



# **Online Payment Terms**

**Australia**

15 September 2021

## ONLINE PAYMENT TERMS AUSTRALIA

### 1. THESE TERMS

- 1.1. These Online Payment Terms (these '**Terms**') govern the provision of the Services by Airwallex Pty Ltd ABN 37 609 653 312 ('**Airwallex**', '**us**', '**our**' or '**we**') to the entity or person ('**you**', '**your**', or '**Merchant**') identified in the Customer Details. Airwallex and Merchant are each a '**Party**' and together the '**Parties**'.
- 1.2. If you receive Services from any additional party, we will provide you with details of those additional parties. The entities providing Services as referred to above as we make known to you will be deemed to be a party to these Terms.
- 1.3. You must not access or use the Services unless you agree to abide by all of the terms and conditions in these Terms including any Additional Terms. You must agree to the Payout and FX Terms prior to us being obliged to provide you with the Services under these Terms.
- 1.4. The Parties agree that the Master Services Agreement (if applicable), the Schedules to these Terms, any Additional Terms and other terms referenced in these Terms are incorporated into and form part of these Terms, in each case, as may be amended, varied, supplemented, modified or novated from time to time.
- 1.5. Please read the following additional documents which also apply to your use of the Airwallex Platform and Services and should be read together with these Terms:
  - (a) [Acceptable Use Policy](#);
  - (b) [Privacy Policy](#);
  - (c) [Electronic Communications Consent](#);
  - (d) [Identity Verification Terms](#); and
  - (e) Product Documentation.

For the avoidance of doubt, unless the contrary intention is expressed elsewhere, the above documents do not form part of these Terms.

- 1.6. Capitalised terms that are not otherwise defined in these Terms have the meanings given in **Schedule 1 (Definitions)**.
- 1.7. These Terms shall take effect from the Commencement Date unless and until terminated by either Party in accordance with clause 19.
- 1.8. During the term of these Terms, we will provide a copy of these Terms to you upon request.

### 2. WHO AIRWALLEX IS AND HOW TO CONTACT US

- 2.1. **Our company information.** The Services are offered by Airwallex Pty Ltd, which has its office at Level 7, 15 William Street, Melbourne, Victoria 3000. We may provide the Services either directly or via one or more of our Group Companies or service providers.
- 2.2. **How to contact us.** You can contact us by:
  - (a) emailing us at: support@airwallex.com;
  - (b) sending mail to us at: Level 7, 15 William Street, Melbourne, Victoria 3000; or

(c) sending us a message through the contact links on our website at [www.airwallex.com](http://www.airwallex.com).

- 2.3. **How we will contact you.** We will contact you using the contact details you provided when you registered – please keep these up to date. By using our Services, you agree to receive electronic communications from us. If we have reasonable concerns either about the security of your Airwallex Profile, or any suspected or actual fraudulent use of your Airwallex Profile or its associated accounts, we will contact you via telephone, email, or both (unless contacting you would be unlawful or compromise our reasonable security measures).

### 3. GETTING STARTED

- 3.1. You may access the Airwallex Platform through Airwallex APIs as well as the Webapp. However, in order to use our Services through the Airwallex APIs, you must first be approved by us. If you are approved by us, you will need to comply with our Product Documentation and reasonable directions regarding the integration and use of the Airwallex APIs.
- 3.2. You warrant and represent that you are not using the Services for the purposes of household, domestic or personal use and you hereby acknowledge and agree that you may not continue to use the Services if you use the Services for household, domestic or personal use at any time.
- 3.3. You may appoint an ‘**Authorised User**’ (for example, any of your directors, officers, employees or professional advisors) to access information about the Services under these Terms. You must set up each Authorised User with a User Profile and promptly provide us with the following details of any of your proposed Authorised Users: full name, address and billing address, phone and email address of, and any other contact or identification information of the Authorised User that we may reasonably require. You must inform us promptly if any details previously provided about an Authorised User changes or is incorrect. You will ensure that your Authorised Users comply with these Terms and in respect of your obligations and liabilities under these Terms and for such purposes any references to ‘you’ shall (where the context requires) be read as including your Authorised Users.
- 3.4. You may setup your Authorised Users to have different levels of authority by following the relevant prompts on the Airwallex Platform.
- 3.5. You agree that:
- (a) your Authorised Users have the authority to provide instructions to us for the provision of Services on your behalf;
  - (b) we may rely on instructions given by the Authorised User, and you will be bound by the actions of your Authorised Users, until you provide us with written notice withdrawing or otherwise varying the authority of an Authorised User;
  - (c) we may refuse access to your Authorised User(s) if we are concerned about unauthorised or fraudulent access; and
  - (d) you will promptly report to us any infringements or unauthorised access to the Airwallex Platform, including through the Webapp or Airwallex APIs.

### 4. DUE DILIGENCE INFORMATION

- 4.1. You shall provide Airwallex with the following information (the ‘**Due Diligence Information**’) in the form specified by Airwallex:
- (a) if applicable, copies of your constitutional documents;
  - (b) description of your basic business operations;
  - (c) your enterprise email address;

- (d) information on your legal and beneficial owners (if applicable);
  - (e) business names (both your legal and trading names);
  - (f) merchant category code;
  - (g) URL of your online sites;
  - (h) your shipping address;
  - (i) financial statements and information relating to your financial standing; and
  - (j) any other information we may reasonably request.
- 4.2. You shall provide Airwallex with any other relevant information (including but not limited to Personal Data of your directors and beneficial owners) upon Airwallex's reasonable request from time to time (including, but not limited, to when Airwallex carries out annual or such other periodic reviews of your business and account with Airwallex).
- 4.3. You shall notify Airwallex of any changes to the Due Diligence Information in a timely manner as soon as reasonably practicable following such change.
- 4.4. The Parties agree that failure to comply with clauses 4.1, 4.2 and 4.3 will be a material breach of these Terms by Merchant.

## 5. SERVICES

- 5.1. Under these Terms, Airwallex shall provide you with the following services (each a **'Service'** and together the **'Services'**):
- (a) the **'Payment Processing Service'** which is the processing and transmission by Airwallex of Authorisation Requests, Capture Requests and Transaction Data between you and Buyer and/or between you and a Payment Method Provider or other payment service provider that connects us to Networks and the subsequent collection and settlement by Airwallex of resulting Payments to Merchant; and
  - (b) any **'Additional Services'** being the Gateway Services, Fraud Control Service, Encryption Service or any other Additional Services that you have requested and that we have agreed to provide to you under these Terms.
- 5.2. If the Merchant uses a Hosted Checkout Page for the Services, Airwallex may allow the Merchant to customise the appearance of the Hosted Checkout Page if Airwallex so permits. The Merchant shall be responsible for any costs of such customisation.
- 5.3. Subject to clauses 5.4 and 5.5, you may use the Services from the Commencement Date.
- 5.4. You hereby acknowledge and agree on an on-going basis that you may not use the Services unless and until you have provided all the information we request from you in accordance with clause 4.1, You agree that, where we make a request for information in accordance with clause 4.2 you will cease to use the Services until you have provided the requested information to us and we have confirmed in writing that you may use the Services again.
- 5.5. You hereby acknowledge and agree that you must only use the Services in accordance with the Acceptable Use Policy issued by us from time to time applicable to Australia (which is available on our website at [www.airwallex.com](http://www.airwallex.com)) and that you may not use the Services in respect of Prohibited Transactions.
- 5.6. You hereby acknowledge and agree that you must immediately cease using the Services if we notify that, acting reasonably, we determine that you have breached the Acceptable Use Policy. We may

terminate these Terms or any Services with immediate effect pursuant to clause 19.5 if you have violated the Acceptable User Policy.

- 5.7. You hereby acknowledge and agree that your Transaction may not be processed if it exceeds your Transaction Limit. Unless we otherwise agree in writing with you, you acknowledge that we may set your Transaction Limit and change it based on our internal policies and procedures and/or Network Rules from time to time.
- 5.8. Where clause 5.7 applies, we may require you to enter into an Acquiring Agreement with us and an Acquirer before you may access the Services again.
- 5.9. You hereby acknowledge and agree that we are not obliged to provide any Service or continue to provide any Service if we reasonably believe this would result in a failure to comply with any Applicable Law, Sanctions Law or the Network Rules.

## **6. SERVICE FEES**

- 6.1. Airwallex shall provide you with the Services in accordance with Applicable Law and the Network Rules in return for the Service Fees.
- 6.2. The Parties agree that the Service Fees are immediately payable by you upon receipt of the relevant Service.
- 6.3. Unless stated otherwise, all Service Fees, charges and other payments to be made by you under these Terms are exclusive of GST and any other applicable Taxes under any Applicable Law or governmental decree, for which you shall also be liable. Any Tax payable in respect of the Services provided or payments made under these Terms (other than Tax payable on our net income, profits or gains) will be payable by you.
- 6.4. Where we do not settle funds to you net of any amounts owed by you to us (as referred to in clause 7.4), while all sums are due immediately, they will be payable in accordance with the terms of any invoice issued by us to you.
- 6.5. We may from time to time vary the Service Fees and/or introduce new charges in addition to the Service Fees, in accordance with clause 23. In addition, if the issuer of the Cards, Local Payment Methods and the Networks respectively increase their fees or charges (including any interchange fees and/or scheme fees), these fees or charges will be added to the Service Fees payable by you to us.

## **7. SETTLEMENT**

- 7.1. After we have value dated a Transaction, subject to clauses 7.4 to 7.10, Airwallex will instruct payment of the Net Settlement Amount to Merchant on the later of the following:
  - (a) without undue delay following receipt of cleared funds from the Payment Method Provider;
  - (b) at the expiry of the interval/period as reasonably determined by Airwallex or as otherwise agreed between the parties in writing; and
  - (c) the expiry of any period of deferment pursuant to clause 7.5 in respect of the relevant Transactions.
- 7.2. We shall, at our discretion, make the Settlement Payment to the Merchant by:
  - (a) initiating a bank transfer of the Net Settlement Amount to the Merchant Bank Account; or
  - (b) by crediting the Net Settlement Amount to a Global Account,

in the Settlement Currency. The Customer agrees that a nominated Global Account will be used as the default method in which a Settlement Payment will be made, unless otherwise agreed in writing by the Parties.

