



## Terms and conditions for Merchant Acquiring Services

This schedule contains the applicable Terms and Conditions as referred to in and incorporated into Novum Financial Technologies PTE.LTD.'s standard agreement for Merchant Acquiring Services (the "Merchant Acquiring Agreement" or the "Agreement"), which govern the relationship between the Merchant or the E-Merchant (as defined below) and Novum Financial Technologies PTE.LTD. ("Novum"). The provisions of this schedule as amended from time to time are in addition to the terms of the Agreement and form an integral and indivisible part of the Agreement. They describe in detail the policy (rules) and the transactional requirements to be followed by the Merchant for the processing and collection of all Card Not Present Transactions.

In case of any inconsistencies between the terms of this document and any other part and/or schedule of the Agreement, unless otherwise specifically provided therein the provisions of this schedule shall prevail.

### 1. Definitions

For the purposes of this Terms and Conditions and other documents referred to herein, the following definitions apply unless the context explicitly requires otherwise:

- 1.1. **Acquiring Services** means the processing, clearing and Settlement of Transactions, including sales Transactions, refund Transactions, reversals, representations and Chargebacks, between the Card Payment Scheme, the E-Merchant and the Issuers.
- 1.2. **ADC Event** means an occurrence that could result, directly or indirectly, in the unauthorized access to or disclosure of account data or the unauthorized manipulation of account data controls, such as account usage and spending limits.
- 1.3. **Agreement** means Application Form, in combination with the given Terms and Conditions, the Privacy Policy, the Fees and Charges, and the Website requirements guideline constitutes the entire Merchant Acquiring Services Agreement. By signing the Application Form E-Merchant undertakes to comply with the current terms and conditions stipulated in the Agreement and the Schedules to it.
- 1.4. **Applicable Law** means any and all laws, regulations, government mandated decisions, terms and guidance which has relevant standing in the relevant jurisdiction, as well as any decision made by relevant and competent government entities, including but not limited to courts and financial services regulators, in all relevant jurisdictions to this Terms and Conditions, including but not limited to legislation on Anti Money Laundering (AML), Counter Terrorist Financing (CTF), embargos, sanctions, bribery, misconduct, Confidential Information (including intellectual property and trade secrets), behaviour of financial institutions and Data Protection.
- 1.5. **Authorisation** means approval of a Transaction by or on behalf of an Issuer according to Card Payment Scheme operations regulations and standards.
- 1.6. **Business Day** means any day other than (i) a Saturday or Sunday, (ii) a day on which credit institutions are authorised by law or by a regulatory order to be closed, in the country where E-Merchant, Novum or Card Payment Scheme have their establishment.
- 1.7. **Cardholder** means an individual, company, firm or other body to whom a valid Card has been issued by a credit or other authorised institution which is a member of the Card Payment Schemes and who is authorised to use that Card.
- 1.8. **Card Not Present Transaction** means a Transaction which is completed when neither the Cardholder nor the Cardholder's Card is present at the E-Merchant point of sale, e.g. e-commerce (Internet) orders or Pre-Authorised Recurring Transactions.

- 1.9. **Card** means a valid and current credit, debit, prepaid, commercial or any other payment card issued by the Issuer.
- 1.10. **Card Payment Scheme Fees** means any costs charged to Novum by Card Payment Scheme (not including interchange fees, which are Issuer fees). These fees typically have both a % and per item component but can also be leveraged based on a E-Merchant profile (e.g. Chargeback fees or integrity fees).
- 1.11. **Card Payment Scheme Rules** means the rules and operating instructions issued by the Card Payment Scheme from time to time.
- 1.12. **Card Payment Scheme** means Mastercard or any other Card Payment Scheme as notified by Novum to the E-Merchant or otherwise agreed in writing by the parties from time to time.
- 1.13. **Chargeback** means any debit of Novum following a demand by the Card Payment Scheme(s) or by a Card Issuer, in respect of a Transaction which is disputed in accordance with the Card Payment Scheme Rules.
- 1.14. **Collateral** means measures taken to secure any current or future indebtedness of E-Merchant to Novum that may arise out of or relate to the obligations of E-Merchant under this Terms and Conditions and/or other claims, moneys, liabilities, or obligations (current or future) owing, incurred, or payable, by the E-Merchant to Novum, including but not limited to Chargebacks, Merchant Discount Rate, fees, and Card Payment Scheme 's fines and penalties.
- 1.15. **Collateral Arrangement** means the Collateral method agreed between the parties in accordance with clause 5.
- 1.16. **Confidential Information** means all confidential information (however recorded or preserved) disclosed by Novum to the E-Merchant in connection with the Agreement, concerning:  
(a) the Terms & Conditions of the Agreement;  
(b) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, clients, suppliers; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); (c) a Cardholder or Cardholders' use of a Card; any one of the Card Payment Schemes; the parties respective security procedures; or the layout of Novum's or other Financial Institutions' or (as the case may be) the E-Merchant premises.
- 1.17. **Contract Year** means a twelve (12) month period commencing with the date of the Agreement or any anniversary of it.
- 1.18. **Copy Request** means a request for information in respect to a specific Transaction that is being queried by the Cardholder, Issuer or Card Payment Scheme. Documentation to fulfil a Copy Request may include, but is not limited to, the original Transaction receipt, sales receipt describing goods/services supplied and proof of delivery.
- 1.19. **Organization** and **Data Intermediary** shall have the same meaning as they have in Personal Data Protection Act 2012.
- 1.20. **Data Protection Legislation** means PDPA together with any related laws and requirements, including but not limited to the applicable legislation within the relevant jurisdiction in which the payment services are provided.
- 1.21. **Direct Debit** means an instruction given by E-Merchant to the financial institution that maintains the Merchant Bank Account that authorises Novum to directly debit from the Merchant Bank Account all sums that become due and payable to Novum.
- 1.22. **PDPA** means the Personal Data Protection Act 2012 of Singapore.
- 1.23. **Intellectual Property Rights** mean all vested contingent and future intellectual property rights including goodwill, reputation, rights in confidential information, copyright, trademarks, logos, service marks, devices, plans, models, diagrams, specifications, source and object code materials, data and processes, design rights, patents, know-how, trade secrets, inventions, get-up

and database rights (in each case whether registered or unregistered) and any applications or registrations for the protection of these rights and all renewals and extensions thereof existing in any part of the world whether now known or created in the future and “Intellectual Property” shall be construed accordingly.

1.24. **Issuer** means an organisation that issues Cards and whose name appears on the Card as the Issuer of such Card and who is a member of a Card Payment Scheme, that enters into a contractual relationship with a Cardholder for the issuance and use of one or more Cards.

1.25. **Mastercard** means Mastercard International Inc. and Maestro.

1.26. **Merchant** or **E-Merchant** means any legal entity which is legally domiciled in Singapore (being those countries licensed by the Card Payment Scheme to Novum) and who is contracted by Novum to accept Cards for the sale of its products and/or services.

1.27. **Merchant Bank Account** means an account, in the E-Merchant’s name, with an authorised credit institution that is acceptable to Novum for the purpose of receiving remittances and/or for paying fees due to Novum and (as applicable) for which E-Merchant has provided a Direct Debit authority.

1.28. **Merchant Discount Rate** means the fees and charges that E-Merchant is required to pay for accepting Cards as detailed in the Schedule of Fees and Charges.

1.29. **E-Merchant Liabilities** have the meaning given to it in clause 5.1.

1.30. **Non-Qualified Transaction** means: (i) any Transaction submitted for processing more than three days past the time the Authorisation occurred; (ii) any Transaction missing required data.

1.31. **Online Payment Terminal** means the software setup at Novum’s Processing Services platform used at Merchant’s website to accept and process a Transaction.

1.32. **Payment Card Industry Data Security Standard** or **PCI-DSS** means a worldwide information security standard defined by the Payment Card Industry Security Standards Council and applied to all organisations which hold, process, or exchange Cardholder information from any Card.

1.33. **Payment Service Provider (PSP)** means the provider of a service to enable details of Card payments to be transmitted securely over the internet. E-Merchant can e.g. appoint a Payment Service Provider to process Transactions to Novum on E-Merchant’s behalf. Appointment of a Payment Service Provider requires prior written approval from Novum.

1.34. **Personal Data** shall have the same meaning as in PDPA.

1.35. **Personal Data Breach** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data transmitted, stored or otherwise processed.

1.36. **Pre-Authorised Recurring Transaction** means a Transaction that has been pre-authorised by the Cardholder to be debited from the Cardholder’s account at agreed intervals or on agreed dates and for which the goods or services are to be delivered or performed in the future by Merchant without having to obtain approval from the Cardholder each time.

1.37. **Processing Services** mean services provided by Novum to supply and process Authorisations for Transactions from E-Merchant.

1.38. **Proprietary Information** has the meaning given to it in clause 22.1.

1.39. **Shared Personal Data** means the Personal Data to be shared and processed between the parties for the purposes of the Agreement.

1.40. **Reserve Account** means an account under Novum’s sole control where funds due to E-Merchant are credited until Novum agrees to release the funds to E-Merchant.

1.41. **Schedules to this Agreement** mean:

- Application Form for Merchant Acquiring Services Schedule (Schedule 1) specifies the information provided by E-Merchant to Novum.
- These [Terms and Conditions for Merchant Acquiring Services](#) (Schedule 2) specifies the

terms and conditions of the Merchant Acquiring Services which are subject of the Agreement.

- Fees and Charges (Schedule 3) defines prices and payment terms for services provided hereunder that E-Merchant is required to pay for accepting Cards and varies in accordance with clause 30.
- [Data Protection Notice](#) (Schedule 4) defines policies regarding the collection, use, and disclosure of personal data in relation to the Merchant Acquiring Services.
- [Website Requirements Guideline](#) (Schedule 5) defines the rules established by the Card Payment Schemes to which E-Merchant should be compliant to in relation to the Agreement, as well as e-commerce best practices.

1.42. **Services** mean the Acquiring Services provided by Novum to the E-Merchant under the Agreement.

1.43. **Settlement** means the payment to Novum of the value of a Transaction as determined by the relevant Card Payment Scheme.

1.44. **Terminal** means the software or device used to process a Transaction. A Terminal can be an Online Payment Terminal.

1.45. **Transaction** means the acceptance of a Card or information embossed/printed on the Card, for payment for merchandise sold and/or leased and/or services provided to Cardholders by E-Merchant. The term Transaction also includes credits (refunds), errors, returns and adjustments.

1.46. **TPI** means any Third Party Intermediary between Novum and E-Merchant which may, as applicable, exchange information between Novum and E-Merchant, including but not limited to answering Merchant's questions regarding Novum's Services with the assistance of Novum within reasonable time limits and informing Novum of any changes in the nature of E-Merchant's activities or management changes.

1.47. **URL** means uniform recourse locator or an address that identifies a particular file on the Internet, usually consisting of the protocol, as http, followed by the domain name.

1.48. **Novum's Data Protection Notice** means a notice that outlines how Novum uses and processes personally identifiable information in relation to Novum's Services.

Unless the context otherwise requires, the terms used but not defined herein shall have the meanings assigned to them in the relevant Card Payment Scheme Rules and Applicable Law.

In interpreting the Agreement (unless the context otherwise requires):

- References to the singular include the plural and vice versa and references to any gender include every gender and references to a 'person' include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);
- Any words following the words "include", "includes", "including", "in particular" or any similar words or expressions shall be construed without limitation and accordingly shall not limit the meaning of the words preceding them;
- All headings are for ease of reference only and will not affect the construction or interpretation of the Agreement; and
- References to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time.

