

BACKGROUND

- (A) OCL is the issuer of stored value contactless smart cards and/or products called Octopus. These cards and/or products may be used, in accordance with the relevant conditions of issue, inter alia, to pay public transport fares on various transport systems within Hong Kong and to pay for certain services provided by persons who have joined and participate in the payment system established by OCL
- (B) OCL and the Company have entered into an agreement (the “Acquirer Agreement”) under which THE COMPANY has been appointed by OCL as an acquirer to procure merchants to accept use of the Octopus in Hong Kong as payment for goods and services.
- (C) The Merchant intends to participate in the payment system established by OCL on the terms and subject to the conditions of this Agreement.

TERMS OF AGREEMENT**1. INTERPRETATION**

1.1 In this Agreement the following terms shall have the following meanings unless the context otherwise requires:-

- “Approved Goods and Services” means any of those goods or services set out in Paragraph 4 of the Annexure;
- “Auditor” means the auditors appointed by OCL from time to time in accordance with the Companies Ordinance (Cap.622);
- “Blacklist” means an electronic file prepared by OCL consisting of a list and/or range of Octopus identification numbers and/or Octopus Reader identification numbers;
- “Blacklisted Card” means an Octopus:-
- whose identification number appears on an effective Blacklist; or
 - whose identification number is within one of the ranges of identification numbers on an effective Blacklist; or
 - with the identification number of a Blacklisted Octopus Reader recorded thereon (indicating that it has been processed by a Blacklisted Octopus Reader).
- “Blacklisted Octopus Reader” means an Octopus Reader whose identification number appears on an effective Blacklist;
- “Business Day” means a day in a calendar year excluding Saturdays, general holidays and any days on which typhoon signal no.8 or above is hoisted or black rainstorm warning is in force at any time between 9:00 a.m. and 6:00 p.m.;
- “Card” means a functional Octopus, but excludes a Blacklisted Card;
- “Card System” means the payment system maintained and operated by OCL with Octopus as the payment instruments; the Card System includes, among other things, the OCL System, the computer equipment installed by the Merchant or any third parties which is connected to the OCL System directly or indirectly and whether continuously or periodically, all Octopus Readers connected to the said computer equipment, all Octopus, and all Octopus identification numbers;
- “Cardholder” means any person holding or using an Octopus or any person to whom an Octopus is issued;
- “certified public accountant” has the same meaning ascribed thereto in the Professional Accountants Ordinance (Cap.50 of the Laws of Hong Kong);
- “Class of Octopus” means any one of an “Adult”, “Elder”, “Student”, “Child”, “Special”, “Personalised”, “Staff” or other special class or type of Octopus from time to time introduced by OCL;
- “Commencement Date” means the date specified in Paragraph 5 of the Annexure;
- “Merchant Account” means the Merchant’s bank account held with THE COMPANY specified in Paragraph 3 of the Annexure or any other bank account nominated by the Merchant and approved by THE COMPANY in writing from time to time;
- “Merchant System” means:-
- the computer equipment installed or to be installed at the Premises for the purposes of :
 - transmitting data between the System Octopus Readers and the OCL System; or
 - processing the data received from the System Octopus Readers or the OCL System;

- the computer equipment which directly or indirectly controls the operation of any System Octopus Readers; and
 - the System Octopus Readers;
- “Conditions” means the Conditions of Issue of Octopus published by OCL as amended by OCL from time to time;
- “Cut-off Time” means any point of time between 0145 hours and 0200 hours on a given day selected by OCL from time to time;
- “Deduct Value Transaction” means a deduction of value from a Card through the use of a System Octopus Reader;
- “effective Blacklist” means a Blacklist which is effective in accordance with Clause 6.12;
- “effective time” in relation to a standard Blacklist, means the time specified in Paragraph 11 of the Annexure and, in relation to a special Blacklist, means the time specified in Paragraph 12 of the Annexure;
- “general holidays” has the meaning ascribed thereto in the General Holidays Ordinance (Cap.149);
- “Hong Kong” means the Hong Kong Special Administrative Region of the People's Republic of China;
- “HK Dollars” or “HK\$” means the lawful currency for the time being of Hong Kong;
- “Net Entitlement Amount” in relation to the Transaction Data received or obtained by OCL and/or THE COMPANY during a Transaction Period, means the gross amount payable by THE COMPANY according to Clause 5.3(a) minus the gross amount payable by the Merchant according to Clause 5.3(b);
- “Octopus” means a stored value card or product issued by OCL pursuant to the Conditions;
- “Octopus Reader” means a device which can directly interface with the Octopus;
- “OCL” means Octopus Limited, a company incorporated under the laws of Hong Kong;
- “OCL System” means the computer equipment belonging to and installed by OCL for the purpose of processing data relating to the use of the Octopus;
- “Payment Services” means the services whereby Cardholders may use an Octopus for payment in any of the Premises for the Approved Goods and Services;
- “Percentage Fees” means the fees set out in Clause 3.4(a) payable to THE COMPANY based upon value deducted from the Cards in the Deduct Value Transactions;
- “person” includes any public body and any body of persons corporate or unincorporated,
- “Premises” means any premises, vehicles, areas or spaces occupied or used by the Merchant in Hong Kong for the purposes of offering or delivering the Approved Goods and Services;
- “Sensitive Information” includes:-
- the software used in the System Octopus Readers;
 - the Transaction Data and other electronic data exchanged between the Merchant System and the OCL System, and the electronic data generated by the System Octopus Readers;
 - the interface specifications of the OCL System, the host computer of the Merchant and the Octopus Readers;
 - the encryption/decryption keys or passwords used in the System Octopus Readers and other components of the Merchant System;
 - the terms of this Agreement;
 - information relating to the Merchant;
 - information relating to THE COMPANY; and
 - any other information which either party may reasonably object to its being disclosed to the public or other third parties,

but does not include any such data which (i) are in the public domain otherwise than as a result of a breach of this Agreement or (ii) both parties agree in writing not to constitute Sensitive Information;”;

“Settlement Report” means a report issued by OCL pursuant to Clause 5.2 substantially in the form of Appendix 2 (as such form may from time to time be amended by OCL);

“special Blacklist” means a Blacklist which the Merchant is required to download from the OCL System in accordance with Clause 6.8;

“**standard Blacklist**” means a Blacklist which the Merchant is required to download from the OCL System in accordance with Clause 6.7;

“**System Octopus Reader**” means an Octopus Reader which is sold or leased to the Merchant by THE COMPANY pursuant to Clause 4.1 or which has been registered by the Merchant with THE COMPANY in accordance with Clause 4.1;

“**time of deemed receipt**” of any communication, notice, notification or statement shall be the relevant time of deemed receipt specified in Clause 7.10(d); and the “**time of deemed receipt**” for any Settlement Report shall be the time of deemed receipt specified in Clause 5.12(b) and if Clause 5.12(b) is not applicable, it shall be the time when the Settlement Report is actually received or obtained by the Merchant;

“**Tolerable Discrepancy**” means the amount as set out in Paragraph 10(a) of the Annexure;

“**Total Transaction Value**” in relation to the Transaction Data received or obtained by OCL and/or THE COMPANY during a Transaction Period, means the total value deducted from the Cards in Deduct Value Transactions as revealed in the Transaction Data; “**Transaction Data**” means all data received by OCL from the System Octopus Readers directly or indirectly (or collected by OCL and/or THE COMPANY pursuant to Clause 4.7) and all data retrieved from the Octopus through other channels including, without limitation, data in respect of the use of Octopus;

“**Transaction Period**” means any period from the Cut-off Time on a day to the Cut-off Time on the next day;

“**use of Octopus**” and “**use of an Octopus**” means the passage of the Octopus, or an Octopus, over an Octopus Reader enabling the Octopus Reader to add value thereto, to deduct value therefrom, to read or to change any of the data therein; and any similar or derivative expression shall be interpreted accordingly; and

“**value**” means the value stored in the electronic purse of any Card and is further defined in Clause 5.15.

