

These Terms and Conditions for Payment Link Services ("Terms and Conditions") set out the terms and conditions under which KVB Trading (Hong Kong) Limited ("KVB") agrees to provide the payment link services to its customers.

These Terms and Conditions supplement and form part of the Master Agreement (as defined below) between KVB and the Merchant (as defined below) in relation to the Services (as defined below).

## 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, and in addition to the defined terms included in any of the Schedules, the following capitalised terms have the following meanings:

"Access Code"	a personal identification number and/or password provided to enable the Merchant to access and/or use its Merchant Data Account and/or any Service;
"Access Information"	information provided to the Merchant to enable it to access the Merchant Data Account;
"Agreement"	the Application Form and these terms and conditions including the Schedules, each as may be amended from time to time;
"Authorised User"	an individual authorised by the Merchant pursuant to clause 4.2 to access and use the Merchant Data Account;
"Business Day"	a day other than a Saturday or Sunday or public or bank holiday when banks are open for the transaction of business in England and Hong Kong;
"Buyer"	a person who has ordered goods and/or services from a Merchant and who has initiated a Transaction in respect of that order;
"Claim"	any action, cause of action, dispute, difference, controversy, complaint, suit, litigation, proceeding, claim, demand or assessment, fine or similar charge arising out of, relating to, or otherwise in connection with this Agreement or its subject matter or formation, and whether arising in contract, tort (including negligence or breach of statutory duty) or otherwise;
"Commencement Date"	the date on which the first Transaction is processed hereunder;
"Confidential Information"	means this Agreement and all business or technical information (other than Transaction Data) disclosed by a Party to the other Party in connection with the Agreement;
"Control" or "Controlled"	in respect of a Party, the exercise, or ability to exercise or entitlement to acquire, direct or indirect control over such Party by means of ownership, contract or otherwise;
"Data Controller"	any person who alone or jointly or in common with others determines the purposes for which and the manner in which Personal Data is, or is to be, Processed;

"Data Protection Authority"	each person having regulatory or supervisory authority over KVB or the Merchant in the area of protection of Personal Data;
"Data Protection Legislation"	all Law applicable to the protection of Personal Data, including the Hong Kong Data Protection Legislation, and, to the extent applicable, the data protection or privacy laws of any other country;
"Data Subject"	an identified or identifiable natural person whose Personal Data is processed under this Agreement;
"EEA"	the European Economic Area;
"Event of Force Majeure"	in relation to a Party, causes beyond such Party's control, including strikes, riots, earthquakes, epidemics, terrorist actions, criminal acts by unrelated third parties, wars, fires, floods, weather, power failure, telecommunications outage, acts of any military, civil or regulatory authority, or acts of God;
"Exchange Rate"	the reference currency exchange rate KVB may notify to the Merchant from time to time;
"Fees"	the amounts payable as set out in the Pricing Schedule, as may be amended from time to time, or otherwise payable to KVB for any products or services provided in connection with this Agreement;
"Group Company"	in respect of a Party means any undertaking which Controls or is Controlled by or under common Control with or by such Party;
"Hong Kong"	Hong Kong Special Administrative Region of the People's Republic of China;
"Hong Kong Data Protection Legislation"	all applicable data protection or privacy law that is in force from time to time and applicable to the provision of the Services pursuant to this Agreement, including the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong);
"Insolvent"	in respect of a Party, any of the following events: (a) an execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the relevant Party that is returned unsatisfied in whole or in part; (b) the relevant Party is unable to pay its debts as they fall due, or the value of the relevant Party's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities; (c) the relevant Party agrees to a moratorium, or a moratorium is agreed or declared in respect of all or a material part of (or a particular type of) its debts or otherwise proposes, seeks or agrees to defer, reschedule or readjust any of its debts; (d) the relevant Party proposes or makes: (i) a general assignment of any of its debts; or (ii) an arrangement or composition with, or for the benefit of, some or all of its creditors in respect of all (or all of a particular type of) its debts in each case other than a solvent re-financing in the normal course of business;

	<p>(e) the relevant Party is the subject of: (i) a petition for an administration order or an application for an administration order, or if an administrator is appointed to it, or if a notice of intention to appoint an administrator is filed at any court; or (ii) any step to enforce security over, or a distress, execution or other similar process is levied or served against, the whole or a substantial part of the relevant Party's assets or undertaking, including the appointment of a receiver, administrative receiver, manager or similar officer to enforce that security;</p> <p>(f) the relevant Party passing a resolution for its winding up, a court of competent jurisdiction making an order for its winding up or the presentation of a petition for the Party's winding up which is not dismissed within seven (7) days; or</p> <p>(g) the relevant Party suffers or is subject to any equivalent event, circumstance or procedure to those set out above in this definition in any other jurisdiction;</p>
"IP Rights"	any copyright, trademark, trade name, trade secret, patent, database rights or other intellectual property right, including any such IP Right in KVB Property;
"Law"	all laws and regulations in force and applicable to a Party in respect of its rights and obligations under this Agreement, or to any Transaction (in respect of the Merchant), including any order of a court of competent jurisdiction and the rules or directions of any Regulatory Authority;
"Losses"	any liability of any kind, loss, claim, damage, interest, fine, penalty, fee, charge, cost and/or expense (including reasonable and properly incurred legal and other professional fees, costs and/or expenses);
"Master Agreement"	the Foreign Exchange Master Agreement entered into between the Merchant and KVB;
"Merchant Bank Account"	an account with a duly authorised credit institution held in the name of the Merchant or a third party nominated by the Merchant (and in each case as acceptable to KVB), used to receive remittances and pay Fees and other sums due to KVB hereunder;
"Merchant Data Account"	an electronic management information account in KVB's systems in which Transaction Data is recorded;
"Merchant Operating Instructions"	any instructions, guidance or manuals made available by KVB at KVB's website, that include information and requirements relating to the Network Rules and the Services, as amended from time to time;
"Network Rules"	those third party rules which apply in respect of the Services identified in schedule 1, including those rules applying to the Visa and MasterCard Card Schemes which, as at the date of this Agreement, are found at <a href="https://www.visa.co.uk/dam/VCOM/download/about-visa/visa-rules-public.pdf">https://www.visa.co.uk/dam/VCOM/download/about-visa/visa-rules-public.pdf</a> and <a href="https://www.mastercard.us/en-us/about-mastercard/what-we-do/rules.html">https://www.mastercard.us/en-us/about-mastercard/what-we-do/rules.html</a> respectively;
"Party"	a party to this Agreement and their successors and

	permitted assigns;
"Personal Data"	data which relates to a living individual who can be identified from such data, or a combination of such data and other information in the possession of, or likely to come into the possession of, the Data Controller;
"Pricing Structure"	the pricing schedule of this Agreement as may be amended from time to time;
"Processing"	any operation which is performed upon Personal Data, whether or not by automatic means, and "Process" will be construed accordingly;
"Regulatory Authority"	any governmental, regulatory authority or law enforcement department, agency, commission, board, tribunal, crown corporation or other law, rule or regulation making entity (including any stock exchange or central bank) that any of the Parties and/or their Group Companies thereof submit to or are subject to the jurisdiction of in respect of this Agreement, and any successor or replacement of any of the foregoing;
"Restricted Person"	a person that is located in, incorporated under the laws of, or owned or controlled by, or acting on behalf of, a person located in or organised under the laws of a country or territory with which or in which KVB has determined to not provide its Services in view of the significant corruption, financial crime, terrorist financing, political and business risks this country or territory presents (namely, the Crimea Region of Ukraine, Cuba, Iran, North Korea, and Syria);
"Sanctions"	any economic sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by: (i) the United States; (ii) the United Nations; (iii) the European Union and its Member States; (iv) the United Kingdom; or (v) the respective governmental institutions and agencies of any of the foregoing, including without limitation, the Office of Foreign Assets Control of the US Department of Treasury ("OFAC"), the US Department of State, the UK Foreign, Commonwealth and Development Office ("FDCO"), and Her Majesty's Office of Financial Sanctions Implementation ("OFSI"), all such governmental institutions and agencies are collectively referred to in this Agreement as "Sanctions Authorities";
"Sanctions List"	means the "Specially Designated Nationals and Blocked Persons" list issued by OFAC, the EU Consolidated Financial Sanctions List, the UK Sanctions List and the Consolidated List of Financial Sanctions Targets issued by OFSI, or any similar list issued or maintained or made public by any of the Sanctions Authorities;
"Sanctioned Person"	a person that is (i) listed on, or owned or controlled by a person listed on any Sanctions List; or (ii) otherwise a target of Sanctions;
"Services"	those services set out in schedule 1, as may be amended from time to time;

"Tax"	all forms of tax and statutory, governmental, state, federal, provincial, local, government or municipal charges, duties, imposts, contributions, levies, withholdings or liabilities wherever chargeable and whether of the USA, the UK or any other jurisdiction and any penalty, fine, surcharge, interest, charges or costs relating to it;
"Tax Authority"	any taxing or other authority (in any jurisdiction) competent to impose, administer or collect any Tax;
"Transaction"	any transaction between the Merchant and a third party permitted under this Agreement in relation to which the Services are supplied;
"Volatility Factor"	means an average standard deviation of the Reference Rate in the prior calendar quarter for the relevant currency pair, measured over each period of three working days in that calendar quarter;
"Transaction Data"	Transaction Personal Data and any other data relating to a specific Transaction;
"Transactional Personal Data"	Personal Data relating to a specific Transaction and which it is necessary to Process in connection with the provision of the Services;
"KVB's Privacy Statement"	the KVB privacy statement available on KVB's corporate website; and
"KVB Property"	the Services, including without limitation, any materials delivered to Merchant hereunder and any invention, development, product, IP Rights, software program, or derivative thereof, developed in connection with providing the Services or during the term of this Agreement.