## 2. Application

2.1. Prior to the provision of Acquiring Services to E-Merchant, E-Merchant is required to complete, sign and deliver a Merchant's Application Form to Novum and provide to Novum such reasonable and relevant information and documents as requested in the Merchant's Application

Form, or by other means preliminary approved with Novum, in the English language.

- 2.2. E-Merchant's completion, signing and delivery of a Merchant Application Form to Novum or Novum's authorised representatives (where indicated) will represent:
- a. Merchant's agreement that the Services are to be provided pursuant to, and in accordance with the Agreement formed by the entry into the Merchant's Application Form; and
  - b. E-Merchant's acknowledgment and confirmation that:
    - i. the details provided by E-Merchant in the Merchant Application Form completed by E-Merchant and delivered to Novum (or to Novum's authorised representatives) and all other details and information E-Merchant has provided are correct; and
    - ii. if E-Merchant has entered, or is entering into an agreement with a Payment Service Provider, E-Merchant understands that the terms of the Agreement are separate to such agreement with a Payment Service Provider and that the provision of Services to E-Merchant is governed by the Agreement and all the Schedules to it only.
- 2.3. If E-Merchant has completed and signed a Merchant's Application Form, E-Merchant will be deemed to have accepted the Agreement at the time of completing and signing the Merchant Application Form. Further, by submitting a duly completed and signed Merchant Application Form, the E-Merchant permits Novum to perform a credit report (credit reference check) into the E-Merchant's operations, or to request a third party creditor report. Novum may at any time request E-Merchant to obtain certification that any document supplied is a true copy of the original document.
- 2.4. Any information and statement given in the Merchant Application Form and in writing during the due diligence process is an inseparable part of the Agreement.

### **3. Information processing related to Transactions and E-Merchant**

- 3.1. The E-Merchant hereby authorises Novum to use the data, including without limitation financial information, as is supplied by E-Merchant or otherwise obtained by Novum, to perform checks against E-Merchant to ensure compliance with applicable legal and regulatory requirements (as is more particularly described below) and assess, amongst other things, the financial position of E-Merchant (the Checks).
- 3.2. The Checks may include, but are not limited to: a. preliminary fraud prevention checks and corporate credit reference checks performed in connection with Merchant's application to and onboarding with Novum; b. subject to the applicable authorisations sought, any personal credit checks on any director, shareholder, officer of E-Merchant or on any other person connected with, or employed by, E-Merchant (together, Connected Persons); or c. subsequent fraud prevention and corporate credit reference checks performed in connection with updating, renewing or continuing the Agreement; and d. Obtaining data from credit reference agencies, fraud prevention agencies, Card Payment Schemes, crime prevention agencies, official records and/or other means allowed by law (as is more particularly described below).
- 3.3. E-Merchant authorises all such Checks, and to the processing and use, including disclosure to Novum group companies and all other relevant third parties (as is more particularly described below) for the purposes described herein. E-Merchant hereby represents and warrants that it is duly authorised to consent to the aforementioned checks, use, disclosure and transfer as detailed herein.
- 3.4. Further detail on credit reference checks: The credit reference checks described herein may involve credit reference agencies placing a search footprint on the relevant credit files of the E-Merchant and/or Connected Persons which would form part of credit histories and which may be seen by other organisations performing credit reference checks. The credit reference agencies may create a record of all relevant names and addresses. Novum may use details of credit histories to assess E-Merchant's ability to meet its commitments hereunder. Novum may share with credit reference agencies the details of how E-Merchant manages any card processing services. If Novum makes demands for repayment following any default and if the E-Merchant fails to repay the sum due in full then Novum may register the default with credit reference

agencies. This may affect the ability of E-Merchant to obtain further credit. This information about credit reference checks is condensed. E-Merchant should contact the credit reference agencies operating in its/their country directly for a copy of their credit reference information. To this end, contact Novum at [login@xpate.com](mailto:login@xpate.com) for details of the credit reference agencies used by Novum for the purposes described herein.

3.5. Further detail on data disclosures: To prevent crime, verify identity, assess E-Merchant's ability to meet its obligations, recover debt and for compliance with legal and regulatory obligations, Novum may exchange data about the E-Merchant with financial institutions, credit reference agencies, fraud prevention agencies, law enforcement agencies, debt recovery agencies, the Card Payment Schemes, the Issuers and other relevant organisations and as may otherwise be permitted or required by law. Credit reference agencies may share that information with their members such as customers obtaining Card payments and lenders. These entities and their members, as relevant, would use that information for their own purposes, including in relation to their own credit reference and fraud prevention searches, to prevent crime, verify identity, recover debt and for compliance with legal and regulatory obligations. In particular, that information may be exported by the credit reference agencies to their members and other organisations in countries outside Singapore.

3.6. Personal Data may be processed by Novum for its business processes including without limitation management analysis, audit, forecasts, business planning and Transactions (including joint ventures and business sales), dealing with legal claims and maintaining good governance. Novum may anonymise data and use it for analysis of statistical trends, carrying out actuarial work, business planning, risk assessment and to analyse costs and charges. Novum may share data with any person in connection with a sale of its business, shares or assets (as relevant). Novum may share data with its affiliates, third party service providers and vendors. To get further information relating to how Novum processes personal data or for any request regarding data subject rights contact Novum at [dpo@xpate.com](mailto:dpo@xpate.com). Novum's Data Protection Notice (the current version of which is available on the Website) is incorporated into the Agreement. This notice may be amended from time to time.

#### **4. Data Protection**

4.1. In relation to the Service, Novum and E-Merchant will share data with each other as Organization to Organization within the meaning of PDPA.

4.2. Novum and E-Merchant must ensure compliance with Data Protection Legislation at all times during the terms of the Agreement. Novum and E-Merchant further agree that they are both a separate and individual Data Controller for their respective data processing.

4.3. Subject to the Data Protection Legislation, it is Novum and E-Merchant's expectation that: a. Novum will ordinarily be acting as Data Controller when Personal Data is processed in order to issue or administer the Services or to meet Novum's obligations under Applicable Law (for example, in connection with "customer due diligence" requirements under money laundering legislation and other obligations and requirements constituted under Novum's regulatory authorization to provide financial services, such as but not limited to payment service and e-money regulation, credit and insurance risk checks arising from the Agreement. b. E-Merchant will be a Data Controller in respect of Personal Data processed for many of the other purposes for which it is processed in connection with the Services. In particular, when collecting, receiving and processing for the purpose of marketing and/or offering any other services.

4.4. The subject-matter, nature and purpose of the processing, categories of Personal Data processed, and categories of data subjects are described in the Agreement and in Novum's Data Protection Notice.

4.5. Data Protection Legislation obligation. Novum and E-Merchant shall ensure that it processes Shared Personal Data fairly and lawfully in accordance with applicable Data Protection Legislation, that it has a legal basis for its data processing and that it shall comply with all the



obligations imposed on a Controller under Data Protection Legislation including:

- i. be responsible for informing the data subjects of the purposes for which it will process their Personal Data and to provide all the information that it is obliged to provide under the Data Protection Legislation to ensure that the data subjects understand how their Personal Data will be processed by that party;
- ii. be responsible for dealing with its own requests from data subjects in relation to the Shared Personal Data it holds;
- iii. process the Shared Personal Data only for the purposes it was collected;
- iv. implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to the risk (taking into account the nature, scope, context and purposes of processing Shared Personal Data), including from unauthorised or unlawful processing of such Shared Personal Data, or accidental loss or destruction of, or damage to, such Shared Personal Data;
- v. ensure that all employees, and others who may have access to the Personal Data, have committed themselves to confidentiality and have received appropriate training;
- vi. ensure that no transfer or disclosure of the Shared Personal Data to any person located outside of Singapore takes place without appropriate safeguards that provide an adequate level of protection of the rights of data subjects; and
- vii. be responsible for all damage, losses, costs, liabilities and expenses caused by a breach of Data Protection Legislation in respect of the Personal Data for which the Party is an Organization.

4.6. Mutual assistance a. Novum and E-Merchant shall provide reasonable assistance to the other in complying with all applicable requirements of the Data Protection Legislation insofar as they pertain to the Agreement. Novum and E-Merchant shall notify the other party without undue delay on becoming aware of any Data Breach of the Data Protection Legislation that affects or comes within the scope of the Agreement. The notification shall include information or a description of the nature of the Personal Data Breach including the categories and approximate number of data subjects concerned and the categories and approximate number of Personal Data records concerned. The notification shall also describe the likely consequences of the Personal Data Breach and the measures taken or proposed to be taken to address the Personal Data Breach.

## **5. Reserve Account (Collateral)**

5.1. Novum may establish a Reserve Account in relation to E-Merchant, and/or allocate any assets Novum holds for any other reason as security for E-Merchant's obligations and liabilities under the Agreement, each for the purpose of providing a source of funds to pay Novum for any and all, actual and reasonably anticipated amounts and liabilities owed by E-Merchant to Novum to include actual and/or contingent liabilities under the Agreement ("Merchant Liabilities"). All funds held in the Reserve Account and all rights, title and interest to such funds, are at all times (and in the event of any insolvency event as set out in clause 28.1.7 on the part of E-Merchant) exclusively for the benefit of and vested in Novum.

5.2. The Reserve Account may, at the reasonable discretion of Novum, be funded by: (i) requiring E-Merchant to deposit into the Reserve Account a cash amount determined by Novum (acting reasonably) within seven (7) Business Days of written notice from Novum to E-Merchant; and/or (ii) Novum (acting reasonably) depositing into the Reserve Account any payments that Novum is obliged to pay to E-Merchant including but not limited to a rolling reserve and/or Settlement withholding.

5.3. Novum may without prior notice to E-Merchant, apply and set off funds in the Reserve Account or enforce any other security, against any outstanding or future: (i) charges, fees, penalties, Chargebacks and refunds payable by E-Merchant to Novum under the Agreement; (ii) Merchant Liabilities; and (iii) amounts demanded by any competent authority or third party in response to a tax levy or other court order relating to E-Merchant as necessary to comply

with any Applicable Laws.

5.4. E-Merchant hereby agrees that Novum may appoint a trustee, at its own reasonable discretion, to manage the Reserve Account in accordance with the terms specified herein with regard to the Reserve Account.

5.5. E-Merchant acknowledges that Novum may at any time reasonably request security or Collateral from E-Merchant. Failure to provide sufficient Collateral may result in Novum seeking other means to secure its interests, including but not limited to, withholding Settlements due to the E-Merchant.

5.6. Novum may at any time after the occurrence of a termination event listed in clause 28 and without prior notice to E-Merchant, realise the security or Collateral provided by the E-Merchant, either by set-off or otherwise, including any foreclosure or execution sale, for all amounts which Novum is entitled to claim from the E-Merchant under the Agreement.

5.7. E-Merchant acknowledges that in the event of an insolvency event (as set out in clause 28.1.7) on the part of E-Merchant, unless restricted or prohibited by Applicable Law, E-Merchant must maintain the Reserve Account or such other security as required by Novum, and Novum shall have the right to call on the funds held and/or the security in respect of, and/or offset against, any and all amounts owed by E-Merchant to Novum, without regard to whether any such amounts relate to Transactions initiated or created before or after the initiation of the insolvency event.

5.8. Funds held in the Reserve Account and not withdrawn or otherwise applied by Novum in accordance with the Agreement, will remain available to Novum until E-Merchant has paid in full all Merchant Liabilities which in no event shall be less than 180 calendar days following the date of deemed acceptance of the Merchant Agreement by E-Merchant in accordance with clause 2.3. or expiry or termination of the Agreement (whichever is the later).