- 1.2 In this Agreement, unless the context otherwise requires:
- (a) words importing one gender include the other genders;
 - (b) words importing the singular include the plural and vice versa;
 - (c) references to Clauses, Annexures and Appendices are references to clauses of, Annexures and appendices to this Agreement;
 - (d) all headings are for ease of reference only and shall not affect the interpretation of this Agreement;
 - (e) any reference to a person shall include that person’s successors, representatives and permitted assigns;
 - (f) references to legislation or documents however described shall include references to such documents or legislation as amended, supplemented, novated or substituted from time to time;
 - (g) references to parties are references to parties to this Agreement; and
 - (h) a reference to any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them.

2. [Deleted]

3. **USE OF CARDS TO PURCHASE GOODS AND SERVICES**

3.1 **Appointment as Service Provider**

During the term of this Agreement, THE COMPANY shall procure OCL to grant to the Merchant the right to, and the Merchant shall be entitled to, accept the use of Cards (and the respective values stored in them) on the Premises, as payment for the Approved Goods and Services by Cardholders. The Merchant shall be solely responsible for the provision of the Approved Goods and Services and neither THE COMPANY nor OCL shall have any liability whatsoever in respect of any goods and/or services provided by the Merchant. Both THE COMPANY and OCL shall not be liable to any Cardholder or any other person in respect of any goods and/or services provided by the Merchant.

3.1A **Premises**

(a) The Company may at any time at its absolute discretion determine that the Merchant shall cease engaging in the Payment Services at a designated

Premises. In such event, the Company will give notice to the Merchant of such determination. The Merchant shall after the issue of such notice forthwith ensure that such Premises shall cease engaging in the Payment Services.

(b) Both the Company and OCL shall under no circumstances be held responsible for any loss or damage the Merchant may suffer as a result of the Company determining that any Premises shall cease engaging in the Payment Services.

3.1B **Restrictions**

The Merchant shall only provide the Payment Services in a retail attended environment and shall not provide the Payment Services in any other types of environments, in particular (without restriction):-

- (a) school (except tuck shop or canteen within the school premises);
- (b) church;
- (c) any transport related services including car park;
- (d) vending machines;
- (e) internet café;
- (f) those applications which the Company and/or OCL considered as high-risk and unethical; and
- (g) any goods and services provided by the Government of Hong Kong Special Administrative Region.

3.2 **Obligation to Accept Octopus**

Subject as otherwise provided in this Agreement, the Merchant shall:-

- (a) accept the use of Cards (and the respective values stored in them) as valid payment for Approved Goods and Services during the term of this Agreement; and
- (b) upon such use of Cards, deliver or perform (as the case may be) the relevant Approved Goods and Services.

3.3 **Approved Goods & Services / Blacklisted Cards**

The Merchant shall not accept the use of a Card as payment except as provided in Clause 3.2. For the avoidance of doubt, the Merchant shall not accept the use of:-

- (i) a Card to pay for anything other than the Approved Goods and Services; or
- (ii) a Blacklisted Card to pay for any goods and services provided by it.

The Merchant acknowledges and agrees that both OCL and the Company shall not be liable to the Merchant in respect of any use of or otherwise in relation to a Blacklisted Card.

3.4 **Percentage Fees**

The Merchant shall pay the Company the Percentage Fees. The Percentage Fees shall be payable in respect of the value deducted in each Deduct Value Transaction. Percentage Fees payable shall be the percentage set out in Paragraph 9 of the Annexure of the value deducted in a Deduct Value Transaction. Percentage Fees payable shall be paid in accordance with Clause 5.

[intentionally left blank]

3.5 **The Company’s Obligation to Pay**

The Company shall pay the Merchant an amount equivalent to the Total Transaction Value in accordance with Clause 5.

3.6 **Indemnity**

The parties agree to indemnify and keep each other indemnified against all direct losses, damages, liabilities, costs (including, but not limited to, legal costs) and expenses suffered or incurred by a party as a result of any claims, action or proceedings brought against such party arising from or in connection with the failure of performance or wrongful performance by such party of its obligations hereunder except to the extent that such losses, damages, liabilities, costs and expenses are due to the negligence, fraud or wilful misconduct of such party.

4. **SYSTEMS AND EQUIPMENT**

4.1 **Octopus Readers**

(a) The Merchant shall, at its own costs and expenses, purchase or hire the Octopus Readers from the Company or the suppliers approved by OCL from time to time. The Merchant shall not purchase or hire Octopus Readers from any other source.

(b) Except for Octopus Readers sold or leased to the Merchant by the Company directly, the Merchant shall, within 30 days of receiving any Octopus Reader

and prior to using such Octopus Reader, register that Octopus Reader with the Company by supplying the Company with such information about the Octopus Reader as the Company may require including, without limitation, its identification number and the location that the Octopus Reader is to be placed.

4.2 **System Integrity**

The Merchant acknowledges that (i) the security and integrity of the Card System are of paramount importance and (ii) the export of Octopus Readers is subject to certain controls by the government of the supplier's country which place restrictions upon the end-users thereof.

4.3 **Restriction on Sale**

The Merchant shall not sell, part with the possession of, or otherwise dispose of any Octopus Reader unless the Merchant has obtained the prior written consent of the Company. If the Company refuses to give such written consent within 30 days of receipt of the Merchant's request for the same and if the Octopus Readers belong to the Merchant, the Company shall on behalf of OCL purchase the Octopus Reader upon the request of the Merchant. The purchase price for such Octopus Reader shall be its original price less depreciation. Provided that such Octopus Reader(s) is/are of good working conditions and that no physical damage is found on the relevant Octopus Reader(s). Depreciation shall be calculated by the diminishing balance method on the assumption that each Octopus Reader will depreciate at the rate of 50% per year starting from the date when it is delivered to the Merchant. The Company shall pay the purchase price to the Merchant within 30 days after the delivery of the Octopus Readers to the Company.

4.4 **System Specifications**

The Merchant shall, at its own costs and expenses, procure that the Merchant System complies with all reasonable standards and specifications issued by the Company and/or OCL from time to time relating to the functions and performance of the Merchant System and cause the Merchant System to be integrated with the Card System and the Systems Octopus Readers so that it may accept the use of the Cards as payment for its Approved Goods and Services within the Card System in all respects according to the requirements, and to the satisfaction, of the Company and/or OCL.

4.5 **System Maintenance**

The Merchant shall, at its own costs and expenses, maintain and operate the Merchant System in accordance with the standards and specifications laid down from time to time by the Company and/or OCL. The Merchant shall use its best endeavours to ensure that the Merchant System is at all times fully operational and, as and when necessary shall, at its own costs and expenses, promptly repair or replace faulty components. In addition but without limitation to the foregoing, the Merchant shall, upon the request of the Company and/or OCL, arrange for such changes to be made to the Merchant System as the Company and/or OCL may require.

4.6 **Data Transfer**

- (a) The Merchant shall, at its own costs and expenses, set up and maintain a data link (e.g. telephone line or a connection to a frame relay network) in accordance with the specifications issued by the Company and/or OCL from time to time for the transfer of data between the Merchant System and the OCL System. The type of data link shall be commensurate with the amount of data expected to be transferred and shall be in accordance with the security requirements and specifications prescribed by OCL and/or the Company from time to time.
- (b) The Merchant shall, at its own costs and expenses, consolidate the data of all the System Octopus Readers before transferring to the OCL System.

4.7 **Inspection**

Each of OCL and the Company shall have the right to access the Merchant System wherever situated at all reasonable times on prior written notice and arrangement (except in the case of emergency) for the purposes of collecting data and carrying out inspections, audit checks, security checks and other related functions in relation to any one of the following:

- (a) where an inspection is deemed necessary by the Company and/or OCL in maintaining the integrity and security of the Card System;
- (b) to conduct periodic inspection to ensure compliance by the Merchant with the requirements of the Company and/or OCL;
- (c) the Company and/or OCL requires an inspection to verify whether the Merchant has carried out such work required by the Company and/or OCL under Clause 4.8(b) to the satisfaction of the Company and/or OCL;
- (d) in the event of discrepancy in the Transaction Data, the Company and/or OCL requires such inspection to verify the Transaction Data; or
- (e) the Company and/or OCL is required to carry out such inspection as required by law or under a direction of any applicable regulatory authority.