- 1.2 Any reference to a clause will be to the relevant clause of these terms and conditions and a part or paragraph will be to the relevant part or paragraph of the relevant Schedule. Any reference to a Schedule will be to a Schedule to these terms and conditions.
- 1.3 The use of the term "including" and derivations thereof means including but not limited to.
- 1.4 References to a person include a natural person, corporate or unincorporated body (whether or not having separate legal personality) and include reference to that person's successors or assigns. References to an undertaking means a body corporate or partnership, or an unincorporated association carrying on a trade or business, with or without a view to profit.
- 1.5 Words importing the singular include the plural and vice versa where the context so requires.
- 1.6 In the event of any inconsistency between these terms and conditions and any Schedule, the provisions of such Schedule will prevail to the extent of such inconsistency and each shall take precedence over the Application Form to the extent of such inconsistency.
- 1.7 Any reference to KVB in this Agreement shall be a reference to the entity providing the relevant Services as described in the Recitals.

## **2 PROVISION OF THE SERVICES**

- 2.1 In consideration of the Merchant paying the Fees, KVB will, in accordance with all Laws, provide the Services from the Commencement Date.
- 2.2 Each Party will make reasonable efforts to implement the Services as soon as practicable following

the date of this Agreement. KVB is only required to provide the Services in respect of the Merchant's business as set out in the Agreement at the Commencement Date and only to the extent permitted by Law. The Merchant must obtain KVB's prior written consent before making any change to the goods and/or services sold by the Merchant which commonly fall within the Merchant's business and as set out in the Application Form and for which the Services are being provided.

- 2.3 Neither KVB nor any Group Company is obliged to execute any Transaction or provide any Service that fails to comply with any Law or the Network Rules, in any jurisdiction. The Merchant therefore acknowledges and agrees that KVB is not obliged to execute any Transaction or provide any Service to the Merchant under this Agreement that KVB considers, in its sole discretion, would breach any Law or the Network Rules in any jurisdiction.

### **3 MERCHANT's GENERAL OBLIGATIONS**

- 3.1 The Merchant must at all times comply with all Laws, all Sanctions, all Network Rules and the terms applicable to the Services received, as if Sanctions applied directly to the Merchant. The Merchant must not use, or allow the use of, the Services provided by KVB in a manner that would result in a violation of Sanctions by the Merchant or that could cause KVB to violate Sanctions, including by engaging in any activity to provide the Services to any person, including any legal entity or government, in violation of Sanctions.
- 3.2 Without prejudice to clause 3.1, the Merchant will not do nor omit to do anything which KVB reasonably believes to be disreputable, or which is otherwise capable of damaging the reputation or goodwill of KVB or any applicable Network Rules making body.
- 3.3 The Merchant will ensure its systems meet the Merchant Operating Instructions and are able to receive the Services at the Merchant's expense.
- 3.4 The Merchant shall not (and shall not permit a third party to) circumvent, attempt to circumvent, reverse engineer, duplicate, mimic, use or copy any technology of a proprietary nature, in whole or in part to which it is granted access in the provision of any of the Services.
- 3.5 The Merchant shall establish and maintain, at all times, a valid account with KVB under the Master Agreement.

### **4 MERCHANT DATA ACCOUNTS**

- 4.1 KVB will provide the Merchant with Access Information and one or more Access Codes for use with the Merchant Data Account.
- 4.2 The Merchant will notify to KVB in writing the names of its Authorised Users from time to time.
- 4.3 The Merchant authorises KVB to act on any instruction received from an Authorised User. Where KVB receives any instruction from a person using an Access Code or Access Information, KVB shall be entitled to treat such instructions as having been received from an Authorised User. KVB is under no obligation to check the authenticity or accuracy of instructions or other data received from an Authorised User.
- 4.4 The Merchant will ensure that none of the Access Codes or Access Information is disclosed to any person, except for those of its Authorised Users who need to know them. The Merchant will ensure that its Authorised Users are aware of the requirement to keep the Access Codes and Access Information secure and confidential.
- 4.5 The Merchant agrees that it is solely responsible for establishing, applying and maintaining such robust security systems and procedures as are sufficient to monitor effectively all access to, and use of, the Access Codes and Access Information and ensure that all Transaction Data and any data that has been accessed, printed or otherwise downloaded from the Merchant Data Account is retained securely at all times.
- 4.6 If the Merchant suspects or becomes aware that there has been or may be, any unauthorised use of the Access Codes or Access Information, the Merchant will notify KVB immediately of the same by telephone and will confirm the same in writing as soon as possible thereafter using such contact details as KVB provides from time to time. Upon receipt of any such notification, KVB will disable the

Access Codes so notified.

- 4.7 Unless approved otherwise by KVB in writing in advance, the Merchant will only submit Transaction Data to KVB directly from its own personnel and systems.
- 4.8 KVB will display the Transactions in the Merchant Data Account. The Merchant is responsible for maintaining its own records related to Transactions, and for reconciling such records against the Merchant Data Account and must notify KVB promptly and, in any event, no later than one (1) month after any unauthorised, incorrect or disputed entry is entered in the Merchant Data Account, whether in relation to the Exchange Rate applied or otherwise. Following the expiry of this period, the entries in the Merchant Data Account shall be deemed as agreed.

## **5 FEES AND OTHER SUMS DUE FROM MERCHANT**

- 5.1 The Merchant will pay KVB the Fees and any other sums payable under this Agreement within eighteen (18) days of receipt of the applicable invoice. Interest shall accrue on any amounts thirty (30) days past due at the rate of twelve percent (12%) per year (or, if lower, the maximum rate permitted by applicable Law).
- 5.2 KVB shall be entitled to deduct from any amounts owing by it to the Merchant, its Fees and such other amounts as are owing to it hereunder.
- 5.3 The Merchant authorises KVB, at KVB's option, to debit the Merchant Bank Account for all sums that become due and payable by the Merchant to KVB under or in connection with this Agreement.
- 5.4 KVB shall, if practicable, notify the Merchant in advance of any sums payable by the Merchant to KVB which KVB intends to debit by direct debit.
- 5.5 All Fees and other sums payable by the Merchant under this Agreement are exclusive of VAT and any other applicable taxes that may apply hereto under any Law. The Merchant will pay such tax upon receipt of a valid tax invoice therefor. If the Merchant is required by Law to make a deduction or withholding from any payment due under this Agreement, it shall pay such additional amounts as are required to ensure that the net amount received and retained by KVB equals the full amount that would have been received and retained by it had no such deduction or withholding been made and/or no such liability to tax been incurred.
- 5.6 Any Tax payable in respect of the Services provided or payments made under this Agreement (other than Tax payable on KVB's net income, profits or gains) will be payable by the Merchant. In the event that KVB and the Merchant are jointly liable to a Tax Authority for any Tax, such sums will be payable by the Merchant. KVB may at its sole discretion, but shall not be obliged, to pay any such Tax to the relevant Tax Authority. In the event that KVB pays any Tax owed by the Merchant under this Agreement, the Merchant agrees to immediately indemnify KVB against, and reimburse KVB for, such sums. KVB may, at its sole discretion, deduct such sums from any Remittance, Outward Payment or sums held by KVB and owed to the Merchant.
- 5.7 Subject to clause 5.6, any Remittance or Outward Payment will be made without a deduction or withholding for, or on account of, Tax imposed or levied by or on behalf of a Tax Authority (a "Tax Deduction") unless such Tax Deduction is required by Law, in which case KVB will make such Tax Deduction in the minimum amount required by Law and will pay such amounts as are due to the relevant Tax Authority required in connection with the Tax Deduction within the time allowed by Law.
- 5.8 In the event that a Tax Authority requires information of KVB in relation to the Merchant and/or Transactions processed under this Agreement then the Merchant hereby agrees that KVB may provide such information. The Merchant agrees to provide KVB with its Tax identification details on request.

## **6 MERCHANT BANK ACCOUNT**

- 6.1 The Merchant shall open and maintain the Merchant Bank Account throughout the term of this Agreement and for such period as may be required thereafter (in any case not less than twelve (12) months after termination) for the purposes of any applicable provisions of this Agreement.
- 6.2 Promptly following a request by KVB, the Merchant will establish and maintain (or where applicable

procure the establishment and maintenance of) a direct debit mandate or equivalent in a form reasonably acceptable to KVB, authorising KVB to debit from the Merchant Bank Account all Fees and other sums that become due and payable by the Merchant to KVB under, or in connection with, this Agreement and will ensure that the Merchant Bank Account at all times has a credit balance sufficient to meet any sums due and payable to KVB hereunder. The Merchant shall not make any change to such direct debit mandate without KVB's prior written consent.

- 6.3 Clauses 5 and 6 shall not prejudice the Merchant's rights under Law to recover payments made to KVB by direct debit.
- 6.4 The Merchant will notify KVB in writing in advance of any change to the Merchant Bank Account (other than general administrative changes) which it or a third party (including the relevant bank) wishes to make, and not implement any proposed change without KVB's prior written consent (such consent not to be unreasonably withheld or delayed),
- 6.5 Any Remittance made, at the Merchant's direction, by KVB to a Merchant Bank Account in the name of a person other than the Merchant will constitute good receipt by the Merchant of the sum due and owing by KVB to it in relation to KVB's liability to the Merchant under this Agreement.

## **7 SET-OFF**

- 7.1 KVB may and is authorised, without prior notice and both before and after demand, to set off the whole or any part of the Merchant's liabilities to KVB, whether such liabilities are present or future, actual or contingent, or liquidated or unliquidated, against any sums held by KVB and owed to the Merchant whether under this Agreement or any other agreement between KVB and the Merchant.
- 7.2 For the purpose of exercising its rights under clause 7.1: (a) KVB is entitled to convert and/or exchange any currency and is authorised to effect any such conversions at the then prevailing Exchange Rate; and (b) if the Merchant's liability is contingent and/or unliquidated then KVB may set off the amount it estimates in good faith will be the liquidated amount.
- 7.3 The Merchant is not entitled to set off any of KVB's liabilities under this Agreement against any liability owed by it to KVB (or any of them).
- 7.4 Any exercise of any of KVB's rights under this clause 7 shall be without prejudice and in addition to any other rights and remedies available to it under this Agreement or otherwise.