- 7.3. We may deduct the Permissible Deductions from the Aggregate Payment Amount. The Parties agree that the '**Net Settlement Amount**' shall therefore be an amount equal to the Aggregate Payment Amount after any Permissible Deductions.
- 7.4. The Permissible Deductions referred to in clause 7.3 are:
- (a) Service Fees;
  - (b) Refunds;
  - (c) Refund Fees;
  - (d) Chargebacks;
  - (e) Chargeback Fees;
  - (f) Chargeback Costs;
  - (g) Assessments;
  - (h) additional Reserve amounts;
  - (i) Claims; and
  - (j) any other charges or amounts due and payable from you to us or our Affiliates under these Terms or otherwise.
- 7.5. In addition to our rights under clauses 7.3 and 7.4, we may defer all or part of your Settlement Payment(s):
- (a) if, following any deductions pursuant to clause 7.3, such amount is less than the minimum Settlement Payment threshold that we reasonably determine in our sole and absolute discretion (of which we will notify you from time to time), until the total Net Settlement Amount payable reaches that threshold;
  - (b) where we reasonably believe that a Transaction (including activity which would otherwise have constituted a Transaction) may be fraudulent or involves other criminal activity, until the satisfactory completion of our investigation and/or that of any Regulator, Network or Local Payment Provider or any other third party; or
  - (c) without limit in amount or time, if we become aware or reasonably believe that you are in breach of or likely to be in breach of your obligations under these Terms.
- 7.6. Airwallex shall make available for download each day by Merchant a list of all the recorded Transactions during the immediately preceding day for which Payments have been received (the '**Transaction List**'). The Transaction List shall set out our determination of the Aggregate Payment Amount and the Net Settlement Amount and in the absence of manifest error or valid dispute by the Merchant shall be final and binding on Merchant in relation to such amounts.
- 7.7. We may suspend the processing of all or any Transactions, Refunds, Chargebacks or Claims where we have the ability or are obligated to do so and where we reasonably believe that a Transaction, Refund, Chargeback or Claim (including activity which would otherwise have constituted a Transaction, Refund, Chargeback or Claim) may be fraudulent or involves any criminal activity, until the satisfactory completion of our investigation and/or that of any Regulator, Network or Local Payment Provider, or any other third party.

- 7.8. In the event that we exercise our rights under this clause 7 we shall notify you of any such action and the reasons for it, unless we are prohibited from doing so under Applicable Law. Subject to reasonable security measures and Applicable Law, we will notify you before any suspension of processing under clause 7.7 if we are able to do so, or otherwise immediately after such suspension.
- 7.9. Settlement Payments shall be paid in the Settlement Currency unless agreed otherwise in writing by you and us from time to time. Where we apply a currency conversion, we shall use our prevailing exchange rate of the day determined by us or such other rate as we may agree in writing.
- 7.10. In addition to the foregoing, we may, in our sole discretion, impose a Reserve on all or a portion of your Settlement Payment. If we impose a Reserve, we will provide you with a notice specifying the terms of the Reserve. The terms of this notice may require:
- (a) that a certain percentage of your Settlement Payment is held for a certain period of time;
  - (b) that a fixed amount of your Settlement Payment is withheld and shall not be paid to you in accordance with clause 7.2; or
  - (c) such other restrictions that we determine are necessary to protect against the risk to us associated with our business relationship.

We may impose a Reserve immediately and provide you with the notice after we have imposed the Reserve in circumstances where we reasonably determine such as to mitigate our financial exposure. We may change the terms of the Reserve at any time by providing you with notice of the new terms.

- 7.11. Settlement Payments subject to a Reserve are not immediately available for payment to your Merchant Bank Account or Global Account (as applicable) for making Refunds. Other restrictions described in clause 7.10(c) above may include:
- (a) limiting Settlement Payments immediately available to you;
  - (b) changing the speed or method of making Settlement Payments to you;
  - (c) setting off any amounts owed by you against your Settlement Payments and/or requiring that you, or a person associated with you, enter into other forms of security arrangements with us (for example, by providing a guarantee or requiring you to deposit funds with us as security for your obligations to us or third parties).
- 7.12. We may hold a Reserve as long as we deem necessary, in our sole and absolute discretion, to mitigate any risks related to your Transactions. You agree that you will remain liable for all obligations related to your Transactions even after the release of any Reserve. In addition, we may require you to keep your Merchant Bank Account or Global Account or other accounts with Airwallex available for any open settlements, Chargebacks and other adjustments.
- 7.13. To secure your performance of these Terms, you grant to Airwallex a security interest (in the form of a charge) to any Settlement Payments held in Reserve.

## **8. YOUR OBLIGATIONS**

- 8.1. You shall at all times comply with:
- (a) the provisions of these Terms;
  - (b) the Network Rules;
  - (c) Applicable Law; and
  - (d) Sanctions Law.

- 8.2. You acknowledge and agree that you (and your agents, sub-contractors or any third parties used by you) shall abide by any data security standards of the Payment Card Industry Security Standards Council (or any replacement body notified to you by us) and the Networks and Local Payment Method Providers including the PCI SSC Standards.
- 8.3. You agree to pay us the Service Fees for administering the system through which you report your compliance status with PCI SSC Standards or its equivalent to the Networks or Local Payment Providers ('**PCI SSC Service**'), and a PCI SSC Standards non-compliance fee or its equivalent (specified in the Fee Schedule) for each month in which you are not compliant with the PCI SSC Standards or its equivalent issued by the Networks or Local Payment Provider.
- 8.4. You shall:
- (a) only accept Payments from and/or make Refunds to Buyers in connection with goods and/or services which you have sold and supplied as principal to those Buyers, and only pay such Refunds to the Buyer using the Payment Method used by the Buyer for the original Transaction;
  - (b) only accept Payments and/or make Refunds in respect of goods and/or services the sale and supply of which commonly falls within your business as identified to us. You acknowledge that we may amend the MID assigned to you as required;
  - (c) notify us in writing before you make any change to the nature of the goods and/or services the sale and supply of which fall within your business as identified to us;
  - (d) only accept Payments and submit Transaction Data to us in respect of Transactions which a Buyer has authorised in accordance with Applicable Law, the Network Rules and any other information or instructions provided or made available by us to you from time to time, and shall not knowingly submit any Transaction Data to us in respect of Transactions that is illegal or that you should have known was illegal;
  - (e) ensure that you prominently and unequivocally inform Buyers of your identity at all points of interaction with a Buyer (including prominently displaying your company name and any trading name on any website through which you conduct Transactions), so that the Buyer can readily identify you as the counterparty to the relevant Transaction;
  - (f) only submit Transaction Data to us directly from your own staff or systems, or via a third party product which has been approved by us in advance in writing;
  - (g) provide Buyers with details of your goods and services, terms and conditions and complaints procedure and customer service contact point which shall be accessible by e-mail and/or telephone in the local language;
  - (h) have proper data protection policy and obtain consents or permissions from Buyers or other users for the sharing and processing of any relevant data with us, Network, Payment Method Provider or Regulator in accordance with Applicable Laws; and
  - (i) refrain from doing anything which we reasonably believe to be disreputable or capable of damaging the reputation or goodwill of us, our Affiliates, Networks or Local Payment Provider.

## **9. SANCTIONS LAW AND PREVENTION OF BRIBERY**

- 9.1. You undertake that you are not, and will procure that none of your directors, officers, agents, employees or persons acting on behalf of the foregoing is, a Sanctioned Person and do not act directly or indirectly on behalf of a Sanctioned Person.
- 9.2. You warrant and represent that neither you nor any of your directors, officers, agents, employees or persons acting on behalf of the foregoing has:



- (a) committed a Prohibited Act;
- (b) to the best of your knowledge, been or is the subject of any investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or
- (c) has been or is listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts on the grounds of a Prohibited Act.

9.3. If you become aware of any suspected breach of clause 9.1 or clause 9.2 or have reason to believe that such a breach may occur, you shall, to the extent permitted by Sanctions Laws and Applicable Law, notify us immediately.

## **10. RECURRING TRANSACTIONS**

10.1. You hereby acknowledge and agree that you may only accept Recurring Transactions if we have agreed with you in writing that you may do so. You acknowledge that Recurring Transaction may only be permitted or possible with respect to certain Payment Methods.

10.2. Subject to clause 10.1, in respect of Recurring Transactions you shall:

- (a) obtain a Recurring Transaction Authority from the Buyer;
- (b) confirm to the Buyer within two (2) Business Days of the date of the Recurring Transaction Authority that the Recurring Transaction Authority has been established;
- (c) notify the Buyer via the agreed method of communication at least seven (7) Business Days prior to a Recurring Transaction payment being charged to the Buyer's Payment Method whether: (i) the payment amount or payment date has changed; (ii) the payment date has changed; (iii) more than six (6) months have elapsed since the last Recurring Transaction payment; or (iv) any trial period, special offer or promotion has expired; or as otherwise required in accordance with the applicable Network Rules;
- (d) not effect (or attempt to effect) a Transaction under the Recurring Transaction Authority once the Recurring Transaction Authority has expired, or once the Buyer has notified you that the it wishes to cancel the Recurring Transaction Authority;
- (e) securely retain the Recurring Transaction Authority for at least a period of eighteen (18) months after the date of the final Transaction effected under it; and
- (f) provide us with copies of any Recurring Transaction Authority on demand.

## **11. REFUNDS**

11.1. You shall maintain and disclose to Buyers at the time of purchase a policy for the return of goods or cancellation of services. You shall not give a cash refund to a Buyer for a payment made using a Card or Local Payment Method, unless required by Applicable Law, nor accept cash or other compensation for making a refund to a Card or Local Payment Method.

11.2. The form and procedure for making Refunds shall depend on the relevant Payment Method. A Refund only arises in circumstances where there is an originating Transaction which is being reversed or partially reversed. We will not be able to process any Refund request if (i) the amount of the Refund exceeds the amount of the originating Transaction or (ii) you do not have a sufficient balance in your Aggregate Payment Amount or sufficient funds in your account with Airwallex. We shall be authorised to deduct the Refund from your Aggregate Payment Amount and the funds in your account with Airwallex.