5.9. E-Merchant shall not do, or permit to be done, anything which could prejudice the Collateral Arrangement.

5.10. The Collateral Arrangement shall be governed by Singapore law.

5.11. E-Merchant shall promptly execute and/or deliver to Novum such documents relating to the Reserve Account and/or Collateral as Novum may reasonably require, including but not limited to, executing any transfer, charge, or assurance of the Reserve Account or Collateral Arrangement, making any registration and giving any notice, order or direction.

## **6. Novum Fees**

6.1. E-Merchant undertakes to pay Novum all fees mutually agreed by Novum, as applicable, TPI and E-Merchant and specified in Schedule of Fees and Charges. As a general rule, E-Merchant will be offered fees individually specified for different categories and different brands of Cards (unblended pricing), unless E-Merchant requests subsequently, in writing or in a similar electronic form, to receive blended pricing. E-Merchant also agrees to pay Novum the amount of any fees, charges, Chargebacks and refunds incurred by E-Merchant. Furthermore, the E-Merchant agrees to pay all fines or penalties assessed against Novum by any Card Payment Scheme or Issuer for violations by E-Merchant of the by-laws, rules, regulations, guidelines, policy statements or threshold requirements of such parties subject to receipt of prior written notice and documentary evidence from Novum of all such fines and penalties. The E-Merchant also agrees to pay Novum a 20% management cost arising from such fines or penalties levied on Novum by the Card Payment Schemes.

6.2. E-Merchant will be responsible for any fees and/or charges payable by E-Merchant to any of its Payment Service Providers in accordance with the terms of the contractual arrangements in place between E-Merchant and those Payment Service Providers.

6.3. E-Merchant acknowledges that its fees and charges, as set out in the Agreement and Schedule of Fees and Charges, may be based on its representations, including but limited to its volume of Transactions, method of processing, type of business, average Transaction value, refund rates, location, as represented in Merchant Application Form, and Novum's risk



assessment.

## **7. E-Merchant obligations and undertakings**

7.1. E-Merchant agrees to accept all valid and current Cards presented by Cardholders, and to provide E-Merchants full range of goods and/or services to Cardholders at prices not greater than Merchant's normal cash prices.

E-Merchant may however refuse to accept a category of Cards, i.e. credit, debit, prepaid or commercial, provided the denial is not based on the identity of the Issuer or of the Cardholder. E-Merchant that decides not to accept all Cards or other payment instruments of a payment Card Payment Scheme shall inform Cardholders of such non-acceptance, in a clear and unequivocal manner, at the same time as they inform Cardholders of the acceptance of other Cards and payment instruments of the payment Card Payment Scheme. Such information shall be displayed prominently at the E-Merchant's web-site or other applicable electronic or mobile device. The information shall be provided to the Cardholder in good time before the Cardholder enters into a purchase agreement with the E-Merchant.

7.2. E-Merchant shall not charge a higher price or impose additional charges for the goods/service because the Cardholder pays by Card, unless Applicable Law specifically permits such charges.

7.3. If E-Merchant indicates a price to a Cardholder which is not a price applicable to all methods of payment accepted by E-Merchant then before E-Merchant accepts the Transaction, E-Merchant shall disclose any methods of payment to which the indicated price does not apply and the price applicable to each method of payment in accordance with Applicable Law.

7.4. E-Merchant shall not establish a minimum or maximum Transaction amount.

7.5. E-Merchant shall not add any tax to Transactions unless Applicable Law expressly requires that E-Merchant imposes a tax. Any tax, if allowed, must be included in the Transaction amount and not collected separately.

7.6. E-Merchant agrees to operate and to comply with all relevant and applicable Card Payment Scheme Rules, and to process Transactions as required in, and in accordance with the Agreement. Any Transaction accepted by E-Merchant which is in breach of the Agreement, or such other requirements as Novum may notify to E-Merchant from time to time, and/or which is disputed by the relevant Cardholder and/or Card Issuer, may be charged back to E-Merchant in accordance with clause 13.

7.7. E-Merchant shall at all times comply with the provisions of these Terms & Conditions and all the other Schedules of the Agreement.

7.8. E-Merchant shall at all times conduct its business in line with Applicable Law in all regions targeted by E-Merchant, including but not limited to seeking necessary approvals, permits, consents, licences, authorisations, permissions, certificates and statutory agreements required from any competent authority and all consents, approvals and agreements from and with third parties necessary for the conduct of the E-Merchant's business, including in respect of compliance with PCI DSS. If E-Merchant's authorisation for conducting the business is withdrawn by an appropriate competent authority E-Merchant shall notify Novum as soon as reasonably practicable.

7.9. E-Merchant must only accept payments and make refunds in respect of goods or services which have been supplied by E-Merchant.

7.10. E-Merchant shall notify, in writing, both Novum and TPI, as applicable, of any material changes to E-Merchant's activities from those stated in the Merchant Application form at least one week before such changes are scheduled to take place. The notification duty equally applies if E-Merchant offers new categories of items for sale, new categories of services or ceases selling items or services or opens or closes an E-Merchant outlet or website for accepting Transactions.

7.11. Provided such action is permitted under, and in accordance with, Applicable Law, E-Merchant shall inform Novum immediately about (i) (except where the E-Merchant is a public company listed on a stock exchange and subject to beneficial ownership disclosure requirements)

any change in company ownership or control, such as a change in directors, authorised signatories, substantial shareholdings or beneficial owners; (ii) any insolvency event (or impending insolvency event) as set out in clause 28.1.7; (iii) any actual or impending change in E-Merchant's trading, business or trading name, legal status, business or trading address or any of E-Merchant's other details that E-Merchant's has provided to Novum; and (iv) any actual or impending sale or other disposal of all or any material part of E-Merchant's assets which may result in a material adverse change to E-Merchant's business.

7.12. E-Merchant must not engage in activity that Novum or the Card Payment Schemes reasonably believe to be illegal, disreputable or may damage the reputation or brand of Novum, Card Payment Schemes, any TPI or any other financial institution. E-Merchant is fully liable for any fines that may be levied in respect of illegal or brand damaging activity, including but not limited to fines imposed on Novum for activities undertaken by E-Merchant.

7.13. If E-Merchant accepts a Pre-Authorised Recurring Transaction it does so at its own risk and the Cardholder shall execute and deliver to E-Merchant a prior written request or make an online acceptance for this Pre-Authorisation for the sums due to the E-Merchant in respect of goods and/or services to be periodically charged to their account. The Pre-Authorisation must be dated and signed by the relevant Cardholder (or otherwise demonstrate online acceptance) and must state the amount and frequency of the recurring charge to be made against that Cardholder, the approximate date within each period their account will be charged, and the duration of time during which the charges comprising that Pre-Authorised Recurring Transaction can be made. The written request or online approval record shall be maintained by E-Merchant and made available to Novum within a reasonable time following a request from Novum. All annual billings must be reaffirmed at least once each year. E-Merchant shall not deliver goods or perform services covered by a Pre-Authorisation after receiving notification from the Cardholder that the Pre-Authorisation is cancelled or from Novum that the Card covering the Pre-Authorisation is not to be honoured.

7.14. E-Merchant agrees that it must notify the Cardholder of the amount of any Pre-authorized Recurring Transaction or the date on which any Pre-Authorised Recurring Transaction will take place if such amount or date is different from that specified in the Cardholder's original Authorisation, not less than fourteen (14) Business Days prior to presentation to of the Transaction data for Settlement.

7.15. E-Merchant agrees that it will not complete any Pre-Authorised Recurring Transaction after receiving: (i) cancellation from the Cardholder; (ii) written notice from Novum that E-Merchant may no longer process Pre-Authorised Recurring Transactions; or (iii) written notice from Novum that the Card is not to be honoured.

7.16. E-Merchant must only accept and submit payments to Novum in respect of Transactions that have been authorised by the Cardholder and undertaken in accordance with the Agreement and its respective Schedules, Card Payment Scheme Rules, Applicable Law and any other instructions provided by Novum to E-Merchant from time to time.

7.17. E-Merchant shall ensure that the identity of E-Merchant is prominent to a Cardholder at all stages of a Transaction, including prominently displaying E-Merchant name or trading name on any website through which E-Merchant conducts Transactions.

7.18. E-Merchant may only submit Transactions to Novum which directly originate from E-Merchant's own staff and systems, or via a third party that has been approved by Novum in writing to E-Merchant. The appointment by E-Merchant of a Payment Service Provider, internet Payment Service Provider or other form of intermediary to process Transactions on E-Merchant's behalf is subject to Novum's prior written approval. If there are any inconsistencies between any document comprising part of the Agreement and Merchant's contract with any Payment Service Provider(s) (if any), as between E-Merchant and Novum, the document comprising part of the Agreement shall govern the provision of Services to

E-Merchant.

7.19. E-Merchant is solely responsible for establishing and maintaining adequate security systems, controls and procedures to include, but not be limited to: a. Security of any system access codes and prevention of unauthorised use. b. Prevention of unauthorised access to and use of card payment Terminals(s). c. Monitoring the use of system access codes and payment Terminals to ensure that any unauthorised user is identified. d. The security of Confidential Information and data as detailed in clause 17.

7.20. E-Merchant must not:

- a. undertake Transactions for anything other than the genuine purchase of the goods and/or services that E-Merchant supplies;
- b. split a Transaction into two or more Transactions;
- c. accept Transactions relating to goods and/or services which fall outside the description of E-Merchant's business without Novum's prior written approval;
- d. accept a Transaction or present Transaction data for processing which was not undertaken directly between E-Merchant and the Cardholder;
- e. accept a Transaction or present Transaction data for processing where E-Merchant has or ought to have reasonable doubts as to whether the person presenting the Card is the Cardholder;
- f. process Transactions on behalf of a third party without Novum prior written consent;
- g. accept or process Transactions in order to credit the Cardholder's account or otherwise accept monies whether from the Cardholder or otherwise for the purposes of crediting the Cardholder's account unless Novum has specifically given E-Merchant its prior written consent to do so;
- h. accept any Transaction using any Card issued in E-Merchant's name, or on the Merchant Bank Account or of a partner in, or director or other officer of Merchant's business, or of the spouse or any member of the immediate family or household of any such person;
- i. accepts Transactions and submit Transaction data which E-Merchant knows or ought to have known or reasonably suspect is illegal or which do not meet the requirements of the Card Payment Scheme Rules.

7.21. E-Merchant must notify Novum as soon as reasonably practicable in respect of any other URLs, other than those specified in the Application form, which are intended to be used for processing Transactions. Such URLs may only be used for processing payments once they have been reviewed and approved by Novum in writing.

7.22. E-Merchant must notify Novum as soon as reasonably practicable, as applicable, about any changes in its relationship with any TPI.

## **8. Software utilization**

8.1. When E-Merchant utilizes any software provided by Novum the following shall apply:

- a. E-Merchant is responsible for technical adaptation and implementation of the chosen software. The software used shall only be a solution approved by Novum and Novum may notify E-Merchant that the software is no longer approved for use. In this event E-Merchant shall upgrade to new software approved by Novum within a reasonable time specified by Novum.
- b. E-Merchant acknowledges that the installation of the software is subject to: (1) the availability of suitable communication lines and Terminals; and (2) the cooperation of E-Merchant with the electric and communication companies. Novum will have no liability to E-Merchant if any installation is delayed or cannot be completed for reasons not caused by the act or neglect of Novum. The E-Merchant acknowledges that its TPI, as applicable, has the same access and is also bound by Novum's rules and regulations.

