

Merchant Agreement  
TERMS & CONDITIONS  
(Hong Kong)

**Allinpay Financial Holdings Company**  
**Limited**



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## 1. GENERAL

- 1.1 This Agreement (“**Agreement**”) consists of these terms & conditions and the Merchant Application & Agreement (Hong Kong) (“**Application**”) attached hereto and is made by and between the Merchant (as defined below) and Allinpay (as defined below), in each case as named on the Application.
- 1.2 Allinpay Network Services Co., Limited is a member of Visa International, Inc. (“**Visa**”), MasterCard International, Inc. (“**MasterCard**”), JCB International Co., Ltd. (“**JCB**”), UnionPay International Co., Ltd. (“**UP**”), Discover Global Network (“**DGN**”), Diners Club International Co., Ltd. (“**DCI**”), WeChat Pay Hong Kong Ltd. (“**WeChat Pay**”), Alipay Payment Services (HK) Ltd. (“**Alipay**”) and any other card associations as may from time to time be specified by Allinpay Network Services Co., Limited and/or its affiliate (including their respective successors and assigns, collectively, the “**Card Associations**”).
- 1.3 Allinpay Financial Holdings Company Limited (“**Allinpay**”) is an affiliate of Allinpay Network Services Co., Limited and provides service offered by Allinpay Network Services Co., Limited in Hong Kong.
- 1.4 Merchant (“**Merchant**”) is the party who will engage Allinpay to provide the Services (as defined in Clause 2.1 hereinbelow) pursuant to this Agreement.
- 1.5 Depository (“**Depository**”) is a financial institution designated by the Merchant for settlement of payments in the course of provision of the Services.
- 1.6 In accordance with these terms and conditions, Allinpay shall provide the Services to the Merchant (to be defined in Clause 2.1 hereinbelow) with respect to transactions for sale of goods and/or services involving cards issued by or virtual wallet provided by any of the Card Associations and/or other card issuers from time to time accepted by Allinpay (“**Card Transactions**”) as selected by Merchant. Merchant shall at all times strictly comply with this Agreement and all amendments thereto.
- 1.7 If this Agreement is executed by a firm, the expression “**Merchant**” shall include the person or persons from time to time carrying on the business of such firm and, if Merchant comprises of two or more persons, the expression “**Merchant**” shall include all and each of them and their liabilities under this Agreement shall be joint and several.
- 1.8 Any reference in this Agreement to “**Merchant**”, “**Allinpay**”, or “**Depository**” shall, if the context permits or requires, be construed so as to include their respective successors, permitted transferees and assigns.
- 1.9 If the context permits or requires, words importing the one gender shall include all genders, and words in singular shall include plural and vice versa. Any reference to a “**Clause**” shall mean a clause hereof.
- 1.10 References to any statutes or statutory provisions shall be construed as references to those statutes or provisions as substituted, amended, extended, consolidated, re-enacted or replaced from time to time.

## 2. SERVICE DESCRIPTIONS

- 2.1 Allinpay’s card processing services, which are provided under this Agreement, consist of:
- (a) authorization of Card Transactions;
  - (b) Quick Response Code payment (QRC);
  - (c) electronic draft capture (or collection of sales slips) of Card Transactions;
  - (c) outclearing of Card Transactions to the appropriate Card Associations and/or card issuers;
  - (d) settlement of Card Transactions;
  - (e) dispute resolution with cardholders’ banks; and
  - (f) transaction-related reporting, statements and products
- (“collectively and individually “**Services**”).
- 2.2 From time to time under this Agreement, upon Merchant’s request, Allinpay may facilitate the transmission of certain payments under Card Transactions (“**Switched Transactions**”) to any of the Card Associations. Switched Transactions shall require prior written approval from Allinpay and Allinpay may impose charges over such Switched Services.
- 2.3 Merchant has elected to accept cards of the card types as specified on the Application. Merchant agrees to pay, and the Merchant’s Account(s) (as defined in Clause 5) will be charged pursuant to Clause 5 of this Agreement for, any additional fees incurred as a result of Merchant’s subsequent acceptance of transactions with any card type that it has not elected to accept on the Application. (which shall be subject to Allinpay’s final approval to process the same).