- 11.3. A Refund request may be processed only if it is made within one (1) year from or such shorter period as determined by the Network or Payment Method Provider from the date of the originating Transaction.
- 11.4. We may refuse to execute a Refund if it does not meet the conditions in these Terms or is prohibited by Applicable Law or Sanctions Laws. If we do refuse to execute a Refund, within the time for processing the Refund we will notify you (i) (unless prohibited by Applicable Law or Sanction Laws) of the refusal, (ii) (if possible) the reasons for such refusal, and (iii) (where it is possible to provide reasons for the refusal and those reasons relate to factual matters) the procedure for correcting any factual mistakes that led to it. Any request for a Refund that we refuse will be deemed not to have been received for the purposes of execution times and liability for non-execution or defective execution under Applicable Law.
- 11.5. Where we execute a Transaction or Refund in accordance with details provided by you, the Transaction or Refund will be deemed to have been correctly executed by us and any other payment service provider involved. Where the details provided by you are incorrect, we are not liable for the non-execution or defective execution of the Transaction or Refund, but we will make reasonable efforts to recover the funds involved in such a Transaction or Refund and we may charge you for any such efforts.
- 11.6. We will apply a Refund Fee as set forth in the Fee Schedule to any Refunds that are requested even where the Refund is not actually processed. You acknowledge that Refunds may not be processed by us where you have insufficient funds in the relevant currency.
- 11.7. You agree that each Refund Fee represents a debt immediately due and payable by you to us.

## **12. CHARGEBACKS**

- 12.1. You agree that each Chargeback and each Assessment represents a debt immediately due and payable by you to us.
- 12.2. You acknowledge and agree that you are required to reimburse us for Chargebacks in circumstances where you have accepted payment in respect of the relevant Transaction, even if you are under no legal liability in respect of the supply of the goods or services concerned. To the extent permitted by Applicable Law, we shall notify you as soon as reasonably practicable of any applicable Chargebacks and Chargeback Costs which have occurred or been incurred.
- 12.3. Any Chargebacks for which you are required to reimburse us shall correspond to the whole or part of the Transaction Value in the currency of the original Transaction. Unless you have an account with us in the currency in which the Chargeback is charged, the Chargeback amount may be converted to the Settlement Currency from the currency of Chargeback at the exchange rate quoted to us or as we otherwise determine.
- 12.4. In the event that you wish to dispute a Chargeback, it is your responsibility:
- (a) to prove to our reasonable satisfaction (which shall, subject to clause 12.5 and without limitation, be conditional upon the relevant Network or Local Payment Provider, as the case may be, confirming it is satisfied) that the debit of the Buyer's account was authorised by such Buyer; and
  - (b) (additionally) to provide us with such other evidence as we or any Network or Local Payment Provider may require you to provide in support of your claim. The evidence required to be provided will depend on, among other things, the nature of the Chargeback, and may vary accordingly.
- 12.5. Subject to the Network Rules, we shall not be obliged to investigate the validity of any Chargeback or Assessment. You acknowledge and agree that any decision or determination of the relevant Network or Local Payment Provider as to the validity and extent of any Chargeback and/or Assessment shall be final and binding.

- 12.6. As Chargebacks may arise a considerable period of time after the date of the relevant Transaction, you acknowledge and agree that, notwithstanding any termination of these Terms for whatever reason, we shall remain, without prejudice to clause 7, entitled to recover Chargebacks and Chargeback Costs from you (and, where relevant, from any Person who has provided us with a guarantee or security relating to your obligations under these Terms) in respect of all Chargebacks that occur in relation to Transactions effected during the term of these Terms.
- 12.7. If you wish to dispute a Chargeback or Assessment, you will do so in accordance with the applicable procedure set out in the Network Rules. In the case of a disputed Chargeback or Assessment, you must provide us within any specified timeframe with the evidence required by us, the Network or the Local Payment Provider.
- 12.8. We will apply a Chargeback Fee as set forth in the Fee Schedule to any Chargeback.
- 12.9. We may suspend all or part of the Services if the ratio of Chargebacks to Transactions is excessive or we otherwise consider, in our sole and absolute discretion, that the total volume or value of Chargebacks is excessive.

### **13. INFORMATION REQUEST & PERIODIC REVIEWS**

- 13.1. If we request any transaction data or proof of a Transaction, you shall provide the original receipts and relevant Transaction records to us via e-mail within two (2) Business Days after the receipt of our request.
- 13.2. You shall assist us and any Payment Method Provider in handling properly all complaints from Buyers on the relevant Payment Method, and shall implement suggestions put forward by us or the Payment Method Provider.
- 13.3. You shall, at your own expense, cooperate with us, Network, Payment Method Provider or Regulator regarding any investigation, enquiry or proceedings and provide any information or records as reasonably requested by the relevant party.
- 13.4. Airwallex may carry out a periodic review of your use of the Services once during each calendar year, or at any time if Airwallex determines that:
- (a) the Transaction Mix figures differ from the Transaction Mix figures you previously provided to Airwallex; or
  - (b) the Transaction Mix figures that Airwallex used to calculate any Service Fee.

If the actual or projected Transaction Mix materially differ from previous Transaction Mix, then Airwallex may revise the Service Fees based on the then current or projected Transaction Mix (as reasonably determined by Airwallex) by giving you thirty (30) days' written notice. If you do not accept the revised Service Fees within that timeframe, you must terminate this Agreement by giving thirty (30) days' written notice to Airwallex, otherwise those revised Service Fees will become binding on you under these Terms (unless you and Airwallex otherwise agree in writing).

- 13.5. You must promptly provide us with any information reasonably requested by Airwallex in relation to any periodic review carried out under these Terms.

### **14. FOREIGN CURRENCY & CURRENCY CONVERSIONS**

- 14.1. **Settlement Currency.** As and where supported by the relevant Payment Method Providers, Airwallex will process Transactions and pay Settlement Payments to you in the Settlement Currency. You acknowledge that Airwallex is not obliged to process any Transaction, or settle a Settlement Payment to you, in a currency that is not a Supported Currency.
- 14.2. **Pricing structure for Card Transactions.** You acknowledge that we may agree on a 'blended' pricing structure or an 'Interchange++' pricing structure with you in respect of Card Transactions. For the

'blended' pricing structure, you acknowledge that the underlying interchange and scheme fees component of the Service Fees for Card Transactions is calculated by Airwallex based on the Transaction Mix figures that you report to Airwallex from time to time, as required under these Terms. Under the 'Interchange++' pricing structure, you acknowledge that Airwallex calculates the underlying interchange and scheme fees component of the Service Fees for Card Transactions based on the actual interchange fee that is attracted by the relevant Transaction, according to interchange pricing published (and varied) by the Card Networks from time to time.

- 14.3. **Foreign Currency Settlement Fee.** Subject to clause 14.5, if the Transaction currency is in any other currency other than Australian dollars, and we pay the Settlement Payment to you in that other currency, then Airwallex will charge you a Foreign Currency Settlement Fee on the Transaction Value. For example, if the Transaction is in USD and we settle USD to you, we will charge you a Foreign Currency Settlement Fee.
- 14.4. **FX Conversion Fee.** Subject to clause 14.5, if we pay the Settlement Payment to you in a Settlement Currency that is different from the Transaction currency, then Airwallex will charge you a FX Conversion Fee on the Transaction Value. For example, if the Transaction is in USD and we settle AUD to you, we will charge you a FX Conversion Fee.
- 14.5. **Applicability of Foreign Currency Settlement Fee and FX Conversion Fee.** The Parties acknowledge and agree that:
- (a) the Foreign Currency Settlement Fee and the FX Conversion Fee will apply in respect of all Card Transactions unless an 'Interchange++' pricing structure has been agreed with you in writing in respect of Card Transactions, in which case only the FX Conversion Fee will be applicable to such transactions; and
  - (b) the Foreign Currency Settlement Fee is not applicable to LPM Transactions.
- 14.6. **Currency conversions by Airwallex and Payment Method Providers.** You acknowledge and agree that:
- (a) a Payment Method Provider may convert the Transaction currency into another currency before it is received by Airwallex using the prevailing exchange rate(s) determined by the Payment Method Provider; and
  - (b) Airwallex may convert the Transaction currency or, if applicable, the currency received from a Payment Method Provider under clause 14.6(a), using the prevailing exchange rate determined by Airwallex into the Settlement Currency before making a Settlement Payment to you.

In relation to certain Transactions in currencies not directly supported by Airwallex, more than one currency conversion may be required under this clause 14.6 to convert a Transaction currency to the Settlement Currency. For example, if a Transaction is made via a Payment Method Provider in an exotic currency that Airwallex does not directly support, that Payment Method Provider may convert and settle the relevant Transaction currency in USD to Airwallex and, if your Settlement Currency is AUD, Airwallex may convert that USD amount to AUD and pay it to you as the Settlement Payment.

- 14.7. **Supported Currency changes.** Without limiting any of our rights under these Terms, Airwallex may add, restrict or remove any Supported Currency from time to time during the Term and, without limiting the foregoing, a Payment Method Provider may add, restrict or remove a currency they support from time to time.
- 14.8. **Buyer warnings.** You are solely responsible for giving any notices, warnings or disclaimers regarding prices and other amounts displayed to a Buyer when making a proposed Transaction (whether the Transaction is to be in Australian Dollars or any other currency) including, but not limited to, warning

a Buyer that they may be charged foreign currency fees by their card issuer and providing any other warnings required by Applicable Law in relation to a Transaction involving a foreign currency.

