



# **First Class Payments Inc. Merchant Service Agreement Terms and Conditions**

## **1. TERMS AND DEFINITIONS**

1.1. First Class Payments, «we» or «our» – First Class Payments Inc., a company registered in Canada with company registration number 1000681482, (MSB license N° M23574478) and registered office at C6 - 80 BIRMINGHAM ST TORONTO, ON, CANADA M8V3W6, Canada

1.2. Merchant, «you» or «your» – means the individual or entity entering into the Merchant Service Agreement with First Class Payments Inc..

1.3. Authorisation – electronic procedure of the International Payment Systems in order to get permission from the Issuer to conduct a Transaction after proper verification of the Card, Transaction Data, results of identification of the Cardholder and adequacy of funds on the Card account.

1.4. Card – payment card branded as Visa, Visa Electron, MasterCard, Maestro or other card schemes that shall be used as the means of payment when conducting the Transaction.

1.5. Cardholder – is the private individual or entity to whom a Card is issued or who is otherwise authorized to use a Card; in the context of the purchase of goods or services, the term Cardholder shall be deemed to include a reference to the customer purchasing the goods or services if different from the Cardholder.

1.6. Card issuer – is the person or entity issuing a Card to a Cardholder.

1.7. Chargeback – a claim of the Issuer in relation to the Transaction drawn up according to the Rules of the International Payment Systems.

1.8. Commission Fee – First Class Payments Inc. remuneration for the services provided to the Merchant under this Agreement. Amount of Commission Fees and schedule of processing payments by Card or APM is mentioned in Annex A of the Agreement.

1.9. Confidential Information - means any information which is marked as “confidential” or “proprietary” or should reasonably be expected to be confidential or proprietary having regard to the context of disclosure or the nature of the information; without prejudice to the generality of the foregoing, the terms of this Agreement as well as business plans, data, strategies, methods, customer and client lists, technical specifications, transaction data shall be deemed confidential.

1.10. Merchant Application – an electronic form which contains detailed information on the Merchant, types of goods and services, as well as types of Cards acceptable for payment and account number where the Transactions Amounts shall be transferred. Merchant’s Application includes a statement of Merchant’s financial condition, a detailed description of the characteristics of Merchant’s business or organization, and any related information.

1.11. MID Application – (Merchant identification number) application in electronic form sent to the First Class Payments Inc. by Merchant in order to register a new address of the E-shop and/or new E-Shop.



1.12. E-Shop – online electronic environment (website) of the Merchant where the Merchant offers its goods and services. Regarding each new E-Shop the Merchant sends completed Merchant MID Application and any related documents to the First Class Payments Inc. in electronic form.

1.13. International Payment System – means any payment card scheme, including but not limited to VISA, MasterCard®, Discover and American Express, and the rules and procedures governing the making and accepting of APM Payments as stipulated by the relevant APM Provider, including but not limited to payment agreements between an APM Provider and intermediary payment service providers and/or First Class Payments Inc., both hereinafter referred to as “The International Payment Systems”.

1.14. Issuer – credit institution or another legal person who issued the Card.

1.15. PCI DSS – (Payment Card Industry Security Standard) International Payment Systems developed safety requirements for Card and Transaction Data registration, archiving and for other non-cash transactions related activities.

1.16. Refund – procedure of processing the transaction of returning the Transaction Amount to the Cardholder.

1.17. Rules of the International Payment Systems – any provisions regardless of their form: rules, instructions, recommendations, etc. for Visa and/or MasterCard Worldwide depending on the context, which regulate the use of their trademarks, processing of the Transactions, technical requirements for the Data processing relating to the Transaction, as well as other provisions on acceptance of the Cards.

1.18. Reserve amount – monetary funds of the Merchant secured for benefit of the First Class Payments Inc. that shall guarantee discharge of obligations of the Merchant under the Agreement.

1.19. Software – means the IT technology provided to the Merchant by First Class Payments Inc. in order to get and process payments.

1.20. Successful Authorization – consent of the Issuer to conduct the Transaction and to write off the Transaction Amount and commission fees (if there are any) from the account of the Cardholder.

1.21. Schedule of fees – an appendix A to the Agreement, specifying commission fees for using services provided by First Class Payments Inc..