## 3. PROCEDURES

- 3.1 Merchant shall permit holders of valid cards bearing the symbols of the cards authorized or valid WeChat Pay/Alipay virtual wallet to be accepted by Merchant hereunder to charge, purchases or leases of goods and services, provided that such Card Transaction complies with the terms and conditions of this Agreement. Each Card Transaction shall be evidenced by a valid transaction record in an approved form, including, without limitation, a sales slip. Merchant shall in no event present any sales slip which does not arise out of a Card Transaction between a cardholder and Merchant.
- 3.2 Merchant agrees:
- (a) to follow the prevailing Acceptance Quick Guide and such other guidelines from time to time issued by Allinpay in force, which is incorporated into and form part of this Agreement;
  - (b) to be bound by the operating regulations and rules of each of the Card Associations and other relative associations, including without limitation any rules and regulations related to cardholder and transaction information security, such as Payment Card Industry (PCI) Data Security Standards, and Cardholder Information Security Program and Site Data Protection Program issued by each of the Card Associations.
  - (c) Merchants shall not disclose cardholder account information to any third party, except when such disclosure is necessary to complete a transaction or is required by law.
  - (d) The Merchant shall ensure that its disposal procedure of data and information shall be secure and all information contained in materials to be disposed shall be unreadable.
  - (e) The merchant shall in no event retain or store Card Verification Value 2 (CVV2) data subsequent to the authorization of a transaction.

- (f) Merchants (and their third party agents) shall in no event retain full-track magnetic-stripe data subsequent to authorization.
  - (g) Merchants shall be prohibited from setting minimum or maximum transaction amounts as a condition of honoring cards or wallet.
  - (h) Merchants shall in no event impose surcharges on transactions, except that such surcharges are required under local laws.
  - (i) Merchants shall in no event use their own merchant accounts for personal credit card / QRC transactions. In particular, Merchants shall in no event apply the cards or virtual wallets to withdraw cash.
- 3.3 Allinpay may from time to time issue written directions (via mail, email or Internet) regarding procedures to follow and forms to use in performance of this Agreement. Such directions and the terms of the forms shall be binding on the Merchants as from the effective date specified in such directions and shall form part of this Agreement.

#### **4. MARKETING**

- 4.1 Merchant shall adequately display the Card Associations and card issuer service marks and promotional materials supplied by Allinpay in the manner approved by Allinpay in writing. Merchant shall cease to use or display such service marks in any way (including, without limitation, in promotional materials and transaction related papers or forms of Merchant) immediately upon notice from Allinpay or upon termination of this Agreement. Merchant shall not issue or despatch any promotional materials which include any reference to Allinpay or its name, tradename, logo, service mark and/or trademark without its prior written consent.
- 4.2 Merchant hereby irrevocably grants a royalty free and perpetual licence to Allinpay to use its name in any directory or promotional materials produced by Allinpay in connection with this Agreement.

