

Terms and Conditions

European Merchant Services B.V.

1 These terms

- 1.1 These Terms and Conditions (“**Terms**”) apply between European Merchant Services B.V. (“**Fiserv**”, “**Clover**”, “**EMS**”, “**we**”, “**us**” or “**our**”) and your company, as specified in the Merchant Agreement, (“**you**”, “**your**”) and form part of the Agreement (as defined below). In these Terms, you and we are referred to individually as “**Party**” and jointly as “**Parties**”.

2 Definitions and interpretation

- 2.1 The capitalized terms used in the Agreement (as defined below) shall bear the meanings provided in the following definitions:

Account: The internal record, not being a payment account, we use in relation to your Transactions, which enables us to assess and/or establish our financial rights and obligations to you.

Agreement: The agreement between you and us, comprising the Merchant Agreement, these Terms, where applicable, any Additional Terms and the Documentation.

Additional Terms: Any supplementary Terms and Conditions that form part of these Terms. The Additional Terms may be agreed between you and us concurrently with these Terms or at a later moment.

Applicable Regulations: All governing laws, regulations, policies, instructions, recommendations or other legally binding provisions that apply to you and/or us in relation to the Agreement. For the avoidance of doubt: the Applicable Regulations include directives from supervisory authorities and the Payment Schemes, the Scheme Rules and standards of the payment card industry (such as PCI-DSS).

Applicable Data Protection Regulations: Any Applicable Regulations related to data protection and/or data privacy, such as Regulation (EU) 2016/679 of the European Parliament and of the Council (**GDPR**), and any national legislation implementing the GDPR, as well as any other relevant data protection laws and regulations that are applicable to the Parties.

Authorization: The specific phase within a Transaction where we, acting on your behalf, seek approval from the Issuer to confirm the legitimacy and sufficiency of a Customer’s Payment Instrument for a given amount, following a payment initiated by the Customer. Such confirmation results in a payment obligation for the Issuer. Any verb forms derived from “Authorized” carry the corresponding meaning.

Balance: Either the funds remaining in your Account after we have deducted the applicable Fees, the Reserve (if applicable) and other deductions in accordance with the Agreement or the funds remaining in your Account without such deductions, depending on the settlement model agreed between you and us.

Bank Account: Your designated bank account held at a regulated credit institution in a member state of the European Economic Area, to which we make Pay-outs in accordance with the Agreement.

Card: A physical or virtual card issued by or on behalf of a financial institution that enables the cardholder to initiate Transactions. A Card also includes (mobile) devices enabled for electronic payments, such as smartphones, tablets or wearables, used for the same purposes.

Card-Not-Present/CNP Transaction: A Transaction in relation to your products/services, whereby the Customer that initiates the Transaction is not physically present at your business’ location at the moment of payment.

Chargeback: The process initiated by a Customer or Issuer in accordance with the relevant Scheme Rules to dispute a Processed Transaction.

Customer: Any individual, organization or entity that (intends to) engage(s) in a Transaction with you in connection with the products/services you offer to them.

DCC: All Services provided to you that allow your Customers to initiate Transactions in their own currency, in the event you offer your products/services in a different currency.

DCC Provider: Any third-party service provider, approved by us, that provides DCC to you.

DCC Provider Terms: The specific Terms and Conditions that may be imposed by the DCC Provider, governing the use of DCC, as may be separately agreed between you and the DCC Provider.

Documentation: Any guides, manuals, instructions or other information issued by us in relation to the use of (specific parts of) the Services, as published on our website or accessible through the Merchant Portal.

Effective Date: The date mentioned in the Merchant Agreement, which represents the date on which the Agreement comes into force.

Fiserv Systems: The systems, software and (other) infrastructure developed, used and/or maintained by us to provide the Services to you. The Fiserv Systems, inter alia, include the Gateway and the Merchant Portal.

Fees: Any amounts payable by you to us for using our Services, including those related to the Processing of Transactions and other events.

Gateway: The software and/or services provided to you, acting as a bridge between the Merchant Systems, us and (the systems and/or infrastructures of) the Payment Schemes.