1.22. Transaction – financial operation with the Card or using APM resulting in payment for any of the goods or services of the Merchant. A service under this Agreement is also a transfer of the funds and replenishment of the account existing in the electronic environment via the Card if such a service is provided by the Merchant.

1.23. Transaction Amount – sum of money specified in the inquiry for Authorization of Transaction confirmed by the Issuer for conducting the Transaction (Successful Authorization).

1.24. Transaction Data – is the written or electronic record of a Transaction, including but not limited to an authorisation code or settlement record.



## **2. THE SUBJECT OF THE AGREEMENT**

2.1. These First Class Payments Inc. Merchant Service Agreement TERMS AND CONDITIONS apply to services provided by First Class Payments Inc. to you and form an integral part of the First Class Payments Inc. Merchant Service Agreement, «the Agreement», concluded between you and First Class Payments Inc..

2.2. In case of any conflict between these TERMS AND CONDITIONS and any provisions agreed between the parties in the First Class Payments Inc. Merchant Service Agreement, the First Class Payments Inc. Merchant Service Agreement shall take precedence insofar as this is necessary for the resolution of such conflict.

2.3. Conclusion of the First Class Payments Inc. Merchant Service Agreement shall always be subject to the conclusion of First Class Payments Inc. Merchant Service Agreement by the Parties and acceptance of the present TERMS AND CONDITIONS; successful completion of the Merchant application process including, but not limited to, satisfactory outcomes of all necessary verifications of identity, establishment of shareholder structure, credit checks and other customer due diligence measure

2.4. Within the frame of the First Class Payments Inc. Merchant Service Agreement and to ensure acceptance of the Cards in the E-Shop or provision of APM Services, the First Class Payments Inc. shall:

2.4.1. provide the Merchant with the possibility to use the First Class Payments Inc. connection to the International Payment Systems;

2.4.2. transfer the Transaction Amounts to the account set forth in the Agreement;

2.4.3. perform other actions pursuant to provisions of the Agreement.

2.5. Within the frame of the Agreement the Merchant shall:

2.5.1. exercise proper monitoring and maintain statistics in the Transactions and received Chargebacks according to the Rules of the International Payment Cards and provisions of the Agreement, it's Annex/es reporting;

2.5.2. provide Chargebacks processing and ensure refund procedures;

2.5.3. accept the Cards for payment in the E-Shop and/ or APM Services according to the provisions of this Agreement, all its Annexes and the Rules of the International Payment Systems;

2.5.4 perform other actions according to the provisions of the Agreement.

## **3. THE RIGHTS AND OBLIGATIONS OF THE FIRST CLASS PAYMENTS INC.**

3.1. Within the frame of this Agreement the First Class Payments Inc. shall provide following services:

3.1.1. Card processing services;

3.1.2. APM processing and settlement services;

3.1.3. Chargeback management;



#### 3.1.4. Software.

3.2. First Class Payments Inc. shall provide all Services in accordance with the Agreements, its Annexes, all applicable legislation.

3.3. First Class Payments Inc. shall be obliged under the request of the Merchant to provide to the Merchant a complete form of the transaction from the Bank-acquirer (with Invoice id/RRN) in relation to money which has been withheld by the Bank-acquirer.

3.4. First Class Payments Inc. shall deduct Commission Fees and sum of Security Deposit.

3.5. the First Class Payments Inc. shall be entitled:

3.5.1. to request reasonably Transaction documents and other related documents from the Merchant at any time;

3.5.2. up to 10 (ten) days to delay transfer of the Transaction Amounts regarding the Transactions which must be checked up additionally on the grounds of a Chargeback or any other information proving illegality of the Transaction, activity of the Merchant and/or E-Shop according to the Rules of the International Payment Systems;

3.5.3. up to 180 (one hundred eighty) days to delay transfer of the Transaction Amounts, regarding the Transactions in relation to which there were received Chargebacks, as well as if the Merchant has not provided the First Class Payments Inc. with the Transaction documents/information. After First Class Payments Inc. has been properly notified of the decision taken by the International Payment System about rejection of Chargeback and as of receiving the sums specified in this clause from the International Payment Systems, the First Class Payments Inc. shall transfer such sums to the Merchant within 7 (seven) business days. Should the Chargebacks be satisfied, the sums specified in this Clause shall be used for redemption of liabilities towards the Cardholder/APM user and, thus, shall not be transferred to the Merchant.