#### **5. PAYMENT AND FEES**

- 5.1 Merchant shall pay the fees, charges and expenses described on the Application, together with any other costs, liabilities or expenses described in this Agreement.
- 5.2 Allinpay will pay Merchant for Card Transactions submitted under this Agreement by credit to the account(s) designated by Merchant (the “**Merchant’s Account(s)**”) or by delivery of a cheque or other negotiable instrument made payable to Merchant or by any other means acceptable to Allinpay. Unless otherwise agreed by Allinpay, Merchant will be paid within the timeframe set out on the Application for the gross amount of the Card Transactions submitted less the amount of any discount, fees and other charges (including chargebacks and adjustments) set forth in this Agreement and credit vouchers deposited (together with any taxes payable in respect thereof); provided, however, that Allinpay does not warrant payment within this timeframe. If the amount payable to Merchant hereunder is insufficient to pay the outstanding charges described in the preceding sentence on any day and/or any other amount due or payable by Merchant to Allinpay under this Agreement, Allinpay shall be entitled to: -
- (a) set off and deduct the outstanding amount in whole or in part from any payment due from it to Merchant; and/or
  - (b) debit the outstanding amount in whole or in part from Merchant’s Account(s); and/or
  - (c) deduct the outstanding amount in whole or in part from subsequent credits to Merchant’s Account(s); and/or
  - (d) claim from Merchant the outstanding amount in whole or in part.
- 5.3 Merchant agrees to pay, and Merchant’s Account(s) will be debited, for all fees, including but not limited to arbitration fees and etc. charged by the Card Associations on account of Merchant’s processing hereunder. If an error occurs, Merchant’s Account(s) may be debited or credited therefor.
- 5.4 Merchant represents and warrants that no one other than Merchant has any claim in respect of any Card Transactions submitted hereunder except as authorized in writing by Allinpay. Merchant agrees that Allinpay has the sole right and discretion to receive payment from the Card Associations or other relative association on any Card Transactions submitted hereunder.
- 5.5 Merchant further represents and warrants that payment by Allinpay shall be without prejudice to any claims or rights which Allinpay may have against Merchant and shall not constitute any admission by Allinpay as to the performance by Merchant of its obligations under this Agreement and the amount payable to Merchant.
- 5.6 If Allinpay suspects, on reasonable grounds, that Merchant has committed or is about to commit a breach of this Agreement, any illegal activity contrary to the laws of Hong Kong (including, without limitation, money laundering) or dishonesty or fraud, Allinpay shall be entitled to suspend all payments under this Agreement pending enquiries by Allinpay.
- 5.7 Merchant hereby irrevocably authorizes Allinpay to make withdrawals from any of its Merchant Account(s) maintained with any financial institution in order to give effect to Merchant’s authorization contained herein to Allinpay to debit its Merchant Account(s). Merchant hereby instructs the related financial institutions to honor any requests made by Allinpay under the terms and conditions of this Agreement. Merchant will hold harmless the financial institutions and indemnify them for any claims or losses they may suffer as a result of honoring withdrawal requests from Allinpay. Merchant shall give a direct debit authorization in favour of any such financial institution (in form and substance satisfactory to such financial institution) for the above purpose.

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

- 6.1 Any advertising materials, leased or rented equipment (including imprinters, authorization terminals, data capture terminals or printers), software, credit card authenticators, unused forms and Merchant deposit plastic cards provided by Allinpay are for Merchant’s exclusive use under this Agreement and will not become Merchant’s property, and shall be returned to Allinpay on demand, upon termination of this Agreement or upon Merchant ceasing to do business, whichever is the earliest. Merchant will protect them from loss, theft, damage or any legal encumbrance and will allow Allinpay and its designated representatives reasonable access to Merchant’s premises for their repair, servicing, replacement, removal, modification, installation and relocation.
- 6.2 Merchant acknowledges that some equipment provided under this Agreement is embedded with proprietary technology (“**Software**”). Merchant shall not obtain title, copyrights or any other proprietary right to any Software. At all times, Allinpay or its suppliers retain all rights to such Software, including but not limited to updates, enhancements and additions.

Merchant shall not disclose such Software to any party, convey, copy, license, sublicense, modify, translate, reverse engineer, decompile, disassemble, tamper with, or create any derivative work based on such Software. Merchant's use of such Software shall be limited to that expressly authorized by Allinpay under this Agreement. Allinpay's suppliers are intended third party beneficiaries of this Agreement to the extent of any terms herein pertaining to such suppliers' ownership rights; such suppliers have the right to rely on and directly enforce such terms against Merchant.