4.8 **Security Measures**

- (a) Each of the Company or OCL shall be entitled, at its sole and absolute discretion, to suspend, or require the Merchant to suspend, the functions (or parts thereof) of all System Octopus Readers if the Company or OCL has reasonable grounds to believe that the Merchant has committed or is about to commit a material breach of the terms of this Agreement, or if the Merchant has committed or is about to commit any act that may cause the Company to commit a material breach of the terms of the Acquirer Agreement, or if OCL has reasonable grounds to believe that the Company has committed or is about to commit a material breach of the terms of the Acquirer Agreement, or if the Company or OCL is of the opinion that the integrity or security of the Card System has been or is about to be materially jeopardised or compromised by the use of Systems Octopus Readers, or if the Company or OCL is required by law or under the direction of any applicable regulatory authority to suspend the functions of the System Octopus Readers. The Company or OCL (as the case may be) shall lift any such suspension after the Merchant has provided evidence or reasonable assurances to the satisfaction of the Company or OCL (as the case may be) that the Merchant is not and will not be in breach of the terms of this Agreement, the Merchant has not committed and will not commit any act that may cause the Company to be in breach of the terms of the Acquirer Agreement, and that the Company is not and will not be in breach of the terms of the Acquirer Agreement and that the integrity and security of the Card System will not be jeopardized or compromised by the use of the System Octopus Readers. The Merchant shall allow the representatives of the Company and/or OCL to enter the Premises for the purpose of suspending the functions of the System Octopus Readers or lifting the suspension. Upon the request of the Company or OCL, the Merchant shall take all necessary steps to assist and facilitate the suspension of the functions of the System Octopus Readers or the lifting of the suspension and shall, at its own costs and expenses comply with any requirement of the Company or OCL to suspend the Systems Octopus Readers forthwith upon receipt of such request. In exercising its rights under this Clause 4.8, the Company and OCL shall use its reasonable endeavours to minimize the disruption that may be caused to the normal operation of the Merchant.
- (b) Where the Company or OCL is of the opinion that the integrity or security of the Card System has been or is about to be jeopardized or compromised, in addition to the Company's and/or OCL's right to suspend, or require the Merchant to suspend, the functions of any or all System Octopus Readers under Clause 4.8(a) above, the Company or OCL shall be entitled, at its sole and absolute discretion, to require the Merchant carry out such work as deemed necessary by the Company and/or OCL in maintaining the integrity and security of the Card System to the satisfaction of the Company and/or OCL within a specified time period, failing which, the representatives of the Company and/or OCL shall be entitled to enter the Premises to carry out such outstanding work at the Merchant's costs and expenses. The Merchant shall take all necessary steps to assist and facilitate the carrying out of such work by the Company

- and/or OCL and the Company and/or OCL may charge the Merchant a reasonable fee for carrying out the work. The Merchant further agree and confirm that the Company and/or OCL shall not be liable to the Merchant for any loss or damage whatsoever arising from or in connection with the Company and/or OCL carrying out such work on the Premises pursuant to this Clause 4.8(b).
- (c) Where the suspension is due to the omission, negligence, fraud or willful misconduct of the Merchant, all fees, costs and charges under this Agreement remain payable by the Merchant to the Company during any period when the functions of any or all System Octopus Readers are suspended.
- (d) The Merchant agrees that its failure to comply with this Clause 4.8 shall constitute a material breach of this Agreement by the Merchant and the Company shall be entitled to terminate this Agreement forthwith without compensation or any payment whatsoever to the Merchant.
- 4.9 **Loss due to Unauthorized Use and etc**
The Merchant shall pay to the Company and/or OCL on demand an amount to compensate the Company and/or OCL for any loss, damage or liability reasonably suffered by the Company and/or OCL (save to the extent that such loss, damage or liability arises from the negligence or wilful default of the Company the Company or OCL) as a consequence of any unauthorized use of a System Octopus Reader due to the fraud, negligence or default of the Merchant.
- 4.10 [deleted]
- 4.11 **Maintenance of Records of Transactions**
The Merchant shall keep a copy of the data relating to all Deduct Value Transactions for at least 14 days after the same has been transmitted to OCL.
- 4.12 **System Changes**
The Merchant shall not make any changes to the Merchant System which may affect the operation of the Card System unless the Merchant has obtained the written approval of the Company for such changes. The Company may require the Merchant to carry out tests to demonstrate that such changes will not adversely affect the operation of the Card System. The costs and expenses for carrying out such tests shall be borne solely by the Merchant. The Company may charge the Merchant a reasonable administration fee for observing the tests and giving the written approval.
- 4.13 **Register of Octopus Readers**
The Merchant shall maintain a register of all Octopus Readers which are or have been in the possession of the Merchant. The register shall contain the identification numbers of all such Octopus Readers and their respective locations or, if they are no longer in the possession of the Merchant, the date when the Merchant parted with such Octopus Readers and what has become of them. The Merchant shall update the register at least once every calendar month. Each of the Company and OCL shall have the right to inspect the register. The Merchant shall allow the representatives of the Company and/or OCL to inspect the Octopus Reader(s) which is (are) in the Merchant's possession at any reasonable time for the purpose of verifying the accuracy of the register.
5. **SETTLEMENT**
- 5.1 **Calculations**
The Company shall procure OCL to calculate the respective amounts payable by or due to each party pursuant to this Agreement and that OCL's calculations shall be based upon the Transaction Data. OCL's calculations shall be made on the basis of successive Transaction Periods. In the absence of manifest error, OCL's calculations shall be final, conclusive and binding on the parties. The first Transaction Period shall commence on the Commencement Date.
- 5.2 **Settlement Report**
The Company shall procure OCL to issue a report at or before 1000 hours on every day. The report shall be sent to or collected by the Merchant by such means as the Company and the Merchant may agree from time to time. The report shall be compiled from the Transaction Data received or obtained by OCL during the Transaction Period ending on that day. The report shall contain:-
- (i) the total number of Deduct Value Transactions;
- (ii) the Total Transaction Value;
- (iii) the Percentage Fees; and
- (iv) the Net Entitlement Amount;
- in respect of the Transaction Data received or obtained by OCL during such Transaction Period.
- 5.3 **Gross Amounts**
(a) The gross amount payable by the Company to the Merchant in respect of the Transaction Data received or obtained by OCL during any Transaction Period shall be the Total Transaction Value.
- (b) The gross amount payable by the Merchant to the Company in respect of the Transaction Data received or obtained by OCL during any Transaction Period shall be the applicable Percentage Fees.
- 5.4 **Set Off**
The respective amounts payable by the each party to the other party under this Agreement in respect of the Transaction Data received or obtained by OCL during each Transaction Period shall be off-set against each other and the net balance, if any, shall be settled in accordance with Clause 5.6.
- 5.5 **Net Entitlement Amount**
The amount payable in respect of the Transaction Data received or obtained by OCL during a Transaction Period shall be the Net Entitlement Amount specified in the relevant Settlement Report. The Company shall pay the Net Entitlement Amount to the Merchant Account if the Net Entitlement Amount is positive. The Company may instruct OCL to pay, on behalf of the Company, the Net Entitlement Amount (if positive) to the Merchant Account. Notwithstanding the foregoing, the Company shall remain solely liable to the Merchant for any or all of such payment.
- 5.6 **Payment**
The payment of the Net Entitlement Amount specified in each Settlement Report shall be made at or before 1600 hours on the day when the Settlement Report is issued by OCL provided that it is a Business Day, irrespective of whether or not the Merchant disputes OCL's calculations. If that day is not a Business Day, the payment shall be made at or before 1600 hours on the immediately following Business Day.
- 5.7 [intentionally left blank]
- 5.8 **Provisional Arrangement for System Breakdown**
If any circumstances (a "system breakdown") arise whereby it is not possible for OCL to generate a Settlement Report by 1200 hours on any day, the amounts payable in respect of the Transaction Data received or obtained by OCL and/or the Company during the relevant Transaction Period shall be settled provisionally on the basis of the amounts specified to be payable in the last properly generated Settlement Report in respect of the Transaction Data received or obtained by OCL and/or the Company during a Transaction Period of a similar nature (e.g. general holiday or not) issued by OCL, subject to any adjustments made at the sole discretion of OCL. The Company shall procure OCL to use its reasonable endeavours to rectify the situation as soon as possible. Within 2 Business Days of the system breakdown being rectified, the Company shall procure OCL to :-
- (i) prepare a Settlement Report in respect of the Transaction Data received or obtained by OCL and/or the Company during each intervening Transaction Period during the period of the system breakdown;
- (ii) calculate the actual amounts payable by the Company or the Merchant during the period of the system breakdown; and
- (iii) send a reconciliation statement to the Merchant showing the amounts actually paid and the amounts that should have been paid had there been no system breakdown and specifying a sum (a "Breakdown Reconciliation Amount") due from or to the Merchant.
- The Breakdown Reconciliation Amount shall be paid by the Company or the Merchant (as the case may be) on or before the close of business on the immediately following Business Day.
- 5.9 **Expired Transactions**
The Merchant shall transmit the data of each Deduct Value Transaction to OCL within 2 days after the date of the relevant Deduct Value Transactions. In calculating the respective amounts