## **15. REPRESENTATIONS AND WARRANTIES**

15.1. Each Party makes each of the following representations and warranties to the other Party, and acknowledges that such other Party is relying on these representations and warranties in entering into these Terms:

- (a) it is an independent corporation duly organised, validly existing and in good standing under the laws of jurisdiction of its incorporation;
- (b) it is properly registered to do business in all jurisdictions in which it carries on business;
- (c) it has all licences, regulatory approvals, permits and powers legally required to conduct its business in each jurisdiction in which it carries on business;
- (d) it has the corporate power, authority and legal right to execute and perform these Terms and to carry out the transactions and its obligations contemplated by these Terms;
- (e) these Terms shall constitute valid and binding obligations on the Party, enforceable in accordance with its terms. Except as otherwise stated in these Terms, no approval or consent of any person or government department or agency is legally or contractually required to be obtained by the Party in order to enter into these Terms and perform its obligations;
- (f) neither (a) the entry into of these Terms, nor (b) the performance by the Party of these Terms will (i) conflict with the certificate of incorporation or by-laws or any other corporate or constitutional document of the Party or (ii) breach any material obligations of the Party under any contract to which it is a party or (ii) violate any Applicable Law to a material extent; and
- (g) there is no litigation, proceeding or investigation of any nature pending or, to the Party's knowledge, threatened against or affecting the Party or any of its Affiliates, which would reasonably be expected to have a material adverse effect on its ability to perform its obligations under these Terms.

15.2. You warrant and represent that you have a permanent establishment and/or business registration in the Territory and that you will only use the Services from the Territory.

15.3. You must obtain any necessary authorisations from Data Subjects for the required transfers of information within the scope of the Services. You are responsible for the legally compliant collection and transmission of information (in particular Personal Data) to Airwallex.

## **16. DATA PRIVACY**

16.1. Your use of the Services is subject to our Privacy Policy, which you agree to by entering into these Terms, and consent to the collection, use, disclosure, processing, management and transfer of Personal Data in accordance therewith.

16.2. When using the Services, you or any third party authorised by you may submit content to Airwallex. Any collection, use or processing of information by us shall be restricted to the purposes necessary for, or incidental to, the provision of the Services pursuant to these Terms unless your prior consent is obtained.

16.3. If you receive any complaint, notice or communication from the Office of the Australian Information Commissioner or other Regulator for Personal Data which relates directly to (i) our processing of Personal Data; or (ii) a potential failure by us to comply with the *Privacy Act 1988* (Cth) or similar Applicable Law in respect of your or our activities under or in connection with these Terms (a '**Data Complaint**') you shall, to the extent permitted by Applicable Law, promptly notify us of the Data Complaint and provide us any information we request in relation to such a Data Complaint.

- 16.4. You acknowledge and agree that we may disclose Transaction Data or Personal Data to the Office of the Australian Information Commissioner for Personal Data, any law enforcement authority or Regulator in accordance with Applicable Law.

## **17. INTELLECTUAL PROPERTY RIGHTS**

- 17.1. We grant you a personal, revocable, non-transferable, non-sublicensable and non-exclusive licence to access and use the Airwallex Platform via any supported web browser for the management of our Services, provided you comply with these Terms.
- 17.2. We own all Intellectual Property Rights in and to the Airwallex Platform and its proprietary technology, including its software (in source and object forms), algorithms, user interface designs, architecture, and documentation (both printed and electronic), and network designs, and including any modifications, improvements, and derivative work thereof. These Terms do not transfer from Airwallex to you any ownership rights in the Airwallex Platform, and its proprietary technology.
- 17.3. You do not have any right to our Services, including the Airwallex Platform, other than the right to use them in accordance with the licence granted in clause 17.1. Except as allowed by Applicable Law or by Airwallex, you cannot use, distribute, reproduce, modify, copy, adapt, translate, create derivative works from, transfer, loan, rent, sublicense, sell, frame or otherwise re-publish or redistribute, publicly perform or publicly display any part of our Airwallex Platform, Services, or included software. You will not allow any unauthorised person to access or use the Airwallex Platform, or trade on the Airwallex Platform for speculative purposes. Except as expressly permitted by Applicable Law (but not otherwise), you also cannot reverse engineer, decompile, disassemble or attempt to extract the source code of the Airwallex Platform or software.
- 17.4. You grant Airwallex a royalty-free, non-exclusive, irrevocable, transferable and sub-licensable licence to any Group Company, third party supplier and outsourcer, to use your Customer Data and Transaction Data, for the purposes of operating the Airwallex Platform, providing the Services, and fulfilling Airwallex's rights and discharging its obligations under these Terms. You are solely responsible for the quality, accuracy, and completeness of any Customer Data and Transaction Data transmitted via the Airwallex Platform.
- 17.5. You will not use our Services, including the Airwallex Platform, in any way that infringes or violates our or anyone else's copyright, trade mark or other intellectual property rights or otherwise breaks any Applicable Law. The Airwallex Platform may display content that we do not own, and we are not responsible for. You may not use content from any of our Services, including the Airwallex Platform, unless you get permission beforehand from us or the owner of the content, or you are permitted by law.
- 17.6. If a third party alleges that the authorised use of the Airwallex Platform as permitted by these Terms infringes any Intellectual Property Rights, then Airwallex will:
- (a) at its own expense defend you or, at Airwallex's option, settle any Claim brought against you and will be responsible for any reasonable losses, damages, costs (including reasonable legal fees) and expenses incurred by or awarded against you as a result of or in connection with any such Claim, and clauses 17.2 to 17.4 will apply accordingly; and
  - (b) if the quiet enjoyment of the Airwallex Platform is prevented, Airwallex will as soon as reasonably practicable secure the right for you to continue using the Airwallex Platform or replace or modify the Airwallex Platform to make it non-infringing (without degrading its performance or quality).
- 17.7. Clause 17.6 will not apply where the Claim is attributable to:
- (a) any Customer Data;
  - (b) any modification of the Airwallex Platform, other than by or on behalf of Airwallex;

- (c) your possession or use of the Airwallex Platform (or any part of it): (i) other than in accordance with these Terms; or (ii) in combination with any other products, services, or materials if the Airwallex Platform would not be infringing without such combination;
  - (d) use of a non-current release of the Airwallex Platform; or
  - (e) compliance with your specifications or instructions.
- 17.8. You agree that we may include and use your company name, logos, trade name, trademarks and general business information in our promotional and marketing materials for our Services and on our website. You may at any time and upon reasonable notice request in writing that we stop using your company name, logos, trade name, trademarks and general business information for these purposes.

## **18. CONFIDENTIALITY**

- 18.1. The Parties agree that they shall:
- (a) treat as confidential all Confidential Information obtained from the other Parties under these Terms;
  - (b) use the other Parties' Confidential Information solely for the specific purposes for which it was disclosed;
  - (c) not publish or otherwise disclose to any person the other Parties' Confidential Information without the owner's prior written consent; and
  - (d) take all action reasonably necessary to secure the other Parties' Confidential Information against theft, loss or unauthorised disclosure.
- 18.2. Each Party may disclose Confidential Information only if it can demonstrate that the Confidential Information:
- (a) is required to be disclosed by any court of competent jurisdiction, Regulator, by the rules of a recognised stock exchange or by Applicable Law or the Network Rules;
  - (b) was lawfully in its possession prior to disclosure to it by any other Party without an obligation restricting disclosure;
  - (c) is already public knowledge or which becomes so at a future date (otherwise than as a result of breach of this clause 18);
  - (d) is received from a third party who is not under an obligation of confidentiality in relation to the information; or
  - (e) is developed independently without access to, or use or knowledge of, the Confidential Information.

## **19. TERM AND TERMINATION**

- 19.1. These Terms shall come into force on the Commencement Date and, unless otherwise terminated earlier in accordance with these Terms, continue thereafter until it is terminated in accordance with clause 19.2, 19.3, 19.4 or 19.5.
- 19.2. We may terminate these Terms without cause by giving you two (2) calendar months' written notice.
- 19.3. You may terminate these Terms without cause by giving us three (3) months' written notice.
- 19.4. Either Party may terminate these Terms or any Service with immediate effect by giving written notice if the other Party is:

- (a) in material breach of these Terms and the breach is either not capable of remedy or is not remedied to the reasonable satisfaction of the non-breaching party within 30 days of service of a notice requiring remedy of the breach in question;
- (b) insolvent or reasonably suspects that the other Party may become Insolvent;
- (c) is the subject of a petition, order, or resolution or any step in connection with winding up (whether it is Insolvent or not).

19.5. We may terminate these Terms or any Service with immediate effect by giving written notice to you if:

- (a) you have violated the Acceptable Use Policy;
- (b) you fall below any relevant thresholds as determined by us from time to time;
- (c) you act in a manner, or if anything happens to you or comes to our attention in relation to you or arising from or incidental to your business or the conduct of your business (including trading practices or any individual's activity), that we in our reasonable discretion consider:
  - (i) to be disreputable or capable of damaging the reputation of us or that of any Network, or Payment Method Provider; or
  - (ii) to be detrimental to our systems, business or that of any Network, or Payment Method Provider; or
  - (iii) may or does give rise to fraud or any other criminal activity or suspicion of fraud or any other criminal activity; or
  - (iv) may or does give rise to increased risk of loss or liability to any of us;
  - (v) may affect your ability or willingness to comply with all or any of your obligations or liabilities under these Terms; or
  - (vi) to be or to be for a purpose contrary to Applicable Law and/or any policy of ours in relation to Applicable Law;
- (d) you include anything in these Terms, the Master Services Agreement (if applicable) or application for the Services which is untrue, inaccurate or misleading;
- (e) we are required to do so by any Network, Payment Method Provider or Regulator or under the Network Rules or Applicable Law or reasonably believe that a Transaction or these Terms or the performance of it may be contrary to Applicable Law or Sanctions Law;
- (f) a Network, Payment Method Provider or any other third party any ceases to provide us with any service which is necessary for us to provide a Service to you; and
- (g) the ratio of Chargebacks to Transactions exceeds thresholds set by the Payment Method Providers, or we consider in our sole and absolute discretion that the total volume or value of Refunds, Chargebacks and/or declined Authorisation Requests is excessive.

19.6. We may suspend all or part of the Services, including any Transactions or Refunds, if we determine that you have breached these Terms or are likely to breach these Terms.