3.5.4. to suspend acceptance of the cards and transfer of the Transaction Amounts until all the circumstances are clarified, if the First Class Payments Inc. has received information that the certain Transactions relate to legalization of the funds received in a criminal way or financing of terrorism or the Merchant is not complying with Anti Money Laundering (AML) rules. the First Class Payments Inc. shall unilaterally take a decision on resumption of accepting the Cards/APM and transfers of the Transaction Amounts on the grounds of available information and recommendations of the International Payment Systems;

3.5.5. to suspend acceptance of the Cards/APM and transfers of the Transaction Amounts until all the circumstances are clarified if in the activity of the Merchant and/or the E- Shop there have been established breaches of provisions of the Agreement and/or the Rules of the International Payment Systems. the First Class Payments Inc. shall unilaterally take a decision on resumption of accepting the Cards/ APM and transfers of the Transaction Amounts on the grounds of available information and recommendations of the International Payment Systems;

3.5.6. to deduct the following sums from any account of the Merchant in the First Class Payments Inc. in the amount of:

3.5.6.1. satisfied Chargeback, as well as commission fees and arbitration costs relating to consideration and processing of Chargebacks;

3.5.6.2. documented fines imposed on the First Class Payments Inc. by the International Payment Systems in connection with breach of the Rules of the International Payment Systems by the Merchant

3.5.6.3. documented non-fulfilment of obligations by the Merchant to the First Class Payments Inc.;

3.5.6.4. direct and documented damages caused to the First Class Payments Inc. by actions of the Merchant;

3.5.6.5. direct and documented damages caused to the First Class Payments Inc. because of proceedings actions mentioned in the Agreement;

3.5.7. use the Security Deposit according to the Agreement;

3.5.8. to unilaterally revise cooperation conditions under the Agreement, having informed the Merchant 3 (three) days beforehand, as well as to revise practicability of such a cooperation with the Merchant in connection with changes in the Rules of the International Payment Systems that significantly influence further execution of the Agreement, as well as in connection with suspicions of breaching the Rules of the International Payment Systems by the Merchant;

3.5.9. to unilaterally accept or reject the received Merchant Application and MID Application due to compliance reason;

3.5.10. to impose a relevant fine on the Merchant if the First Class Payments Inc. has determined the -Merchant violates provisions of the Agreement or Rules of the International Payment Systems. The First Class Payments Inc. unilaterally defines the amount of the fine considering fines imposed in such cases by the International Payment Systems.

3.6. The Merchant holds full financial responsibility to all and any claims represented by VISA or MasterCard or other card schemes or the First Class Payments Inc..

## **4. THE RIGHTS AND OBLIGATIONS OF THE MERCHANT**

4.1. The Merchant shall undertake:

4.1.1. to accept the Cards/APM from the Cardholders/ APM users listed in the Merchant Application as the means of payment for the goods and services offered by the Merchant in the E-Shop;

4.1.2. to accept the Cards/APM Payments as the means of payment only for the goods and services that are in conformity with the types of commercial activity of the Merchant specified in the Merchant Application and other documents, submitted Merchant;

4.1.3. to follow the legislation on the territory on which the Merchant has its business activity;

4.1.4. to follow the Rules of the International Payment Systems and provide observation of technical requirements set by the International Payment Systems;

4.1.5. in proper time and in the necessary volume to inform its employees, officials and involved persons with the topical provisions of the Agreement and the Rules of the International Payment Systems, as well as to monitor observation of provisions of the aforementioned documents while the validity of the Agreement;



4.1.6. to inform the First Class Payments Inc. immediately, but not later than within 3 (three) business days, of any cases of fraud or other illegal operations with the Cards determined by the Merchant;

4.1.7. in case of received Chargebacks to act according to the Rules of the International Payment Systems on consideration of Chargebacks;

4.1.8. to assist the First Class Payments Inc. in consideration of Chargebacks to the extent as it is necessary at the First Class Payments Inc.'s discretion;