- 6.3 The operating instructions will instruct Merchant in the proper use of the terminals and/or any other equipment, and Merchant shall use and operate the terminals and/or any other equipment only in such manner and at the location where they are initially installed (unless otherwise agreed by Allinpay). Merchant will promptly notify Allinpay of any equipment malfunction, failure or other incident resulting in the loss of use of the equipment or need for repair or maintenance, whereupon Allinpay will make the necessary arrangements to obtain required maintenance subject to payment of agreed costs (if any) by Merchant. Merchant shall cooperate with Allinpay in its attempt to diagnose any problem with the terminal and/or any other equipment. In the event the Merchant's terminal and/or any other equipment requires additional Software, Merchant is obligated to cooperate and participate in a dial in down line load procedure and/or other procedure as directed by Allinpay and/or its suppliers.
- 6.4 Once detecting suspected noncompliance, such as illegal cash out and illegal QRC or terminal lease, or even fake transactions throughout QRC-based Payment, Card Association, Wechat Pay, Alipay or Allinpay has the right to take risk control measures, such as lowering the upper limit of transaction amount, limiting the transaction count, delaying settlement, closing transactions, etc.
- 6.5 With respect to any item of equipment leased or rented to Merchant by Allinpay, Merchant will not be liable for normal wear and tear, provided, however, that Merchant will be liable to Allinpay in the event that any leased or rented item of equipment is lost, destroyed, stolen or rendered inoperative. Merchant will indemnify Allinpay against any loss arising out of damage to or destruction of any item of equipment provided hereunder for any cause whatsoever. Merchant also agrees to hold harmless and indemnify Allinpay for any liabilities, losses, damages, disputes offsets, counterclaims, claims, demands, actions, costs, expenses and judgments Allinpay may suffer or incur, including reasonable legal fees, as a result of Merchant's use or misuse of the equipment provided hereunder.
- 6.6 All persons using any leased or rented instruments provided by Allinpay to Merchant shall be deemed to be agents of Merchant, and Merchant shall be fully responsible for their acts and omissions.
- 6.7 Any unused equipment in its original packaging purchased from Allinpay hereunder may be returned to Allinpay at Merchant's expense within 60 days of receipt. Merchant shall receive a refund of any money paid in connection therewith subject to a re-stocking fee of an amount equal to 20 percent of the total purchase price for the returned equipment. No refunds shall be made for any equipment returned after 60 days.

## 7. FINANCIAL INFORMATION

- 7.1 Merchant agrees to furnish Allinpay such financial statements and information concerning Merchant, its owners, principals, shareholders, partners, proprietors, directors, officers or its affiliates as Allinpay may from time to time request. Allinpay, or its duly authorized representatives, may examine the books and records of Merchant, including records of all transactions previously submitted hereunder.
- 7.2 Merchant agrees to retain copies of all paper and electronic transaction records and credit slips submitted to Allinpay for a period of 5 years from submission, or such longer period of time as may be required by the statutory requirement, by the operating rules or regulations of the Card Associations, by law or by Allinpay as specifically requested in writing in individual cases.

## 8. CHANGE IN BUSINESS

Merchant agrees to provide Allinpay 30 days prior written notice of its intent to:

- (a) transfer or sell all or any substantial part (10% or more) of its total stock or assets; or
- (b) liquidate or file for winding-up or bankruptcy; or
- (c) cease business or change the basic nature of its business; or
- (d) convert all or part of its business to mail order sales, telephone order sales, Internet-based sales or other sales where the card is not physically present and processed through Merchant's terminal; or
- (e) remove or relocate any shop or office; or
- (f) make any material change in the management of Merchant; or change of control
- (g) make any change in Merchant's legal status (such as from sole proprietorship to partnership or limited company or vice versa); or
- (h) make any change in any other material particulars relating to Merchant which have been supplied to Allinpay in connection with this Agreement.

("collectively and individually "**Change of Business**").

Within 30 days upon the receipt of the said written notice, the terms of this Agreement might be modified to address issues arising therefrom, including but not limited to requirements of applicable Card Associations. Without prejudice to any other rights of Allinpay, Allinpay could terminate this Agreement and claim any damages and losses upon the occurrence of any Change of Business.