## **8 GUARANTEE AND SECURITY**

- 8.1 KVB may at any time require that the Merchant procures, within thirty (30) days (or such longer period as KVB may determine is reasonable) after receiving KVB's written request, that the Merchant and/or a person (or persons) reasonably satisfactory to KVB provide KVB with a guarantee, indemnity, cash reserve or other security (including the replacement of any existing security) in such form and over such assets as KVB and the Merchant mutually agree in writing (including the Merchant Bank Account) to secure to KVB's reasonable satisfaction the performance of the Merchant's obligations (including contingent or potential obligations) from time to time under this Agreement ("Security").
- 8.2 KVB will be entitled to charge the Merchant for its reasonable external costs incurred in obtaining the Security referred to in this clause 8.

## **9 TERM AND TERMINATION**

- 9.1 This Agreement comes into force on the date set out at the head of this Agreement and subject to any other term hereunder, unless otherwise terminated (in whole or in part) earlier in accordance with its terms.
- 9.2 Either Party may give written notice to the other Party at least two (2) months to terminate this Agreement, subject to other terms of this Agreement.
- 9.3 Without prejudice to any other rights and remedies available to it under this Agreement, the Merchant may at any time immediately terminate this Agreement or any Service by written notice to KVB if:
  - (a) KVB commits a material breach of this Agreement which is not capable of remedy, or if capable



of remedy, is not remedied to the Merchant's reasonable satisfaction within thirty (30) days of service of a notice requiring such remedy and describing the breach in reasonable detail;

- (b) KVB becomes Insolvent; or
- (c) the Merchant or a Group Company of the Merchant, becomes entitled to terminate for a material breach, any other agreement it has with KVB; or
- (d) the Merchant is required to do so under Law.

9.4 Without prejudice to any other rights and remedies available to it under this Agreement, KVB may at any time immediately terminate this Agreement or any Service, or suspend the provision of any Service, by written notice to the Merchant if:

- (a) the Merchant commits a breach of clauses 3.2, 3.5 or 5.1;
- (b) the Merchant commits a material breach of any other of its obligations under this Agreement which is not capable of remedy, or if capable of remedy, is not remedied to KVB's reasonable satisfaction within thirty (30) days of service of a notice requiring such remedy and describing the breach in reasonable detail;
- (c) the Merchant becomes Insolvent;
- (d) the Merchant ceases or there is a reasonable likelihood of it ceasing to carry on all or a material part of its business, except for the purpose of a bona-fide solvent reconstruction, amalgamation, reorganisation, merger or consolidation;
- (e) there is an occurrence of any circumstance, event or series of circumstances or events that materially adversely affects the Merchant's ability to meet its current or future liabilities (or potential liabilities) or obligations under this Agreement;;
- (f) the Merchant uses, or permits the use of, any of the Services or KVB's systems for any purpose contrary to Law;
- (g) KVB, or any Group Company of KVB, becomes entitled to terminate for a material breach, any other agreement it has with the Merchant;
- (h) KVB becomes entitled to enforce any Security granted pursuant to clause 8 or such Security is not provided within the required timeframe;
- (i) there is a threatened or actual withdrawal, removal, termination or unenforceability of, any Security granted pursuant to clause 8;
- (j) KVB is required to do so under Law or reasonably believes (in its sole discretion) that the Transaction or this Agreement or the performance of it may be contrary to Law or Sanctions, including by providing the Services to a Sanctioned or Restricted Person;
- (k) the Merchant becomes a Sanctioned or Restricted Person, including but not limited to by virtue of its ownership or control;
- (l) the Merchant undergoes a change of Control, or a sale or other disposal of any substantial division or part of the Merchant's business;
- (m) there is a withdrawal or termination of any licence, permission or authorization required to operate the Merchant's business;
- (n) if any Regulatory Authority or court of competent jurisdiction (an "Authority") has taken action or made statements, orders, requests, directives or demands regarding the activities of the Merchant or another person operating in the same industry ("Actions or Communications") and KVB determines in its sole and absolute discretion that the Actions or Communications of any Authority may harm or otherwise adversely affect, directly or indirectly, the reputation or goodwill of KVB or any applicable Network Rules making body if KVB continues to process Transactions under this Agreement; or
- (o) KVB's agreement to use any third-party software or service upon which the Service relies expires or is terminated; provided, however, that prior to any such termination, KVB shall use reasonable efforts develop a work around that allows the Merchant to continue to receive the Service or similar software or services without material interruption, reduction in quality, or increase in fees.

9.5 The Merchant acknowledges and agrees that suspension or termination by KVB in accordance with clause 9.4 or under the Schedules shall in no way create any cause of action, Losses, Claim or any other right ("Action") in favour of the Merchant against KVB whether under Law, contract, equity or otherwise. Without prejudice to the foregoing and notwithstanding clause 18.1, the Merchant hereby waives, and fully releases and discharges KVB and its Group Companies from, any Action the Merchant may otherwise have arising from KVB exercising such suspension or termination right, including any challenge in relation to the exercise of KVB's discretion, and the Merchant agrees that it shall not apply to any Authority for any form of relief, including (without limitation) injunctiverelief, that could constrain or prevent KVB from exercising any of its rights of suspension or termination.

9.6 The Merchant will inform KVB immediately upon becoming aware of the occurrence of any of the

events referred to under sub-clauses 9.4(a), (c), (d), (e), (f), (i), (j), (k), (l), (m) and (n).

## **10 CONSEQUENCES OF TERMINATION**

- 10.1 Upon termination of this Agreement all rights and obligations of any Party will cease to have effect immediately, save that the clauses and paragraphs which expressly or by implication have effect after termination will continue to be enforceable notwithstanding such termination (including clauses 5, 6, 7, 10, 11, 12, 12.8, 16, 17.5, 18, 18.1, 20, 22.1, 22.3, 22.4, 22.7, 22.8, 23 and 24); and termination will not affect accrued rights, obligations and liabilities of any Party under this Agreement as at the date of termination.
- 10.2 If this Agreement is terminated pursuant to clause 9.2, KVB will, if requested to do so and subject to agreeing in advance the charges payable for such assistance, provide the Merchant with reasonable assistance during the relevant notice period to facilitate the Merchant's arrangements for the transfer of the terminated Services to another service provider.
- 10.3 Upon the termination of this Agreement for whatever reason: (a) KVB will have no obligation to retain, store or make available to the Merchant any data (including Transaction Data), records or other information relating to any of the Services or Transactions; (b) each Party will remove any reference to the other from any promotional material or literature, agreement or website; and (c) the Merchant shall (i) discontinue all use of the affected Services and (ii) promptly return to KVB any related KVB Property.

## **11 INDEMNITY**

- 11.1 The Merchant indemnifies (and will keep indemnified) on demand, defends and holds harmless KVB from and against any Losses which KVB suffers or incurs in relation to any Claim brought against KVB by a third party where such Claim is caused by the Merchant or arises as a result of, or in connection with any breach by the Merchant of clauses 3.1 (in respect of Sanctions and Network Rules only), 4 or 16, or any security breach, compromise or theft of Transaction Data held by the Merchant or on the Merchant's behalf (other than by KVB).

## **12 EXCLUSION AND LIMITATION OF LIABILITY**

- 12.1 Nothing in this Agreement will operate to exclude or limit a Party's liability:

- (a) for such Party's fraud or fraudulent misrepresentation;
- (b) for death or personal injury resulting from such Party's negligence;
- (c) (in the case of the Merchant) to pay any Fees or other monetary amounts due under this Agreement; or
- (d) to the extent that it cannot be lawfully excluded or limited,

and each of the following provisions of this clause 12 is subject to this clause 12.1.

- 12.2 Each KVB Party will be liable under this Agreement jointly and severally and, where there is more than one Merchant, each Merchant will be liable under this Agreement jointly and severally.
- 12.3 Subject to clause 12.1, under no circumstances will a Party (or any of its Group Companies providing or receiving the Services under the Agreement) be liable to any other Party for any of the following types of Losses arising under or in connection with this Agreement (whether arising for breach of contract, misrepresentation (whether tortious or statutory), tort (including but not limited to negligence or strict liability), breach of statutory duty, liability under indemnities or otherwise):
- (a) any special, incidental, exemplary, punitive, consequential or indirect: loss; damage; cost; and/or expense whatsoever; or
  - (b) any lost profits, lost goodwill (or any other damage to reputation), loss of revenue, loss of business, loss of contracts, loss of anticipated savings, business interruption, loss of opportunity, loss of bargain, or lost or corrupted data, in each case regardless of whether any of these types of Losses are direct, indirect or consequential; even if that Party was advised or was aware of the possibility that such Losses might be incurred by another Party.
- 12.4 KVB will not be liable for any failure to perform (nor any defective or delayed performance of) any of its respective obligations under this Agreement, if and to the extent that such failure, defect or delay is

due to:

- (a) the Merchant's breach of this Agreement, negligent, wrongful or bad faith acts or omissions;
- (b) a suspension of any Services under or in connection with clause 9.4 or schedule 1;
- (c) KVB complying with any of its obligations under any Network Rules, Law or Sanctions, as determined in KVB's sole discretion; and/or
- (d) any deferment, withholding or deduction under or in connection with schedule 1.

12.5 KVB will not:

- (a) be liable for any Loss suffered by the Merchant which arises directly or indirectly from its compliance with a Merchant's instruction, or any of the data received by KVB being inaccurate or incomplete, Without prejudice to the foregoing, KVB may make reasonable efforts to assess a transaction price and/or recover funds lost in an erroneous or misdirected Transaction resulting from such inaccurate or incomplete data and KVB may charge the Merchant for any such efforts; or
- (b) be obligated nor liable under any provision of the Agreement for any performance problem, claim of infringement or other matter resulting, in whole or in part, from: (i) any modification of any Service (other than a modification made solely by KVB); (ii) any use of a Service in breach of the Agreement; (iii) any combination of the Service with any other software, hardware, product, technology, data or services; (iv) any use of any version of a Service other than the supported services; (v) the Merchant's failure to implement corrections or changes to a Service provided by KVB; or (vi) any negligence or wrongful act or omission, or breach of the Agreement, by the Merchant, or its Authorized Users or Buyers.