4.1.9. to provide the documents confirming the Transaction, as well as to give explanations in relation to the received Chargeback immediately, but not later than within 3 (three) days from the moment of reception of the First Class Payments Inc. inquiry;

4.1.10. to inform the First Class Payments Inc. about its decision to satisfy the Chargeback or to appeal against it by submitting requested documents on the certain Transaction to the First Class Payments Inc. immediately, but not later than within 3 (three) days after the First Class Payments Inc.'s inquiry;

4.1.11. to return the Transaction Amounts to the Cardholder/ APM user in full or in parts depending on the rules of the Merchant about canceled Transactions if the Cardholder shall refuse from the goods or the services purchased via the Transaction;

4.1.12. to return the Transaction Amounts in full in the cases envisaged in the Rules of the International Payment Systems;

4.1.13. to keep the Transaction confirmation records in electronic or printed format 2 (two) years from the date of the Transaction;

4.1.14. to exclusively use the Software for acceptance of the cards in the E-Shop;

4.1.15. every day to realize the procedure set by Software which provides generalization of information on the Transaction conducted by the Merchant during a business day, including rejected and returned transactions (end of the fiscal day);

4.1.16. to inform the First Class Payments Inc. immediately, but not later than within 3 (three) days, of all changes in information specified in the Agreement or another information what the Merchant gave to the First Class Payments Inc., submitting the documents confirming such a notification;

4.1.17. to provide the First Class Payments Inc. immediately, but not later than within 3 (three) business days, with information what the First Class Payments Inc. shall need for execution of the Agreement;

4.1.18. to provide the Reserve Amount;

4.1.19. within 10 (ten) days to pay the First Class Payments Inc.'s invoice in case if on the accounts of the Merchant there are not sufficient monetary funds to perform the operations listed in Sub-Clause 3.5.6;

4.1.20. to pay to the First Class Payments Inc. the Commission Fees, which the Merchant irrevocably entrusts and authorizes the First Class Payments Inc. to deduct from any account of Merchant with the First Class Payments Inc. or deduct from the Transaction Amounts.



4.2. The Merchant shall not be entitled:

4.2.1. to fix additional fees for the payments via the Card/APM, unless the applicable law stipulates the opposite, and First Class Payments Inc. has accepted such a fee according to the Rules of the International Payment Systems. In case the additional fee is stipulated in the laws, it shall not be levied separately but must be included in the Transaction Amount. Cardholder must be informed before the Transaction by Merchant about any additional fees (surcharging);

4.2.2. to set minimal or maximal Transaction Amount;

4.2.3. to accept the Card in order to pay or refinance already existing obligations, i.e. the Merchant shall accept the Card only as the means of payment for certain goods and services;

4.2.4. within the frame of the Transaction to issue cash to the Cardholder;

4.2.5. within the frame of the Transaction to issue a commercial cheque, bill or any other document with which it is possible to make next payments;

4.2.6. to divide the Transaction into parts;

4.2.7. to accept the Card as the means of payment for the commercial activity of third persons;

4.2.8. to issue electronic money as a result of the Transaction;

4.2.9. to use the Transaction Data for other purposes except lawful processing of the Data of the Transaction according to the Rules of the International Payment Systems.

4.3. The Merchant shall be entitled:

4.3.1. to receive the services of the First Class Payments Inc. on provision of acceptance of the Cards/APM rules in the E-Shop and the services of the First Class Payments Inc. on transfer of the Transaction Amounts to the account set forth in the Merchant Application;

4.3.2. to receive the services of the First Class Payments Inc. on the software and technical maintenance;

4.3.3. The Merchant shall irrevocably entrust and authorize the First Class Payments Inc., without any additional agreement or authorization, to deduct the monetary funds of the Merchant in order to perform the operations listed in Sub-Clause 3.5.6.

## **5. THE RESERVE AMOUNT**

5.1. The First Class Payments Inc. shall deduct the Reserve Amount from the Transaction Amounts upon entrance of the Transaction Amounts from the International Payment Systems.