## 9. TRANSFERABILITY

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

**10. WARRANTIES AND REPRESENTATIONS**

10.1 Merchant warrants and represents to Allinpay: -

- (a) that each Card Transaction submitted hereunder will represent a bona fide sale to a cardholder by Merchant for the amount shown on the related transaction record as the total sale and constitutes the binding obligation of the cardholder, free from any claim, demand, defense, setoff or other adverse claim whatsoever;
- (b) that each transaction record or other evidence of a transaction will accurately describe the goods and services which have been sold and delivered to the cardholder or in accordance with the cardholder's instructions;
- (c) that Merchant will comply fully with all laws, rules and regulations applicable to it and its business;
- (d) that Merchant will fulfill completely all of its obligations to the cardholder and will resolve any cardholder dispute or complaint directly with the cardholder;
- (e) that the signature on the sales slip will be genuine and authorized by cardholder and not forged or unauthorized;
- (f) that each Card Transaction submitted hereunder shall have been consummated and the related transaction record prepared in full compliance with the provisions of the Acceptance Quick Guide and the operating regulations and rules of the applicable Card Associations;
- (g) that none of the Card Transactions submitted hereunder represent sales by telephone, or mail, or Internet, or where the card is not physically present at the Merchant's location and processed through Merchant's terminal, unless Merchant is specifically authorized in writing by Allinpay to submit such transaction records hereunder;
- (h) that, without limiting the generality of the foregoing, each Card Transaction submitted hereunder and the handling, retention, and storage of information related thereto, will comply with the rules and regulations of the Card Associations related to cardholder and transaction information security, including without limitation those referred to in Clause 3.2;
- (i) that all of the information contained in or provided pursuant to this Agreement is true and correct;
- (j) that Merchant shall keep strictly confidential the provisions of this Agreement, and all information and materials received from Allinpay in connection with Allinpay's businesses and instruments provided by Allinpay, and will disclose the same only to such of its employees who require such information for the purposes of performing Merchant's obligations under this Agreement; Merchant shall not and shall procure that its officers, employees and agents shall not without the prior written consent of Allinpay use or disclose any such information to any other person (except to Merchant's agents for the sole purpose of assisting Merchant to complete or enforce Card Transactions or to Merchant's insurers and professional advisers) unless such disclosure is compelled by law or rules or regulations of the Card Associations;
- (k) that Merchant shall not submit any Card Transaction which is for the supply of gambling or pornographic goods or services without the prior written consent of Allinpay;
- (l) that Merchant shall not receive any cash payment from a cardholder with respect to charges for goods and/or services included in a Card Transaction; and
- (m) that Merchant shall not engage in acceptance of practices or procedures that discriminate against or discourage the use of a card of a card type selected to be accepted by it hereunder in favour of any other competing card brand, and shall not promote any other means of payment more actively than promoting payment with a card of such card type (except for any privilege card issued by Merchant solely for the purpose of making purchases at Merchant or under any temporary promotion programme).

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

10.3 NEITHER ALLINPAY, NOR ANY OF ITS RESPECTIVE SUPPLIERS MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY EQUIPMENT (INCLUDING IMPRINTERS, AUTHORIZATION TERMINALS, DATA CAPTURE TERMINALS OR PRINTERS) OR ANY OF THE SERVICES FURNISHED HEREUNDER.

**11. INDEMNITY**

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

Merchants shall properly retain static or dynamic QRCS for Merchant-presented QRC-based Payment. When a QRC was tampered with due to improper retention, the Merchant shall be liable for the loss incurred therefrom.

**12. LIMITATION OF LIABILITY**

12.1 Allinpay shall not be liable for failure to provide the Services if such failure is due to any cause or condition beyond Allinpay's reasonable control. Such causes or conditions shall include, but shall not be limited to, acts of God or of any public enemy, acts of any Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, shortages of labor or materials, freight embargoes, unusually severe weather, breakdowns, operational failures, electrical power failures, communication failures, unavoidable delays, the errors or failures of third party systems or other similar causes beyond Allinpay's reasonable control.