## **20. INDEMNITY**

20.1. You will indemnify us, Networks, Acquirers and the Local Payment Providers and hold us, Networks, Acquirers and the Local Payment Providers and hold us harmless and indemnified from, against and in respect of all and any Losses in relation to any Claims brought against us by a Buyer, Network,



Payment Method Provider, Acquirer or Regulator or any other third party, to the extent such Claims arise out of or in consequence of or in connection with:

- (a) a Transaction (including the failure to retain or produce a Recurring Transaction Authority), Refund, Assessment, Chargeback and/or Chargeback Cost (including any activity which would otherwise constitute a Transaction or Refund);
- (b) any breach of the requirements or failure by you to comply with: (i) the requirements of a Network or Local Payment Provider; (ii) the Network Rules; (iii) a Regulator; or (iv) Applicable Law, and any reasonable steps taken in the protection of our interests in connection with any such breaches;
- (c) any security breach compromise or theft of Data held by you or on your behalf, or any other security breach or a security breach relating to Data (whether or not you have complied with PCI SSC Standards as defined above), and any reasonable steps taken in the protection of our interests in connection with such breach;
- (d) the enforcement or attempted enforcement of these Terms;
- (e) any reasonable steps taken in the protection of our interests in connection with any allegation of fraud made in relation to you or your business; and/or
- (f) any breach by you of the provisions of clause 18;

except if and to the extent such Claim is caused by our fraud or any breach of these Terms by us.

20.2. We shall indemnify and hold you indemnified from and against any Losses in relation to any Claims brought against you by a third party, to the extent such Claims arise out of or in connection with:

- (a) any actual security breach or security breach reported to you by a Network, Acquirer, other Acquirer, Card Issuer or us relating to Data which is directly attributable to our failure to comply with any PCI SSC Standards or to our gross negligence (but not including any claims made by a Regulator), and any reasonable steps taken in the protection of your interests in connection with such breach; and/or
- (b) any breach by us of the provisions of clause 18;

except if and to the extent caused by or contributed to by your negligence or any breach of these Terms by you.

## **21. LIMITATION OF LIABILITY**

21.1. Nothing in these Terms shall exclude or restrict liability for:

- (a) Losses suffered by a Party arising out of the other Party's fraud, fraudulent misrepresentation or wilful default;
- (b) death or personal injury resulting from a Party's negligence;
- (c) Losses suffered by us in respect of any Chargebacks or Assessments;
- (d) any Service Fees, Permissible Deductions, or other amounts due to us;
- (e) any indemnity provided under these Terms; or
- (f) any other liability to the extent it cannot be lawfully excluded or limited.

21.2. We shall not be liable for any failure to perform (nor any defective or delayed performance of) any of our obligations under these Terms if and to the extent that such failure is due to:

- (a) circumstances beyond our reasonable control;
- (b) any cessation or interruption of any part of the Services which are due to any act or omission of a third party (including, but not limited to, Payment Method Providers, Networks, or Acquirers) and is not caused by our breach of these Terms;
- (c) us taking steps (in our reasonable and honest belief or view) to comply with any relevant requirement under the Network Rules or any Applicable Law, Sanctions Law, or the requests of any Regulator;
- (d) your failure to provide complete and/or correct Data to us and/or your negligence and/or breach of these Terms;
- (e) a suspension of the Services by us in accordance with these Terms;
- (f) your breach of these Terms, negligence, wrongful or bad faith acts or omissions; or
- (g) any deferment/withholding of the Settlement Payment(s) otherwise due to you in accordance with the provisions of these Terms.

21.3. Neither Party shall be liable for:

- (a) loss of profits, revenue or anticipated savings (including those anticipated or forecast);
- (b) loss of goodwill (or any other damage to reputation);
- (c) loss connected with or arising from business interruption;
- (d) loss of opportunity, business or contracts;
- (e) loss of bargain;
- (f) lost or corrupted data (or loss associated with the same); and/or
- (g) any special, incidental, punitive, consequential or indirect: loss, damage, cost and/or expense whatsoever,

in each case whether such losses are direct, indirect or consequential, and even if that Party was aware of the possibility that such losses might be incurred by another Party.

21.4. Our aggregate liability to you in relation to all Claims arising out of, or in connection with the Services or these Terms during each Contract Year shall be limited to:

- (a) in the first Contract Year, a sum equal to the average monthly Service Fees paid under these Terms, less any fees incurred by us under the Network Rules in respect of Transactions, in each case in the period between the Effective Date and the first event giving rise to the first such Claim, multiplied by twelve (12); and
- (b) in each Contract Year thereafter, a sum equal to the Service Fees paid under these Terms, less any fees incurred by us under the Network Rules in respect of Transactions, in each case in the twelve (12) months immediately preceding the first event giving rise to the first such claim in the relevant Contract Year.

## **22. NOTICE**

- 22.1. The Parties agree that any notice to be given under or in connection with these Terms to Airwallex shall be in writing and shall be served as follows (or otherwise as notified by Airwallex to you from time to time):
- (a) by email to [legal@airwallex.com](mailto:legal@airwallex.com);
  - (b) by mail to Level 7, 15 William Street, Melbourne, Victoria 3000.
- 22.2. The Parties agree that any notice to be given under or in connection with these Terms to you shall be in writing and shall be served as follows (or otherwise as notified by you from time to time through the Airwallex Platform):
- (a) by mail to any mailing address we have recorded for you in your Airwallex Profile;
  - (b) by email to the email address we have recorded for you in your Airwallex Profile;
  - (c) by other electronic communication (such as by sending you an electronic message and referring you to a notice available for viewing or to download online or in Webapp using phone or other written records we have recorded for you in your Airwallex Profile).
- 22.3. Where you provide an email address, we may send notices to and rely on the authenticity of communications we receive from that email address as being from and binding on you. You must ensure only you and persons with authority to act on your behalf have access to your email addresses, that they are kept secure and that you contact us immediately if you become aware or suspect any relevant unauthorised use or security compromise.
- 22.4. Notices sent by email or other electronic communication shall be deemed to be received on the day on which the communication is sent, **PROVIDED THAT** (i) any notice sent after 17:00 hours (AEDT) on any Business Day or at any time on a day which is not a Business Day shall be deemed to have been given at 09:00 (AEDT) on the next Business Day. Notices sent by mail shall be deemed to be received seven (7) days after the letter is posted.

## **23. CHANGES TO THE SERVICES AND THESE TERMS**

- 23.1. From time to time, we may change the provisions of these Terms, the Schedules to these Terms (including the Fee Schedule) in accordance with clause 23.2 or clause 23.3.
- 23.2. We may change these Terms by giving you 30 days' notice. We will treat you as having accepted the proposed change(s) if you do not terminate the Terms during that notice period.
- 23.3. We may also make changes to these Terms immediately, without prior notice, if those changes:
- (a) are necessary to comply with any Applicable Law or Network Rules; or
  - (b) relate to the addition of a new service or extra functionality of our Services and do not affect terms relating to the existing Services.
- 23.4. We may issue updates for the Airwallex Platform, including the Airwallex APIs, from time to time. We may need to do this to facilitate the continued and proper operation of the Platform, make improvements to the Platform or to comply with Applicable Law. Some updates may require you to take steps to implement them. You agree to implement such updates as soon as reasonably practicable after receipt. In some cases (for example, if there are security risks), you will not be able to use the Airwallex Platform until you have implemented the update. If you have not implemented an update within 6 months of us releasing it, we may stop providing some of the Services to you or terminate these Terms, by giving you two months' prior written notice.

- 23.5. We may also, from time to time, require you to update or make a change in software, interfaces or operating procedures, in order to continue using the Services or the Airwallex Platform. We may send you some additional information on how to implement those changes. We shall aim to send you this information as soon as reasonably practicable.

## **24. GENERAL**

- 24.1. These Terms is concluded in English and all communications (including any notices or the information being transmitted) shall be in English. In the event that these Terms or any part of it is translated (for any proceedings, for your convenience or otherwise) into any other language, the English language text of these Terms shall prevail.

## **25. GOVERNING LAW**

- 25.1. These Terms shall be governed by the laws of the State of Victoria.
- 25.2. The Parties submit to the non-exclusive jurisdiction of the State of Victoria to settle any dispute arising out of, relating to or having any connection with these Terms, and any dispute relating to any non-contractual obligations arising out of or in connection with it (for the purpose of this clause, a '**Dispute**') and each party submits to the non-exclusive jurisdiction of the State of Victoria.
- 25.3. For the purposes of clause 25.2, each party waives any objection to the Victorian courts on the grounds that they are an inconvenient or inappropriate forum to settle any Dispute.

## **26. SET-OFF**

- 26.1. If at any time an amount payable by you under these Terms or any other agreement with Airwallex is due but unpaid, we may withhold payment of any amount that is payable by Airwallex to you until you have made payment of the amount that you owe us. We may set off any amount that you owe us against any amount that we owe you. We may apply any credit balance in any account you have with us (including, without limitation, any Reserve) in and towards satisfaction of, or payment of, any of your obligations to pay an amount which is then due under these Terms or any other agreement you have with Airwallex.

## **27. FURTHER ASSURANCES**

- 27.1. You agree, at your own expense, to:
- (a) execute and do everything else reasonably necessary or appropriate to bind you under these Terms; and
  - (b) use your best endeavours to cause relevant third parties to do likewise.
- 27.2. If we determine that any part of these Terms (or a transaction in connection with it including but not limited to provisions relating to the Reserve) is or contains a security interest for the purposes of the PPSA, you agree to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which we ask and consider necessary for the purposes of:
- (a) ensuring that the security interest is enforceable, perfected and otherwise effective; or
  - (b) enabling us to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by us; or
  - (c) enabling us to exercise rights in connection with the security interest.
- 27.3. Everything you are required to do under this clause 26 is at your expense (in particular, but not limited to, preparing, registering and maintaining any financing statement or financing change statement as

required under the PPSA). You agree to pay or reimburse our reasonable costs, charges and expenses in connection with anything you are required to do under this clause 26.

## **28. THIRD-PARTY RIGHTS**

- 28.1. A person who is not a party to these Terms has no rights under any Applicable Law any to enforce any term of these Terms save that the obligations of the Merchant under these Terms are owed to Airwallex's Affiliates each of whom may enforce the terms of these Terms against Merchant.