5.2. The Reserve Amount shall be set forth in the First Class Payments Inc. Merchant Service Agreement.

5.3. the First Class Payments Inc. may unilaterally and without prior notification use the Reserve Amount with the aim to:



5.3.1. return the Transaction Amounts to the Cardholder/ APM user for the satisfied Chargebacks, as well as to pay commission fees and costs of arbitration relating to consideration and processing of Chargebacks;

5.3.2. pay the fines imposed by the International Payment Systems on the First Class Payments Inc. because of the Rules of the International Payment Systems breached by the Merchant;

## 6. CHARGEBACKS

6.1. Chargeback Limits for card payments – the maximum monthly chargeback rate is the lower of:

- 1% of transactions processed in one calendar month; or
- 100 chargebacks per calendar month

6.2. For each chargeback above the aforementioned maximum number of chargebacks for card payments, First Class Payments Inc. will charge an excess chargeback processing fee set forth in the Merchant Service Agreement and Appendix A thereto.

6.3. For each chargeback above the aforementioned maximum number of chargeback or card payments, First Class Payments Inc. will charge an excess chargeback processing fee set forth in the Merchant Service Agreement and Appendix A thereto.

6.4. This shall be without prejudice to First Class Payments Inc. further rights and claims for indemnity under the Agreement, including but not limited to indemnities for the imposition of fines and penalties by MasterCard.

6.5. If any of the above chargeback limits are exceeded or likely to be exceeded, the Merchant shall, upon First Class Payments Inc. Europe requests, produce within a reasonable time a remedial action plan containing actual or suggested measures designed to avoid exceeding the chargeback limits or adopt new procedures under the instruction of First Class Payments Inc. Europe in order to avoid future Chargebacks.

## 7. LIABILITY OF THE PARTIES

7.1. In carrying out any activity under this Agreement, the Parties shall observe the laws of the Republic of Estonia and the Rules of the International Payment Systems.

7.2. The Merchant shall be responsible for its liabilities stipulated in the Agreement. the First Class Payments Inc. has the right as its discretion to ask the -Merchant to fulfill its obligations in full

7.3. The First Class Payments Inc. shall indemnify damages to the Merchant caused because of non- execution or improper execution of the Agreement. The Merchant shall indemnify damages to the First Class Payments Inc. caused because of non-execution or improper execution of the Agreement.

7.4. the First Class Payments Inc. shall not be liable for the arising damages if:

7.4.1. The First Class Payments Inc. has not been informed in a timely manner (7 business days) about changes of any requisites of the Merchant or were submitted wrong requisites.

7.4.2. Third parties do not fulfill or fulfill its obligations in an improper way.





7.5. The Merchant shall indemnify direct and documented damages caused to the First Class Payments Inc. because of any proceedings (civil, criminal or administrative) started due to the Merchant actions or omissions and where First Class Payments Inc. is participating as defendant/codefendant. Mentioned in this Clause damages include: state and other fees, proceedings costs, legal aid costs, costs related to arriving on hearing, costs related to collecting the evidence, as well as costs related to hearing of the case in all court levels (appealing). The Merchant shall indemnify direct and documented damages caused to the First Class Payments Inc. as a result of court ruling stating the First Class Payments Inc. must pay monetary funds the First Class Payments Inc. shall deduct the Reserve Amount from the Transaction Amounts upon entrance of the Transaction Amounts from the International Payment System.

7.6. Under no circumstances, will our liability for our failure of performance under this Agreement exceed the total fees paid to us under this Agreement (net of Card Scheme fees, third party fees, interchange, assessments, and fines) for the six months prior to the time the event giving rise to the liability arose. Under no circumstances shall we be liable to you for any of the following types of loss or damage even if, in each case, you have been advised of the possibility of such loss or damage:

- special, indirect or consequential loss;
- pure economic loss, costs, damages or charges;
- loss of profits or revenue;
- loss of use;
- loss of opportunity, contracts, business or anticipated savings;
- loss of goodwill or damage to reputation; and
- loss or damage arising from loss, damage or corruption of any data.

## **8. CONFIDENTIALITY OF INFORMATION**

8.1. Each of the Parties shall not be entitled to disclose confidential information received in connection to execution of the Agreement without a written consent of the other Parties, except the cases pointed out in Clauses 8.3-8.5.

8.2. Confidential information under this Agreement means information relating to the commercial secret of the Parties: know-how, value of services, any costs, fees, fines, information on the customers (including financial information); data of the Card, Transactions, Transaction Data, Transaction Amount, APM and information on the Cardholder and APM User.