12.2 To the extent permitted by any applicable law, the liability of Allinpay for any loss arising out of or relating in any way to this Agreement, including but not limited to damages arising out of any malfunction of the equipment or the failure of the

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

12.3 Under no circumstances shall Allinpay be liable for:

(a) any loss of profits, loss of interest, or for special, consequential, punitive or exemplary damages arising out of or relating in any way to this Agreement, including but not limited to, damages arising out of placement of Merchant's name on any terminated merchant list for any reason, even if Allinpay has been advised of the possibility of such damages;

(b) any settlement amounts pertaining to Switched Transactions, in respect of which Merchant's sole recourse shall be to the applicable card issuer; or

(c) any claim, loss, billing error, damage or expense arising out of or relating in any way to this Agreement which is not reported in writing to Allinpay by Merchant within 30 days of such failure to perform or, in the event of a billing error, within 60 days of the date of the invoice or applicable statement and Merchant expressly waives any such claim that is not brought within the time periods stated herein.

### 13. TERMINATION

13.1 Subject to the provisions hereof, this Agreement shall remain in full force and effect for the term as specified on the Application (the "**Initial Term**"), unless Merchant gives written notice of termination as to this Agreement at least 60 days prior to the expiration of the Initial Term or any extension or renewals thereof. If no term is specified on the Application, subject to the provisions hereof, this Agreement shall continue in full force and effect until Merchant gives not less than 60 days' prior written notice to Allinpay to terminate it.

13.2 Notwithstanding anything to the contrary set forth herein, in the event that the term is specified on the Application and Merchant terminates this Agreement in breach of this Clause 13, all monthly fees assessed to Merchant under this Agreement and due to Allinpay for the remainder of the then existing term of this Agreement, including all minimum monthly fee commitments, shall be immediately due and payable to Allinpay, and Merchant hereby authorizes Allinpay to accelerate the payment of all such monthly fees and to deduct the total amount from Merchant's Account(s), or to otherwise withhold the total amount from amounts due to Merchant from Allinpay, immediately on or after the effective date of termination. If the Merchant's Account(s) does not contain sufficient funds for the debit or the amount cannot be withheld by Allinpay from amounts due to Merchant, Merchant shall pay Allinpay the amount due within ten (10) days of the date of Allinpay's invoice for same. The payment of accelerated monthly fees as described herein is not a penalty, but rather is hereby agreed by the parties to be a reasonable amount of liquidated damages to compensate Allinpay for their termination expenses and all other damages under the circumstances in which such amounts would be payable. Such amounts shall not be in lieu of but shall be in addition to any payment obligations for Services already provided hereunder (or that Allinpay may continue to provide), which shall be an additional cost, and any and all other damages to which Allinpay may be entitled hereunder.

13.3 Notwithstanding the foregoing, Allinpay may terminate this Agreement or any portion thereof at any time with immediate effect upon written notice to Merchant. Furthermore, Allinpay may terminate this Agreement at any time without notice:

(a) upon Merchant's default in performing under any provision of this Agreement;

(b) upon an unauthorized conversion of all or any part of Merchant's activity to mail order sales, telephone order sales, Internet-based sales, or to any sales activity where the card is not physically present and processed through Merchant's terminal;

(c) upon any failure to follow the Acceptance Quick Guide or any operating regulation or rule of any Card Associations;

(d) if there has been any misrepresentation by Merchant;

(e) upon commencement of bankruptcy or insolvency or winding-up proceedings by or against Merchant; or

(f) in the event Allinpay reasonably deems itself insecure in continuing this Agreement.

13.4 In the event that Allinpay breaches the terms and conditions hereof, Merchant may, at its option, give written notice to Allinpay of its intention to terminate this Agreement unless such breach is remedied within 30 days of such notice. Failure to remedy such a breach shall make this Agreement terminable, at the option of Merchant, at the end of such 30 days period unless notification is withdrawn.