## **29. GENERAL**

- 29.1. **Entire Agreement.** These Terms represent the entire agreement between the Parties with respect to the subject matter of these Terms and supersedes and extinguishes all previous agreements, representations, promises, and statements between us, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into these Terms it does not rely on, and will have no remedy in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in these Terms. Each party agrees that it shall have no Claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Terms.
- 29.2. **Relationship.** Except as expressly provided for in these Terms or in any Additional Terms, nothing in these Terms will be construed as creating a partnership or joint venture between the Parties, constitute any party being the agent of the other party, or authorise any party to make or enter into any commitments for or on behalf of the other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 29.3. **Assignment.** You will not assign these Terms, in whole or in part, without our prior written consent. Any attempt to do so will be void and constitute a material breach of these Terms. We may assign these Terms, in whole or in part, or subcontract our obligations under it, without your consent.
- 29.4. **Waiver.** No failure or delay by a party to exercise any right or remedy provided under these Terms or by law, or a single or partial exercise of such right or remedy, will constitute a waiver of that or any other right or remedy, nor will it preclude or restrict the further exercise of that or any other right or remedy.
- 29.5. **Currency.** Unless otherwise agreed by the Parties, Airwallex may, but is not obliged to, convert any amounts in connection with these Terms from one currency to another currency using a prevailing exchange rate determined by Airwallex, but only where Airwallex determines that such currency conversion is reasonably necessary (including, but not limited to, where Airwallex determines a currency conversion is reasonably necessary to comply with Applicable Law).
- 29.6. **Severability.** If any provision of these Terms is determined to be invalid, unenforceable or illegal by any court of competent jurisdiction, it will be deemed to have been deleted without affecting the remaining provisions. If such provision would be valid, enforceable and legal if some part of it were modified or deleted, the provision will apply with the minimum modification necessary to make it legal, valid and enforceable.

## SCHEDULE 1

### DEFINITIONS

In these Terms, unless otherwise defined in these Terms itself, the following terms have the following meanings (for both the singular and plural):

<b>Acquirer</b>	means (i) with respect to the Transactions for which we provide you with Gateway Service, a third party that has an agreement with you to settle funds to you, or (ii) with respect to the Transactions for which we provide you with Payment Processing Services, either Airwallex itself or a third party that has an agreement with us to settle funds to us;
<b>Acquiring Agreement</b>	means an agreement between Merchant and an Acquirer for the collection and settlement by Acquirer of Payments to Merchant;
<b>Additional Services</b>	means the Gateway Services, Fraud Control Service, Encryption Services and any other additional services under these Terms that the Merchant has requested that Airwallex provide to Merchant;
<b>Additional Terms</b>	means the additional terms which vary or amend these Terms, as set out in <b>Schedule 2</b> ( <i>Card Payment Processing Terms</i> ), <b>Schedule 3</b> ( <i>Local Payment Method Processing Terms</i> ) and any other terms you agree are 'Additional Terms';
<b>Affiliate</b>	means: (a) a director, officer, partner, member, manager, executor or trustee of such person and (b) any person directly or indirectly controlling, controlled by, or under common control with, that person. For purposes of this definition, "control," "controlling," and "controlled" mean having the right to elect a majority of the board of directors or other comparable body responsible for management and direction of a person by contract, by virtue of share ownership or otherwise;
<b>Airwallex API</b>	means the technical interface setting out the protocols and specifications required to effect an integration of the Customer's technical systems with the Airwallex Platform for Authorised Users to use the Services;
<b>Airwallex Platform or Platform</b>	means the proprietary technology and associated products (including but not limited to those found on the Webapp and through an Airwallex API) devised by Airwallex to provide customers with Services under these Terms;
<b>Aggregate Payment Amount</b>	means the aggregate amount in the Settlement Currency of all Payments which are due to be settled to Merchant;
<b>Applicable Law</b>	means any applicable law, regulation, rule, policy, judgment, decree, order or directive, at a state or local level, including, without limitation, any regulatory guidelines or interpretations or regulatory permits and licences issued by governmental or regulatory authorities having jurisdiction over the relevant Party, that are applicable to a Party or its business or which the Party is otherwise subject to, in each case in force from time to time;

<b>Assessment</b>	means any assessment, fine, liquidated damages, fee, cost, expense or charge of any nature which a Network, Local Payment Provider or any other third party levies on you or us at any time, directly or indirectly, in relation to the Services, Transaction or any other aspect of our or such third party's relationship with you;
<b>Authorisation</b>	means the confirmation at the time of a Transaction from the relevant Network or Local Payment Provider that the Payment Method used to pay for the Transaction has not been blocked for any reason or listed as lost or stolen or as having had its security compromised, that there are sufficient funds available for the relevant Transaction and that such a Transaction otherwise meets the requirements by the relevant Network or Local Payment Provider and 'authorise' and 'authorised' shall be construed accordingly;
<b>Authorisation Request</b>	means a request for Authorisation;
<b>Authorised User</b>	has the meaning given in clause 3.3;
<b>Business Day</b>	means any day when banks are generally open for business in Melbourne (other than a Saturday, Sunday or public holiday in Melbourne);
<b>Buyer</b>	means the person purchasing products or services from the Merchant;
<b>Capture Request</b>	means the submission by you to the Payment Method Provider of Transaction Data relating to a specific Transaction after receipt of the Authorisation for the purposes of executing a payment instruction in respect of a Transaction;
<b>Card</b>	means any of the cards we allow to be accepted including any such cards we have agreed in writing with you;
<b>Card Network</b>	means any scheme governing the issue and use of Cards as may be approved and notified by us to you in writing from time to time;
<b>Card Transaction</b>	means a sale and purchase transaction between Merchant and a Buyer for products or services (including shipping costs) for which the Buyer pays with a Card;
<b>Chargeback</b>	means any circumstances where Networks or Local Payment Providers and / or their payment service providers refuse to Settle a Transaction or demand payment from us in respect of a Transaction that has been Settled and/or in respect of which a Settlement Payment has been made to you notwithstanding any Authorisation;
<b>Chargeback Costs</b>	means our administrative charge for processing a Chargeback and any (i) reasonable costs, expenses, liabilities, and (ii) Assessments that we may incur as a result of or in connection with a Chargeback;

<b>Chargeback Fee</b>	means our fee for processing Chargebacks as set out in the Fee Schedule;
<b>Claim</b>	means any action, proceeding, claim, demand or assessment (including Assessments), fine or similar charge whether arising in contract, tort (including negligence or breach of statutory duty) or otherwise;
<b>Commencement Date</b>	means the date specified in the Master Services Agreement or the date you agree to these Terms in the Online Application (whatever is earliest);
<b>Confidential Information</b>	means these Terms and information relating to it (other than Transaction Data), or provided pursuant to it, that is designated as "confidential" or which by its nature is clearly confidential, howsoever presented, whether in oral, physical or electronic form and which is disclosed by one Party to another hereunder, including (but not limited to) pricing and specifications relating to the Services;
<b>Contract Year</b>	means the calendar year commencing from the date and month of the Commencement Date;
<b>Customer Data</b>	means information that describes you and your business (as applicable) and its operations, your products or services, and orders placed by your customers;
<b>Customer Details</b>	means the details set out in the Online Application or the Master Services Agreement (as may be applicable);
<b>Data Complaint</b>	has the meaning given to it in clause 16.3;
<b>Data Subject</b>	in relation to Personal Data, means the individual who is the subject of the data;
<b>Dispute</b>	has the meaning given to it in clause 25.2;
<b>Due Diligence Information</b>	has the meaning given to it in clause 4.1;
<b>Encryption Service</b>	means the encryption and secure transfer of Transaction Data by Airwallex on behalf of Merchant;
<b>Fee Schedule</b>	means the fee schedule applicable to the Services which is published by Airwallex on <a href="http://www.airwallex.com">www.airwallex.com</a> or as we have otherwise agreed in writing with you;
<b>Foreign Currency Settlement Fee</b>	means the Foreign Currency Settlement Fee set out in the Fee Schedule;
<b>Fraud Control Service</b>	means the monitoring and analysis of Transactions by Airwallex to identify and block fraudulent Transactions;



<b>FX Conversion Fee</b>	means the FX Conversion Fee set out in the Fee Schedule;
<b>Gateway Fee</b>	means a fee per Transaction attempted or made using the Gateway Service;
<b>Gateway Service</b>	means the processing and transmission by Airwallex via a Hosted Checkout Page of Authorisation Requests, Capture Requests and Transaction Data between you and Buyer and/or between you and an Acquirer. When providing the Gateway Service, we do not enter into the possession of any funds at any time. In respect of the Gateway Service, the Acquirer will settle the resulting Payments to Merchant pursuant to an Acquiring Agreement;
<b>Global Account</b>	means the unique account ledger registered under your name and which records the amount of funds collected from your payers by Airwallex for you as part of the "Collection Services" provided under the Payout and FX Terms;
<b>Group Company</b>	means each of Airwallex and any entity that, directly or indirectly through one or more entities, controls or is controlled by, or is under common control with, Airwallex. For this purpose, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract or otherwise;
<b>Hosted Checkout Page</b>	means the Airwallex hosted payment pages which the Merchant uses to accept a Payment as part of the Gateway Service;

