not be limited to, the authority and right to debit the Merchant's Account(s) as described herein. Processor and Member may subcontract or appoint any agent to carry out any of their respective obligations under this Agreement.

## **10. WARRANTIES AND REPRESENTATIONS.**

- 10.1 Merchant warrants and represents to Processor and Member:
  - (a) that each Card Transaction submitted hereunder will represent a bona fide sale to a cardholder by Merchant for the amount shown on the related transaction record as the total sale and constitutes the binding obligation of the cardholder, free from any claim, demand, defense, setoff or other adverse claim whatsoever;
  - (b) that each transaction record or other evidence of a transaction will accurately describe the goods and services which have been sold and delivered to the cardholder or in accordance with the cardholder's instructions;
  - (c) that Merchant will comply fully with all laws, rules and regulations applicable to it and its business;
  - (d) that Merchant will fulfill completely all of its obligations to the cardholder and will resolve any cardholder dispute or complaint directly with the cardholder;
  - (e) that the signature on the sales slip will be genuine and authorized by

- cardholder and not forged or unauthorized;
- (f) that each Card Transaction submitted hereunder shall have been consummated and the related transaction record prepared in full compliance with the provisions of the Card Acceptance Guide and the operating regulations and rules of the applicable Card Association;
  - (g) that none of the Card Transactions submitted hereunder represent sales by telephone, or mail, or Internet, or where the card is not physically present at the Merchant's location and processed through Merchant's terminal, unless Merchant is specifically authorized in writing by Processor or Member to submit such transaction records hereunder;
  - (h) that, without limiting the generality of the foregoing, each Card Transaction submitted hereunder and the handling, retention, and storage of information related thereto, will comply with the rules and regulations of the Card Associations related to cardholder and transaction information security, including without limitation those referred to in Clause 3.2;
  - (i) that all of the information contained in or provided pursuant to this Agreement is true and correct;
  - (j) that Merchant shall keep strictly confidential the provisions of this Agreement, and all information and materials received from Processor and/or Member in connection with their respective businesses and instrument provided by them or either of them, and will disclose the same only to such of its employees who require such information for the purposes of performing Merchant's obligations under this Agreement; Merchant shall not and shall procure that its officers, employees and agents shall not without the prior written consent of Processor and Member use or disclose any such information to any other person (except to Merchant's agents for the sole purpose of assisting Merchant to complete or enforce Card Transactions or to Merchant's insurers and professional advisers) unless such disclosure is compelled by law or rules and regulations of the Card Association;
  - (k) that Merchant shall not submit any Card Transaction which is for the supply of gambling or pornographic goods or services without the prior written consent of Processor and Member;
  - (l) that Merchant shall not receive any cash payment from a cardholder with respect to charges for goods and/or services included in a Card Transaction; and
  - (m) that Merchant shall not engage in acceptance practices or procedures that discriminate against or discourage the use of a card of a card type selected to be accepted by it hereunder in favour of any other competing card brand, and shall not promote any other means of payment more actively than promoting payment with a card of such card type (except for any privilege card issued by Merchant solely for the purpose of making purchases at Merchant or under any temporary promotion programme).

10.2 In the event that any of the warranties or representations in Clause 10.1 are breached, the affected Card Transactions or transaction records may be refused, or prior acceptance revoked and charged back to Merchant.

- 10.3 Merchant must obtain Processor's prior consent if Merchant wishes to use the terminal service of American Express, Novus or any other third-party provider. If Merchant uses a third-party terminal provider with Processor's consent, that provider becomes Merchant's agent for the delivery of card transactions to Processor via the applicable card-processing network. Merchant agrees to assume full responsibility and liability for any failure of such agent to comply with the operating regulations and rules of the applicable Card Associations, including without limitation any violation, which results in a chargeback to Merchant. Merchant also agrees that Member's obligation hereunder to pay Merchant for the value of the Card Transactions captured by such agent is limited to the value of the Card Transactions (less applicable fees) received by the card-processing network from such agent.
- 10.4 NEITHER MEMBER, NOR PROCESSOR, NOR ANY OF THEIR RESPECTIVE SUPPLIERS MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY EQUIPMENT (INCLUDING WITHOUT LIMITATION, IMPRINTERS, AUTHORIZATION TERMINALS, DATA CAPTURE TERMINALS OR PRINTERS) OR ANY OF THE SERVICES FURNISHED HEREUNDER.