13.5 Any Merchant deposit of a transaction record hereunder after the effective date of termination will be returned to Merchant and will not be credited (or debited) to Merchant's Account(s), unless the related Card Transaction was effected on or before the effective date of termination and the deposit was made within 7 days thereafter (in which case the payment for any such Card Transactions will only be made to Merchant after payment is successfully collected by Allinpay from the related Card Associations within 180 days from the date of such Card Transactions). Except as provided above, if any such deposit has already been posted to Merchant's Account(s), such posting may be reversed and the deposit be returned to Merchant. Termination of this Agreement shall not affect Merchant's obligations which have accrued prior to termination or which relate to any Card Transactions submitted hereunder prior to termination, including but not limited to chargebacks even if such chargebacks come in after termination.

13.6 In the event of termination, all equipment leased or rented from Allinpay (but not from any other leasing agent), including but not limited to imprinters, terminals, data capture terminals and printers; all supplies; Acceptance Quick Guides and operating instructions must be returned immediately to Allinpay at Merchant's expense.

13.7 Any termination shall not affect any liabilities incurred prior to the termination nor any provision of this Agreement expressed or intended to survive, or to be effective from, termination. In particular, but without prejudice to the foregoing, Clauses 4, 6.1, 6.4, 7, 10.1, 10.2, 11, 12, 13.5, 13.6, 15.2, 15.3, 16.1 and 16.2 shall remain in full force and effect notwithstanding termination.

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

14.1 If: -

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

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

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

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

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

- (a) direct payment by Merchant by depositing funds in the Reserve Account at the request of Allinpay;
- (b) the proceeds of Card Transactions presented hereunder; or
- (c) the transfer by Allinpay into the Reserve Account of funds withdrawn from the Merchant's Account(s) or any other accounts, including certificates of deposit, maintained by Merchant or Merchant's guarantor, if any, with any designated depository or other financial institution.

15.2 Merchant and/or Merchant's guarantor hereby irrevocably authorize Allinpay to make such withdrawals from any such other accounts maintained with any designated depository or other financial institution referred to in Clause 15.1(c) at such times and in such amounts as it may deem necessary hereunder. Merchant and/or Merchant's guarantor hereby instruct the related financial institutions to honor any requests made by Allinpay under the terms of this provision. Merchant and/or Merchant's guarantor will hold harmless the financial institutions and indemnify them for any claims or losses they may suffer as a result of honoring withdrawal requests from Allinpay.

15.3 Merchant hereby agrees that Allinpay may deduct from a Reserve Account any amount owed to such party in accordance with this Agreement. Any funds in a Reserve Account may be held until the expiration of any potentially applicable chargeback rights in respect of Card Transactions submitted hereunder as provided for under the rules and regulations of the Card Associations, which holding period may extend beyond termination of this Agreement. Merchant will not receive any interest on funds being held in any Reserve Account.

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

16.1 Upon failure by Merchant to meet any of its obligations under this Agreement (including funding a Reserve Account), any of the Merchant's Account(s) or any other accounts belonging to Merchant or Merchant's guarantor held by any designated depository (or by any other financial institution) may be debited without notice to Merchant or Merchant's guarantor, and Merchant and/or Merchant's guarantor irrevocably authorize Allinpay to debit any such accounts for these purposes. Merchant's and/or Merchant's guarantor's instructions to its financial institutions to accept withdrawal requests from Allinpay, and Merchant's agreement to hold such institutions harmless and to indemnify them, are set out in Clause 15.2.

16.2 Merchant also agrees that, in the event of a default by Merchant, Allinpay has a right of setoff and may apply any of Merchant's balances or any other monies due from Allinpay towards the payment of amounts due from Merchant under the terms of this Agreement. The rights stated herein are in addition to any other rights Allinpay may have under applicable law.

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

17.1 Should it be necessary for Allinpay to defend or enforce any of its rights under this Agreement in any collection or legal action, Merchant agrees to reimburse Allinpay, as applicable, for all costs and expenses, including reasonable collection agency and legal fees, under indemnity basis, as a result of such collection or legal action.

17.2 Allinpay and Merchant agree that this Agreement and all disputes arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the Hong Kong Special Administrative Region of the People's Republic of China ("**Hong Kong**") and Allinpay and Merchant hereby agree to submit to the non-exclusive jurisdiction of the Courts of Hong Kong.