8.2. When E-Merchant does not utilize any software provided by Novum the following shall apply: For e-commerce, E-Merchant shall use software that includes fraud screening of Authorisation and Transactions. The software shall be designed specifically for the region or the industry where E-Merchant is doing business to assist in keeping Chargeback and fraud rates below the Chargeback and fraud limits as they may change from time to time. E-Merchant shall further

apply the utmost diligence and forthrightness in protecting against and responding to any ADC Event or potential ADC Event. E-Merchant acknowledges and agrees that Novum and/or Card Payment Schemes have the right and need to obtain full disclosure (as determined by Novum and/or Card Payment Schemes) concerning the causes and effects of an ADC Event or potential ADC Event as well as the authority to impose assessments, recover costs, and administer compensation, if appropriate, to E-Merchant that have incurred costs, expenses, losses, and/or other liabilities in connection with ADC Events and potential ADC Events. At the time that the ADC Event or Potential ADC Event has occurred E-Merchant is fully responsible for resolving all outstanding issues and liabilities to the satisfaction of Novum.

## **9. Individual TRANSACTION rules**

9.1. Except as otherwise provided, Novum reserves the right to reject a Transaction submitted by E-Merchant under the following circumstances: a. if submitted more than fifteen (15) Business Days after the date of such Transaction; b. if Card is honoured after the expiry date indicated thereon; c. if Card is honoured in spite of instructions received when Card was verified through Terminal stating that the Card should not be honoured; d. if amount of the sale Transaction is altered, erased, or alleged to have been drawn improperly without the Cardholder's authority or corresponding counter signature; e. if Cardholder or any representative of Cardholder disputes the sale or Transaction by any means whatsoever including but not limited to, by telephone, or by e-mail either to Novum or TPI or any supplier of support services to Novum or TPI; f. in the case of credits (refunds), where Novum reasonably believes that the Merchant Bank Account has insufficient funds to meet the associated debit, or where the Direct Debit mandate has been cancelled; g. if there has been negligence, fraud or suspected fraud, or dishonesty on the part of E-Merchant or any of its employees which should in any way affect or violate the Terms & Conditions of the Agreement; h. if there are clear indications that a party other than the genuine Cardholder made the purchase.

9.2. Novum may reject Transactions submitted by E-Merchant when only part of the amount due is indicated on a single Transaction except under the following circumstances: a. when the balance of the amount of sales is paid by the Cardholder by another method (cash, cheque, e-cheque, another Card type) confirmed by E-Merchant at the time of Transaction; and/or b. in a delayed delivery Transaction whereby the goods, merchandise and/or services are to be delivered or performed at a later date and one Transaction represents a "deposit" and the second Transaction represents the "balance" of the purchase price, the latter Transaction being conditional upon delivery of merchandise and/or completion of the service. The Transaction representing the balance shall not be presented to Novum until the merchandise is delivered or the services performed. Separate Authorisations are required on the "deposit" and "balance" parts of the Transaction and Transactions will reflect "deposit" or "balance" according to Card Payment Scheme Rules and regulations. No Authorisation with respect to a "deposit" Transaction shall bind or obligate Novum to thereafter authorise the "balance" portion.

## **10. Information Security, Retention and Data Storage**

10.1. E-Merchant must not sell, purchase, provide, exchange or in any manner disclose a Card account number, Transaction, or personal information of or about a Cardholder to anyone other than its acquirer or to the Card Payment Schemes. This prohibition applies to mailing lists, tapes, database files, and all other media created or obtained as a result of a Transaction. Under no circumstances may E-Merchant store in any system or in any manner discretionary card-read data, CVV/CVC, CVV2/CVC2 data, iCVV, PIN, address verification service data, or any other prohibited information as set forth in the Card Payment Scheme Rules and PCI DSS. E-Merchant undertakes to introduce, comply with and maintain new procedures as they may change from time to time as published on [www.mastercard.com](http://www.mastercard.com) and [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org). Novum may specify a time limit for compliance.

10.2. Before completing any Transaction, E-Merchant is required to comply with all security procedures that Novum requires E-Merchant to comply with from time to time and to attempt,

by reasonable, discreet and appropriate means, to retain a Card if so requested by Novum.

10.3. E-Merchant (and/or, as applicable, its TPI on its behalf) agrees to retain all Transaction data in the strictest confidence and in a secure environment where they can only be accessed by authorised members of E-Merchant's staff (and/or TPI's staff, if applicable), and to ensure that any such details stored electronically are fully protected, correct, complete, not lost or damaged and can be reconstituted, in a complete and easily readable form. E-Merchant (and/or, as applicable, its TPI on its behalf) will take all reasonable precautions to ensure that Cardholder information is not disclosed to any person other than Novum or misused by any person, unless otherwise required by any Applicable Law or by the Card Payment Scheme Rules.

10.4. To the extent that Novum is in possession of any Transaction data, Novum will retain such data in the strictest confidence and in a secure environment where it may only be accessed by authorised members of Novum's staff, and Novum shall ensure that any such details stored electronically are fully protected, not lost or damaged and can be reconstituted, in a complete and easily readable form. Novum will take all reasonable precautions to ensure that any Cardholder information or Transaction data is not disclosed to any person other than Novum or misused by any person, unless otherwise required by any Applicable Law or by the Card Payment Scheme Rules.

10.5. E-Merchant (and/or, as applicable, its TPI on its behalf) must retain Transaction records, including, to the extent available depending on the Transaction type, electronic records relating to each Transaction. All the above mentioned Transaction records must be kept by E-Merchant (and/or, as applicable, its TPI on its behalf) in a safe, secure and confidential manner for at least eighteen (18) months from the date of the relevant Transaction (or in the case of Pre-Authorised Recurring Transactions, at least eighteen (18) months from the date of the last Transaction forming part of the Pre-Authorised Recurring Transaction).

10.6. E-Merchant may not retain or store CVV2/CVC2 data after Authorisation for a Transaction has been received.

10.7. Novum will not in any circumstances (other than if due to Novum's negligence) be liable in respect of the face value of any Transaction data, or the costs of reconstituting such data, or for any other loss or damage arising on any loss of Transaction data. If any loss or damage to the physical medium containing any Transaction data occurs and it is agreed or shown to be due to our negligence, Novum will reimburse E-Merchant the replacement value of the lost or damaged medium.

10.8. E-Merchant agrees to comply with the PCI DSS (as is more particularly referred to in [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org)) and the MASTERCARD "Site Data Protection Program", and any changes to those programmes and standards which may occur. Novum will promptly provide E-Merchant with details of such data standards, and the programmes, on written request. E-Merchant will confirm to Novum in writing that all third parties that store, transmit or process Transactions on E-Merchant's behalf are fully compliant, where applicable and when considered as a combined, overall solution, with such standards and programmes. In the event that Novum reasonably deems E-Merchant to be noncompliant with PCI DSS, Novum will issue E-Merchant with a non-compliance notice and E-Merchant shall promptly remedy areas of noncompliance. Novum may charge a fee for noncompliance.

## **11. Clearing**

11.1. E-Merchant must forward valid Transactions for clearing to Novum no later than three (3) Business Days after the date of a Transaction. If at the time of Transaction, the Cardholder agrees to a properly disclosed delayed delivery of the services, then clearing must be no later than three (3) days after the date of shipping. If E-Merchant cannot meet the agreed upon time limit, E-Merchant shall obtain the Cardholder's approval for shipping and if approval is obtained a new Authorisation should be done. Novum can at its discretion accept or deny clearing Transactions six (6) months from Authorisation date.

## **12. Complaints**

12.1. E-Merchant shall respond promptly to inquiries from Cardholders and shall resolve any disputes amicably. If unresolved disputes occur with a frequency unacceptable to Novum, Novum may terminate the Agreement in accordance with clause 28. Novum reserves the right to charge E-Merchant reasonable fees and reimbursement on account of excessive Cardholder inquiries, refunds or Chargebacks.

12.2. Any complaints by Cardholder to E-Merchant about the merchandise or services provided by E-Merchant shall be settled by E-Merchant and the Cardholder. Novum is not liable for any claims arising from such complaints or the business relationship between E-Merchant and the Cardholder and Novum shall not undertake any intercession under the circumstances that such claims arise. E-Merchant shall treat any complaints from Cardholders in the same way as complaints from any other customers.

12.3. Novum shall respond to any complaint from the E-Merchant regarding issues arising from or in connection with its services within fifteen (15) Business Days. In circumstances where Novum cannot respond within the given time limit, for reasons beyond Novum's control, Novum shall notify the E-Merchant of that fact and the reasons for the delayed response. In any event, Novum shall provide a final response to a complaint from an E-Merchant, under this clause, within thirty five (35) Business Days after the day Novum receives the complaint

## **13. Chargeback**

13.1. Any Chargeback represents a debt immediately due and payable by E-Merchant to Novum. If an Issuer exercises its rights not to settle or to undertake a Chargeback in accordance with the Card Payment Scheme Rules, Novum will immediately, and without notice, be entitled, and E-Merchant will allow Novum, to debit the Merchant Bank Account, or to recover from E-Merchant by any other means or on any other timescales, the amount paid by Novum to E-Merchant in respect of that Transaction. Novum's right to do this will be as detailed in the Card Payment Scheme Rules, only, and will not be affected by any arrangement between E-Merchant and the Cardholder. For the avoidance of doubt, Novum may invoice E-Merchant for Chargeback amount if Novum (at its sole discretion) has decided not to debit the Merchant Bank Account.

13.2. The following is a non-exhaustive description of circumstances where a Chargeback may arise, and there may be other parts of the Agreement which give rise to a Chargeback or other circumstances not referred to in the Agreement which may give rise to a Chargeback:

13.2.1. the Transaction is for any reason illegal or of no legal effect;

13.2.2. the Card used in the Transaction no longer bears the authenticity features, or has expired, is not yet valid or has been cancelled or revoked, at the date of the Transaction;

13.2.3. the amount of the Card Transaction was a Recurring Transaction or involved Maestro Card but the Transaction was not authorised;

13.2.4. E-Merchant has in any way failed to comply with or are otherwise in breach of the Agreement or the Card Payment Scheme Rules or any other requirement that Novum may notify to E-Merchant from time to time in accordance with clause 30;

13.2.5. the goods and/or services to be supplied by E-Merchant under the Transaction have not been supplied, or are defective or not as described, or the purpose of the Transaction is to credit the Cardholder's account;

13.2.6. the information recorded in the sales receipt presented to the Cardholder materially differs from the information contained in Transaction data presented for Settlement;

13.2.7. Novum has notified E-Merchant, whether in a list or otherwise, that the Card is fraudulent, lost or stolen; two or more sets of Transaction data have been completed or sent for Settlement in respect of a single Card Transaction;

13.2.8. the Transaction is not directly between E-Merchant and the Cardholder, or where E-Merchant had or ought to have had reasonable doubts that the person inputting the Card details



for the Transaction is not the Cardholder;

13.2.9. the Transaction data is incomplete or not presented to for Settlement within relevant time limits;

13.2.10. the Cardholder disputes or denies having authorised the Transaction and E-Merchant is unable to provide evidence satisfactory to Novum that the Transaction was so authorised (including with respect to the value of the Transaction);

13.2.11. the Transaction is a Card Not Present Transaction and is disputed by the Cardholder and/or Issuer;

13.2.12. the Transaction is charged back for any other reason within the relevant Card Payment Scheme Rules.

13.2 Novum is not obliged to notify E-Merchant of any defect in any Transaction data, or other liability to Chargeback except where a Chargeback is in fact made or to procure, or assist E-Merchant in procuring, payment from a Cardholder where the relevant Transaction has been charged back to E-Merchant.