payable by or due to each party pursuant to this Agreement, the Company and/or OCL is entitled to ignore any Deduct Value Transactions which take place more than 6 days prior to the day when OCL receives the data from the Merchant. Notwithstanding the foregoing, in the event OCL, in its sole and absolute discretion, chooses to handle a Deduct Value Transactions which takes place more than 6 days to the day when OCL receives the data from the Merchant, OCL is entitled to impose a reasonable handling fee for handling such transaction. Such handling fee shall be borne by the Merchant.

5.10 **Duplicate Transactions**

In calculating the respective amounts payable by or due to the Company or the Merchant pursuant to this Agreement, the Company and/or OCL will ignore any Deduct Value Transactions which have already been taken into account in a previous Settlement Report.

5.11 **Other Invalid Transactions**

In calculating the respective amounts payable by or due to each party pursuant to this Agreement, the Company and/or OCL is entitled to ignore any Deduct Value Transactions conducted through the use of a System Octopus Reader after such System Octopus Reader has been reported by the Merchant as lost or stolen.

5.12 (a) **Reasonableness of Time Limits**

The Merchant acknowledges that to operate the Card System, OCL and/or the Company has to process a vast amount of data and that it would be impracticable for OCL and/or the Company to retain copies of all transactions and other data for a substantial period of time if the Card System is to operate for the mutual and profitable benefit of the Merchant, the Company and OCL. Therefore the Merchant agrees that:-

- (i) it is crucial that the Merchant promptly, upon receipt, carries out checks on the data contained in the Settlement Reports and reconciliation statements provided to it by OCL so that discrepancies can be rectified in a timely and orderly manner before the Company or OCL disposes of its records of transactions and other data processed by it; and
- (ii) the strict time limits imposed in this Clause 5.12 and Clause 5.13 are fair, reasonable and proper in the circumstances.

(b) **Deemed Receipt**

The Merchant shall be deemed to have received a Settlement Report at 1400 hours on the day when the relevant Settlement Report is issued by OCL, unless the Merchant notifies the Company (in writing) to the contrary before 1500 hours on the same day.

(c) **Time Limit for Disputes**

(i) The Merchant shall examine each Settlement Report and reconciliation statement carefully and compare the same with its own records and shall give notice to the Company in writing (a "Dispute Notice") within 5 Business Days of the time of deemed receipt of such Settlement Report or reconciliation statement of any discrepancies in the figures, data or other information contained therein or if it disputes such figures, data or information. If the Company does not receive a Dispute Notice from the Merchant within such 5 Business Day period, the relevant Settlement Report or reconciliation statement shall (in the absence of manifest error or fraud committed by the Company or OCL) be deemed to be accepted by the Merchant as correct and conclusive evidence of all figures, data and information contained therein for all purposes, but OCL shall have the absolute right at any time to rectify any errors. The Company shall upon receiving each

Dispute Notice promptly serve the same on OCL.

- (ii) Without prejudice to Clause 5.12(c)(i) above, the Company is entitled to charge a reasonable administrative fee in handling each Dispute Notice received by the Company after the expiration of such 5 Business Days if the Company agrees to grant an extension of time in giving the Dispute Notice. Such administrative fee shall be borne by the Merchant.

(d) **Retention of Records**

Notwithstanding Clause 4.11, if the Merchant issues a Dispute Notice, the Merchant shall retain the relevant records until the relevant dispute has been resolved in accordance with Clause 5.13 or 5.14.

5.13 (a) **Dispute Notice**

Each Dispute Notice must contain particulars of:-

- (i) the reason for issuing the Dispute Notice, together with an estimate of the amount in dispute;
- (ii) the Settlement Report or reconciliation statement; and
- (iii) the relevant dates and identification numbers of the System Octopus Readers involved.

(b) **Tolerable Discrepancy**

If the Merchant disputes the figures, data or other information in more than one Settlement Report or reconciliation statement, the Merchant shall issue a separate Dispute Notice for each such Settlement Report or reconciliation statement. The Merchant shall not issue more than one Dispute Notice in respect of one Settlement Report or reconciliation statement. No Dispute Notice shall be issued unless the estimated amount in dispute exceeds the Tolerable Discrepancy.

(c) **Supporting Evidence**

The Merchant shall furnish the Company with documentary evidence, including the bases for its own calculations, and copies or print-outs of its own records as soon as practicable but in any event not later than 15 Business Days after serving the Dispute Notice on the Company or such other extended deadline as the parties may agree. The Company shall upon receiving such documentary evidence promptly serve the same on OCL.

(d) **Strict Compliance**

Both the Company and OCL shall be entitled (but not obliged) to reject any claim or challenge in respect of a Settlement Report or reconciliation statement issued by OCL which does not comply with the conditions specified in Clauses 5.12 and 5.13.

(e) **Review by OCL**

The Company shall procure that all claims and challenges in respect of a Dispute Notice shall be individually evaluated and assessed by OCL within one month after the Company has served on OCL the last piece of documentary evidence furnished by the Merchant in accordance with Clause 5.13 (c). The Company shall notify the Merchant of OCL's decision on or before the expiry of the said one-month period. If the claim or challenge is approved or accepted by OCL, the Company shall procure OCL to amend the relevant Settlement Report or reconciliation statement and pay the agreed amount to the Merchant on the next Business Day based on the amended Settlement Report or reconciliation statement.

(f) **Appeal to Expert**

If the Merchant is aggrieved by any decision of OCL under Clause 5.13(e) and the parties are unable to resolve their differences by negotiation, the Merchant shall give written notice to the Company of its intention to submit its claim or challenge to an expert for determination in accordance with Clause 5.14 below within one month of the notification of OCL's decision. If the Merchant fails to give such written