<b>Insolvent</b>	<p>means:</p> <p>(a) where a receiver or any other controller (as defined in section 9 of the <i>Corporations Act 2001</i> (Cth)) is appointed to you or any of your property or any steps are taken to do so;</p> <p>(b) where a liquidator, provisional liquidator, administrator or similar official is appointed to you or any steps are taken to do so;</p> <p>(c) when a resolution is passed or an order made or other action taken for the winding up of your business or you enter into, or commence negotiations to enter into, a scheme of arrangement or composition, with, an assignment for the benefit of, your creditors, generally or any class of your creditors;</p> <p>(d) when you cease, or threaten to cease, to carry on your business or stop payment of your debts generally or is, or becomes, unable to pay your debts as and when they fall due;</p> <p>(e) (where you are a partnership) you have any partner to whom any of the foregoing apply; and</p> <p>(f) (where you are an individual) you die, by reason of illness or incapacity (whether mental or physical), you are of unsound mind and are incapable of managing your own affairs or become a patient under any mental health legislation, or an order has been made or a guardian has been appointed in respect of you under the <i>Guardianship and Administration Act 2019</i> (Vic) or any similar law in any other jurisdiction;</p>
<b>Intellectual Property Rights</b>	<p>means: (i) rights in, and in relation to, any patents, registered designs, design rights, trademarks, trade and business names (including goodwill associated with any trade marks or trade and business names), copyright and related rights, moral rights, databases, domain names, semi-conductor and other topography rights and utility models, and including registrations and applications for, and renewals or extensions of, such rights, and similar or equivalent rights or forms of protection in any part of the world; (ii) rights in the nature of unfair competition rights and to sue for passing off and for past infringement; and (iii) trade secrets, confidentiality and other proprietary rights, including rights to know how and other technical information;</p>
<b>Local Payment Method</b>	<p>means any of the local payment methods that we allow you to use from time to time including any we have agreed in writing with you;</p>
<b>Local Payment Network</b>	<p>means any scheme governing the issue and use of Local Payment Methods as may be approved and notified by us to you in writing from time to time;</p>
<b>Local Payment Provider</b>	<p>means the provider of each Local Payment Method or Local Payment Network;</p>
<b>Losses</b>	<p>means any liabilities, losses, damages, charges, fines, costs and/or expenses (including reasonable and properly incurred legal fees and/or expenses);</p>

<b>LPM Transaction</b>	means a sale and purchase transaction between Merchant and a Buyer for products or services (including shipping costs) for which the Buyer pays with a Local Payment Method;
<b>Mark</b>	means the names, logos, trade names, logotypes, trademarks, service marks, trade designations, and other designations, symbols, and marks that a Network or Local Payment Provider owns, manages, licenses, or otherwise controls and makes available for use by its customers and other authorised entities in accordance with a licence;
<b>Master Services Agreement</b>	means the agreement entitled “Master Service Agreement” entered into between you and us (if any);
<b>Merchant Bank Account</b>	means the Merchant’s nominated bank account to which Settlement Payments can be paid specified in the Online Application or Master Services Agreement (as applicable);
<b>MID</b>	means merchant identifier;
<b>Net Settlement Amount</b>	has the meaning given to it in clause 7.3;
<b>Network</b>	means the Card Network and Local Payment Network; any scheme governing the issue and use of Cards or Local Payment Methods, as may be approved and notified by us to you in writing from time to time;
<b>Network Rules</b>	<p>means all applicable rules, regulations, operating guidelines, policies, procedures, manuals, announcements, bulletins issued by the Networks or Local Payment Providers from time to time which relate to (amongst other things) Cards, Payments, Transactions, Local Payment Methods and the related processing of data including but not limited to:</p> <p>(a) such rules, regulations, operating guidelines, policies, procedures, manuals, announcements and bulletins issued by Visa (including rules regarding the use of Visa-Owned Marks, Visa acceptance, risk management, Transaction processing, and any Visa products, programs or services in which you are required to, or choose to participate);</p> <p>(b) such rules, regulations, operating guidelines, policies, procedures, manuals, announcements and bulletins issued by Mastercard International Incorporated, Maestro International Inc., and their subsidiaries and affiliates; and</p> <p>(c) such rules, regulations, operating guidelines, policies, procedures, manuals, announcements and bulletins issued by any Local Payment Method or Local Payment Network;</p>
<b>OFAC</b>	means the Office of Foreign Assets Control of the US Department of Treasury;

<b>Online Application</b>	means the online application whereby you apply for the Services and agree to be bound by these Terms (if applicable);
<b>Payment</b>	means the payment in the relevant currency representing the relevant Transaction Value made or to be made by a Buyer for the purposes of completing the relevant Transaction;
<b>Payout and FX Terms</b>	means the agreement entitled "Payout and FX Terms" entered into between you and us;
<b>Payment Method</b>	means Cards and Local Payment Methods;
<b>Payment Method Fee</b>	means, in respect of each Payment Method, the Payment Method Fee set out in the Fee Schedule to be charged on the amount of the Transaction in the currency in which Airwallex is to settle funds to you under these Terms;
<b>Payment Method Providers</b>	means the providers of Cards and Local Payment Methods;
<b>Payment Processing Service</b>	has the meaning given to it in clause 5.1(a);
<b>PCI SSC Service</b>	has the meaning given to it in clause 8.3;
<b>PCI SSC Standards</b>	means the Payment Card Industry Data Security Standard, Payment Application Data Security Standard and the PIN Transaction Security Standard as updated from time to time and published by the PCI Security Standards Council (the ' <b>PCI SSC</b> ') at <a href="http://www.pcisecuritystandards.org">www.pcisecuritystandards.org</a> ;
<b>Permissible Deductions</b>	has the meaning given to it in clause 7.4;
<b>Personal Data</b>	means any data (a) relating directly or indirectly to a living individual; (b) from which it is practicable for the identity of the individual to be directly or indirectly ascertained; and (c) in a form in which access to or processing of the data is practicable;
<b>PPSA</b>	means the <i>Personal Property Securities Act 2009</i> (Cth) and any regulations made pursuant to it and the following words have the respective meanings given to them in the PPSA: financing statement, financing change statement and security interest;
<b>Privacy Policy</b>	means our Australian privacy which is made available on our website at <a href="http://www.airwallex.com">www.airwallex.com</a> or provided to you separately as amended from time to time;
<b>Product Documentation</b>	means the documentation and guidelines applicable to the Airwallex products and services found on our website at <a href="http://www.airwallex.com">www.airwallex.com</a> ;

<b>Prohibited Act</b>	<p>means:</p> <p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Airwallex a financial or other advantage as an inducement or reward for any improper performance of a relevant function or activity in relation to obtaining these Terms or any other contract with the Merchant;</p> <p>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with these Terms;</p> <p>(c) committing an offence: (i) under the any Applicable Law relating to sanctions, bribery and corruption including the <i>Crimes Act 1914</i> (Cth), the <i>Criminal Code Act 1995</i> (Cth), the UK Bribery Act 2010, the US Foreign Corrupt Practices Act; (ii) under legislation or common law concerning fraudulent acts; (iii) of defrauding, attempting to defraud or conspiring to defraud the Airwallex; or</p> <p>(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in Australia;</p>
<b>Prohibited Transactions</b>	means transactions that violate or contravene the Acceptable Use Policy which is available at <a href="http://www.airwallex.com">www.airwallex.com</a> or transactions prohibited by the Networks or Local Payment Providers;
<b>Recurring Transaction</b>	means a recurring periodic Transaction including but not limited to subscriptions or a series of installment payments in respect of which Merchant periodically charges the Buyer's Payment Method;
<b>Recurring Transaction Authority</b>	<p>means a prior written authority (provided by the Buyer to the Merchant at checkout process) authorising a Recurring Transaction and containing at least the following:</p> <p>(a) the amount of the Recurring Transaction and whether it is fixed or variable;</p> <p>(b) the dates on which the Recurring Transaction will be charged by the Merchant to the Buyer's Payment Method and whether the dates are fixed or variable;</p> <p>(c) the method by which the Merchant will communicate with the Buyer in respect of the Recurring Transaction Authority; and</p> <p>(d) a statement that the Buyer is entitled to cancel the Recurring Transaction Authority at any time;</p>
<b>Refund</b>	means the whole or partial reversing of a Transaction including the currency exchange;
<b>Refund Fee</b>	means our fee for processing Refunds as set out in the Fee Schedule;

<b>Regulator</b>	means any governmental or regulatory authority, and/or any self-regulatory authority, governmental department, agency, commission, board, tribunal, crown corporation, or court or other law, rule or regulation making entity having jurisdiction over any of the Parties and/or their businesses or any part or subdivision thereof in any territory in which the Services are made available or any local authority, district or other subdivision thereof (including, in respect of Australia, AUSTRAC, ASIC and the Office of the Australian Information Commissioner for Personal Data) and any body which succeeds or replaces any of the foregoing;
<b>Reserve</b>	means an amount or percentage of your Settlement Payment(s) that we hold in order to protect against the risk of Refunds, Chargebacks, or any other risk, exposure and/or liability related to your use of the Services;
<b>Sanctioned Person</b>	means a person that is (a) listed on, or owned or controlled by a person listed on any Sanctions List; (b) 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 that is the target of country-wide sanctions; or (c) otherwise a target of Sanctions Laws;
<b>Sanctions Authorities</b>	has the meaning given to it in the definition of Sanctions Laws;
<b>Sanctions Laws</b>	means any economic sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by: (a) Australia; (b) the United States; (c) the United Nations; (d) the European Union; (e) the United Kingdom; or (e) the respective governmental institutions and agencies of any of the foregoing, including without limitation, the Australian Sanctions Office, OFAC, the United States Department of State, and Her Majesty's Treasury (together ' <b>Sanctions Authorities</b> ');;
<b>Sanctions List</b>	means the Consolidated List issued by the Australian Sanctions Office, the Consolidated List of Financial Sanctions Targets issued by Her Majesty's Treasury (UK), the "Specially Designated Nationals and Blocked Persons" list issued by OFAC or any similar list issued or maintained or made public by any of the Sanctions Authorities;
<b>Service Fees</b>	means the fees specified in the Fee Schedule including, but not limited to, the Gateway Fee, Payment Method Fee, Refund Fee, FX Conversion Fee and Foreign Currency Settlement Fee;
<b>Services</b>	has the meaning given to it in clause 5;
<b>Settlement Currency</b>	means: (a) the currency you have requested to be used for Settlement in the Online Application or Master Services Agreement (as applicable) that we have approved; or (b) if no such request is made or approved in accordance with (a), the currency we reasonably determine being either Australian Dollars or another Supported Currency;
<b>Settlement Payment</b>	means payment of the Net Settlement Amount by us to the Merchant in accordance with clause 7;

<b>Supported Currency</b>	means, in respect of each feature of a Service, each currency approved by Airwallex from time to time that can be settled, collected, exchanged and/or paid out (as applicable) using that feature through the Airwallex Platform;
<b>Territory</b>	means Australia and such other territories approved by Airwallex from time to time;
<b>Transaction</b>	means a Card Transaction or an LPM Transaction (and <b>Transactions</b> means any of them, as the context requires);
<b>Transaction Data</b>	means documents, data and records of any kind relating to Transactions, Chargebacks, or Refunds (including, for the avoidance of doubt, data relating to Cards, Local Payment Methods and Buyers);
<b>Transaction Limit</b>	means the maximum aggregate value of one or more Transactions that you may complete in respect of any specified period as determine by us from time to time or otherwise agreed in writing with you;
<b>Transaction List</b>	has the meaning given to it in clause 7.6;
<b>Transaction Mix</b>	means the amount, type and nature of Transactions projected for the Merchant, including the Transaction Volume, the average Transaction value, the types of the Buyers, the spread of Transactions across Payment Methods, the geographical spread of Transactions, the relevant Transaction currencies and other relevant information in relation to the Merchant and the use of the Services;
<b>Transaction Value</b>	means, with respect to each Transaction, the amount of the purchase price of the relevant product or service offered by the Merchant; and
<b>Webapp</b>	means the online user interface that the Customer and its Authorised Users may use to access the Airwallex Platform and the Services.