Issuer: The bank or financial institution, which, inter alia, issues Cards to Customers and Authorizes and settles Transactions initiated by them to an acquirer or other party nominated by the payee.

Merchant Agreement: The document you sign during your onboarding, which includes your (company) information and specifies the Services we provide to you.

Merchant Systems: The software, hardware and infrastructure used by you to manage various aspects of your business operations in connection with the Services.

Merchant Portal: The platform, accessible to you, which allows you to, inter alia, view Transactions, access the Documentation and various other information, modify the settings of the Services and which serves as the channel through which we may communicate notices related to the Services.

Pay-out: A payment by us from your Balance to your Bank Account.

Payment Instrument: Any specific tool or mechanism used by a Customer to initiate a Transaction, such as a Card, an electronic authorization for direct debit or for other forms of (electronic) Payment Methods.

Payment Method: The category or option offered by you to and chosen by the Customer to make payments, such as (debit or credit) Cards or iDEAL.

Payment Scheme: A network or organization (such as VISA and Mastercard) that establishes and manages Scheme Rules and facilitates the transfer of funds between various stakeholders as part of the Processing of Transactions.

Personal Data: Any information relating to an identified or identifiable natural person, as defined in the Applicable Data Protection Regulations.

Point-of-Sale/POS Transaction: A Transaction in relation to your products/services, whereby the Customer that initiates the Transaction is physically present at your business' location at the moment of payment.

Privacy Policy: [This document](#) outlining how we process Personal Data under the Agreement.

Processing: The activities undertaken by us as part of the Services to facilitate the Authorization of amounts associated with Transactions initiated by your Customers, collect settlement from the relevant Issuers and/or Payment Schemes and make Pay-outs.

Refund: The process initiated by you to reverse a completed Transaction, resulting in a reimbursement to the Customer through the Payment Method used for the original Transaction.

Reserve: The funds that we block on or set aside from your Account as a safeguard against potential financial risks, such as Chargebacks.

Scheme Rules: All rules, (operating) regulations, procedures and waivers issued by the Payment Schemes.

Services: All payment processing solutions and related services we agreed to provide you. The Services, inter alia, include any activities we undertake in the context of Processing, the provision of (access to) the Gateway and the Merchant Portal, fraud prevention, reporting, Customer support and are further specified in the Merchant Agreement.

Terminal: Any physical device and/or software application that serves as a communication interface between the Customer's chosen Payment Instrument and the payment network for the purposes stipulated in the Agreement.

Terminal Provider: The company that has provided, either separately or through us, the Terminals to you, as agreed in the Merchant Agreement.

Terminal Provider Terms: The specific Terms and Conditions imposed by the Terminal Provider, governing the use of each Terminal, as separately agreed between you and the Terminal Provider.

Terms: These "Terms and Conditions" and any Additional Terms that apply to your use of the Services and form an inseparable part of the Agreement between us, as amended and/or supplemented over time.

Transaction: A financial transaction following your acceptance of a Payment Instrument, relating to a payment initiated by a Customer for your products/services.

Transaction Data: Any specific details relating to a completed Transaction, such as its date, time, payment amount, information about you or a Customer, location, reference/authorization codes, currency and any relevant terms.

- 2.2 In these Terms, "in writing" or "written" includes electronic communications, singular words include the plural and vice versa, references to persons include individuals, corporations, partnerships, limited liability companies and other (legal) entities.
- 2.3 We reserve the right to change these Terms and the Terms and Conditions of any Merchant Agreement from time to time. Any changes will become binding 30 days from the moment we notify you thereof. If you disagree with the proposed changes, you must notify us in writing within 30 days of receiving our notification. Your notification will constitute a termination of the Agreement, which termination will take effect when the proposed changes come into force.