- notice to the Company within such time, it shall be deemed for all purposes to have accepted the decision and to have waived any rights it may have in respect thereof
- 5.14 (a) **Appointment of Expert**
If the Company receives a written notice from the Merchant in accordance with Clause 5.13(f):-
- (i) the Company shall procure OCL to appoint an expert (the “Expert”) as mutually agreed between the Company and OCL to determine the relevant claim or challenge by the Merchant;
 - (ii) the Company shall procure OCL to appoint the Auditor as the Expert unless the Auditor, for whatever reason, cannot or will not act as the Expert; and
 - (iii) if the Auditor cannot or will not act as the Expert, the Company shall procure OCL to act jointly with the Company to appoint a certified public accountant as the Expert, and if the parties cannot agree on the appointment, the Company shall procure OCL to act jointly with the Company to appoint as the Expert a certified public accountant nominated by the president of the Hong Kong Institute of Certified Public Accountants.
- (b) **Determination by Expert**
The Expert shall:-
- (i) act as an expert and not as an arbitrator;
 - (ii) afford OCL and the Company the opportunity to make representations to him; and
 - (iii) determine whether the claim or challenge by the Merchant is valid or not and whether the Merchant shall make any further payment to the Company. Such determination shall be final and binding on the Company and the Merchant.
- (c) **Expert’s Costs**
The fees and expenses of the Expert (including the cost of his nomination) shall be borne by OCL and the Company in such proportions as the Expert may determine to be fair and reasonable, or if no such determination is made by the Expert, by OCL and the Company in equal shares. The Merchant shall upon demand forthwith pay or reimburse of any fees and expenses of the Expert which shall be borne by the Company.
- 5.15 **Value**
For the avoidance of doubt, every unit of value is equivalent to HK\$0.1 and shall be represented as 1 or \$0.1 in the Card System depending on the software being used. For example, 105 units of value is equivalent to HK\$10.5 and may be represented as 105 or \$10.5.
- 5.16 [deleted]
- 5.17 **Claims for Lost Data**
If the Merchant fails to transmit data to OCL in accordance with Clause 5.9 as a result of the malfunction, damage or loss of any part of the Merchant System, the Merchant may issue a written statement (the “Claim”) to the Company within 30 days after the occurrence of such malfunction, damage or loss setting out the Merchant’s record of the transactions referred to in Clause 4.11 which have been conducted at the Premises during the period such malfunction, damage or loss occurs. The Company shall upon receiving the Claim promptly serve the same on OCL. Clause 5.13 and 5.14 shall apply to the Claim in the same way as if they apply to a Dispute Notice *mutatis mutandis*. Both the Company and OCL shall have the absolute right to reject any Claim which is received by the Company after the expiry of the aforesaid period from the occurrence of the relevant malfunction, damage or loss of any part of the Merchant System.
- 5.18 **Limitation on Claims**
The aggregate amount payable by the Company to the Merchant in relation to all Claims issued by the Merchant under Clause 5.17 in any calendar month shall not exceed HK\$20,000. This
- limitation on the aggregate amount of Claims payable by the Company shall not apply to Claims issued by the Merchant within 5 Business Days after the occurrence of the relevant malfunction, damage or loss.
- 5.19 **Explanation of Settlement Reports**
Upon the request of the Merchant and subject to the payment of a reasonable administration fee to the Company and/or OCL, the Company shall procure OCL to provide evidence in relation to, or a breakdown of, any Settlement Report as far as it is reasonably practicable to do so.
- 5.20 **Bank Settlement Fee**
The Company and/or OCL shall have the right to charge the Merchant reasonable fees in connection with the settlement of the transaction monies, such fees to be advised by the Company from time to time.
6. **GENERAL PROVISIONS RELATING TO THE CARD SYSTEM**
- 6.1 **Intellectual Property Rights**
The Merchant acknowledges (i) that OCL is the owner of the name “Octopus” and its Chinese equivalent, all trade marks and other intellectual property connected therewith, and all Octopus identification numbers, and (ii) that the copyright in all the specifications, source codes, computer programs, materials and other documentation supplied by OCL or the Company to the Merchant in any way connected with the Card System is vested in OCL and, upon the expiry or termination of this Agreement, the Merchant shall return to OCL and/or the Company all such specifications, source codes, computer programs, materials and documentation and any copies thereof.
- 6.2 **OCL’s Trade Marks**
Save as provided in Clause 6.3(b), the Merchant shall not use the name “Octopus” or its Chinese equivalent or any logos, trade marks or other intellectual property of OCL for any other purposes except as permitted in this Agreement or with the prior written consent of OCL. The Merchant shall comply with all reasonable guidelines issued by OCL from time to time concerning the use of the name “Octopus” or its Chinese equivalent or any logos, trade marks or other intellectual property of OCL. Under no circumstance shall the Merchant use any Octopus identification numbers for any purpose without the prior written consent of OCL. Nothing in this Agreement shall confer any other rights on the Merchant in any names, logos, trade marks or other intellectual property owned by OCL.
- 6.3 (a) **The Merchant’s Trade Marks**
During the term of this Agreement and for the purpose of promoting the Card System, each of OCL and the Company shall be entitled to, amongst other things, use the name of the Merchant as a participant permitted to use the Cards as a means of payment for the Approved Goods and Services. The Merchant hereby grants the Company a licence to use its names, logos and trade marks for such purposes only and the Company shall have the right to grant OCL a sub-licence to use the Merchant’s names, logos and trade marks for those purposes only. OCL and the Company shall not otherwise use such names(s), trade mark(s) or logos, without the prior written consent of the Merchant. OCL and the Company shall comply with all reasonable guidelines issued by the Merchant from time to time concerning the use of the Merchant’s names, logos and trademarks. Nothing in this Agreement shall confer any other rights on OCL or the Company in any names, logos, trade marks or other intellectual property owned by the Merchant.
- (b) **Display of OCL’s Trade Marks**
The Merchant shall procure that the trade marks of OCL as specified by OCL or the Company in writing shall appear on the surface of every System Octopus Reader in such manner as OCL or the Company may reasonably require from time to time. The Merchant shall also display prominently such logos, trade marks and other promotional materials as OCL or the Company may reasonably require on the Premises.
- 6.4 **Anti-discrimination**
(a) [deleted]

- (b) The Merchant shall not charge the Cardholders any additional amount for making a purchase by the use of a Card as opposed to any other payment method for the purchase of the Approved Goods and Services.
- (c) The Merchant shall not discriminate against, or give preferential treatment to, any individual Cardholder in relation to other Cardholders who hold the same Class of Octopus without the prior written consent of the Company, such consent not to be unreasonably withheld. The Merchant acknowledges and agrees that the Company and/or OCL shall be entitled to charge a reasonable fee in consideration of the grant of its consent.
- (d) The Merchant shall not use any data stored in any Card other than the data stored in the data fields specified by OCL or the Company from time to time for the purpose of determining the amount of value to be deducted from the relevant Card.

6.5 **Conditions of Issue of Octopus**

Octopus is issued subject to the Conditions. The Merchant shall procure that the terms of the contract between the Merchant and the Cardholders in relation to the sale and purchase of the Approved Goods and Services shall not be inconsistent with the Conditions.

6.6 **Merchant's Undertakings**

The Merchant further undertakes to the Company:

- (a) not to use any Octopus Reader other than strictly for the purposes of performing its obligations under this Agreement;
- (b) to take all reasonable steps to protect the Octopus Readers in its possession from loss, theft or malicious interference;
- (c) to report to the Company (i) the loss or theft of, or (ii) the malicious interference with, any System Octopus Reader as soon as practicable after discovery of the same;
- (d) to report to the Company any pattern of use of the Cards or the System Octopus Readers over any period which deviates from normal or average usage over a similar period or any usage of the Cards or the System Octopus Readers which is suspicious or abnormal (for example, where the Total Transaction Value for any Transaction Period is two times the average Total Transaction Value for a similar period) forthwith upon discovery of the same;
- (e) to pay HK\$100 to the Company for every report made under Clause 6.6 (c) to cover the Company's costs of handling the report;
- (f) to procure that the Merchant System shall detect and disable any Blacklisted Card which is used or attempted to be used with a System Octopus Reader;
- (g) not to sell, part with the possession of, assign, encumber, provide as security (including, without limitation, pursuant to any floating charge) or otherwise dispose of any System Octopus Reader, without the prior written consent of the Company (which consent the Company shall have full liberty to withhold) save as provided in Clauses 4.3 and 7.4(f);
- (h) to notify the Company as soon as possible and to furnish particulars reasonably satisfactory to the Company in the event that the Merchant becomes a party to an industrial dispute which may cause the Card System or any part thereof not to function properly or becomes aware of the occurrence of an event or circumstance likely to cause such an industrial dispute;
- (i) to notify the Company promptly and to furnish particulars reasonably satisfactory to the Company, upon becoming aware of any event or circumstance (including, but not limited to, any change to its financial condition and/or business operations) which will or is likely to inhibit, impair, delay or adversely affect the ability of the Merchant to perform or comply with its obligations under this Agreement;
- (ia) to notify the Company promptly in the event of any change in (in the case of a sole proprietorship or a

company) the beneficial owner(s) of and/or his/her/their respective shareholding(s) or interest(s) in the Merchant, (in the case of a partnership) the partners of the Merchant, (in the case of a company, a statutory body or a body of persons corporate or unincorporated) the director(s) or the governing body of the Merchant, and/or any change in any other information of or relating to the Merchant which have been provided by the Merchant to the Company and/or OCL for due diligence purpose and furnish supporting documentation in relation to such change(s) as reasonably requested by the Company and/or OCL, and/or to furnish any other information of or relating to the Merchant (including, but not limited to, financial information) as reasonably requested by the Company and/or OCL in connection with the performance by the Merchant of its obligations under, and/or matters contemplated by, this Agreement; and to comply with this Clause 6.6, failing which shall constitute a material breach of this Agreement by the Merchant and the Company shall be entitled to terminate this Agreement forthwith without compensation or any payment whatsoever to the Merchant.