13.3 Novum is not obliged to assist E-Merchant in procuring payment of any sums that may be properly due to E-Merchant from the Cardholder if the Transaction has been the subject of a Chargeback for any reason.

13.4 E-Merchant acknowledges that Chargebacks can occur a considerable time after the original Transaction and agrees that, notwithstanding any termination of the Agreement, Novum remains entitled to recover Chargebacks and any associated costs from E-Merchant.

13.5 E-Merchant is responsible upon receipt of any Copy Request or Chargeback and undertakes to supply to Novum the required documentation within seven (7) Business Days.

13.6 In the event that E-Merchant wishes to dispute a Chargeback, it remains E-Merchant's responsibility to prove to the satisfaction of Novum, the Card Payment Scheme, Card Issuer or other financial institution that the debit of the Cardholder's Card or account was authorised by the Card and/or account holder. E-Merchant must provide Novum, the Card Payment Scheme, Card Issuer or other financial institution any such evidence required to support the claim.

13.7 Novum or TPI shall not be obliged to investigate the validity of any Chargeback. E-Merchant agrees that a decision by the Card Payment Scheme as to the validity of any Chargeback shall be final and binding.

13.8 E-Merchant undertakes to use all reasonable efforts to maintain Chargeback and fraud rates at a level acceptable to Novum and the Card Payment Schemes. If the ratio of Chargebacks to Transactions or fraud to sales exceeds 1% for a period of longer than three calendar months, Novum may terminate the Merchant Agreement in accordance with clause 28.1

13.9 E-Merchant agrees that they will be liable for any Card Payment Scheme fines levied in respect of unacceptable Chargebacks or fraud to the extent it arises as a result of E-Merchant's breach of the Agreement or the Card Payment Scheme Rules or failure to follow Novum's reasonable instructions.

13.10 A fee may be charged to E-Merchant for each report that Novum needs to send to Card Payment Schemes on behalf of the E-Merchant according to Card Payment Scheme rules, including but not limited to Chargeback-Monitored Merchant (CMM) Report, Excessive Chargeback Merchant (ECM) Report and fraud report.

13.11 If E-Merchant disagrees with Novum's decision to charge back a Transaction, E-Merchant must so notify Novum in writing within seven (7) days of the Chargeback and provide documentation that the dispute has been resolved to Cardholder's satisfaction or proof that a credit has been issued. Novum's failure to charge, recoup or set off the amount does not waive Novum's Chargeback rights.

#### **14. Settlement and Direct Debit**

14.1. The Card Payment Schemes settle with Novum in the respective currency of an account setup for each E-Merchant and Novum. Novum's payment to E-Merchant shall be made in the same currency as the Settlement by the Card Payment Schemes in accordance with an agreement

between E-Merchant and Novum and subject to the payment terms stated in Schedule of Fees and Charges. If there is a non-Settlement date in any particular Settlement currency, as determined by the Central Bank associated with the designated Settlement currency, Novum may postpone Settlement to E-Merchant until Novum is able to settle payments in that currency.

14.2. Transactions will be settled in accordance with the Schedule of Fees and Charges. Novum shall deliver payment to E-Merchant by a credit to the Merchant Bank Account. This credit will be reduced, if necessary, by: (i) the sum of all Cardholder charges denied, refused or charged back; (ii) all refunds processed on account of Cardholders during said time period; (iii) the fees and charges, including Chargebacks the E-Merchant owes Novum hereunder and calculated foreseeable fees; (iv) any justified claim against E-Merchant, irrespective of whether the claim is because of Settlement or adjusting entries, or originates in other business between the parties; (v) all taxes, penalties, fines, charges and other items incurred by Novum that are reimbursable pursuant to the Agreement.

14.3. Where Novum is required to deliver payment to E-Merchant via a Payment Service Provider, E-Merchant agrees that such payment is a discharge of Novum's obligations to the E-Merchant under the Agreement and Card Payment Scheme Rules.

14.4. Novum may, with or without notice to the E-Merchant, change processing or payment terms and/or suspend Settlement of any Transaction(s) if: (i) Novum reasonably believes that the Transactions may be fraudulent or relate to criminal activity; (ii) Novum reasonably believes E-Merchant may be in breach of its obligations under the Agreement; (iii) the Transaction was not in the ordinary course of Merchant's business; (iv) if the number and/or size of the Transaction(s) is significantly greater than expected for a business of E-Merchant's size or type; (v) if any of the termination events in clause 28 has occurred; (vi) if Novum (acting reasonably) suspects that any such termination events in clause 28 has occurred (whether or not Novum has terminated the Agreement); (vii) Novum suspects (acting reasonably) that E-Merchant's financial position has deteriorated (as shown by E-Merchant's financial accounts, including management accounts, or otherwise); (viii) based on Novum's reviews (from time to time) of E-Merchant's processing history Novum is of the opinion that there is a potential risk of loss to Novum through excessive Chargebacks; (ix) Novum reasonably believes that E-Merchant may be in breach of Card Payment Scheme Rules, Applicable Law and/or the Agreement, and Novum has initiated or intends to initiate screening of E-Merchant or Transactions (such as Know Your Customer (KYC) check); or (x) E-Merchant has failed to pay amount due to Novum under the Agreement on its due date. All payments so suspended may be retained by Novum until Novum has satisfied itself that such Transaction(s) is/are legitimate and/or no longer liable to be the subject of a Chargeback. In particular in such circumstances, Novum may move E-Merchant on to a system under which Novum settles such Transactions by holding back payments to E-Merchant for a predetermined number of days. No interest shall accrue in respect of any such amount that is so withheld or deferred. Suspension will remain in force until such time as investigation into the matter has been satisfactorily completed by Novum, any other financial institution or third party

14.5. If a portion of E-Merchant's assets becomes subject to attachment, distraint or other equivalent sequestration or E-Merchant enters insolvency proceedings, commences upon debt negotiations, ceases payments or acknowledges insolvency, Novum is authorised to withhold payments otherwise due to E-Merchant in order to guarantee potential reclaims it may need to make against E-Merchant. In exercising this provision, Novum will not withhold more capital than Novum, in its reasonable discretion, deems necessary for such a guarantee and will not hold such capital for longer than necessary.

14.6. In case the Agreement is terminated as a result of the breach and/or according to clause 28, Novum is entitled to withhold Settlement, whether due or not, if Novum's aggregated coverage with E-Merchant's is not satisfactory based on Novum's risk calculation, which is based on recognized risk factors, such as merchant sectors, delayed delivery, merchant volume, etc. The Settlement will be paid out according to Novum's risk calculation.

14.7. E-Merchant shall duly notify Novum in writing within thirteen (13) months from date of

Settlement if it considers a Settlement to be unauthorised or incorrect, specifying the incorrect Transactions. If Novum has not received written observations from E-Merchant within that period, Novum may, at its own discretion, consider the relevant Settlement to be in final form.

14.8. Notwithstanding clause 14.7 above, in the event of incorrect Settlement to E-Merchant to which E-Merchant is not entitled in accordance with the Agreement, Novum shall be entitled to subtract the amount from the subsequent amount referred for Settlement. Furthermore, Novum shall be entitled to claim repayment without delay of such amounts or any other claim to which Novum is entitled against E-Merchant in connection with the Agreement.

14.9. In certain circumstances may, with prior notification to E-Merchant, only settle payments to Merchant Bank Account if the funds to be transferred exceed a minimum of 1 unit of the corresponding currency. Where the amount payable by Novum to E-Merchant is lower than the minimum amount, the amount payable is deferred until the total amount reaches the minimum limit.

14.10. E-Merchant will maintain a Merchant Bank Account in E-Merchant's name throughout the term of the Agreement and for such a period as may be required thereafter for the purpose of complying with any applicable provisions of the Agreement. When applicable, E-Merchant will maintain with the Merchant Bank Account bank an instruction to authorise Novum to directly debit the Merchant Bank Account all sums that become due and payable by E-Merchant to Novum under or in connection with the Agreement.

14.11. Novum may, in addition to and without prejudice to the exercise of any rights under clauses 14.2,14.4,14.5,14.6 and 14.7, debit the Merchant Bank Account for all sums that are due and payable to Novum under or in connection with the Agreement in accordance with the terms of the direct debit mandate maintained by E-Merchant under clause 14.10, when applicable.

14.12. E-Merchant will ensure that the Merchant Bank Account shall at all times have enough credit balance to meet the sums payable to Novum under or in connection with the Agreement. Novum will, if practicable, notify E-Merchant in advance of the sums payable to Novum, in due time, which will be debited by Direct Debit, when applicable.

14.13. E-Merchant shall notify Novum in writing and in advance, within a reasonable time period, of any changes proposed by E-Merchant to the Merchant Bank Account and shall not implement changes without Novum prior written consent.

14.14. Novum may at its sole discretion at any time change the Settlement procedure and either deduct E-Merchant's service fees and all other liabilities and payments due prior to Settlement or make a gross Settlement to E-Merchant.

14.15. Novum reserves the right to claim interest on any payment (in any currency) due and payable to Novum that cannot be collected when it becomes due, at a rate equal to 4% above the base rate of the Bank of England from time to time. Default interest (if unpaid) arising on an overdue amount will be compounded.

14.16. Without limiting the generality of any other provision of the Agreement, if Novum or TPI, take legal action against E-Merchant for any Chargebacks or any amounts due to Novum or TPI hereunder, E-Merchant shall pay the costs and attorneys' fees incurred by Novum and/or TPI, whether proceedings are commenced or not.

## **15. Set-off**

15.1. In addition to any other legal or equitable remedy available to Novum in accordance with the Agreement or by law, Novum may at any time (without notice to E-Merchant) set off and apply any or all amounts due and payable (present, future, actual or contingent or potential, liquidated or unliquidated) to Novum, and any of Novum's affiliates providing payment services or related services to E-Merchant, under the Agreement, an agreement with any of Novum's affiliate or under some other agreement between E-Merchant and any Novum entity, against any or all amounts due and payable by Novum to E-Merchant or to the Reserve Account or to any property of E-Merchant in the possession or control of 14.15. Novum or TPI. Claimants' formal collection measures against

E-Merchant's balance with Novum, bankruptcy proceedings against the E-Merchant's estate or the transfer by E-Merchant of its claims against Novum to a third party by no means limits this right unless otherwise provided for by law, or Novum especially having abandoned its debt-balancing Authorisation or especially consented as transferee or holder of lien.

15.2. E-Merchant may not set-off any of Novum's liabilities under this or any other agreement against any amounts due to Novum from E-Merchant.

## **16. Adjustments and Returns**

16.1. E-Merchant will maintain a fair exchange and return policy and make adjustments with respect to goods and services sold and/or leased to its customers whenever appropriate. If, in the usual course of E-Merchant's business, E-Merchant provides refunds to E-Merchant's customers, E-Merchant must also provide refunds to Cardholders on the same terms E-Merchant provides refunds to E-Merchant's other customers. If goods are returned, or services are terminated or cancelled, or any price is adjusted, E-Merchant will prepare and transmit a credit or refund Transaction, electronically, for the amount of the adjustment as a deduction from the total amount of Transactions transmitted that day. If the amount of credit or refund Transactions exceeds the amount of sales Transactions, E-Merchant shall pay Novum the excess. E-Merchant shall make no cash refunds on Transactions and shall handle all credit adjustments as provided in this section. If no refund will be given, Cardholder must be advised in writing at the time of the Transaction that the sale is a "final sale" and "no returns" are permitted. Cardholders must also be advised in writing of any policy of E-Merchant that provides for no-cash refunds. E-Merchant shall follow Card Payment Scheme reservation/no-show policies. E-Merchant shall notify Cardholders in writing of this policy on all advance reservations. E-Merchant also shall notify Cardholders at the time of the reservation of the exact number of days required for reservation deposit refunds.