12.6 Subject to clauses 12.1, 12.3 and 12.7, under no circumstances shall the aggregate combined liability of KVB to the Merchant(s) howsoever arising out of, under or in connection with the Services or this Agreement including (but not limited to) liability for breach of contract, misrepresentation (whether tortious or statutory), tort (including but not limited to negligence), breach of statutory duty or otherwise exceed, in relation to all Claims (connected or unconnected) a sum equal to the average monthly Fees received by KVB (less the average monthly fees incurred by KVB under the Network Rules in respect of the Transactions) in the twelve (12) months immediately preceding the first event giving rise to the first such Claim.

(a)

12.7 Clause 12.6 shall not limit KVB's liability under any indemnities provided under this Agreement.

12.8 Except as expressly stated in the agreement, the services are provided "as is", and all other representations, warranties, terms and conditions, oral or written, express or implied, arising from course of dealing, course of performance, usage of trade, quality of information, quiet enjoyment or otherwise (including implied warranties, terms or conditions of merchantability, satisfactory quality, uninterrupted or error-free operation, fitness for a particular purpose, title, non-interference, or non-infringement) are, to the fullest extent permitted by applicable law, disclaimed and excluded from the agreement. Any information provided outside of the Merchant Data Account does not imply any representation, warranty or undertaking not expressly given in this Agreement as to its suitability for use by the Merchant and should not be relied upon by the Merchant in making its commercial decisions including in relation to the setting of its pricing for Buyers.

12.9 In relation to any Loss which is the subject of a Claim, indemnity or liability action hereunder, each Party will: (i) promptly notify the other Party in writing of such claim, including all materials received by the Party related to the Claim and an identification of the relevant Service(s); (ii) reasonably cooperate during defence and settlement efforts; (iii) in respect of the claimant, not make any admission, concession, consent judgment, default judgment or settlement of such Claim or any part thereof; and (iv) will take all reasonable steps to mitigate any Loss which is the subject of such Claim.

## 13 DATA

13.1 The Parties agree that, for the purposes of Data Protection Legislation, it is their mutual understanding that the Parties shall not constitute joint controllers.

13.2 The Merchant shall ensure that, in respect of all Transaction Personal Data provided to KVB by the Merchant under this Agreement, and in respect of the use of that Transaction Personal Data under this Agreement:

- (a) all necessary fair processing notices have been provided to and, to the extent required by Law, consents obtained from Data Subjects by the Merchant, including to specify KVB as a Data Controller in respect of the Data Subject's personal data and to provide a link to KVB's Privacy Statement or to include a statement that KVB's Privacy Statement can be found on KVB's corporate website to enable KVB to Process Personal Data to the extent required to provide the Services;
- (b) all necessary steps have been taken to ensure that Transaction Personal Data has been collected and Processed in accordance with the principles set out in Data Protection Legislation and/or the Hong Kong Data Protection Legislation, including in particular those relating to: (i) lawful, fair and transparent Processing; (ii) specified, legitimate and explicit purposes of Processing; and (iii) adequate, relevant and not excessive Processing;
- (c) all necessary steps will be taken by the Merchant to ensure that the Transaction Personal Data are accurate and kept up to date and that, in the event that any Data Subject informs the Merchant of any change of his/her Personal Data, the Merchant shall promptly inform KVB and provide KVB with such updated information accordingly;
- (d) all necessary steps will be taken by the Merchant to ensure that, in the event that any Data Subject informs the Merchant of his/her decision to withdraw his/her consent to the Processing of his/her Personal Data by the Merchant, KVB, the Merchant shall promptly notify KVB and provide KVB with such information as it may reasonably request in order to ensure that KVB update its records accordingly; and
- (e) all necessary steps will be taken by the Merchant to ensure that it has secured such consents from the Data Subjects as may be required under the Data Protection Legislation and/or the Hong Kong Data Protection Legislation to enable KVB to transfer Personal Data to a country or territory outside Hong Kong for the purpose of exercising its rights and obligations under this Agreement.

13.3 If the Merchant receives any complaint, notice or communication from a Data Protection Authority which relates directly to:

- (a) KVB's Processing of the Transaction Personal Data; or
- (b) a potential failure by KVB to comply with Data Protection Legislation in respect of the activities of the Parties under or in connection with this Agreement,

the Merchant shall, to the extent permitted by Law, promptly notify KVB and provide such information as it shall reasonably request in that regard.

13.4 KVB shall comply with the Data Protection Legislation and with the provisions included in KVB's Privacy Statement when processing the Transaction Personal Data.

13.5 KVB may make periodic searches of, and provide information about the Merchant to credit reference, market research, customer feedback and fraud prevention agencies, and KVB's Group Companies and agents. The Merchant acknowledges that any information provided to credit reference agencies may be used by other credit providers to take decisions about the Merchant. Further information about how KVB uses this information can be found in KVB's Privacy Statement.

## **14 INTELLECTUAL PROPERTY**

14.1 Without prejudice to clause 14.2, each Party hereby grants to the other Parties a royalty free non-exclusive, non-transferrable and revocable licence to access and use during the term of this Agreement its IP Rights, solely to the extent necessary to enable that Party to provide (on the part of the KVB Parties) or receive (on the part of the Merchant) the Services, perform its obligations under this Agreement or as otherwise provided for in clause 12.8. KVB shall at all times retain exclusive title to the KVB Property. The Merchant hereby unconditionally and irrevocably assigns, transfers, and conveys to KVB all of the Merchant's right, title, and interest in and to any KVB Property and all IP Rights therein or thereto. KVB may use all of the Merchant's comments and suggestions for the improvement of any KVB Property without accounting or reservation.

14.2 Upon execution of this Agreement, KVB may refer to the Merchant as being a client of KVB in

customer reference lists, sales presentations and on KVB's website but shall not otherwise refer to the Merchant without the prior written consent of the Merchant (such consent not to be unreasonably withheld or delayed). In addition KVB and Merchant may issue a mutually agreed press release on signature of this Agreement. Subject to the foregoing, each Party shall obtain the written consent of the other Parties (such consent not to be unreasonably withheld or delayed) prior to using or referring to any trade marks, logos, copyrighted materials, business names or other similar IP Rights of the other in any promotional materials or literature, agreements or on any website.

## **15 SERVICE ADJUSTMENTS AND AGREEMENT VARIATIONS**

- 15.1 From time to time, KVB may make changes to the Services which are necessary to comply with any Law or Network Rule, or which do not materially affect the nature or quality of the Services. Such changes shall come into effect upon notice to the Merchant. If such changes lead to a material change in software, interfaces or operating procedures affecting the Merchant, KVB will notify the Merchant as soon as reasonably practicable prior to their implementation.
- 15.2 KVB may vary the provisions of this Agreement from time to time by giving the Merchant at least one (1) month's prior written notice. Upon receiving KVB's notice of variation, the Merchant will be entitled to terminate this Agreement immediately by providing written notice to KVB, provided that such notice is served upon KVB within one (1) month of the date of the notice of variation. Otherwise, the Merchant will be deemed to have accepted any such variation with effect from the date one (1) month from the notice of variation. Subject to the foregoing, this Agreement shall not be varied unless in writing signed by a duly authorised representative of each Party.
- 15.3 Notwithstanding clause 15.2, KVB may vary the provisions of this Agreement from time to time by giving the Merchant prior written notice if:
- (a) there is a change to Law or the Network Rules that affects the Services but only to the extent required to comply with such change; or
  - (b) (in respect of any line item of pricing contained in the Pricing Schedule or otherwise any Service provided) there is a change to the fees applied by third parties that apply to the Services such as card scheme fees and interchange but only to the extent of and to reflect such change.

## **16 CONFIDENTIAL INFORMATION**

- 16.1 The Party receiving Confidential Information ("Receiving Party") of the other Party ("Disclosing Party") shall not use Confidential Information for any purpose except as necessary to implement, perform or enforce the Agreement and/or to manage or enhance the relationship between the Parties.
- 16.2 Except for Personal Data, neither Party shall be obligated to preserve the confidentiality of any information that:
- (a) was previously known;
  - (b) is a matter of public knowledge;
  - (c) was or is independently developed without reference to or use of the other Party's Confidential Information;
  - (d) is released for disclosure with the other Party's written consent; or
  - (e) is received from a third party to whom it was disclosed by the Disclosing Party without restriction.
- 16.3 Receiving Party will use the same reasonable efforts as it uses to protect its own proprietary information (but in any event not less than a reasonable standard of care) to: (i) keep all Confidential Information of Disclosing Party strictly confidential; (ii) not disclose the Confidential Information of Disclosing Party to anyone other than its Authorised Recipients; and (iii) only use Personal Data as permitted by applicable Laws. Receiving Party will promptly notify Disclosing Party if Receiving Party discovers any improper use or disclosure of Confidential Information and will promptly commence all reasonable efforts to investigate and correct the causes of such improper use or disclosure.
- "Authorised Recipient" means: (a) with respect to the Merchant, the Merchant and any employee of the Merchant, its Group Companies or agent, provided that the agent is not a competitor of KVB; and (b) with respect to KVB, KVB, its Group Companies, and their respective employees, contractors, or agents, in the case of (a) or (b) that has a reasonable need to know the Confidential Information in connection with the use or provision of the Services and who are required to protect and restrict the use of the other Party's Confidential Information in accordance with terms substantially similar to the

requirements of the Agreement. KVB may use and disclose the Merchant's name and logo as reasonably necessary to perform any Services,

- 16.4 If Receiving Party believes the Confidential Information must be disclosed or made publicly available under applicable Law, or Network Rule making body, Regulatory Authority, an order of a court of competent jurisdiction or in response to a request from a governmental regulator, Receiving Party may do so provided that, to the extent permitted by such applicable Law, court of competent jurisdiction or governmental regulator, the Disclosing Party is given a reasonable opportunity to contest such disclosure and obtain a protective order, and shall in any event omit all pricing, service level or Service specific information from any such disclosure or public filing, unless such omission is prohibited by Law.