(j)

6.7 **Standard Blacklist**

The Merchant shall download a Blacklist from the OCL System at the times set out in Paragraph 13 of the Annexure every day.

6.8 **Special Blacklist**

The Merchant shall download a Blacklist from the OCL System within the period set out in Paragraph 14 of the Annexure after the Company has notified the Merchant to download the Blacklist.

6.9 **Upload of Standard Blacklists**

The Merchant shall upload every standard Blacklist (downloaded in accordance with Clause 6.7) to all System Octopus Readers or the computers which directly control the operation of the System Octopus Readers before the effective time of the standard Blacklist.

6.10 **Upload of Special Blacklists**

The Merchant shall upload every special Blacklist (downloaded in accordance with Clause 6.8) to all System Octopus Readers or the computers which directly control the operation of the System Octopus Readers before the effective time of the special Blacklist. [intentionally left blank]

6.11

6.12 **Effective Blacklist**

A standard or special Blacklist shall be effective from the effective time of the standard or special Blacklist until the effective time of the next standard or special Blacklist.

6.13 **Disclaimer of Warranties**

The Merchant agrees that its use of the Card System and the Merchant System is at its sole risk. the Company does not warrant that the Card System and the Merchant System will be uninterrupted or error free and the Company does not warrant as to the results or data that may be obtained from the use of the Card System or the Merchant System or as to the timeliness, sequence, accuracy, completeness, reliability or content of any information, service or transaction provided through the Card System or the Merchant System. The Card System and the Merchant System, or any feature or component thereof, are provided on an "AS IS" basis without representations or warranties of any kind, either express or implied, including, but not limited to, those of information access, merchantability and fitness for a particular purpose.

7. **MISCELLANEOUS**

7.1 (a) **Mutual Warranties**

Each party represents and warrants to each other that:

- (i) it has the full power, capacity and authority to enter into this Agreement and will comply with and perform its obligations hereunder, and has obtained all necessary consents and approvals to do so;
- (ii) this Agreement constitutes its valid, binding and enforceable obligations and does not violate or conflict with any law or regulation or any constitutional document;
- (iii) it has complied (and will continue to comply) with the Personal Data (Privacy)

- (iv) Ordinance (or any other applicable laws analogous thereto) so that the disclosure of the personal data of any individual Cardholders pursuant to this Agreement to the other party will not at any time contravene the said Ordinance or laws;
- (v) it has complied (and will continue to comply) with all applicable statutory and regulatory requirements; and
- (v) all information supplied to the other party in connection with the matters contemplated by this Agreement and its performance of its obligations hereunder is true, complete and up-to-date and does not omit any material facts.

(b) **Protection of Reputation**

Each party undertakes to the other that:

- (i) it will not generate any adverse publicity or make any untrue, unfair or defamatory statement about the other or OCL;
- (ii) it shall not do, or cause or allow anything to be done by its employees, servants, agents, licensees or contractors to cause damage or injury to the name or reputation of the other party or OCL.

7.2 **Limitation of Liability**

- (a) Subject to Clauses 7.2(b), (c), (d) and (e), the maximum liability of a party (in this Clause 7.2 the “defaulting party”) in respect of claims for direct loss or damage by the other party under this Agreement in relation to any one breach of this Agreement or other single act or omission by the defaulting party giving rise to liability (for the purposes of this Clause 7.2, each a “claim”) shall be the amount specified in Paragraph 15 of the Annexure.
- (b) Subject to Clauses 7.2(c), (d) and (e), the aggregate maximum liability of the defaulting party in respect of all claims for direct loss or damage over any one calendar year (commencing on the date upon which this Agreement comes into effect and on each anniversary thereof) shall not exceed the amount specified in Paragraph 16 of the Annexure.
- (c) If a number of breaches, acts or omissions by the defaulting party give rise to substantially the same loss then such breaches, acts or omissions shall be treated as giving rise to only one claim under this Agreement.
- (d) Clauses 7.2(a), (b) and (c) shall not apply to claims in relation to or arising under Clause 5 or claims in respect of death or personal injury.
- (e) Clauses 7.2(a), (b) and (c) shall not apply to claims by the Company against the Merchant in respect of any fees, charges or shortfall amounts payable by the Merchant to the Company under this Agreement, or claims by the Merchant against the Company in respect of any fees, charges or shortfall amounts payable by the Company to the Merchant under this Agreement.
- (f) Neither party shall be liable for any indirect, consequential, incidental, special, or punitive damages arising out of or in connection with this Agreement, whether in contract, tort or otherwise, even if such party has been informed of the possibility of such damage.

7.3 **Duration**

This Agreement shall come into force on the Commencement Date and shall continue in force until it is terminated in accordance with Clause 7.4.

7.4 (a) **Termination**

Either party may terminate this Agreement in the specified manner in any of the following circumstances:

- (i) by giving to the other parties a notice of termination specifying the date of termination but such date of termination shall not be earlier than the expiry of the

period specified in Paragraph 6 of the Annexure and such notice shall not be given prior to the date specified in Paragraph 6A of the Annexure;

- (ii) if any other party is in continuous or material breach of its obligations under this Agreement, and, in the case of a breach which is capable of remedy, that other party fails to remedy the breach within 30 days of a notice from the non-defaulting party giving particulars of the breach and requiring its remedy, by giving the party in breach 5 Business Days’ notice;
- (iii) if any other party goes into liquidation or provisional supervision (voluntary or otherwise), or a receiver or equivalent officer has been appointed in respect of all or any material part of its assets or otherwise becomes or is declared insolvent or is unable to pay its debts as they fall due, by giving notice to the other parties, such notice to take effect upon receipt;
- (iv) if any other party enters into a merger or consolidation with or into any other person or anything analogous thereto and the entity resulting from the merger or consolidation does not assume or otherwise agree to be bound by the obligations and liabilities undertaken by that other party under this Agreement, by giving notice to the other parties, such notice to take effect upon receipt;
- (v) if any other party suspends (for 7 Business Days or more) or ceases or threatens to suspend (for 7 Business Days or more) or cease, any part of its business which relates to the provision of the services provided for in this Agreement or participation in the Card System, by giving notice to the other parties, such notice to take effect upon receipt.

(b) **Necessary Licence or Authorization**

Either party may terminate this Agreement if the Government or any regulatory authority of Hong Kong revokes any licence, authorization or permission that OCL, the Company and/or the Merchant is required by law to hold to enable the Merchant to accept the use of Octopus as payment for the Approved Goods and Services. The parties shall, on the occurrence of such revocation by the Government of Hong Kong or the relevant regulatory body, consult and liaise on the timing and manner of termination.

(ba) **Termination of Acquirer Agreement**

The Company may terminate this Agreement if the Acquirer Agreement shall expire or terminate for whatever reasons, by giving notice to the other parties, such notice to take effect upon receipt.

(bb) **Termination by OCL**

Both the Company and the Merchant agree and acknowledge that OCL shall have the right to terminate this Agreement (but shall not unreasonably exercise such right) by giving to either the Company or the Merchant a notice of termination specifying the date of termination but such date of termination shall not be earlier than the expiry of the period specified in Paragraph 7 of the Annexure.

(c) **Remediable Breach**

For the purpose of this Clause 7.4 (but not otherwise) a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance.

(d) **Without Prejudice**

The termination of this Agreement shall not affect the respective rights and liabilities of the parties accrued prior to such termination.