16.2. E-Merchant agrees that:

16.2.1. E-Merchant will not affect a refund by cash or cheque or any other method for goods and/or services paid for by Card;

16.2.2. E-Merchant will not affect a refund by Card for goods and/or services paid for by cash or cheque or any other method.

16.2.3. E-Merchant will only refund Transactions in full or in part to the Card which was originally used to make such Transactions; and

16.2.4. E-Merchant will not accept money from a Cardholder or third party in connection with processing a refund to the Cardholder's account.

## **17. Confidentiality**

17.1 Except where set out in this section, E-Merchant, as applicable, TPI and Novum shall: a. Treat all Confidential Information received in connection with the Agreement as confidential; b. Use the other parties' Confidential Information only for the specific purpose for which it was disclosed; and c. Not disclose the other parties' Confidential Information without the owner's prior consent.

17.2 Each party may disclose Confidential Information if it is required to do so by Applicable Law, Card Payment Scheme Rules or any competent regulatory authority or court.

17.3 Since the documents constituting the Agreement contain certain information designed to help E-Merchant reduce the risk of fraud arising on Transactions, E-Merchant must treat such documentation as confidential and keep it secure and not disclose it to the general public.

17.4 E-Merchant shall not, except for the purposes of the Agreement, compile or make use of any information relating to any TPI and Novum, any Card Payment Scheme, any Card, any Cardholders or the terms of the Agreement or any documents provided with it, except where necessary for the performance of the Agreement. E-Merchant shall use E-Merchant's best endeavours to ensure that E-Merchant's employees and agents will maintain strictest confidence with respect thereto and not divulge or communicate to any third party information concerning Novum's business or Transactions of Cardholders which may come to the notice of E-Merchant during the term of the

Agreement. Novum will use its reasonable endeavours to ensure that Novum's employees and agents maintain such information in strictest confidence.

17.5 E-Merchant acknowledges that Novum may disclose information about E-Merchant's business and activity to Novum's associated companies, the police, Card Payment Schemes, any competent regulatory authority, or any other investigating body for use in the prevention or detection of fraud or other criminal activity, or to any credit reference agency which Novum also uses as a source of information, and other disclosure in accordance with clause 4.

## **18. Term**

18.1. The Agreement, which constitutes the documents listed in the beginning of it, becomes effective upon the signature of the E-Merchant either on the Merchant Application Form or the Merchant Agreement itself, or the transmission of a Transaction, or other evidence of a Transaction to Novum. The Merchant Agreement will remain in full force until terminated by Novum with sixty (60) days prior written notice, or with immediate effect in accordance with clause 28, or by the E-Merchant with thirty (30) days written notice. All existing obligations, warranties, indemnities and agreements with respect to Transactions entered into before such termination shall remain in full force and effect, and E-Merchant shall remain liable for all obligations to Cardholders and Novum incurred while the Agreement was in effect.

## **19. Compliance with Card Payment Scheme Rules and Applicable Law**

19.1. E-Merchant agrees to comply with the bylaws, the Card Payment Scheme Rules, regulations, policy statements and guidelines of the Card Payment Schemes.

19.2. E-Merchant undertakes to send all information and documents Novum requests within the time limit given by Novum and in a form acceptable to Novum, when such information and documents are requested by the Card Payment Schemes.

19.3. E-Merchant represents and warrants that it has obtained all necessary regulatory approvals, certificates and licences to sell any product or provide any service it intends to offer. E-Merchant shall comply with all Applicable Law.

19.4. Where E-Merchant is found non-compliant with clause 19.1 above and has not amended its activity to become compliant within the timeframe given by Novum, then Novum can either terminate the Agreement according to clause 28 or withhold Settlements to the E-Merchant until the E-Merchant has become compliant.

19.5. E-Merchant accepts and understands that Novum may send all relevant data and information that the E-Merchant has provided Novum and/or information that stems from the business relationship of the E-Merchant with Novum to the Card Payment Schemes and other relevant authorities due to investigations or audits performed on the E-Merchant. This information can be, but is not limited to, Transaction details, sales turnover, information on Chargebacks and contracts and other documents provided by the E-Merchant, or as applicable its TPI.

## **20. Labelling**

E-Merchant undertakes to label its E-Merchant home page/main page and payment page in a way that shows that E-Merchant accepts Mastercard as a means of payment and in compliance with the Card Payment Scheme Rules governing the display of such label. This label shall be placed in a prominent position and shall be at least as prominent as other Card labels/logos appearing at E-Merchant's website. E-Merchant is required to comply with all instructions given by Novum as to the adequate and correct display of promotion signs or other material provided by Novum to indicate that Cards issued under the Card Payment Schemes are accepted as a means of payment.

E-Merchant shall not use any other material associated with the Card Payment Schemes or Novum without Novum's prior written approval. Subject to the prior written consent of Novum

and upon such conditions as are authorised by Novum, E-Merchant may use Card service marks or design marks in its own advertisement and promotional materials.

## **21. Logos/designs**

21.1. E-Merchant may only use logos/designs approved by Mastercard: for Mastercard Cards logos shall only be according to the site [www.mastercardbrandcenter.com](http://www.mastercardbrandcenter.com).

21.2. E-Merchant is not allowed to use the Novum logo except in the context of Novum's Services for E-Merchant.

21.3. E-Merchant's use of Novum, and/or Mastercard, whether registered or not, does not entail any transfer of ownership rights or copyrights. Novum does not pay for the publication of the trademarks, neither at the venue of sale nor in advertisements.

21.4. For Card Not Present Transactions E-Merchant undertakes to display, at a minimum, the following on E-Merchant's website:

- Consumer data privacy policy;
- Terms of trade;
- Security capabilities and policy for transmission of payment Card details;
- The address of its permanent establishment;
- Contact details;
- and Mastercard logos.

All the requirements are specified in the Website Requirements Guideline.

## **22. Intellectual Property**

22.1. Novum is the owner or licensee of all Intellectual Property Rights in and to the Acquiring Services and all products, devices, software and components used in the provision of the Acquiring Services including all documentation in relation to the foregoing ("Proprietary Information").

22.2. Novum hereby grants E-Merchant a nonexclusive, non-transferable and revocable licence to use the Proprietary Information solely for the purposes of the Agreement during the term of the Agreement.

22.3. Neither the Agreement nor any licence or sub-licence granted under the Merchant Agreement shall be construed to convey or transfer any ownership or proprietary interest in any Intellectual Property Rights in or to the Acquiring Services or the Proprietary Information to E-Merchant or any third party.

22.4. E-Merchant shall not (and shall not permit or enable any third party to): a. reproduce, copy, adapt, reverse engineer, decompile, disassemble, modify or distribute any Proprietary Information unless expressly authorised under the terms of the Merchant Agreement and/or with Novum's prior written consent except to the extent required to do so by Applicable Law; or b. sell, resell, assign, license, lease, rent, loan, lend, transmit, network or otherwise distribute or transfer rights to the Acquiring Services or the Proprietary Information in any manner to third parties, or embed any part of the software forming part of the Proprietary Information into any other product or software, without Novum's prior written consent.

22.5. E-Merchant agrees that:

- a. the Acquiring Services and Proprietary Information are Novum's valuable property and shall be treated as Confidential Information;
- b. any goodwill or reputation for the Acquiring Services generated by E-Merchant obligations under the Merchant Agreement will belong to Novum and upon termination of the Agreement for whatever reason E-Merchant shall not be entitled to claim recompense or compensation for such enhanced goodwill or reputation.

22.6. E-Merchant undertakes: a. not to use Novum's Intellectual Property Rights, the Proprietary Information or Acquiring Services in any way which would or is likely to bring Novum's reputation, or the reputation of any of Novum's affiliates, into disrepute; b. not to cause or permit anything which may damage or endanger Novum's (or any of Novum's licensors') Intellectual Property Rights, the



Proprietary Information or Novum's title to them or assist or allow others to do so; c. to notify Novum promptly of any actual, threatened or suspected infringement of Novum's Intellectual Property Rights and/or the Proprietary Information; d. to notify Novum without delay of any claim by any third party that the Acquiring Services infringe any Intellectual Property Rights of any third party; e. to take such reasonable action as Novum may direct in relation to such infringement; f. to indemnify Novum against all losses (including in respect of third party claims) which Novum incurs arising from, relating to or in connection with any liability incurred by Novum to third parties for any use of Novum Intellectual Property Rights or the Proprietary Information otherwise than in accordance with the Agreement, occurring strictly as a result of the misuse by E-Merchant of such Novum Intellectual Property Rights or Proprietary Information, only.

## **23. Warranties**

23.1. E-Merchant warrants to Novum that all Transactions submitted to Novum: a. represent bona fide sale of merchandise and/or services in the ordinary course of business for the total price. b. involve no advance of cash and no Transaction other than the regular sale of goods/services for which E-Merchant is primarily engaged. c. will not be defective, illegal or otherwise, as may impair enforceability of collection thereof from the named Cardholder. d. pertain to the sale of merchandise and/or service. E-Merchant assumes full responsibility for any such merchandise and/or service returned and/or questioned by the Cardholder. e. will not damage the goodwill of the Card Payment Schemes or reflect negatively on the respective brand. f. will in no case constitute a sale that is not in compliance with the Card Payment Scheme Rules or the operating instructions or the Agreement or with Applicable Law. g. do not represent the refinancing of an existing obligation of the Cardholder (including, but not limited to, any obligation otherwise owed to the E-Merchant by a Cardholder or arising from a Direct Debit, bank transfer or giro payment); h. will have been entered into by E-Merchant in good faith and E-Merchant is not aware of any dispute relating to or any matter which may affect the validity of the Transaction; i. will be made in accordance with the Agreement and the Card Payment Scheme Rules.

23.2. E-Merchant warrants that it is body corporate, private limited company, public limited company, partnership, sole trader, unincorporated association, registered charity, or other entity or concern, validly existing in the relevant jurisdiction.

23.3. E-Merchant warrants that it is not in breach of any Applicable Law or regulations, orders of competent regulatory authority, or is engaged in the supply of material that is not generally accepted by the public in the jurisdictions E-Merchant operates in, and local law, e.g., material which is patently offensive and lacks serious artistic value (such as, by way of example and not limitation, images of non-consensual sexual behaviour, sexual exploitation of a minor, child pornography, non-consensual mutilation of a person or body part and bestiality). This warranty shall survive the execution of the Agreement and shall be deemed to be repeated daily during the term of the Agreement.

23.4. E-Merchant warrants that it is not and will not during the term of the Agreement be engaged in money laundering or terrorist financing, including the laundering of sales Transactions receipts.

23.5. E-Merchant warrants that it will not present to Novum Transactions in the event of E-Merchant having actual knowledge of any information that would indicate in any manner that the enforceability or collectability of any indebtedness arising under such Transactions is subject to any dispute, claim, offset or other defence of the Cardholder, or is otherwise impaired.

23.6. E-Merchant warrants that all information, documents and exhibits supplied by E-Merchant or any person on its behalf to Novum or TPI in connection with the Agreement was and remains true, accurate and complete in all respects, and do not contain any misstatement of fact or omit to state a fact making such information, exhibits misleading in any respect, and that there are no other material affairs of E-Merchant that have not been disclosed to Novum

23.7. E-Merchant warrants that there is no action, suit, or proceeding pending, or to E-Merchant's knowledge, threatened which if decided adversely would materially impair E-Merchant's ability to carry on its business substantially as now conducted or which would adversely affect its financial condition or operations.