8.3. Confidential information under this Agreement shall not be:

8.3.1. information that becomes publicly available on the date of signing the Agreement or after signing it;

8.3.2. information that is publicly available;

8.3.3. information that was legally received by a Party before signing the Agreement;

8.4. Each of the Parties shall be entitled to disclose confidential information without prior coordination if it is requested by the state institutions or supervising bodies according to the laws obligatory for a certain Party. The Parties shall also be entitled to pass the Transaction Data to the Data Center and the International Payment Systems.



8.5. First Class Payments Inc. is entitled to disclose the information about the Merchant to International Payment Systems according to the Rules and as specified by International Payment Systems.

8.6. Each of the Parties shall be entitled to disclose the fact of signing the Agreement without prior coordination.

8.7. Notwithstanding the foregoing, it will not be a breach of this Agreement for either party to disclose Confidential Information of the other party if required to do so under law or by order of a competent law enforcement or government authority

## **9. DATA PROTECTION**

9.1. Each Party, when acting as data processor (as defined in the EU Data Protection Directive 2016/679, hereinafter the “Data Processor”), shall process personal data in accordance with applicable data protection laws.

9.2. Where one party acts as the data processor (as defined in the EU Data Protection Directive 2016/679, hereinafter the “Data Processor”) of personal data which is processed by the other party as the Data Controller, the Data Processor shall at all times follow the Data Controller’s reasonable instructions with regards to the personal data processed.

9.3. Merchant shall at all times ensure that Merchant have obtained from the Cardholder/APM User all necessary consents with regards to the processing of the Cardholder/APM User’s personal data including, but not limited to, the right to share relevant personal data with First Class Payments Inc., the Cardholder/APM Provider and any other third part involved in the processing of your Transactions and the right to process such personal data in jurisdictions outside the European Economic Area. In any event, if you proceed, such consent shall be assumed existing and any claim regarding data protection, upon your failure to obtain such consent shall burden you, solely.

## **10. FORCE MAJEURE**

10.1. Each Part’ shall be exempted from liability for complete or partial non-execution of obligations, as well as for improper execution of its obligations under the Agreement if such non-execution resulted from Force Majeure that arose after signing the Agreement and that the Party could neither foresee, nor prevent by reasonable measures and that directly influences the ability of the Party to execute its obligations under the Agreement.

10.2. At the commencement and cessation of Force Majeure, the Party for which it became impossible to execute its obligations, shall immediately but not later than 3 (three) business days, inform the other Parties about it which should be confirmed by the certificate issued by the relevant state authority of the Party in force majeure

10.3. If the Part for which it became impossible to execute its obligations has not informed other Parties on these circumstances in time stipulated in Clause 10.2. it may not use Force Majeure as a ground for non-fulfilment of its obligations.

10.4. The Part, for which it became impossible to execute its obligations, shall be entitled not to execute only those obligations that were directly influenced on by Force Majeure. The



obligations free from Force Majeure shall be subject to execution pursuant to the Agreement.

10.5. The Party, for which it became impossible to execute its obligations, shall take all reasonable measures to eliminate Force Majeure and its consequences.

10.6. The Party which reasoned non-execution of its obligations under the Agreement with Force Majeure must prove the fact of presence of Force Majeure.

10.7. In case the circumstances of Force Majeure or their consequences last for more than 20 (twenty) days, the Parties shall undertake to cooperate with the aim to determine new provisions for execution of the obligations under the Agreement. Should written agreement not be reached within the next 5 (five) days, any of the Parties shall be entitled to unilaterally terminate the Agreement having informed the other Party 5 (five) days beforehand.

## **11. SUSPENSION OF SERVICE**

11.1. We may at any time suspend the provision of services to you

- 11.1.1. if any circumstances occur or are likely to occur that would give us the right to terminate or otherwise end this Agreement;
- 11.1.2 you have a negative Merchant Payment Account Balance on any of your Merchant Payment Accounts;
- 11.1.3. you are in breach of this Agreement or the Card Scheme Rules or E-Wallet Rules.

11.2. Any suspension of the service shall be notified to you in advance or, if this is not reasonably possible, as soon as possible after suspending the service.