(e) **Repossession on Termination**
Upon the termination or expiry of this Agreement and without prejudice to the rights of the parties under this Agreement, each of OCL and the Company shall be entitled to enter the Premises at a reasonable time and upon reasonable prior notice and the Merchant shall grant access to OCL and the Company and their respective staff and other authorized representatives to enable them to dismantle and remove or retrieve any property owned by any of them from the Premises, and to delete any computer software licensed to the Merchant by the Company or OCL. Further, the Merchant shall deliver up, and each of OCL and the Company shall have the right to remove, any equipment located on the Premises which OCL or the Company reasonably believes contains property owned by OCL or the Company.

(f) **Option to Buy**
Upon the termination or expiry of this Agreement, the Company shall have an option to purchase on behalf of OCL any or all Octopus Readers owned by the Merchant. The price payable by the Company for such Octopus Reader shall be its original price less depreciation Provided that such Octopus Reader(s) is/are of good working conditions and that no physical damage is found on the relevant Octopus Reader(s). Depreciation shall be calculated by the diminishing balance method on the assumption that each Octopus Reader will depreciate at the rate of 50% per year starting from the date when it is delivered to the Merchant. The option may be exercised by notice in writing to the Merchant within 60 days after the termination or expiry of this Agreement.

(fa) **Reasonable Notice to Customers, etc**
The Merchant shall, at its own costs and expenses, give reasonable notice to its customers (reasonable in terms of, among other things, the length of notice period and the manner of bringing such notice to the attention of its customers) that it will not provide the Payment Services on the Premises or participate in the Card System pursuant to cessation of engaging in the Payment Services at a designated Premises pursuant to Clause 3.1A(a) or termination or expiry of this Agreement. Without prejudice to Clause 7.4(e), the Merchant further agrees that it shall, at its own costs and expenses, provide assistance as reasonably requested by the Company and/or OCL to facilitate the smooth cessation of Payment Services at a designated Premises or the smooth termination of this Agreement.

(g) **Survival of Terms**
For the avoidance of doubt, Clauses 4.3, 4.9, 6.1, 7.1(b), 7.4(e), 7.4(f), 7.4(fa), 7.8, 7.10 and 7.12 shall survive the termination or expiry of this Agreement.

7.5 **The Company's Right to Set Off**
Without prejudice to the set off referred to in Clause 5.4 and notwithstanding anything to the contrary, the Company shall be entitled to set off any amount due and payable by the Merchant to the Company whether under this Agreement or otherwise against any sum which would otherwise be due to the Merchant under this Agreement.

7.6 **No Partnership**
Nothing in this Agreement shall be deemed to constitute or to create a partnership between the Company and the Merchant.

7.7 **No Assignment**
Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party.

7.8 **Confidentiality**
(a) Each of the Company and the Merchant shall keep confidential all Sensitive Information except (i) where it is under law or the requirements of any applicable regulatory authorities or court to disclose the same (in such case, the receiving party shall promptly notify the disclosing party of such order or demand (unless prevented from doing so by such order or demand) and upon the reasonable request of the disclosing

party, the receiving party shall use reasonable efforts to obtain a protective order or otherwise protect the confidentiality of such information in question, (ii) in relation to its staff members, professional advisers, and/or agents who have a need to know, for the purpose of enabling the party to perform its obligations under this Agreement on the condition that they agree to keep the same confidential. It is agreed that the Company shall be entitled to disclose any or all Sensitive Information to OCL, OCL's affiliated companies and/or the directors, staff members, professional advisers, sub-contractors and/or agents of OCL and/or OCL's affiliated companies. Except as expressly authorized by this Agreement, neither party shall allow any person to use, display, copy, disclose, transmit, reverse, disassemble, decompile or translate any of the Sensitive Information without the prior written consent of the disclosing party.

(b) To the extent as permissible under the Hong Kong Personal Data (Privacy) Ordinance and save and except as permitted under this Agreement, each of the Company and the Merchant may be required to disclose certain data or information to the other party in performance of its obligations under this Agreement.

(c) Each of the Company and the Merchant shall ensure that it and its employees, agents and sub-contractors shall observe and comply with the provisions of the Hong Kong Personal Data (Privacy) Ordinance.

(d) Without prejudice to Clause 4.8, each of the Company and the Merchant shall take appropriate technical and organizational security measures against unauthorized or unlawful processing of data or information disclosed pursuant to this Clause 7.8 and against any accidental loss or destruction thereof, or damage thereto, while it is in the possession or under the control of such party, in accordance with reasonable industry standards.

(e) Each of the Company and the Merchant shall ensure that its employees, agents and sub-contractors are aware of and comply with the provisions of this Clause 7.8.

7.8A **The Company's Right on Disclosure of the Merchant's Information**

(a) Without prejudice to Clause 7.8(a), the Merchant agrees that the Company shall be entitled to disclose information concerning the Merchant to the Company's holding companies, branches, subsidiaries, representative offices and/or affiliates (together the "BOC Group Companies") and/or any agents or sub-contractors appointed or engaged by the Company (each or any of the foregoing, a "transferee") or to any other persons for any purposes in connection with this Agreement, including for data processing, administrative, telecommunications or other services relating to the Payment Service such as call centre service providers and for risk analysis purposes, but not otherwise on a strictly need-to-know basis and on the condition that such BOC Group Companies and transferees are under a duty of confidentiality to the Company or have agreed to keep such information confidential.

(b) The Company and any of the transferees may transfer and disclose information concerning the Merchant to local or foreign legal, regulatory, governmental, tax or law enforcement authorities, securities or futures exchange, or self-regulatory or industry bodies or associations of financial services providers (collectively, the "Authorities") as required by applicable laws or regulations, order of any competent court of law, regulator, legal process or code in Hong Kong or any other jurisdictions outside Hong Kong or according to the BOC Group Companies' policy for legal or regulatory compliance purposes. Notwithstanding the foregoing, the Company shall,

and shall ensure the transferees to, disclose only that portion of the information concerning the Merchant which is legally required to be disclosed.

- (c) In so far as the Merchant is a sole proprietor or a partnership (the sole proprietor and the partners of any partnership are hereinafter collectively referred to as the “Owners”), the Merchant shall provide information relating to the full name, Hong Kong identity card number and/or passport number (as the case may be), residential address and telephone number of the Owners to the Company for the purpose of identification. The Merchant warrants to the Company that any information relating to the Owners provided by the Merchant to the Company is complete and accurate and the Merchant shall forthwith inform the Company of any change to such information.
- (d) The Merchant confirms that every entity or individual, including the beneficial owners, Owners, shareholders (applicable if the Merchant is a company), directors (applicable if the Merchant is a body corporate or unincorporate), officers and managers of the Merchant, whose information has been (or will be) provided to the Company, OCL or the transferees in connection with the Payment Services or pursuant to this Agreement has (or will at the relevant time have) been notified of and consented to the using, processing and disclosing of its/his/her information (including personal data for individual) in accordance with Clauses 7.8 and 7.8A, for the purposes as shown in the Company’s Data Policy Notice (in case of individual).

7.9

- (a) **Waivers**
No failure or delay by either party to exercise or enforce any right shall operate as a waiver of such right, nor will any single, partial or defective exercise of any right preclude any other or further exercise of it or the exercise of any other right.
- (b) No act, conduct or negotiation by or on behalf of either party shall in any way preclude it from exercising any right under this Agreement or constitute a suspension or variation of such rights.
- (c) Any consent or waiver under this Agreement:
- (i) may be given subject to such conditions as the party giving the consent or waiver may specify;
- (ii) shall be effective only in the instance and for the purpose for which it is given; and
- (iii) must be in writing to be effective.
- (d) **Amendment**
The Company may (with the prior written consent of OCL) amend or modify the terms of this Agreement at any time by giving not less than 30 days notice in writing to the Merchant, furnishing full particulars of the amendment or modification and specifying the date upon which it shall become effective. If the Merchant raises no written objection to the amendment or modification, the same shall come into effect in accordance with the provisions of the Company’s said notice. Any other amendment to this Agreement may only be made if the parties so agree in writing.
- (e) **Entire Agreement**
This Agreement (including all the specifications, instructions, procedures and other documents referred to herein) and the documents referred to in Paragraph 18 of the Annexure contain the entire agreement between the parties relating to the transactions contemplated in it and supersedes all previous agreements, understanding, arrangements, promises, warranties, indemnities and undertakings relating to such transactions. Without limiting the generality of the foregoing, neither party shall have any remedy in respect of any untrue statement or representation made by the other party prior to entering into this Agreement unless such statement or representation is

contained in this Agreement or the statement or representation is made with fraudulent intent.