## **11. INDEMNITY.**

Merchant agrees to satisfy directly with the cardholder any claim or complaint arising in connection with the sale transaction between Merchant and such cardholder, regardless of whether such claim or complaint is brought by the cardholder, Processor or another party. Merchant agrees to indemnify and hold Processor and Member harmless from and against any and all liabilities (including without limitation fines imposed under the operating regulations and rules of the applicable Card Associations), losses, claims, damages, demands, actions, disputes, offsets, counterclaims, costs, expenses and judgments arising out of or relating to any card transaction (including without limitation claims and complaints made by a cardholder or any other person or entity with regard to any Card Transaction submitted by Merchant hereunder) or any other Service provided hereunder.

## **12. LIMITATION OF LIABILITY.**

- 12.1 Neither Member nor Processor shall be liable for failure to provide the Services if such failure is due to any cause or condition beyond such party's reasonable control. Such causes or conditions shall include, but shall not be limited to, acts of God or of any public enemy, acts of any Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, shortages of labor or materials, freight embargoes, unusually severe weather, breakdowns, operational failures, electrical power failures, communication failures, unavoidable delays, the errors or failures of third party systems or other similar causes beyond such party's reasonable control.
- 12.2 To the extent permitted by any applicable law, the liability of Processor and Member for any loss arising out of or relating in any way to this Agreement, including but not limited to damages arising out of any malfunction of the equipment or the failure of the equipment to operate, the unavailability or



malfunction of the Services, personal injury, or property damage, shall, in the aggregate, be limited to actual, direct and general money damages in an amount not to exceed one (1) month's average charge paid by Merchant hereunder (exclusive of interchange fees, assessments, and any other fees or costs that are imposed by a third party in connection with Merchant's payment processing) for Services during the previous twelve (12) months or such lesser number of months as shall have elapsed subsequent to the effective date of this Agreement. This shall be the extent of Processor's and Member's liability arising out of or relating in any way to this Agreement, including alleged acts of negligence, breach of contract, wilful default, or otherwise and regardless of the form in which any legal or equitable action may be brought against Processor or Member, whether in contract, tort or otherwise, and the foregoing shall constitute Merchant's exclusive remedy.

- 12.3 Under no circumstances shall Processor or Member be liable for:
- (a) any lost profits, lost interest, or for special, consequential, punitive or exemplary damages arising out of or relating in any way to this Agreement, including but not limited to, damages arising out of placement of Merchant's name on any terminated merchant list for any reason, even if Processor or Member has been advised of the possibility of such damages;
  - (b) any settlement amounts pertaining to Switched Transactions, in respect of which Merchant's sole recourse shall be to the applicable card issuer; or
  - (c) any claim, loss, billing error, damage or expense arising out of or relating in any way to this Agreement which is not reported in writing to Processor by Merchant within 30 days of such failure to perform or, in the event of a billing error, within 60 days of the date of the invoice or applicable statement and Merchant expressly waives any such claim that is not brought within the time periods stated herein.

### **13. TERM AND TERMINATION.**

- 13.1 Subject to the provisions hereof, this Agreement shall remain in full force and effect for the term as specified on the Merchant Application (the "**Initial Term**"), unless Merchant gives written notice of termination as to this Agreement at least 60 days prior to the expiration of the Initial Term or any extension or renewals thereof. If no term is specified on the Merchant Application, subject to the provisions hereof, this Agreement shall continue in full force and effect until Merchant gives not less than 60 days' prior written notice to Member and Processor to terminate it.
- 13.2 Notwithstanding anything to the contrary set forth herein, in the event that a term is specified on the Merchant Application and Merchant terminates this Agreement in breach of this Clause 13, all monthly fees assessed to Merchant under this Agreement and due to Processor or Member for the remainder of the then existing term of this Agreement, including all minimum monthly fee commitments, shall be immediately due and payable to Processor and Member, and Merchant hereby authorizes Processor and Member to accelerate the payment of all such monthly fees and to deduct the total amount from Merchant's Account(s), or to otherwise withhold the total amount from amounts due to Merchant from Processor or Member, immediately on or after

the effective date of termination. If the Merchant's Account(s) does not contain sufficient funds for the debit or the amount cannot be withheld by Processor or Member from amounts due to Merchant, Merchant shall pay Processor the amount due within ten (10) days of the date of Processor's invoice for same. The payment of accelerated monthly fees as described herein is not a penalty, but rather is hereby agreed by the parties to be a reasonable amount of liquidated damages to compensate Processor and Member for their termination expenses and all other damages under the circumstances in which such amounts would be payable. Such amounts shall not be in lieu of but shall be in addition to any payment obligations for Services already provided hereunder (or that Processor or Member may continue to provide), which shall be an additional cost, and any and all other damages to which Processor or Member may be entitled hereunder.