11.3 If we suspend services to you, you shall be obliged to continue to pay any recurring fees, minimum fees and other fees that are charged on a continuing basis.

11.4. We shall endeavor to lift a suspension as soon as the reasons for its imposition cease to exist and are not likely to reoccur within a time period reasonably determined by us.

## **12. TERMINATION**

12.1. Subject to any agreed minimum term, you may terminate this Agreement at any time without reason by written notice to us.

12.2. Subject to any agreed minimum term, we may terminate this Agreement at any time without reason by written notice to you. Such termination shall be effective 30 (thirty) days after you have received the termination notice.

12.3. Regardless of any agreed minimum term, we may terminate this Agreement by written notice to you at any time immediately or with such notice period as specified by us in the termination notice:

- 12.3.1. you become unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 (as amended);

- 12.3.2. you cease or threaten to cease to carry on the whole or a substantial part of your business;
- 12.3.3. any distress or execution is levied on your property or assets;
- 12.3.4. you make any voluntary arrangement or composition with your creditors;
- 12.3.5. you or your shareholders or principles pass any resolution to wind up (other than for the purpose of a bona fide reconstruction or amalgamation without insolvency) or an order is made for your winding up;
- 12.3.6. you are the subject of a notice of intention to appoint an administrator or of a notice to appoint an administrator or you are the subject of an administration application, become subject to an administration order or have an administrator appointed over you;
- 12.3.7. a receiver or administrative receiver is appointed over all or any of your property or assets;
- 12.3.8. you make an application for a debt relief order or a debt relief order is made in relation to you;
- 12.3.9. you are dissolved or otherwise cease to exist; or
- 12.3.10. the equivalent of any of the events described in clauses 12.3.1 to 12.3.9 occurs in relation to you under the laws of any jurisdiction;
- 12.3.11. if you are undergoing or intend to undergo a material change of your ownership structure; a change is material if it affects the ownership structure you have notified to us in your Application or subsequent information update;
- 12.3.12. you are in material breach of this Agreement;
- 12.3.13. you are otherwise in breach of this Agreement and failed to remedy such breach within 10 working days of our notice to you that you are in breach of this Agreement;

12.4. For the purpose of clause 12.3.12, but without limiting the generality of its application, a material breach shall be deemed to exist if:

- 12.4.1. you are in breach of any representation or warranty given in clause 18 or otherwise;
- 12.4.2. you fail to provide us with any required security;
- 12.4.3. you are in breach of any Card Scheme Rules and such breach may result in the imposition of a fine or penalty or may adversely affect or standing with any Card Scheme;
- 12.4.4. you are in repeated breach of this Agreement or any Card Scheme Rule; or you are in breach of any applicable law.

### **13. CHANGE OF TERMS AND CONDITIONS**

13.1. This Agreement is subject to change from time to time. Changes may be made by mutual agreement between the parties or by notice from us to you under the following procedure:

13.2. We shall give you notice of any proposed change to this Agreement (a "Change Notice").

13.3. The proposed change shall come into effect automatically two weeks after receipt of the Change Notice unless you give written notice to us that you object to the proposed



changes in which case we shall treat your objection as a termination notice terminating this Agreement on the date the changes would have come into effect.

13.4. We may stipulate in a Change Notice a different time period for the coming into effect of any change provided. Such a time period cannot go beyond the time period specified in p. 13.3.

13.5. If no objection notice is received by us within the stipulated time frame, you are deemed to have accepted the change.

13.6. You have the right to terminate this Agreement with immediate effect at any time before the change becomes effective.

## **14. TAXES**

14.1. It is your responsibility to determine which, if any, taxes apply to any payments received by you for any Transaction and to report and remit the correct tax to the appropriate tax authority. We are not obliged to determine whether taxes apply and are not responsible to collect, report or remit any taxes arising from any Transaction.

14.2. The provision of financial services in the European Union is currently exempt from Value Added Tax ("VAT"). Should VAT become chargeable on any of our services, we shall be entitled to charge VAT in addition to the fees for these chargeable services.

14.3. Where our services do not constitute VAT exempt services, the fees quoted in this Agreement are exclusive of VAT and VAT shall be charged in addition to such fees.