23.8. E-Merchant warrants to fully abide by Applicable Law throughout the term of this Merchant Agreement. E-Merchant furthermore undertakes to abide by the Card Payment Scheme Rules and any other operating instructions from Novum E-Merchant guarantees that the employees or others who are involved in Transactions for E-Merchant will respect the aforementioned rules and instructions.

23.9. E-Merchant warrants that it is validly organised and existing under E-Merchant's country of establishment and has by proper action duly authorised the execution and delivery of the Agreement.

23.10. E-Merchant warrants that it is not and has not been prohibited from participating in the Card Payment Schemes to accept Services of a kind offered by Novum.

23.11. E-Merchant warrants that it is and shall remain during the term of the Agreement fully compliant with the PCI DSS.

23.12. If E-Merchant, at any time, becomes aware of any information that indicates that any representation or warranty set forth in the Agreement is or may be false, or becomes aware of a breach of a warranty, E-Merchant will immediately make Novum aware of such information.

23.13. E-Merchant acknowledges that it is responsible for, and undertakes to, meet all costs associated with achieving and maintaining compliance, including any fines, costs or charges arising from E-Merchant being compromised or not being compliant or data held by E-Merchant being compromised and/or used for fraudulent purposes.

23.14. Novum represents and warrants that it will provide the Acquiring Services in accordance with all Applicable Laws and Card Payment Scheme Rules and Novum shall refrain from performing any acts that might discredit, disparage, dilute, infringe or negatively affect the value of any Card Payment Scheme marks used in the course of providing such Acquiring Services.

## **24. Taxes**

24.1. Each party hereto shall report its income and pay its own taxes to any applicable jurisdiction. If Novum or TPI are required to pay any taxes, interests, fines or penalties owed by E-Merchant, the said amount shall become immediately due and payable by E-Merchant to Novum or TPI. If excise, sale or use taxes are imposed on the Transactions, E-Merchant shall be responsible for the collection and payment thereof. Novum or TPI shall be entitled to recover any of the said taxes paid by it on behalf of E-Merchant from E-Merchant immediately after payment.

## **25. Limitation of Liability**

25.1. In addition to all other limitations on the liability of Novum and TPI contained in the Agreement, neither Novum nor TPI shall be liable to E-Merchant or E-Merchant's customers or any other person for any of the following:

- a. Any loss or liability resulting from the denial of credit to any person or E-Merchant's retention of any Card details or any attempt to do so.
- b. Any loss caused by a Transaction downgrade (Non-Qualified Transaction) resulting from defective or faulty software regardless of whether it is owned by Novum, TPI or E-Merchant.
- c. The unavailability of services caused by the termination of contracts with computer hardware vendors, processors or installers, whether terminated by Novum, TPI or any other person for any reason.
- d. Interruption or termination of any services not caused by Novum or TPI.

25.2. Neither Novum nor TPI shall be liable for any indirect, special or consequential damages (including any increased costs or expenses, lost profits, loss of business, loss of goodwill, loss of data, or loss of revenue or anticipated savings) to E-Merchant or to any third party whether in contract or tort (including negligence or breach of statutory duty) or otherwise in connection with or arising out of the Agreement or any of the Acquiring Services to be performed by Novum or TPI pursuant to the Agreement.

25.3. E-Merchant acknowledges that Novum has provided no warranties, either express or implied, written or oral, including, but not limited to, any implied warranty of merchantability, noninfringement or fitness for a particular purpose, with respect to any software installed or provided by any TPI and that Novum has no liability with respect to any software. Novum makes no representations or warranties, expressed or implied, regarding the Acquiring Services it provides hereunder except as provided for in the Agreement. Should there be errors, omissions, interruptions or delays resulting from Novum's or TPI's performance or failure to perform of any kind, Novum's and/or TPI's liability shall be limited to correction of such errors or omissions if commercially reasonable.

25.4. Novum will not be liable for any delays in receipt of funds or errors in debit and credit entries caused by third parties, including, but not limited to, any Card Payment Scheme or E-Merchant's financial institution.

25.5. Nothing in the Agreement shall exclude or limit any liability of any party for fraud or fraudulent misrepresentation; or for death or personal injury caused by negligence; or for anything which a party cannot exclude or limit its liability or attempt to exclude or limit its liability in law.

## **26. Limitation on Damages**

Novum's and TPI's aggregate liability arising under or in connection with the Agreement in respect of any event or series of events shall not exceed fees retained by Novum and TPI pursuant to the Agreement during the three (3) month period immediately prior to the event giving rise to the claim for damages.

## **27. Indemnification**

27.1. E-Merchant agrees to indemnify and hold Novum and TPI harmless on a full and continuing basis, from any and all losses, claims, damages, liabilities and expenses properly incurred, including the cost of investigating the claim, attorneys' fees and costs (whether or not an attorney is an employee of Novum or X Novum's affiliates, TPI or affiliates of TPI) whether in contract or tort (including negligence or breach of statutory duty), directly or indirectly arising out of any of the following:

- a. E-Merchant's failure to comply with the Agreement;
- b. E-Merchant's failure to comply with any bylaw, Card Payment Scheme Rule, regulation, guideline or policy of any Card Payment Scheme or Issuer;
- c. E-Merchant's failure to comply with any Applicable Law, rule or regulation;
- d. Fees and fines levied against Novum or TPI as the result of E-Merchant exceeding one or more Card Payment Scheme compliance programme thresholds or standards. If any such fee or fine is imposed Novum or TPI as a result of the activities of more than one E-Merchant, such fee or fine will be assessed to E-Merchant proportionately, as determined by Novum;
- e. Any dispute concerning the quality, condition or delivery of any merchandise of E-Merchant or the quality of performance of any service by E-Merchant;
- f. The fraud or dishonesty of E-Merchant or E-Merchant's employees or agents;
- g. Incidents of money laundering or terrorist financing;
- h. E-Merchant's selection of an Internet service provider or other telecommunication services provider;
- i. The theft of or damage or destruction to any software by E-Merchant;
- j. E-Merchant's submission of any incorrectly processed Transactions, unauthorised Transactions and prohibited Transactions;
- k. Claims by Cardholder relating to any Transaction paid to E-Merchant as may be made by way of defence, dispute, offset, counterclaim or affirmative action of Cardholder;
- l. Any loss of Cardholder's information or Transaction data in contravention of clause 10.3;
- m. E-Merchant's breach of the duty of confidentiality set out in clause 17;
- n. E-Merchant's non-compliance in relation to Chargebacks;
- o. Any breaches or violation by E-Merchant, or E-Merchant's employees, officers, agents and/or sub-contractors of PCI DSS or any of the other standards and/or programme requirements referenced in clause 10.8; and
- p. Any breach or default of any of its obligations by any internet Payment Service Provider appointed by E-Merchant from time to time;
- q. E-Merchant's operation or use of any website in contravention of any law, regulation or code of practice or any infringement or other violation of any Intellectual Property Rights of any third party.

27.2. Any release, payment or discharge between Novum and E-Merchant shall be conditional upon no security or payment made or given to Novum being avoided, reduced, set aside or

rendered unenforceable by virtue of any provision or enactment now or hereafter in force relating to bankruptcy, insolvency or liquidation. If any such security or payment shall be avoided, reduced, set aside or rendered unenforceable Novum shall be entitled to recover the full amount or value of any such security or payment from E-Merchant and otherwise to enforce this section as if such release, payment or discharge had not taken place.

27.3. E-Merchant shall, at its own expense, provide Novum with all reasonable assistance to resolve any dispute arising under the Card Payment Scheme Rules, including without limitation the provision of any information Novum or Novum's agents or nominees may require in respect of Transactions with Cardholders. Novum shall, as against E-Merchant, have complete discretion to decide whether or not to resist or defend any claim made against Novum by any Card Payment Scheme or Cardholder, or whether to compromise any such claim, and our decision shall be binding on E-Merchant.

27.4. Without prejudice to the indemnities set out in this clause 27, E-Merchant also agrees that Novum shall have discretion to accept, dispute, compromise or otherwise deal with any claim made against E-Merchant and/or Novum arising out of a Transaction accepted by E-Merchant for loss or liability in respect thereof on E-Merchant's behalf.

27.5. Novum agrees to keep E-Merchant indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by E-Merchant that arise from the fraud, gross negligence or wilful default of Novum under the Agreement, save where such liabilities have resulted directly from E-Merchant's failure to properly observe its obligations under the Agreement.

## **28. Termination of the Agreement**

28.1. Novum may exclusively, or, as applicable, jointly with TPI, terminate the Agreement or Acquiring Services with immediate effect to E-Merchant under any of the circumstances listed below. Any notification thereof by Novum or TPI is effective by giving written notice to E-Merchant.

28.1.1. Excessive chargeback/fraud ratios of E-Merchant's transactions in the opinion of Novum;

28.1.2. The ratio of error Transactions, copy/retrieval requests, Chargebacks, fraudulent Transactions, refunds and/or declined Authorisation requests is excessive in the opinion of Novum;

28.1.3. E-Merchant commits a material breach of the Agreement and (if, upon Novum's sole discretion, such a breach is remediable) it fails to remedy that breach within 10 Business Days of being notified in writing by Novum of the breach;

28.1.4. E-Merchant fails to pay any amount due to Novum under the Agreement on the due payment date, unless its failure to pay is caused by an administrative or technical error and payment is made within 3 Business Days of its due date;

28.1.5. Any representation or warranty made by E-Merchant in the Agreement is not true and correct in any material respect;

28.1.6. Any act of fraud or dishonesty is committed by E-Merchant, its employees and/or agents or Novum discovers that E-Merchant is conducting any illegal, brand damaging, deceptive activities or is violating International Card Schemes rules and regulations (including Account Data Compromise events or illegal transaction aggregation/transaction laundering);

28.1.7. E-Merchant files a petition under any bankruptcy or insolvency law, or any corporate action, legal proceedings or other procedure or formal step is taken (in any jurisdiction) in relation to the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of E-Merchant, or if E-Merchant is a partnership and the partnership ends, or if E-Merchant is an individual and E-Merchant dies or ceases to be legally capable (in which case notice will be sent to E-Merchant's personal representatives).

28.1.8. Any insurance policy obtained by Novum, TPI or E-Merchant relating to Transactions and/or Chargebacks is cancelled or terminated for any reason;

28.1.9. E-Merchant fails to provide financial statements suitable to Novum within 30 days after such

request from Novum.

28.1.10. E-Merchant fails to provide required information and documents to Novum within a reasonable time following a reasonable request from Card Payment Schemes and/or Novum;

28.1.11. TPI does not or cannot perform its duties under the Agreement and Novum reasonably determines that it is not feasible to provide to E-Merchant the Services contemplated by the Agreement. Novum is not obligated to provide replacement Services if TPI does not or cannot perform;

28.1.12. The E-Merchant materially varies its business from the business described in the Merchant Application Form and/or subsequent agreed changes by Novum or there is any material adverse change in the nature, level, scope or control of E-Merchant's business activities or E-Merchant's financial condition;

28.1.13. E-Merchant has not started processing within two months after Novum has issued the Merchant ID number; A Card Payment Scheme or any competent regulator requires Novum to terminate the Merchant Agreement with either E-Merchant or TPI, or the integrity or reputation of the Card Payment Scheme or Novum is, or may be (as reasonably determined by Novum) brought into disrepute by E-Merchant;

28.1.14. E-Merchant changes its Merchant Bank Account, other than as permitted by the Agreement;

28.1.15. E-Merchant processes a Transaction for E-Merchant's own Card, or any Card, without a corresponding sale of any goods and/or services;

28.1.16. E-Merchant's activities contravene any Applicable Laws (whether national, regional or international);

28.1.17. E-Merchant has not sent Novum a Transaction for nine (9) consecutive months;

28.1.18. E-Merchant fails to show (to Novum's reasonable satisfaction) its compliance with the PCI DSS and any changes which may occur to those standards as required in clause 10.8 within six months of Novum or Novum's agents giving E-Merchant written notice of E-Merchant's non-compliance;

28.1.19. (where E-Merchant is required to do so by law) E-Merchant fails to file E-Merchant's annual return in compliance with the law, or within the timeframes prescribed by the law, and/or the registrar of companies applicable to E-Merchant (or equivalent).