- 13.3 Notwithstanding the foregoing, Processor or Member may terminate this Agreement or any portion thereof at any time with immediate effect upon written notice to Merchant. Furthermore, Processor or Member may terminate this Agreement at any time with immediate effect without prior notice to Merchant:
- (a) upon Merchant's default in performing under any provision of this Agreement;
  - (b) upon an unauthorized conversion of all or any part of Merchant's activity to mail order sales, telephone order sales, Internet-based sales, or to any sales activity where the card is not physically present and processed through Merchant's terminal;
  - (c) upon any failure to follow the Card Acceptance Guide or any operating regulation or rule of a Card Association;
  - (d) if there has been any misrepresentation by Merchant;
  - (e) upon commencement of bankruptcy or insolvency proceedings by or against Merchant; or
  - (f) in the event Processor or Member reasonably deems itself insecure in continuing this Agreement.
- 13.4 In the event that Processor and Member breach the terms and conditions hereof, Merchant may, at its option, give written notice to Processor and Member of its intention to terminate this Agreement unless such breach is remedied within 30 days of such notice. Failure to remedy such a breach shall make this Agreement terminable, at the option of Merchant, at the end of such 30 day period unless notification is withdrawn.
- 13.5 Any Merchant deposit of a transaction record hereunder after the effective date of termination will be returned to Merchant and will not be credited (or debited) to Merchant's Account(s), unless the related Card Transaction was effected on or before the effective date of termination and the deposit was made within 7 days thereafter (in which case the payment for any such Card Transaction will only be made to Merchant after payment is successfully collected by Member from the related Card Association within 180 days from the date of such Card Transaction). Except as provided above, if any such deposit has already been posted to Merchant's Account(s), such posting may be reversed and the deposit returned to Merchant. Termination of this Agreement shall not affect Merchant's obligations which have accrued prior to termination or which relate to any Card Transactions submitted hereunder prior to termination, including

but not limited to chargebacks even if such chargebacks come in after termination.

- 13.6 In the event of termination, all equipment leased or rented from Processor (but not from any other leasing agent), including but not limited to imprinters, terminals, data capture terminals and printers; all supplies; Card Acceptance Guides and operating instructions must be returned immediately to Processor at Merchant's expense.
- 13.7 Any termination shall not affect any liabilities incurred prior to the termination nor any provision of this Agreement expressed or intended to survive, or to be effective from, termination. In particular, but without prejudice to the foregoing, Clauses 4, 6.1, 6.4, 7, 10.1, 10.2, 11, 12, 13.5, 13.6, 13.7, 15.2, 15.3, 16.1 and 16.2 shall remain in full force and effect notwithstanding termination.

#### **14. RETURNED ITEMS/CHARGEBACKS.**

14.1 If:

- (a) a cardholder disputes any Card Transaction or payment for any Card Transaction (irrespective of the nature or manner of such disputes);
- (b) a Card Transaction is charged back for any reason by the card issuing institution according to the operating rules and regulations of the related Card Association; or
- (c) there has been a breach by Merchant of any term of this Agreement;
- (d) Processor or Member has any reason to believe a transaction previously submitted hereunder is unlawful, unenforceable, irregular, questionable, not genuine, or is otherwise unacceptable; and/or
- (e) any other event or circumstance, which Member or Processor shall have previously notified to Merchant in writing for the purpose of this Clause 14, has occurred in relation to a Card Transaction,

the amount of such Card Transaction may be charged back and deducted from any payment due to Merchant or may be charged against any of the Merchant's Account(s) or a Reserve Account (as defined in Clause 15). A list of some common reasons for chargebacks is contained in the Card Acceptance Guide; provided, however, that such list is not exclusive and does not limit the generality of the foregoing. If any such amount is uncollectible through withholding from any payments due hereunder or through charging the Merchant's Account(s) or the Reserve Account, Merchant shall, upon demand by Processor or Member, pay Processor or Member the full amount of the chargeback.

- 14.2 Merchant understands that obtaining an authorization for any transaction shall not constitute a guarantee of payment and the related sales slips can be returned or charged back to Merchant like any other item hereunder.