#### **18. AMENDMENTS**

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



**19. WAIVER**

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

**20. EXCHANGE OF INFORMATION**

20.1 Merchant authorizes Allinpay to obtain from time to time from any person, including without limitation any credit reference agency, financial information on Merchant or any owner, principal, director, officer, shareholder, partner, proprietor, managing agent or guarantor of Merchant. Merchant hereby authorizes (on its own behalf and on behalf of each person mentioned in the preceding sentence) any depository institution to release any financial information concerning Merchant or its accounts to Allinpay.

20.2 Allinpay may exchange information about Merchant, Merchant's owners, principals, partners, proprietors, directors, officers, shareholders, managing agents and guarantors with other financial institutions, Card Associations and any other party as Allinpay, as applicable, may deem necessary in connection with the Services and this Agreement. Merchant hereby authorizes (on its own behalf and on behalf of each person mentioned in the preceding sentence) Allinpay to disclose information as mentioned above and information concerning Merchant's activity to any Card Associations, or any of their member financial institutions, or any other party without any liability whatsoever to Merchant.

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

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

**22. SEVERABILITY**

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

**23. NOTICES**

23.1 All notices required by this Agreement shall be in writing.

23.2 All notices to Allinpay shall be sent by courier, or by regular or registered mail. Any notices sent to Allinpay shall be effective upon actual receipt by Allinpay Financial Holdings Company Limited, whose address is situate at Unit C, 15/F King Palace Plaza, 55 King Yip Street, Kwun Tong, Hong Kong;

23.3 All notices to Merchant shall be sent by courier, by regular or registered mail, by email or by facsimile. Any notices sent to Merchant (including notices contained in Merchant statements) shall be effective upon the earlier of actual receipt or on the day following the date of posting such notice to the latest address provided by Merchant to Allinpay or upon sending such notice to any e-mail address or facsimile number provided by the Merchant hereunder.

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

**24. ENTIRE AGREEMENT**

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

**25. EFFECTIVE DATE**

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

**26. DESIGNATION OF DEPOSITORY**

The financial institution set forth in the Application is designated by Merchant as a depository institution ("**Depository**") for payments due to Merchant hereunder. Merchant authorizes Allinpay to make payment hereunder to Depository with instructions to credit the Merchant's Account(s) with Depository. Depository and Allinpay may charge any of Merchant's Account(s) at Depository for any amount due under this Agreement. Allinpay must approve in writing any proposed changes to the Merchant's Account(s) or to Depository.

**27. TRANSACTION CURRENCY**

All transactions submitted hereunder shall be denominated in Hong Kong dollars or such other currencies as specified on the Application unless otherwise agreed in writing between Allinpay and Merchant.

**28. TIME IS OF THE ESSENCE**

Time is of the essence of this Agreement as regards any time, date or period specified for the performance of an obligation. No time or indulgence given by any party to the other shall be deemed or in any way be construed as a waiver of any of its rights and remedies hereunder.

**29. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ORDINANCE**

For the avoidance of doubt, except the Clause 6.2 of this Agreement, any additional right as may be conferred to any third

party to this Agreement under the Contracts (Rights of Third Parties) Ordinance (Cap. 623) shall not apply and the privity of contract under the common law shall continue to be in force.

**30. COSTS AND EXPENSES**

Each party shall bear its own legal costs, fees, charges, expenses and disbursements of and incidental to the preparation and execution of this Agreement or to the preparation, execution or completion of any further documents contemplated herein.

**31. SUCCESSORS AND ASSIGNS**

This Agreement shall be binding on and shall ensure for the benefits of the successors, personal representatives and assigns of the parties.

**32. NO PARTNERSHIP OR AGENCY**

Nothing in this Agreement (or any of the arrangements contemplated by it) shall be deemed to constitute a partnership between the Parties or, save as may be expressly set out in it, constitute either Party the agent of the other Party for any purpose.