3 The services

- 3.1 We provide the Services to you, in accordance with the Terms and Conditions set forth in the Agreement. However, we cannot guarantee uninterrupted access to our Services, inter alia, due to our reliance on third-party factors. The details and scope of the Services we provide to you, including the Fees and any applicable restrictions, are detailed in the Merchant Agreement and/or the Merchant Portal.
 - 3.2 Your use of the Services must strictly adhere to the scope and the limitations specified in the Merchant Agreement and/or the Merchant Portal. Unauthorized usage beyond these parameters is strictly prohibited. Our Services should be used solely for conducting Transactions directly associated with the products or services you offer. Any other purposes, including enabling cash withdrawals by your Customers, are expressly prohibited.
 - 3.3 It is your responsibility to ensure the proper implementation and compatibility of the Services with your Merchant Systems. You are also responsible for maintaining the compatibility of your Merchant Systems through necessary updates. Any costs associated with integrating and updating your Merchant Systems are to be borne by you.
 - 3.4 We reserve the right to limit, suspend or terminate (specific parts of the) Services, for instance, when certain circumstances related to your business change. You acknowledge that we bear no liability for any costs and/or damages resulting from such actions.
 - 3.5 We reserve the right to make alterations to the Services. In the case of significant alterations that substantially affect your rights and obligations under the Agreement, we will provide you with advance notice before these modifications take effect. If such modifications have a significant adverse effect, you have the right to terminate the Agreement. Notifying us within a reasonable timeframe before the changes take effect is necessary for such termination to be effective.
 - 3.6 If you encounter any issues that render the Services unusable according to the terms outlined in the Agreement, you must promptly report them to us. We commit to providing you with support during Dutch business hours regarding your use of the Services. Complaints about our Services should follow the outlined procedure available on our website.
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4 Payment methods

- 4.1 As part of the Services, you are able to offer the agreed upon Payment Methods to your Customers. You hereby authorize us to submit all information we have collected from you to the relevant Payment Scheme as required for the proper execution of the Agreement.
- 4.2 For certain Payment Methods, we will collect payments on your behalf and periodically issue Pay-outs to you in accordance with article 12 of these Terms. However, for other Payment Methods that do not involve collection, you will directly receive payments from the relevant Payment Scheme or Issuer.
- 4.3 The availability and acceptance of each Payment Method are subject to the terms, policies and conditions of third parties. You are obligated to comply with such terms, policies and conditions. You may be required to enter into separate agreements with third parties providing these Payment Methods. We cannot be held liable for any costs and/or damages resulting from the unavailability, rejection, suspension, termination or failure of any Payment Method, whether due to technical issues, restrictions imposed by third parties or other factors beyond our control.
- 4.4 We reserve the right to discontinue specific Payment Methods or impose additional terms and Fees for your access to them, due to factors including significant alterations in Payment Schemes, performance issues, your creditworthiness or increased costs associated with those Payment Methods. We will make reasonable efforts to notify you in advance of any such changes or discontinuations related to the Payment Methods you use.

5 Onboarding

- 5.1 You are obligated to provide us with all information required under the Applicable Regulations and requested by us. This includes specific details about the Services you intend to use, the Payment Methods you plan to offer to your Customers, the Fee model and the online locations from which you wish to offer your products/services to your Customers. We will use this information to generate a Merchant Agreement, which will be sent to you for your signature. The effectiveness of the Merchant Agreement is contingent on our confirmation of your successful onboarding, pursuant to article 5.2 below. Upon such confirmation, the Merchant Agreement will be considered effective from the Effective Date.
- 5.2 We will conduct additional checks, verifications, and/or assessments, including the verification of your identity, evaluation of your creditworthiness, and assurance of compliance with the Applicable Regulations ("KYC checks"). You authorize us to share your information with third-party service and data providers for these purposes. Upon completion of the KYC checks, we will decide whether to onboard you as a merchant, considering several factors including your compliance with the Applicable Regulations, the Scheme Rules, our risk and acceptancy policies, and statutory rules for client acceptance. If your application is approved, we will notify you of your confirmed status as our merchant. Subsequently, you can implement and use the Services in accordance with our Documentation and other provided instructions. You acknowledge that we conduct KYC checks periodically after your onboarding as well.