## **17 ASSIGNMENT AND SUB-CONTRACTING**

- 17.1 The Merchant may not assign, novate, charge, declare a trust over or transfer the benefit of all or any part of this Agreement.
- 17.2 The Merchant may only use an agent or subcontractor in relation to the performance of its obligations with KVB's prior written consent which KVB may reasonably withhold, or withdraw at any time. The Merchant will remain liable to KVB for the acts or omissions of any of its agents or subcontractors, regardless of whether the Merchant obtained consent for that person. The Services may be provided by KVB or its Group Companies or their respective subcontractors. KVB shall remain solely responsible for the work performed by its Group Companies and its, or its Group Companies', subcontractors. The Merchant shall have no recourse, and shall assert no claim, against any subcontractor of KVB or its Group Companies.
- 17.3 The Merchant shall notify KVB at least fourteen (14) Business Days before it changes its place of incorporation or establishment from that identified in this Agreement. If in KVB's reasonable opinion such change is likely to have an adverse impact on KVB (including where the Merchant's proposed new place of incorporation or establishment falls outside of the scope of KVB's regulatory licences or other permissions required for it to provide the Services), then KVB shall be entitled to terminate this Agreement without liability immediately on notice to the Merchant.
- 17.4 KVB shall be entitled to novate and/or assign any or all of its rights and obligations (as appropriate) under the Agreement to a third party at any time on giving the Merchant at least one (1) month's notice. If KVB does this the Merchant shall be entitled to serve written notice to terminate the Agreement within one (1) month's of receiving the notice of the novation and/or assignment. The Merchant will be deemed to have accepted the novation and/or assignment of the Agreement one (1) month from receipt of the notice if no such notice of termination is served.

## **18 WAIVER**

- 18.1 No waiver of any breach of this Agreement, and no course of dealing between the parties, shall be construed as a waiver of any subsequent breach of this Agreement, nor will any single or partial exercise of such rights preclude or restrict the further exercise of such rights. Any waiver must be in writing to be effective.

## **19 NOTICES**

- 19.1 Subject to clause 19.2, any notice, demand or other communication given or made hereunder (a "Notice") must be in writing in the English language and must be delivered by e-mail, delivered via overnight or signed for delivery. Each Notice must be sent (as applicable): (a) to the receiving Party's address as set out at the head of this Agreement and/or, where the Merchant does not have a place of business in Hong Kong, to the Merchant's agent's address referred to in clause 19.4; or (b) to the receiving Party's email address (as set out on the Application Form or otherwise notified by one Party to the other from time to time in accordance with this clause 18.1), or in each case, to such other address(es) as by the Parties may agree from time to time.
- 19.2 A Notice will be deemed received if: (a) delivered by post within Hong Kong, one (1) Business Days (or on the date of signature if signed for delivery) after posting; or (c) sent by email, on the day on which the Notice is sent, provided no report of non-delivery is received by the sender. If any Notice would, when made in accordance with the above, be deemed to be given or made either on a non-Business Day or after 17:00 on a Business Day, such Notice will be deemed to be given or made at

09:00 on the next Business Day.

- 19.3 Notice from the Merchant to KVB to terminate or to bring a Claim in respect of this Agreement may not be delivered by e-mail and shall include a copy (which shall not constitute notice) to the Compliance Department at the same address.
- 19.4 If the Merchant does not have a place of business in Hong Kong, it must within five (5) Business Days of the date of this Agreement appoint a process agent in Hong Kong authorised to receive notices and inform KVB of the agent's name, postal and email address for service of Notices. If for any reason such agent ceases to act as agent for the Merchant or no longer has an address in Hong Kong, the Merchant shall immediately appoint a substitute agent within Hong Kong acceptable to KVB and notify KVB of the new agent's name, postal and email address for service of Notices.

## **20 ENTIRE AGREEMENT**

- 20.1 The Agreement states the entire agreement and understanding between the Parties and supersedes all prior representations, other than any securities or written pledges, agreements and understandings, whether written or oral, relating to its subject matter. In entering into the Agreement, each Party acknowledges and agrees that it has not relied on any representation, warranty, collateral contract or other assurance (whether negligently or innocently made), except those expressly set out in the Agreement.
- 20.2 No Party shall have any Claim for innocent or negligent misrepresentation based upon any statement in this Agreement.
- 20.3 Nothing in this clause 20 shall operate to exclude any liability for fraud.

## **21 FORCE MAJEURE**

- 21.1 A Party (the "Affected Party") shall not be deemed to be in breach of this Agreement or otherwise liable to another Party (the "Non-affected Party") for any delay in performance or any non-performance of any of its obligations under this Agreement (and the time for performance shall be extended accordingly) if and to the extent that the delay or nonperformance is due to an Event of Force Majeure provided that the Affected Party has used reasonable endeavours to mitigate the effect of the Event of Force Majeure and to carry out its obligations under this Agreement in any other way that is reasonably practicable.
- 21.2 The Affected Party shall promptly notify the Non-affected Party of the nature and extent of the circumstances giving rise to the Event of Force Majeure.
- 21.3 If the Event of Force Majeure continues for more than fourteen (14) Business Days then, without limiting any other rights it may have, either Party may terminate this Agreement by giving written notice to the other.
- 21.4 This clause 21 shall not impinge upon the Merchant's obligations to pay Fees due hereunder.
- 21.5 This provision does not relieve KVB from its obligations to maintain and test disaster recovery plans for the Services.

## **22 MISCELLANEOUS**

- 22.1 If any provision of this Agreement is held by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable the legality, validity and enforceability of the remainder of this Agreement will not be affected. If such provision would cease to be illegal, invalid or unenforceable if some part of that provision were modified or deleted, the provision in question will apply with the least such modification or deletion as may be necessary to make the provision legal, valid and enforceable.
- 22.2 KVB is an independent contractor. Neither KVB nor any of its representatives are an employee, partner, agent or joint venturer of the Merchant.
- 22.3 A person who is not Party to this Agreement will not have any rights under the Contracts (Rights of Third Parties) Ordinance (Chapter 623 of the Laws of Hong Kong) to enforce any provisions of this Agreement, except for any KVB Group Company that provides any of the Services on behalf of KVB.

Except as otherwise set forth herein, the parties do not intend, nor shall there be, any third party beneficiary rights, and the rights of the parties to terminate, rescind or agree any variation, waiver or settlement under the Agreement are not subject to the consent of any other person.

- 22.4 At any time after the date of this Agreement, the Merchant will, at KVB's request, execute or procure the execution of such documents and do or procure the doing of such acts and things as KVB may reasonably require for the purpose of giving effect to this Agreement.
- 22.5 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall be deemed to be one and the same agreement. Delivery of an executed counterpart by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.
- 22.6 The Merchant represents and warrants as a continuing representation and warranty during the term of this Agreement that neither it, nor any of its directors, officers, agents, employees, nor any person acting on behalf of the foregoing, is a Sanctioned or Restricted Person and none of the foregoing act directly or indirectly on behalf of a Sanctioned or Restricted Person.
- 22.7 The Merchant represents and warrants as a continuing representation and warranty during the term of this Agreement that it has implemented adequate procedures and controls to ensure that the Transaction, this Agreement and the performance of it comply and will continue to comply with Sanctions, as if each party is subject to such Sanctions. Within ten (10) days' written notice from KVB, the Merchant will provide KVB and/or, with a view to protecting Confidential Information, its duly authorised representatives, copies of procedures, controls, and records relating to compliance with Sanctions.
- 22.8 The Merchant shall to the extent permitted by law promptly upon becoming aware of them supply to KVB details of any Claim, action, suit, proceedings or investigation against it with respect to Sanctions by any Sanctions Authority.
- 22.9 KVB's Confidential Information may be subject to export control Laws. The Merchant shall not import, export or use KVB's Confidential Information where a license or other authorisation is required by Law without first securing such license or authorisation.

## **23 DISPUTE RESOLUTION**

- 23.1 Without prejudice to either Party's rights or remedies hereunder and subject to the provisions of clause 24, if any dispute, difference, controversy or Claim between the Parties (each a "Disputing Party") arising, directly or indirectly out of or in connection with this Agreement or its subject matter, formation, validity or enforceability (including noncontractual Claims) (each a "Dispute") then, except as expressly provided in this Agreement, the Disputing Parties shall follow the dispute resolution procedure set out in this clause.
- 23.2 Either Disputing Party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice"), together with any relevant supporting documentation. Following service of the Dispute Notice, the representatives of each of the Disputing Parties shall attempt in good faith to resolve the Dispute.
- 23.3 If the representatives of the Disputing Parties are for any reason unable to resolve the Dispute within fourteen (14) Business Days of service of the Dispute Notice, either Disputing Party shall be entitled to commence proceedings under clause 24.
- 23.4 If the Dispute is resolved by the representatives within fourteen (14) Business Days of service of the Dispute Notice in accordance with clause 23.2, the settlement shall be recorded in writing and signed by each of the Disputing Parties within seven (7) Business Days of the end of the period referred to in clause 23.3.
- 23.5 Nothing in this clause 23 shall prevent either Disputing Party from making any application for injunctive relief that it considers necessary to protect its position.

## **24 GOVERNING LAW AND JURISDICTION**

- 24.1 This Agreement and any Dispute will be governed by, and shall be construed and enforced in



accordance with the Laws of Hong Kong. Each Party irrevocably agrees that the courts of Hong Kong shall have exclusive jurisdiction to settle any dispute, difference, controversy or claim arising, directly or indirectly, out of or in connection with this Agreement, or the breach, termination or validity thereof (including non-contractual disputes or claims). The Merchant waives any objection to any proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum.

24.2 Each Party agrees that it must notify the other of any Claim it may have under this Agreement within twelve (12) months of when the asserting Party first knew or reasonably should have known of the basis of the Claim. Any service of process in relation to such Claim must also be made within that time period, otherwise the Claim is extinguished.

24.3 Class arbitrations, class actions, private attorney general actions, and consolidation with other arbitrations or proceedings are not permitted. Merchant hereby waives any right to participate in a class action against KVB.

24.4 The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Agreement or its subject matter.

## SCHEDULE 1 – THE SERVICES

### PART A – CARD ACQUIRING SERVICES

#### 1. Definitions

1.1 In this Part A of schedule 1, the following capitalised terms and expressions will have the following meanings (unless the context otherwise requires).