#### **15. RESERVE ACCOUNT**

15.1 At any time, Processor or Member may, upon notice to Merchant, establish one or more reserve accounts to secure the performance of Merchant's obligations under this Agreement to either or both of them (each a "**Reserve Account**"). A Reserve Account may be funded through any or all of the following:

- (a) direct payment by Merchant by depositing funds in the Reserve Account at the request of Processor or Member;

- (b) the proceeds of Card Transactions presented hereunder; or
  - (c) the transfer by Processor or Member into the Reserve Account of funds withdrawn from the Merchant's Account(s) or any other accounts, including certificates of deposit, maintained by Merchant or Merchant's guarantor, if any, with any designated depository or other financial institution.
- 15.2 Merchant and Merchant's guarantor hereby irrevocably authorize Member or Processor (to the extent authorized by Member), to make such withdrawals from any such other accounts maintained with any designated depository or other financial institution referred to in Clause 15.1(c) at such times and in such amounts as it may deem necessary hereunder. Merchant and Merchant's guarantor hereby instruct the related financial institutions to honor any requests made by Member or Processor, under the terms of this provision. Merchant and Merchant's guarantor will hold harmless the financial institutions and indemnify them for any claims or losses they may suffer as a result of honoring withdrawal requests from Processor or Member. Merchant and Merchant's guarantor shall not be entitled to revoke the authorization granted hereunder unless and until this Agreement is terminated and there are no outstanding payments or liabilities from Merchant to Processor or Member.
- 15.3 Merchant hereby agrees that Member or Processor may deduct from a Reserve Account any amount owed to such party in accordance with this Agreement. Any funds in a Reserve Account may be held until the expiration of any potentially applicable chargeback rights in respect of Card Transactions submitted hereunder as provided for under the rules and regulations of the Card Associations, which holding period may extend beyond termination of this Agreement. Merchant will not receive any interest on funds being held in a Reserve Account. Without limiting the generality of the foregoing and without prejudice to Clause 13.5, Merchant shall, upon termination of this Agreement, maintain the sum of at least five percent (5%) of gross sales for the 90 day period prior to termination to be held in a Reserve Account in accordance with the terms of this Agreement. Processor and Member may, at their discretion upon termination of this Agreement, require that Merchant maintain more than five percent (5%) of gross sales for the 90 day period prior to termination in a Reserve Account.

## **16. DEFAULT/SECURITY INTEREST**

- 16.1 Upon failure by Merchant to meet any of its obligations under this Agreement (including funding a Reserve Account), any of the Merchant's Account(s) or any other accounts belonging to Merchant or Merchant's guarantor held by any designated depository (or by any other financial institution) may be debited without prior notice to Merchant or Merchant's guarantor, and Merchant and Merchant's guarantor irrevocably authorize Member and Processor to debit any such accounts for these purposes. Merchant's and Merchant's guarantor's instructions to its financial institutions to accept withdrawal requests from Processor or Member, and Merchant's agreement to hold such institutions harmless and to indemnify them, are set out in Clause 15.2.
- 16.2 Merchant also agrees that, in the event of a default by Merchant, Processor or Member has a right of setoff and may apply any of Merchant's balances or any other monies due Merchant from Member or Processor towards the payment of

amounts due from Merchant under the terms of this Agreement. The rights stated herein are in addition to any other rights Processor and Member may have under applicable law.

## **17. CHOICE OF LAW/COLLECTION FEES/JURISDICTION**

- 17.1 Should it be necessary for Processor or Member to defend or enforce any of its rights under this Agreement in any collection or legal action, Merchant agrees to reimburse Processor and/or Member, as applicable, for all costs and expenses, including reasonable collection agency and attorney's fees, as a result of such collection or legal action.
- 17.2 Processor, Member and Merchant agree that this Agreement and all disputes arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of India and Merchant hereby submits to the non-exclusive jurisdiction of the Mumbai Courts.

## **18. AMENDMENTS**

This Agreement may be amended only in writing signed by Processor, Member and Merchant, except that (a) the Card Acceptance Guide, fees, charges, and/or discounts may be changed immediately by Processor or Member without notice to Merchant or (b) Processor may give Merchant a notice either describing amendments to this Agreement or enclosing an entirely new agreement, which amendments or new agreement will be binding upon Merchant if Merchant deposits sales or credit slips after the effective date of such amendment or new agreement set forth in Processor's notice.