## **SCHEDULE 2**

### **CARD PAYMENT PROCESSING TERMS**

#### **1. Acquiring Services for Visa**

- 1.1. You understand and agree that we have the right to terminate or limit our agreement with you at any time upon the Card Network's request.

#### **2. Acquiring Services for MasterCard**

- 2.1. You understand and agree that we are entering into these Terms on behalf of and as an agent of the Acquirer.
- 2.2. On an ongoing basis, you shall promptly provide to us with the current address of each of your offices, all "doing business as" (DBA) names used by you, and a complete description of goods sold and services provided.
- 2.3. You understand and agree that in the event of any inconsistency between any provision of these Terms and the Network Rules, the Network Rules will govern.
- 2.4. We are responsible for your card acceptance policies and procedures, and may require any changes to your website or otherwise that we deem necessary or appropriate to ensure that you remain in compliance with the Network Rules governing the use of the Marks.
- 2.5. These Terms shall automatically and immediately terminate if the Card Network de-registers us or if the Acquirer ceases to be a customer of Card Network for any reason or if the Acquirer fails to have a valid licence with the Card Network to use any Mark accepted by you.
- 2.6. You acknowledge and agree:
  - 2.6.1. Card Network is the sole and exclusive owner of its Marks;
  - 2.6.2. not to contest the ownership of the Card Network's Marks for any reason;
  - 2.6.3. Card Network may at any time, immediately and without advance notice, prohibit you from using any of Card Network's Marks for any reason;
  - 2.6.4. Card Network has the right to enforce any provision of the Network Rules issued by the relevant Card Network and to prohibit the you and/or us from engaging in any conduct the Card Network deems could injure or could create a risk of injury to the Card Network, including injury to reputation, or that could adversely affect the integrity of the interchange system, Card Network's Confidential Information (as defined in the Card Network's Rules), or both; and
  - 2.6.5. you will not take any action that could interfere with or prevent the exercise of this right by Card Network.
- 2.7. Any use of the Card Network's Mark by you in advertising, acceptance decals, or signs, must be in accordance with the Network Rules, including Card Network's reproduction, usage, and artwork standards, as may be in effect from time to time; and your use or display of any Card Network's Mark will terminate effective with the termination of these Terms, or upon notification by Card Network to discontinue such use or display.



### **SCHEDULE 3**

#### **LOCAL PAYMENT METHOD PROCESSING TERMS**

You agree that the following additional terms will apply.

1. Subject to these Terms, you may use, access and utilise the Local Payment Method to accept payments from Local Payment Users for sales of your goods and/or services.
2. Your use of the Local Payment Method is subject to:
  - 2.1. your successful registration for and continued right to use the Local Payment Method in accordance with the Local Payment Rules;
  - 2.2. your acceptance of and agreement to be bound by the Local Payment Rules;
  - 2.3. conditions that may be notified by the Local Payment Provider to us from time to time.
3. You shall be solely responsible for procuring the Supporting Infrastructure and Services, and in no event shall the Local Payment Provider be liable or responsible for any Supporting Infrastructure and Services and any and all related fees and costs shall be for your own account.
4. You shall use the Local Payment Method solely for the Local Payment Transactions that involve products and/or services properly registered with and approved by the Local Payment Provider. Failure to comply with this requirement may result in us terminating these Terms immediately (in whole or in part) and we will not be responsible for any loss suffered by you as a result of such termination.
5. You acknowledge and agree that: (1) the Local Payment Provider reserves all right, title and interest in its and its affiliates' Intellectual Property Rights; (2) all rights not expressly granted to you are reserved and retained by the Local Payment Provider, its affiliates or its licensors, suppliers, publishers, rights holders, or other content providers; and (3) the Intellectual Property Rights of the Local Payment Provider and its affiliates may not be reproduced, duplicated, copied, licensed, sold or resold without the Local Payment Provider's express written consent.
6. You acknowledge and agree that the Local Payment Provider shall own the Local Payment User Data, the Local Payment Provider's Marks and all Intellectual Property Rights in or to Local Payment User Data and the Local Payment Provider's Marks. You undertake to assign or procure the assignment of all Intellectual Property Rights relating to Local Payment User Data to the Local Payment Provider or its nominee for this purpose for no additional consideration immediately upon creation. You acknowledge and agree that the Local Payment User Data shall be deemed to be the Local Payment Provider's confidential information and you shall only use the Local Payment User Data for the purpose of complying with your obligations under these Terms.
7. You shall display Local Payment Provider's Marks in accordance with Local Payment Rules and at least as prominently as other Payment Method Provider's Marks.
8. You understand, acknowledge and agree that:
  - 8.1. you shall ensure the accuracy and completeness of the information and records kept in relation to the Local Payment User and Local Payment Transactions. You shall keep such information records for a period of at least seven (7) years or such longer period as required by the Local Payment Rules from the date of the Local Payment Transaction;
  - 8.2. you shall assume all liabilities for the legality, authenticity, completeness and validity of your instructions given in the course of your use of the Local Payment Method. You undertake to solely assume all risks relating to actions of the Local Payment Provider that are taken in accordance with your instructions or purported instructions;

- 8.3. you shall indemnify the Local Payment Provider, the Local Payment Provider's partners, and the Local Payment Provider's affiliated companies from and against any claim, suit, action, demand, damage, debt, loss, cost, expense (including litigation costs and attorneys' fees) and liability (each an "**Local Payment Method Claim**") arising from: (1) your use of the Local Payment Method ; (2) any sale or purported sale of products or services by you through the Local Payment Method ; (3) any breach by you of Applicable Law or mandatory codes, standards or best practice guidelines; or (4) any breach by you of these Terms;
- 8.4. you shall use counsel reasonably satisfactory to us and/or the Local Payment Provider to defend each indemnified claim. If at any time we and/or the Local Payment Provider reasonably determine that any indemnified claim might adversely affect us and/or the Local Payment Provider, we or the Local Payment Provider may take control of the defense at our or the Local Payment Provider's respective expense. You may not consent to the entry of any judgment or enter into any settlement of an indemnified claim without our and/or the Local Payment Provider's prior written consent, which may not be unreasonably withheld;
- 8.5. you shall comply with Local Payment Rules, including but not limited to processing and accepting any Refund and Chargebacks in accordance with Local Payment Rules;
- 8.6. The Local Payment Provider owes no direct obligations to you and shall not be responsible for any of your goods, services, actions or omissions or liable for your losses, expenses or charges;
- 8.7. The Local Payment Provider makes no other representations or warranties of any kind, express or implied, to you;
- 8.8. shall not restrict the Local Payment Method User in any way from using the Local Payment Method at checkout at any sales channel, including but not limited to requiring a minimum or maximum purchase amount from customers.
9. The provisions of these Terms, which by their nature and content, are intended, expressly or impliedly, to continue to have effect notwithstanding the completion, rescission, termination or expiration of these Terms, shall survive and continue to bind you and the Local Payment Provider.
10. In this schedule:

**"Applicable Taxes"** means any and all sales, goods and services, use, excise, premium, import, export, value added, consumption and other taxes, regulatory fees, levies (including environmental levies) or charges and duties assessed, incurred or required to be collected or paid for any reason in connection with any advertisement, offer or sale of products or services by the Merchant in connection with the Local Payment Method.

**"Intellectual Property Rights"** means rights in, without limitation, (1) patents, design rights, copyright (including rights in computer software), database rights, trademarks, service marks, logos, moral rights, trade or business names, domain names, confidential information and knowledge and rights protecting goodwill and reputation, in all cases whether registered or unregistered; (2) all other forms of protection having a similar nature or effect anywhere in the world to the right described in (1); and (3) applications for or registrations of any of the above rights described in (1) or (2).

**"Supporting Infrastructure and Services"** means (1) point-of-sale terminals, supporting hardware and other equipment; (2) terminal financing; (3) local supporting functions; and (4) any other hardware or software systems reasonably required for the purpose of use of the Local Payment Method by a Merchant.

**"Local Payment Rules"** means all applicable rules, regulations, operating guidelines, policies, procedures, manuals, announcements, bulletins, requirements issued by the Local Payment Networks or Local Payment Provider from time to time which relate to (amongst other things) Payments, Transactions, Local Payment Methods and the related processing of data.

**“Local Payment User”** means any person who from time to time is accepted by the Local Payment Provider as a user of the Local Payment Method who purchases goods or services from the Merchant utilising Local Payment Method as the payment solution.

**“Local Payment User Data”** means the Local Payment Users' names, account information, Local Payment Transaction information, Personal Data and any other information relating to the Local Payment Users and/or their use of the Local Payment Method, which are collected by, generated by, or otherwise coming into yours or the Local Payment Provider's possession or control.

**“Local Payment Transaction”** means any Transaction between a Merchant and a Local Payment User which utilises the Local Payment Method.