“Acquiring Services”	the Authorisation, Capture and Settlement by KVB of a Card related Transaction;
“Assessment”	any assessment, fine, or similar charge of any nature which a Card Scheme levies on the Merchant or KVB at any time, directly or indirectly, in respect of the Acquiring Services or any Transaction;
“Authorisation”	KVB's provision to the Merchant at the time of the Transaction of confirmation from the relevant Card Issuer as to whether or not the Card used to pay for the Transaction has sufficient funds available for the relevant Transaction and has not been blocked for any reason or listed as lost, stolen or as having had its security compromised;
“Capture”	KVB's transmission of a payment instruction in relation to a Transaction to a Card Scheme for onward transmission to a Card Issuer to enable the earmarking of funds by a Card Issuer in a Cardholder's account for Settlement;
“Card”	a credit, debit, charge, purchase or other card payment method issued by a Card Issuer whose payments KVB is able to process under a Card Scheme (as notified by KVB to the Merchant from time to time);
“Cardholder”	the authorised user of a Card;
“Card Issuer”	an organisation which issues a Card to a Card holder;
“Card Scheme”	a scheme listed in schedule 3 governing the issue and use of Cards, or as may be approved and notified by KVB in writing from time to time;
“Chargeback”	a Transaction that is partially or fully returned by a Card Issuer, resulting in a financial liability to KVB, including any circumstances where a Card Issuer or Card Scheme either: (a) refuses to Settle a Transaction; (b) demands payment from KVB in respect of a disputed Transaction that has been Settled; or (c) demands payment from KVB in respect of a disputed Transaction for which Remittance has been made to the Merchant, in each case notwithstanding any Authorisation;
“Dispute Management System”	the on-line electronic request for information and Chargeback management and defence system provided or otherwise made available by KVB;
“Original Credit Transaction”	a Transaction that results in a disbursement to the account number of a Card for a purpose other than Refunding a purchase as permitted from time to time by a Card Scheme, by whatever name;
“PCI SSC”	those standards of the PCI Security Standards

	Council (or its replacement body or successor) in force from time to time, including the Payment Card Industry Data Security Standard, Payment Application Data Security Standard and the PIN Transaction Security Standard, as updated from time to time;
"Reason Code"	a code or category used by a Card Scheme to classify a specific activity, act or omission;
"Recurring Transaction"	a repetitive periodic Transaction for which the Merchant charges the Buyer's Card (e.g. subscriptions or instalments);
"Recurring Transaction Authority"	a Buyer's prior written authority (taken during the check-out process) for the Merchant to establish a Recurring Transaction, setting out: (a) the amount of the Recurring Transaction and whether this amount is fixed or variable; (b) the dates on which the Recurring Transaction will be charged to the Buyer's Card and whether the dates are fixed or variable; (c) the method of communication for all correspondence with the Buyer; and (d) a statement that the Buyer may cancel the Recurring Transaction Authority at any time;
"Refund"	a Transaction made to wholly or partly reverse a payment from a Buyer;
"Remittance"	a payment of Settlement funds by KVB to the Merchant (or, where so agreed between the Parties in writing, to a third party on the instructions of the Merchant) under this Agreement in connection with a Transaction (and "Remit" will be construed accordingly);
"Remittance Currency"	the currency identified as such in the Application Form or Pricing Schedule or such other currencies as otherwise may be agreed in writing between the Merchant and KVB from time to time;
"Representment"	a transaction to reverse a Chargeback by the re-execution of the original Transaction, where the Merchant has successfully challenged the Chargeback;
"Retro-charge"	a transaction initiated by the Merchant to reverse a Refund to which the Buyer was not entitled;
"Sensitive Authentication Data"	data used for Authorisation, including magnetic stripe data (PAVE, CVV, eve, CID) PINs, PIN blocks and the three or four digit number security code found either on the front or on the back of a card (e.g. MasterCard CVC2/Visa CW2);
"Settlement"	the crediting by the relevant Card Scheme to KVB or its agent (as applicable) of funds equating to the net value of a Transaction as determined by that Card Scheme (and "Settle" will be construed accordingly);
"Terminal"	an authorised point-of-sale payment order acceptance terminal and associated equipment or device(s); and
"KVB Customer Payments Account"	an account in which KVB holds the Settlement funds in accordance with Law.

1.2 Any capitalised terms not defined above will have the meanings given in clause 1 of this Agreement.

1.3 For the purposes of this schedule 1, Part A, the term Network Rules refers to the rules set by the

Card Schemes, including those posted on [www.visaeurope.com](http://www.visaeurope.com), <https://www.visa.co.uk/dam/VCOM/download/about-visa/visa-rules> and [http://www.mastercard.com/us/merchant/pdf/BM-Entire\\_Manual\\_public.pdf](http://www.mastercard.com/us/merchant/pdf/BM-Entire_Manual_public.pdf) and such other URLs as KVB may notify the Merchant about from time to time.

## **2. Provision of Acquiring Services**

- 2.1 The Merchant hereby appoints KVB as its non-exclusive provider of Acquiring Services.
- 2.2 KVB will provide the Acquiring Services and Remit: (a) unless otherwise agreed in writing between the Parties in respect only of those Transactions entered into following the date of signature by KVB and the Merchant; and (b) in accordance with the terms of this Agreement and to the extent permitted by Network Rules. The Merchant acknowledges that successful Authorisation does not guarantee payment from the Cardholder.
- 2.3 Fees for the Acquiring Services on a "MIF Plus Plus" basis (as defined by Visa Europe) in relation to Transactions made with consumer Cards that are Direct (Immediate) Debit Cards; Deferred Debit Cards; and Credit Cards, are available at the request of the Merchant (which must be in writing).
- 2.4 The Merchant warrants and undertakes that it:
- (a) has a permanent establishment and/or business registration in the country referenced as its address in the Agreement which is where the Acquiring Services are provided;
  - (b) will abide by all relevant accounting principles as they apply to it and record the Transactions that KVB processes for it in the accounting records of the permanent establishment/business registration as the case may be fully and properly in accordance with those principles and the Network Rules;
  - (c) pays all relevant taxes as required by Law and the Network Rules relating to the Transactions submitted to KVB for processing by the permanent establishment/business registration as the case may be; and
  - (d) will comply with all Network Rules as in force from time to time and to the extent any Card Scheme rules require a change in the location of a Merchant or contracting entities, the Merchant undertakes to comply with such requirements and will execute all such documents as required by KVB in order to ensure compliance with the Network Rules or any Law. Such document(s) may include but are not limited to, the execution by the Merchant of a novation agreement replacing the Merchant with another entity or Merchant Group Company as required pursuant to the relevant Network Rules.

The Merchant further agrees to provide KVB with evidence of compliance with this warranty and undertaking on request by KVB, including the accounting records relating to the permanent establishment/business registration as the case may be.

- 2.5 KVB will, on request from the Merchant, make Card Transaction level data available to the Merchant setting out each Card Transaction processed under this Agreement from the date of the request from the Merchant, the amount of the Card Transaction and the Fees chargeable for that Card Transaction, with the interchange Fee being shown separately. This information will be provided or made available on a monthly basis and may be aggregated.

## **3. Transactions**

- 3.1 The Merchant will:
- (a) comply with the Merchant Operating Instructions;
  - (b) submit Transactions to KVB promptly and in any event within two (2) days of entry into them;
  - (c) honour all valid Cards in accordance with the relevant Network Rules without discrimination when properly presented by a Buyer for payment and not establish a minimum or maximum Transaction amount as a condition for honouring all Cards;
  - (d) not add any surcharges to Transactions, unless expressly permitted under Law. Any surcharge applied, if allowed, must be included in the Transaction amount and not collected separately;
  - (e) unless the Network Rules specifically state otherwise in relation to particular industry sectors, or unless otherwise agreed between the Parties in writing, not request the Capture of a payment before the relevant goods have been shipped or before a service is delivered in respect of the relevant Transaction. Unless otherwise agreed by KVB, requests for Authorisation which do not

lead to a request for Capture within fourteen (14) days after Authorisation will automatically expire and can no longer be the subject of a Capture request;

- (f) without prejudice to clause 14.1, throughout the term of this Agreement display prominently on each of its premises, trading venues and/or websites where the Merchant accepts Card Transactions, all applicable Card and Card Scheme identification, as required by and in accordance with, the Merchant Operating Instructions and/or Network Rules;
- (g) only accept Transactions in respect of goods and/or services the sale and/or supply of which commonly falls within the Merchant's business as set out in the Application Form and are in accordance with Law. The Merchant will not submit Transactions to KVB in respect of Transactions from Buyers located in jurisdictions in which it is illegal to receive the services offered by the Merchant;
- (h) unless otherwise agreed in writing between the Parties, only accept Transactions in respect of goods and/or services that the Merchant itself supplies;
- (i) notify KVB in writing (and in advance of any Services being provided in respect of such) of the URL of any website in respect of which the Services are to be provided;
- (j) upon KVB's request, at all times throughout the term of this Agreement (and following termination of this Agreement) promptly disclose to KVB such information as KVB reasonably requires in order to enable KVB to: (i) perform its obligations; or (ii) assess its financial and insurance risks, in connection with any Services provided; and
- (k) take all reasonable steps to assist KVB in handling any Claim or query raised by a third party in relation to the Services or any Transaction or Chargeback, RetroCharge or Representment.

3.2 The Merchant must, at or before entering into a Transaction with a Buyer, prominently and unequivocally inform the Buyer of the:

- (a) Merchant's identity at all points of interaction with the Buyer (including prominently displaying its registered name and any trading name on any website through which the Merchant accepts Transactions), so that the Buyer can readily identify the Merchant as the Transaction counterparty and whose name will appear on the Buyer's Card statement;
- (b) complete description of the goods or services offered;
- (c) terms and conditions of sale (and the length of any trial period) including the Merchant's delivery policy, returns and cancellation policies relevant to the supply of goods and services which are the subject of the Transaction. Such policies shall be reasonable and otherwise comply with Law;
- (d) date on, and currency in which, any charges will commence;
- (e) Merchant's complaints procedure, customer service email and telephone contact details; and
- (f) the location (physical address) of the Merchant to enable the Cardholder to easily determine whether the Transaction will be a domestic transaction or a cross-border Transaction.