7.10

Communications

- (a) Every communication, notice, notification, statement (excluding Settlement Reports, Transaction Data and Blacklists) (collectively “communications”) issued under this Agreement shall be in writing and may be sent by facsimile, email, personal delivery or by post unless otherwise stated.
- (b) Each communication shall be sent to the other party, marked for the attention of the person or office holder at the facsimile number, email address or address designated in writing by that party to the other.
- (c) The initial designated person or office holder, address, facsimile number and email address of the Merchant are set out in Paragraph 17 of the Annexure. The initial designated office holder, address, facsimile number and email address of the Company are:-
DESIGNATED OFFICE HOLDER: [xxx Card Services Manager]
ADDRESS: 20/F, BOC Credit Card Centre, 68 Connaught Road West, Hong Kong
TEL. NO.: (852) 2853 8702
FAX NO.: (852) 2850 4922
EMAIL ADDRESS: mcs@bochk.com
- (d) Every communication shall be deemed to have been received:
- (i) in the case of a communication sent by facsimile or email, when successfully despatched during normal business hours;
- (ii) in the case of a communication delivered by hand, when left at the relevant party’s designated address; and
- (iii) in the case of a communication sent by postage prepaid, 2 Business Days after posting, unless returned by post.
- (e) All communications shall be in the English language.

7.11

Illegality

The illegality, invalidity or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provisions. This Agreement shall be deemed to have been modified to the extent necessary to render enforceable the provisions hereunder.

7.12

Arbitration

Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Hong Kong International Arbitration Centre (“HKIAC”) domestic arbitration rules as in force as at the date of this Agreement. The appointment authority shall be the HKIAC. The place of arbitration shall be in Hong Kong. There shall be only one arbitrator. In relation to all matters referred to arbitration, the parties hereby acknowledge and agree that the right of appeal under section 23 of the Arbitration Ordinance (Cap. 341) and the right to make an application under section 23A thereof are hereby excluded.

English Language

Any arbitration or other legal proceedings in relation to this Agreement shall be conducted in English and, for the avoidance of doubt, neither party shall require the other to provide a Chinese translation of any document.

Computer Records

It is expressly agreed that all records (including computer records) of OCL, the Company and the Merchant shall be admissible in evidence in any arbitration or other legal proceedings.

7.13

Special Conditions

This Agreement shall be varied or modified by the terms and conditions (the “Special Conditions”) set out in Appendix 1. In case of conflict or inconsistency between this Agreement and the Special Conditions, the Special Conditions shall prevail.

- 7.14 **Cardholder's Transaction Records**
To the extent permitted by applicable laws, the Company shall procure OCL to supply the Merchant with a copy of the transaction records (excluding personal details) in respect of the transactions between the Merchant and any Cardholder (identified by the Octopus number only) upon the written request of the Merchant and subject to the payment by the Merchant of a reasonable administration fee.
- 7.15 **Visibility and Audibility**
The Merchant shall procure that the System Octopus Readers are installed at prominent locations, so that customers may clearly view the amount to be added or to be deducted from the Octopus and the remaining balance. The System Octopus Reader shall provide an audible tone of frequencies and audibility to a standard approved by the Company to indicate to the customer that a successful transaction has been consummated. The Merchant shall consult and take into account recommendations by the Company in determining the appropriate location for the System Octopus Readers and any other aspects of the payment process utilising the Octopus.
- 7.16 **Suspension of Payment**
- (a) Notwithstanding Clause 3.6 above, the Merchant agrees and confirms that the Company may, in its sole and absolute discretion, withhold and/or instruct OCL to withhold payment or any part thereof payable to the Merchant under this Agreement for such period and in such manner as advised by the Company in writing from time to time.
- (b) The Merchant further agrees and confirms that the Company and/or OCL shall not be liable to the Merchant for any loss or damage whatsoever arising from or in connection with the Company exercising its rights under this Clause 7.16 and/or OCL's compliance with the Company's instructions in accordance with this Clause 7.16.
- 7.17 **Rights of Third Parties**
- (a) Subject to Clause 7.17(c), a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623 of the Laws of Hong Kong) (the "**Third Parties Ordinance**") to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Save for OCL (as provided for in this Agreement), the consent of any person who is not a party to this Agreement is not required to rescind or vary this Agreement at any time.
- (c) OCL may, by virtue of the Third Parties Ordinance, enforce or rely on any provision of this Agreement (including without limitation any indemnity, limitation or exclusion of liability) which expressly confers rights or benefits on it.

Annexure

<u>Paragraph Number</u>	<u>Relevant Clause(s)</u>	<u>Brief Description</u>	<u>Particulars</u>
1.	Parties	The Company and The Merchant	
2.	[deleted]	[deleted]	[deleted]
3.	1.1	Merchant Account	Account Holder Name: Bank Name: Account No.:
4.	1.1	Approved Goods and Services	Any goods and/or services supplied by the Merchant within the Premises
5.	1.1	Commencement Date	The date on which this Agreement is stated to be signed by the last party to sign this Agreement.
6.	7.4(a)	Termination Notice Period	Six months after a party has given the notice of termination to the other party
6A.	7.4(a)	Termination Notice not to given before	Six months after the commencement date
7.	7.4(bb)	Termination Notice Period by OCL	Six months after OCL has given the notice of termination to either the Company or the Merchant
8.	[deleted]	[deleted]	[deleted]
9.	3.4 (a)	Percentage for calculating the Percentage Fee	[]%
10.	3.5	Per Transaction Fee	NIL
10(a)	[deleted]	[deleted]	[deleted]
11.	1.1	effective time of standard Blacklist	30 minutes after the time when the Merchant is required by Clause 6.7 to download the standard Blacklist from the OCL System
12.	1.1	effective time of special Blacklist	30 minutes after the time when the Merchant is required by Clause 6.8 to download the special Blacklist from the OCL System
13.	6.7	Times for Downloading standard Blacklists	At or before the 30 th minute of every hour during Business Hours

<u>Paragraph Number</u>	<u>Relevant Clause(s)</u>	<u>Brief Description</u>	<u>Particulars</u>
14.	6.8	Time for Downloading special Blacklist	30 minutes
15.	7.2(a)	Maximum Liability per breach	NIL
16.	7.2(b)	Maximum Liability per year	NIL
17.	7.10	The Merchant's contact details	
18.	7.9(e)	Additional documents/agreements	NIL

APPENDIX 1

SPECIAL CONDITIONS

1. Monthly fee: HK\$200.00
2. Fee waiver applies when monthly transaction volume exceeds HK\$50,000.00

APPENDIX 2

FORM OF SETTLEMENT REPORT

Octopus Cards Ltd
 Settlement Summary
 Settlement Date : DD-MM-YYYY

Print By :

Print Date :

DD-MM-YYYY HH:MM:SS

REPORT ID: SET051

Page 1 of 1

SP NAME: XXXXX Ltd

SP ID: XXXXX

	TRANSACTION VOLUME			[EXPIRED TRANSACTION]
X	USAGE VOLUME	(1)	X,XXX	
X	CASH ADD VALUE VOLUME	(2)	XX	
	TRANSACTION VALUE			
X.X	USAGE DEDUCTIONS VALUE	(3)	XX,XXX.X	
	LESS DEDUCTIONS			
	CASH ADD VALUE	(4)	(XX,XXX.X)	
	MISCELLANEOUS CHARGE	(5)	(X.X)	
	TOTAL DEDUCTIONS	(6) = (4) + (5)	(XX,XXX.X)	
	LESS PER TRANSACTION FEE	(7)	(X.X)	
	PERCENTAGE FEE	(8)	(X,XXX.X)	
	LOAD AGENT FEE	(9)	XX.X	
	NET CHARGES	(10) = (7) + (8) + (9)	(X,XXX.X)	
	NET ENTITLEMENT	(11) = (3) + (6) + (10)	XX,XXX.X	
	ADD VALUE - EFT		X.X	

* * * END OF REPORT * * *