6 Merchant Portal

- 6.1 Upon confirmation of your merchant status and if agreed between you and us, we will grant you access to the Merchant Portal by providing you with your login credentials. You must keep these login credentials secure in accordance with article 9.
- 6.2 Delays in the appearance of a Transaction on the Merchant Portal may occur due to several factors, including network congestion, technical constraints, and external dependencies. Your use of data accessed through the Merchant Portal is at your own risk and we disclaim any responsibility for costs and/or damages incurred by you due to reliance on this data.
- 6.3 You are entitled to authorize your employees or other individuals working on your behalf to use the Merchant Portal. However, you are responsible for ensuring their compliance with the Agreement. Moreover, any use of our Services by such authorized individuals remains your sole liability. You warrant and represent that we may assume that users authenticating themselves as specific individuals possess the necessary authorization to represent you or your company. Your company is legally bound to any messages transmitted using the designated means of authentication provided or assigned by us.

7 Your general obligations

- 7.1 You must use the Services in accordance with the Applicable Regulations and the Agreement. You are prohibited from offering products/services or engaging in Transactions that violate the Applicable Regulations, public morality, public order or may otherwise harm our reputation. We are not obligated to notify you of changes in the Applicable Regulations.
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- 7.2 You are obligated to obtain all permits and authorizations required by the Applicable Regulations for your business and associated activities. Our provision of the Services to you does not confirm that you have the required permits and authorizations.
- 7.3 You must provide us with accurate, complete, and up-to-date information and documentation requested by us or needed for the performance of the Agreement and compliance with the Applicable Regulations. You warrant and represent that the information provided does not infringe upon any third-party rights. You must promptly inform us of any changes or updates to the information you provided us with, such as changes or updates to the legal structure of your company or the ultimate beneficiary owners.

8 Your obligations towards customers

- 8.1 You are obligated to explicitly inform your Customers regarding the acceptance or non-acceptance of specific Payment Instruments. For POS Transactions, you must prominently display this information at the entrance of your business premises and on each Terminal. Concerning CNP Transactions, it is mandatory to communicate this information on your website or relevant electronic platforms before Customers engage in an agreement with you. For CNP Transactions, you must also provide comprehensive information on your website for Customer to understand their rights and obligations in their relationship with you, including all relevant details on the products/services you offer, your general Terms and Conditions, refund policies, customer service contact details, business address, delivery policies, consumer data protection policy, and any other essential information required by the Applicable Regulations. You must ensure that this information is accurate, up-to-date and easily accessible to your Customers. Should you use any logos, trademarks or other intellectual assets of the Payment Schemes for the purposes mentioned, you warrant that your use complies with the licenses and any further guidelines provided by the relevant intellectual property right holders.
- 8.2 You agree not to accept payments from Customers using a Payment Instrument if there is suspicion of unauthorized or fraudulent use. In such cases, you must investigate any suspicious activities following the procedures as may be outlined in the Documentation. In addition, we may impose additional conditions for accepting a Payment Instrument, to which you must adhere.
- 8.3 You may only charge Customers a fee for using a specific Payment Instrument or apply costs exceeding the directly incurred costs if this is permitted under the Applicable Regulations. If permissible and if you plan to charge such a fee, you commit to informing each Customer prior to their initiation of payment.
- 8.4 You are required to promptly address your Customers' inquiries concerning your products and/or services and the usage of Payment Methods. Our responsibility does not include managing complaints from your Customers regarding you or your products/services. In cases where we receive Customer complaints or claims requiring investigation or action, we reserve the right, at our discretion, to address these matters. Any such intervention may incur an additional Fee, subject to our discretion.
- 8.5 Where strong client authentication is possible for a Transaction, you are strongly advised to enable this. In the event of your failure or refusal to implement strong customer authentication when it is possible, you assume the risk of unauthorized Transactions and are liable for any costs and/or damages resulting from such unauthorized Transactions.