3.3 Where the Merchant offers goods or services for sale over the internet the Merchant must additionally display the following on its website:

- (a) the Merchant's consumer data privacy policy, security capabilities and policy for transmission of payment card details;
- (b) any legal and export restrictions (if known); and
- (c) the Merchant's address of its fixed place of business.

3.4 Where KVB has agreed in writing that the Merchant may accept Recurring Transactions, the Merchant will:

- (a) obtain a Recurring Transaction Authority from the Buyer for such Recurring Transaction and confirm, within two (2) working days of the date of the Recurring Transaction Authority, to the Buyer via the agreed method of communication that a Recurring Transaction Authority has been established;
- (b) notify the Buyer via the agreed method of communication at least seven (7) working days prior to a Recurring Transaction payment being charged to the Buyer's Card if: (i) the payment amount has changed; (ii) the payment date has changed; (iii) more than six (6) months have elapsed since the last Recurring Transaction payment; or (iv) a trial period, introductory offer or promotional activity has expired;
- (c) not effect (or seek to effect) a Transaction under the Recurring Transaction Authority once the Recurring Transaction Authority has expired, or once the Buyer has notified the Merchant that the Buyer wishes to cancel such Recurring Transaction Authority; and
- (d) retain securely the Recurring Transaction Authority for at least a period of eighteen (18) months

after the date of final Transaction effected under it, and produce each Recurring Transaction Authority to KVB on demand.

#### **4. Settlement and Remittance**

- 4.1 KVB will value date and credit the Merchant Data Account with the value of a Transaction on the day on which Settlement of that Transaction occurs. KVB will hold Settlement funds from the Card Schemes in the KVB Customer Payments Account. The Merchant shall not be entitled to receive any interest in respect of funds held in a KVB Customer Payments Account
- 4.2 KVB will Remit in the Remittance Currency to the Merchant Bank Account the value of any Settlement funds (which may be net of Tax Deductions (as defined in clause 5.7), Fees, any applicable third party bank charges, Chargebacks and Refunds, and in such event those Fees, Chargebacks and Refunds are owed to KVB immediately at Settlement) due in respect of Transactions permitted under this Agreement promptly following Settlement or, (if invoked by KVB) upon the expiry of any period of deferral invoked by KVB under this Agreement. For the avoidance of doubt, with respect to paragraph 4.4(c) below, KVB shall implement a deferral period of three (3) days (i.e. Remittances shall be made to the Merchant Bank Account no earlier than five (5) days after the day on which the Transaction occurs), or such other deferral period as KVB may determine in its sole discretion.
- 4.3 KVB may in its sole discretion withhold, set-off and/or defer payment of any sums it owes and/or holds on behalf of the Merchant hereunder: (a) until the Merchant's liabilities to KVB hereunder have been discharged; or (b) in respect of reasonably expected Refunds, Chargebacks or Assessments.
- 4.4 KVB may defer the payment of any Remittances:
  - (a) until the total Remittance payable reaches the minimum Remittance threshold applicable to the Merchant (as may be notified to the Merchant from time to time);
  - (b) if KVB reasonably believes that a Transaction may be fraudulent or otherwise contrary to Law or not otherwise permitted under this Agreement, until the satisfactory completion of KVB's investigation of the same; or
  - (c) if the Merchant fails to comply with Clause 3.5 of this Agreement and/or fulfil the condition within the timeframe as specified in Clause 3.6 of this Agreement.

Where KVB defers payment of Remittance pursuant to this paragraph 4.4, it shall to the extent permitted by Law, notify the Merchant of the deferral and the reasons for it. The Merchant then agrees not to seek to dispose of, charge or otherwise deal with any such sums withheld or deferred by KVB.

- 4.5 If a Transaction is effected other than in a Remittance Currency, KVB will convert the relevant Transaction value into the Remittance Currency requested by the Merchant by reference to the Exchange Rate applicable: (a) in the case of Terminal Transactions on the date of that Transaction's Settlement; and (b) otherwise, including ecommerce Transactions, as obtainable via the Merchant Data Account from time to time. KVB may amend the Exchange Rate applied in case of manifest error caused by its external rate provider within one (1) Business Day of Remittance.

#### **5. Chargebacks and Assessments**

- 5.1 Upon its occurrence each Chargeback and each Assessment represents a debt immediately due and payable by the Merchant to KVB on demand, notwithstanding any termination of this Agreement or the Acquiring Services.
- 5.2 To the extent permitted by Law and Network Rules, KVB will notify the Merchant (which may be via a link to a URL) as soon as reasonably practicable of any Chargebacks and/or Assessments which have occurred or have been incurred.
- 5.3 Unless otherwise agreed, each Chargeback and Assessment will be charged to the Merchant in the currency in which KVB is required to pay the Chargeback or Assessment. The Fees for handling each Chargeback are payable upon the earlier to occur of the receipt by KVB of: (a) a Chargeback; and (b) a request for information from a Card Scheme in relation to a potential Chargeback irrespective of whether the Chargeback subsequently occurs.
- 5.4 If the Merchant wishes to dispute a Chargeback or Assessment, the Merchant will do so in

accordance with the applicable procedure set out in the Merchant Operating Instructions and Network Rules and, if applicable, the Dispute Management System. It is the Merchant's responsibility in the case of a disputed Chargeback or Assessment, to provide to KVB such evidence as KVB, the Card Scheme or the Card Issuer may reasonably require both to investigate the disputed Chargeback or Assessment and to prove that the underlying Transaction was authorised by the Buyer.

- 5.5 The Merchant's use of the Dispute Management System is subject to and conditional upon the Merchant granting the necessary access and permission to the information required to enable the Chargeback and defence services to be provided. The Merchant consents to the use of any such information within the Dispute Management System and shall ensure that the information (i) is complete and accurate in all material respects; and (ii) does not infringe any IP Rights or confidentiality rights of a third party.
- 5.6 The Merchant agrees that the relevant Card Scheme's decision regarding the validity and value of any Chargeback and/or Assessment will be final and binding and KVB will not be obliged to investigate or defend the validity and or value of any Chargeback or Assessment.

## **6. Refunds**

- 6.1 Where a Buyer requests that the Merchant refunds a Transaction the Merchant will submit a Refund request using the procedure set out in the Merchant Operating Instructions and such request constitutes irrevocable consent by the Merchant for the execution of such Refund.
- 6.2 In relation to any Transaction, the Merchant will only effect a Refund to a Buyer in respect of goods and/or services the Merchant has actually sold and/or agreed to supply and using the payment method used by the Buyer in respect of that Transaction.
- 6.3 The Merchant will not provide a cash Refund to a Buyer where the Transaction the subject of the Refund was a Card related Transaction, unless required to do so pursuant to Law nor in any circumstances accept cash or any other compensation for effecting a Refund.
- 6.4 All Refunds must be paid in the currency of the original Transaction. If a Refund value is not in the Remittance Currency, then in order to pay the Refund KVB will convert the Refund back into the original Transaction currency using the Exchange Rate applicable on the date on which the Refund request is processed by KVB.
- 6.5 KVB is only obliged to process any Refund or Original Credit Transaction to the extent that it holds sufficient funds for the Merchant in the currency of the particular Refund or Original Credit Transaction at the relevant time and, to the extent KVB does not hold such funds the Merchant agrees to put KVB in funds, to do so prior to such Refund or Original Credit Transaction being undertaken and the Merchant shall hold KVB free of any liability in respect of the payment of Refunds or Original Credit Transactions to the extent that they are presented to KVB and KVB is not in funds to pay these.

## **7. Suspension and Termination**

- 7.1 Without prejudice to any other rights, KVB may immediately terminate this Agreement, or terminate or suspend Services under this Agreement in whole or part by written notice to the Merchant:
- (a) upon a material positive or negative fluctuation month-on-month in the Merchant's Transaction volumes or the average value of its Transactions or the occurrence of such other event as may give rise in KVB's discretion to a significant increase in its risk profile;
  - (b) if KVB otherwise considers in its sole and absolute discretion that the total value of Refunds, Chargebacks and/or declined Transactions is excessive relative to expected volume; provided that, in respect of each of these events (a) and (b), account will be taken of historical figures and trends including seasonality of sales and yearly sales growth, or
  - (c) if KVB reasonably considers that any act or omission of the Merchant falls within a Reason Code which would ordinarily lead to a Merchant being listed on the Visa Merchant Alert Service, the MasterCard Alert to Control High-risk (Merchants) or an equivalent for any other Card Scheme or a Regulatory Authority block list, deny list or equivalent;
  - (d) upon the occurrence of either a material Assessment or multiple Assessments;
  - (e) if so instructed by a Card Scheme; or
  - (f) if the Merchant breaches paragraph 2.4 or 3.1(j) of this Schedule 1, Part A.

- 7.2 Without prejudice to any other rights, KVB may suspend Services in respect of a Transaction or Transactions under this Agreement if KVB reasonably considers that such suspension is necessary to reduce the Merchant's fraud levels and/or enable KVB to comply with certain fraud thresholds as required under Law.
- 7.3 Either Party may immediately terminate this Agreement if the other ceases to be in compliance with its PCI SSC compliance obligations under paragraph 9.1 of this schedule 1, Part A.
- 7.4 If KVB exercises any right under this Agreement to suspend its processing of a Transaction, then KVB will, to the extent it is permitted to do so by Law and the Network Rules, notify the Merchant of such suspension and the reasons for it.
- 7.5 If KVB considers that any act or omission of the Merchant leading to the termination of this Agreement falls within a Reason Code, KVB may, in addition to providing details of such act or omission to the Merchant, notify any termination hereunder and the Reason Code forming the grounds for termination to the Card Schemes, who may record and thereafter make such information available to any Acquiring Services provider, Card Issuer and crime enforcement authorities.
- 7.6 Without prejudice to clause 10.1, the following paragraphs of this schedule 1, Part A will continue to be enforceable notwithstanding termination of this Agreement: 3.1(j), 3.1(k), 4, 5, 6, 7.5, 9.6, 9.7 and 10.