## **19. WAIVER**

No provision of this Agreement shall be deemed waived by any party unless such waiver is in writing and signed by the party against whom enforcement is sought. No failure to exercise, and no delay in exercising on the part of any party hereto, any right, power or privilege under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

## **20. EXCHANGE OF INFORMATION**

- 20.1 Merchant authorizes Member and Processor to obtain from time to time from any person, including without limitation any credit reference agency, financial information on Merchant or any owner, principal, director, officer, shareholder, partner, proprietor, managing agent or guarantor of Merchant. Merchant hereby authorizes (on its own behalf and on behalf of each person mentioned in the preceding sentence) Member and any depository institution to release any financial information concerning Merchant or its accounts to Processor.
- 20.2 Processor and Member may exchange information about Merchant, Merchant's owners, principals, partners, proprietors, directors, officers, shareholders, managing agents and guarantors with each other, the Settlement Bank, other financial institutions, Card Associations and any other party as Processor or Member, as applicable, may deem necessary in connection with the Services and this Agreement. Merchant hereby authorizes (on its own behalf and on

behalf of each person mentioned in the preceding sentence) Processor and Member to disclose information as mentioned above and information concerning Merchant's activity to any Card Associations, or any of their member financial institutions, or any other party without any liability whatsoever to Merchant.

**21. USE OF MERCHANT'S NAME**

Upon execution of this Agreement, Processor and Member shall have the right to include the Merchant's name in any directory or promotional material produced in connection with the acceptance of Card Transactions.

**22. GENERAL**

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision or part of a provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Paragraph headings are included for convenience only and are not to be used in interpreting this Agreement.

**23. NOTICES**

All notices required by this Agreement shall be in writing and shall be sent by telefax, by courier, or by regular or registered mail. Any notices sent:

- (a) to Member shall be effective upon actual receipt by the Managing Director of [NAME OF MEMBER], [ADDRESS], [ATTN: \_\_\_\_\_];
- (b) to Processor shall be effective upon actual receipt by the Managing Director of [NAME OF PROCESSOR], [ADDRESS], [ATTN: \_\_\_\_\_];
- (c) to Merchant (including notices contained in Merchant statements) shall be effective upon the earlier of actual receipt or on the day following the date of posting such notice to the latest address provided by Merchant to Processor or upon sending such notice to any e-mail address or facsimile number provided by the Merchant hereunder.

The parties hereto may change the name and address of the person or the facsimile number to whom/which notices or other documents required under this Agreement must be sent at any time by giving written notice to the other party.

**24. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between Merchant, Processor and Member with respect to the subject matter hereof and supersedes all prior memoranda or agreements relating thereto, whether oral or in writing.

**25. EFFECTIVE DATE**

This Agreement shall become effective only upon acceptance by Processor and Member, or upon the acceptance by Processor of the submission of transactions by Merchant at such locations as designated by Processor, whichever event shall first occur.

**26. DESIGNATION OF DEPOSITORY.**

The financial institution set forth in the Merchant Application is designated by Merchant as a depository institution (“**Depository**”) for payments due to Merchant hereunder. Merchant authorizes Member, Processor or the Settlement Bank, as the case may be, to make payment hereunder to Depository with instructions to credit the Merchant’s Account(s) with Depository. Depository, Member, Processor and/or the Settlement Bank may charge any of Merchant’s Account(s) at Depository for any amount due under this Agreement. Processor and Member must approve in writing any proposed changes to the Merchant’s Account(s) or to Depository.

**27. TRANSACTION CURRENCY.**

All transactions submitted hereunder shall be denominated in Indian Rupees or such other currencies as specified on the Merchant Application unless otherwise agreed in writing between Processor, Member and Merchant.

**28. CARD NOT PRESENT TRANSACTIONS**

Where Processor and Member have agreed that Merchant may submit card not present transactions (including without limitation mail order sales, telephone order sales and Internet-based sales) to Processor for processing under this Agreement:

- (a) any reference in this Agreement to “**Card Transaction**” shall include any card not present transaction;
- (b) any reference to use of a card or effecting a Card Transaction shall include use of, or effecting a Card Transaction with, the details of or relating to the card;
- (c) this Agreement shall apply to all card not present transactions except to the extent that any provisions of this Agreement are not applicable where a card is not physically presented to Merchant; and
- (d) Merchant shall comply with all provisions of this Agreement, in particular, such requirements specified in the Card Acceptance Guide and written directions of Processor in connection with processing card not present transactions (including without limitation any software, system, security and website requirements).