28.2. In the event of the termination of the Merchant Agreement, E-Merchant shall cease charging Cards forthwith and shall remove physical or electronic information indicating association with the Cards without delay. E-Merchant also undertakes to return all electronic information received from Novum if this has not been returned within one (1) month Novum has the right to levy reasonable periodical fines until its return

28.3. Novum may, due to an E-Merchant's breach of the Agreement or a regulatory requirement, selectively terminate one or more of E-Merchant's approved Terminals without terminating this entire Merchant Agreement. In the event of such termination, all obligations of E-Merchant incurred or existing under the Agreement prior to termination shall survive the termination. E-Merchant obligations with respect to any Transaction shall be deemed incurred and existing on the Transaction date of such Transaction. Novum is not obliged to notify E-Merchant of termination of approved Terminals.

28.4. Upon termination of the Agreement, Novum, in accordance with the Card Payment Scheme Rules, reserves the right to record details of E-Merchant termination with the Card Payment Schemes with immediate effect.

## **29. Audit and access privilege**

29.1. Novum will regularly monitor and assess E-Merchant's performance and procedures with regards to the Agreement.

29.2. Novum, Card Payment Schemes, or its designees may conduct onsite review for compliance



purposes.

29.3. Novum may from time to time, following a reasonable advance notice to E-Merchant, conduct financial and procedural audits. E-Merchant shall provide information requested by Novum to complete Novum's audit, including without limitation, financial statements and information pertaining to E-Merchant's financial condition. Furthermore, E-Merchant shall allow Novum employees such access to their premises and facilities, data, information and material as may be necessary, and to take copies of such books and records as Novum requires.

29.4. Within a reasonable time following a request from Novum, or TPI, E-Merchant shall provide Novum and, as applicable, TPI its balance sheet and income statements no less frequently than every three calendar months during the term of the Agreement.

29.5. Novum may opt to utilise a third party to conduct such an audit subject to: a. Novum issuing its appointment and authorisation of such third party in writing and furnishing, E-Merchant with a copy thereof and b. Such a third party entering into a confidentiality Merchant agreement. c. Any audit conducted by Novum or third party designated by Novum will be at Novum's expense.

29.6. If the outcome of the monitoring, assessment and/or audit indicates a breach of the Agreement, Novum has the right to terminate the Merchant Agreement in accordance with clause 28.

### **30. Amendments to the Agreement**

30.1. From time to time Novum may amend the Agreement as follows:

a. Amendment of Terms and Conditions, Fees and Charges, Data Protection Notice and Website Requirements Guideline.

Novum may amend the Fees and Charges listed in the respective Schedule by notifying E-Merchant in email of any amendment with a one month notice prior to the entry into force of such amendments. Novum may add rates, fees and charges and/or change all rates, fees and charges set forth in Schedule of Fees and Charges for due cause, such as changes in Card Payment Schemes fees, TPI's fees, E-Merchant's sales volume or average Transaction amount not meeting E-Merchant's projections as provided in Merchant Application Form. All provisions of the Agreement shall apply to Fees and Charges amended/added to the Agreement. Acceptance by E-Merchant of a new approved Card as payment and/or of a Transaction affected by a notified amendment, and/or use of a new Service post the one month notice period shall constitute E-Merchant's agreement to the relevant amendments and the Fees or Charges related thereto. E-Merchant has the right to terminate the Agreement within the two (2) month notice period, with a notice period of one month, though such termination taking effect at latest on the effective date of the notified amendments.

b. Novum is authorized to amend the Terms and Conditions from time to time. The most recent published version of the Terms and Conditions on the Novum website is applicable. E-Merchant's continued usage of Novum services confirms acceptance of amended Terms and Conditions. E-Merchant undertakes responsibility to keep acquainted with the most recent version of the Terms and Conditions throughout the whole period of using Novum services. E-Merchant has the right to request and receive clarifications and additional information from Novum on any applicable amendments of the Terms and Conditions.

### **31. Novum's Transactions Processing Services**

31.1. Novum undertakes to provide Processing Services with all reasonable skill and care in accordance with good industry practice and all Applicable Law and for the execution will assign a subcontractor that has knowledge and a good reputation in the field.

31.2. E-Merchant in order to cooperate with Novum shall (a) request access to e-commerce (if needed) and/or install and maintain software and systems as required by Novum to enable E-Merchant to use the Processing Service; (b) take necessary steps to ensure all permission to use the Processing Service are in place; and (c) comply with instructions from Novum relating to the

Processing Services in a timely manner.

31.3. Novum will in order to cooperate with E-Merchant to (a) process Authorisation requests from E-Merchant to the Card Payment Schemes and receive the response from the Issuer; (b) maintain secure communication and data storage in compliance with the Card Payment Scheme rules, now being PCI DSS compliant, and Applicable Law according to its jurisdiction; (c) ensuring that subcontractor will schedule and implement upgrades, new versions, and planned service updates with minimal impact on E-Merchant operation meaning the downtime.

31.4. Neither party will make changes to their side of agreed interfaces, standards or formats without the prior written approval of the other party, whose approval will not be unreasonably withheld or delayed.

31.5. E-Merchant acknowledges that the access to the Online Payment Terminal is subject to: (1) the availability of suitable communication lines; and (2) the cooperation of E-Merchant with the electric and communication companies. Novum will have no liability to E-Merchant or TPI if any installation is delayed or cannot be completed for reasons not caused by the act or neglect of Novum.

### **32. Card not present transactions**

32.1. Card Not Present Transactions should not be undertaken by E-Merchant unless E-Merchant has Novum's prior agreement in writing, and only then in accordance with any requirements notified to E-Merchant by Novum from time to time.

32.2. Novum may immediately, on giving E-Merchant notice, withdraw Novum's permission for E-Merchant to accept or process Card Not Present Transactions where there are, in Novum's sole opinion, unacceptable levels of Cardholder disputes resulting from Card Not Present Transactions which E-Merchant has accepted and/or Card Not Present Transactions which E-Merchant has accepted and which subsequently turn out to be fraudulent.

### **33. Miscellaneous**

33.1. Assignment. The Agreement or E-Merchant's rights or obligations under it may not be assigned, novated and/or sublicensed by E-Merchant without the prior written consent of Novum. Novum may assign or novate the Agreement, and/or transfer or sub-licence any or all of Novum's rights and obligations under the Agreement without limitation. Any such transfer of the Agreement by Novum shall relieve Novum of any further obligations under the Agreement. Novum reserves the right to fulfil any of its duties and powers under the Agreement by the use of agents and sub-contractors as long as such practice is in compliance with the Card Payment Scheme Rules. Any such transfer will not reduce E-Merchant's rights under the Agreement unless E-Merchant agrees otherwise. E-Merchant authorises disclosure of details relating to it and its merchant arrangements to any prospective persons or entity to which Novum is novating, assigning and/or sublicensing the Agreement. E-Merchant agrees to enter into such documents as Novum may reasonably require in order to effect such assignment, novation, transfer or sub-licence.

33.2. Waiver. To the extent that E-Merchant becomes a debtor under any law regarding liquidation and/or bankruptcy, and such event does not result in the termination of the Agreement, E-Merchant hereby unconditionally and absolutely waives any right or ability that E-Merchant may otherwise have had to oppose, defend against or otherwise challenge any motion filed by Novum for relief from any automatic stay granted by law, to enforce any of Novum's rights or claims under the Agreement.

33.3. No Waiver. Any delay, waiver or omission by Novum to exercise any right or power arising from any breach or default of the other party in any of the terms, provisions or covenants of the Agreement shall not be construed to be a waiver of any subsequent breach or default of the same or any other terms, provisions or covenants on the part of the other party. All remedies afforded by the Agreement for a breach hereof shall be cumulative.

33.4. Cooperation. In their dealings with one another, each party agrees to act reasonably and in

good faith and to fully cooperate with each other in order to facilitate and accomplish the Transactions contemplated hereby.

33.5. Entire Agreement. The Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes any previous agreements and understandings. The parties have not entered into the Agreement in reliance on any agreement, representation or warranty which is not made or repeated in the Agreement. The only remedies available for breach of any representation or statement which was made prior to entry into the Agreement and which is set out in the Agreement shall be for breach of contract.

33.6. Force Majeure. The parties shall be excused from performing any of their respective obligations under the Agreement which are prevented or delayed by any occurrence not within their respective control including but not limited to strikes or other labour matters, destruction of or damage to any building, natural disasters, accidents, riots or any regulation, rule, law, ordinance or order of any federal, state or local government authority.

33.7. Severability. If any provisions of the Agreement shall be held, or deemed to be, or shall in fact be, inoperative or unenforceable as applied in any particular situation, such circumstance shall not have the effect of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections herein contained shall not affect the remaining portions of the Agreement or any part hereof.

33.8. Notices. All notices which may be or are required by the Agreement will be sent to the e-mail address listed in Merchant Application Form, unless notification from the defined address, of change of such e-mail address is received by the other party.

33.9. Governing Law. The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including noncontractual disputes or claims) shall be governed by and construed in accordance with the laws of Singapore, without regard to internal principles of conflicts of laws.

33.10. Jurisdiction. Each party irrevocably agrees, for the sole benefit of Novum that, subject as provided below, the courts of England shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including noncontractual disputes or claims).

33.11. Headings. Clause headings in the Agreement are for convenience of reference only and are not to be considered as defining or limiting in any way the scope or intent of the provisions of the Agreement.

33.12. Agency/Sub Contracting. Novum and/or the TPI may appoint at any time, and without notice to E-Merchant, an agent or sub-contractor to perform any of Novum's and/or the TPI's obligations under the Agreement. E-Merchant may not appoint a subcontractor or agent in connection with the Agreement without our prior written approval. Notwithstanding such approval, E-Merchant will remain primarily liable for anything done (or omitted to be done) by any such subcontractor or agent appointed by E-Merchant. If Novum gives its consent, Novum may withdraw it at any time, in which case the sub-contractor must immediately cease acting for E-Merchant.

33.13. Joins and Several. If E-Merchant comprise more than one person the liability of such persons to Novum and the Card Payment Schemes shall be joint and several, and if such persons are a partnership then any act or omission of any one partner shall be deemed to be an act or omission of all the partners.

33.14. No third party beneficiaries. Any person that is not a party to the Agreement shall not have any rights under or in connection with it except if and to the extent such rights are expressly granted under the Agreement. The parties may vary or rescind the Agreement without the consent of anyone who is not a party to the Agreement.

Remedies are Cumulative. Except where expressly agreed otherwise in the Agreement, the rights and remedies of the parties under the Agreement are cumulative, may be exercised as often as the parties consider appropriate and are in addition to their rights and remedies under Applicable Law.