## **8. Right of Audit**

- 8.1 No more than once annually during the term of this Agreement (unless prompted by a request from a Regulatory Authority or Card Scheme or any event or events giving rise to a security breach pertinent to this Agreement or potential breach of Law or Sanctions), within twenty eight (28) days' written notice from KVB, the Merchant will: (a) permit KVB and/or its duly authorised representatives to access during business hours such premises or systems on which the Merchant's business trades or where the Merchant's records or stock are located and to take and retain copies of all such records to ascertain if the Merchant is performing its obligations hereunder; and (b) provide all reasonable cooperation in relation to such audit.
- 8.2 Where such audit is undertaken at the specific request of a Card Scheme, the Merchant shall pay any costs and charges incurred by KVB in respect of such audit.

## **9. PCI SSC and Data**

- 9.1 Without prejudice to the provisions of clause 13 of this Agreement, the Merchant and KVB will each comply with all PCI SSC rules, regulations and/or standards as required of them respectively, directly or indirectly, by the Card Schemes.
- 9.2 KVB may charge the Merchant a management fee for administering the system through which the Merchant reports its PCI SSC compliance status and an additional administrative PCI SSC non-compliance fee for each month in which the Merchant is not compliant with the relevant rules, regulations and/or standards of the PCI SSC, which Fees the Merchant will pay in accordance with clause 5 of this Agreement.
- 9.3 The Merchant represents, warrants and undertakes that no security breach relating to Transaction Data processed by or on behalf of the Merchant has occurred before, and remains unremedied on, the date on which this Agreement was signed by the Parties. If the Merchant breaches the foregoing representation, warranty and undertaking, the Merchant acknowledges and agrees that KVB may suspend the Services and/or take such other steps as KVB, any Regulatory Authority or any Card Scheme reasonably considers necessary to remedy the breach.
- 9.4 The Merchant will not "store" (as such term is used in the PCI SSC standards), at any time: (a) a Card's verification value in the Card's magnetic stripe, on the Card, in or next to its signature panel, or in the Card's magnetic stripe image in a chip application; (b) a PIN verification value in a Card's magnetic stripe; (c) the full contents of any track from a Card's magnetic stripe (on the Card, in a chip or elsewhere); or (d) any other data (including any Sensitive Authentication Data) that any of the Card Schemes mandate from time to time as data that cannot be stored.
- 9.5 The Merchant must notify KVB of all third parties who have access to Cardholder data on behalf of the Merchant (i.e., store, process or otherwise transmit Cardholder data). The Merchant



acknowledges such third parties are required by the Card Schemes to be registered, and the Merchant shall cooperate with KVB in completing such registration and be responsible for all fees imposed by the Card Schemes in connection therewith. The Merchant shall notify KVB immediately if it becomes aware of or suspects any security breach relating to Transaction Data and shall also (and without prejudice to any other remedy KVB have in respect thereof) immediately identify and resolve the cause of such security breach and take any steps that KVB may require of the Merchant to do so, including the procurement (at the Merchant's cost) of forensic reports from third parties recommended by KVB.

- 9.6 Without prejudice to clause 16, and subject to the requirements of the PCI SSC, the Merchant will retain legible copies of all Transaction Data for a minimum period of eighteen (18) months from the date of the relevant Transaction, Chargeback, Retro-Charge or Representment to which it relates.
- 9.7 The Merchant will provide KVB with copies of such Transaction Data relating to any Transaction or Chargeback, Retro-Charge or Representment as KVB may request, in each case in such format as specified by KVB and within ten (10) days of such request.

## **10. Indemnity**

- 10.1 Without prejudice and in addition to any other rights and remedies available to KVB under this Agreement: (a) the Merchant indemnifies (and will keep indemnified) on demand, defends and holds harmless KVB from and against any Losses KVB suffers or incurs as a result of, or in connection with any Transaction, Representment, Retro-Charge, Assessment and/or Chargeback or resulting from the Merchant's failure to comply with the PCI SSC; and (b) KVB indemnifies (and will keep indemnified) on demand, defends and holds harmless the Merchant against any Losses it suffers or incurs resulting from a third party Claim directly caused by KVB's failure to comply with the PCI SSC.

## Part B – GATEWAY SERVICES

### 1. Definitions

1.1 In this Part C of schedule 1, the following capitalised terms and expressions will have the following meanings (unless the context otherwise requires):

“Acquirer”	a recognised third party bank or financial institution (or KVB where acquiring services are provided by KVB to the Merchant) which has an agreement with the Merchant to process the payment instructions received from the Buyer by intermediation of KVB for the payment method selected by the Buyer and that, following Authorisation, acquires the relevant Transactions and effects payment of the purchase price (and "Acquiring" shall be construed accordingly);
“APM”	a provider of a payment method which can be used by the Merchant as an alternative to a Card payment;
“Authorisation”	the status indicating that the Acquirer or APM has validated the Authorisation Request and (in case of a Card related Transaction) has reserved the amount and has deducted it from the Cardholder's spending limit;
“Authorisation Request”	the submission by the Merchant to the relevant Acquirer or APM via the Gateway Service of Transaction Data for the purposes of validating a payment in respect of a Transaction;
“Capture Request”	the submission by the Merchant to the relevant Acquirer or APM via the Gateway Service of Transaction Data after receipt of an Authorisation for the purposes of executing a payment instruction in respect of a Transaction;
“Card”	a credit, debit, charge, purchase or other card payment method;
“Gateway Service”	the provision of an on line portal that inter alia supports the processing of Authorisation Requests and Capture Requests over the internet;
“Hosted Payment Pages”	the KVB hosted payment pages which may be utilised by the Merchant as part of the Gateway Service; and
“PCI SSC”	those standards of the PCI Security Standards Council (or its replacement body or successor) in force from time to time, including the Payment Card Industry Data Security Standard, Payment Application Data Security Standard and the PIN Transaction Security Standard, as updated from time to time.

1.2 Any capitalised terms not defined above will have the meanings given in clause 1 of this Agreement.

### 2. Provision of Gateway Services

2.1 KVB will provide the Gateway Services to the Merchant in accordance with the terms of this Agreement.

2.2 KVB does not guarantee any minimum response times in connection with on-line Authorisation or

availability of a specific payment method.

- 2.3 KVB may adjust the content and interfaces of the Gateway Service (including the Hosted Payment Pages, if applicable) to keep the Gateway Service up to date with market requirements. If such adjustments lead to a necessary change in software, interfaces or operating procedures at the Merchant, KVB will notify the Merchant as soon as possible prior to the execution of such adjustments. The Merchant shall be responsible for its own costs with respect to such changes to its software, interfaces or operating procedures.
- 2.4 Where the Merchant uses the Hosted Payment Pages to process Transactions, the Merchant acknowledges and agrees that:
- (a) it remains responsible for its own compliance with PCI SSC rules, regulations and/or standards as required of it respectively, directly or indirectly, by applicable Network Rules making bodies; and
  - (b) where the Merchant has customised the Hosted Payment Pages itself (or KVB has done so at the Merchant's request), the Merchant is responsible for the content of the Hosted Payment Pages and indemnifies and holds KVB harmless from any Claims regarding such content including infringement claims from third parties.

### **3. Obligations of KVB to the Merchant**

- 3.1 Upon receipt of an Authorisation Request or Capture Request, KVB will forward such request to the relevant Acquirer or APM.
- 3.2 If a third party Acquirer or APM requires that the Merchant is accepted by it before KVB can process payment instructions from Buyers, the Merchant will co-operate in providing such third party with all requested information. Where the third party Acquirer or APM requires that the Merchant has its own contract and/or connection number with it, the Merchant will apply for this. If the Merchant is not accepted and/or if the connection number is not granted to the Merchant by the third party Acquirer or APM, KVB will not provide the specific payment method offered by such third party to the Merchant. KVB is not responsible for the above decision of the third party.
- 3.3 KVB may disconnect the Merchant from any payment method that ceases to be provided by the relevant Acquirer or APM. KVB will promptly notify Merchant if a payment method is disconnected.
- 3.4 KVB will not be liable for any failure of a third party Acquirer or APM to effect payment in respect of a Transaction including the settlement of any proceeds.

### **4. Survival**

- 4.1 Without prejudice to clause 10.1, the following paragraphs of this schedule 1, Part C will continue to be enforceable notwithstanding termination of this Agreement: 3.4, 5 and 6.

### **5. Data**

- 5.1 Without prejudice to clause 16, the Merchant will retain legible copies of all Transaction Data for a minimum period of eighteen (18) months from the date of the relevant Transaction or disputed Transaction to which it relates.
- 5.2 The Merchant will provide KVB with copies of such Transaction Data relating to any Transaction or disputed Transaction as KVB may request, in each case in such format as specified by KVB and within ten (10) days of such request.

### **6. Indemnity**

- 6.1 Without prejudice and in addition to any other rights and remedies available to KVB under this Agreement, the Merchant hereby indemnifies (and will keep indemnified) on demand, defends and holds harmless KVB from and against any Losses KVB suffers or incurs as a result of, or in connection with any Transaction or disputed Transaction.

## SCHEDULE 2 – PRICING

Item	Charging description	Standard Price (USD)
Acquiring Fee	Charge per transaction amount	Hong Kong issued cards 2.5%, International issued cards 3.99% + 0.6 USD or equivalent
Acquiring Setup Fee	New acquiring API set up fee (One-off)	5,000
Monthly Management Fee	Maintenance fee (Monthly)	500
Minimum Monthly Service Charge	If acquiring fee is lower than this amount, the variance will be charged (Monthly)	1,000
Refund Handling	Per transaction (flat)	5
Chargeback Handling	Per transaction (flat)	20
Remittance Fee	Charge per settlement	20

### **SCHEDULE 3 – CARD SCHEMES AND ALTERNATIVE PAYMENT METHODS**

#### **Part A – CARD SCHEMES**

Visa Inc.  
Mastercard Worldwide

#### **Part B – Alternative Payment Methods**

As agreed between the parties and set out in the pricing schedule