9 Security

- 9.1 In accordance with the Applicable Regulations and any additional security instructions provided by us, you must implement and consistently maintain robust security measures to prevent unauthorized access, use or disclosure of sensitive information. This includes safeguarding data concerning Payment Instruments and Customers, encompassing Payment Instrument details, expiration dates, security codes, information stored on Cards' chips or magnetic strips, Transaction Data, and other Customer details. Furthermore, you commit to adjusting security measures or obtaining specific registrations and certifications, such as PCI-DSS certificates, if required by the Applicable Regulations.
- 9.2 You bear sole responsibility for the costs, expenses and fees associated with implementing, maintaining, and improving security measures. Furthermore, you agree to indemnify us against all costs and/or damages resulting from any non-compliance with this article 9. In addition, your failure to adhere to the guidelines in this article 9 may incur an additional Fee, subject to our discretion.
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10 Transactions and transaction data

- 10.1 You hereby authorize us for Processing Transactions on your behalf. While we make reasonable efforts to obtain Authorization confirmation from the relevant Payment Scheme and/or Issuer and payment for each Transaction, we cannot guarantee this as this is not under our control. As part of our risk management policies and in adherence to the Applicable Regulations, we conduct reconciliation, risk assessments and other checks. Furthermore, you agree that we will only make Pay-outs if the Transactions related to such amounts are in compliance with the Agreement, our risk management policies, and the Applicable Regulations and have been settled to us by the relevant Payment Scheme. Pay-outs will take place in accordance with the agreed payment frequency and only if there is a positive Balance. We retain the right to impose additional conditions on Transactions, including restrictions on the number of Transactions within a specific timeframe and specific minimum or maximum Transaction amounts. We will notify you of any anticipated additional conditions unless urgency prevents us from doing so.
- 10.2 In cases where Pay-outs cannot be made, we reserve the right to transfer these funds to our own accounts in accordance with the Applicable Regulations. You hold the option to request fund retrieval within three years from the date of your last Transaction or the Agreement termination date, whichever occurs first. From this moment, we will charge you a monthly administration fee until we have received your request of retrieval. To initiate a retrieval request, you must contact us at legal.nl@fiserv.com. Subsequently, upon evaluating your request, based on the information provided, we reserve the right to deduct these administration fees from the funds for which you have requested retrieval. Failure to request retrieval within this time frame will result in automatic expiration of your rights to any amount, allowing us to gain title to these funds.
- 10.3 You are obligated to retain copies of all Transaction Data, including essential details such as shipping information where relevant, invoices, and any correspondence with Customers related to the Transactions. You must keep this data for the longer of (i) two years from the date the Transaction is Processed, (ii) the duration of any applicable warranty for the purchased products or services or (iii) the period required by the Applicable Regulations. In cases of inconsistencies between your retained Transaction Data and our records, our Transaction Data will take precedence. At our request, you must promptly provide us with all requested Transaction Data, particularly in instances involving Chargebacks, suspected fraudulent activities or at the request of a Payment Scheme. Failure to provide such information may result in a requirement for you to refund the relevant Transaction amounts.

11 Refunds and chargebacks

- 11.1 If you have received Pay-outs, this does not guarantee your right to retain them. Transactions may be subject to reversal for various reasons, such as violations of Applicable Regulations, Scheme Rules or Customer disputes. In such cases, you will indemnify us for any amounts disbursed or that we are obligated to disburse to the Issuer, Payment Scheme or any other relevant party.
- 11.2 You are authorized to initiate Refunds in accordance with the Applicable Regulations and your Refund policies. Should you fail to process a Refund as required by the Applicable Regulations and your Refund policies, we retain the right to process such Refund on your behalf. In such case, we will recover the Refund amount and associated charges from your Account, following which such amount will be transferred to your Customer's bank account through the relevant Payment Scheme. As Refunds are separate Transactions, you are liable to us for the Refund amount and any associated Fees and other charges. However, we cannot guarantee the Customer will receive the Refund amount due to factors such as the arrangements and financial relationship between the Customer and the relevant Issuer. In addition, we may choose not to process a Refund in certain cases, such as when your Balance is insufficient or when this is prohibited under the Applicable Regulations.
- 11.3 Issuers and Customers retain the right to initiate Chargebacks in accordance with the relevant Scheme Rules. Chargebacks are an inherent aspect of Transaction Processing and may result from several reasons, including fraud, Transaction errors, Customer dissatisfaction or non-receipt of your products/services. However, you are committed to minimizing Chargebacks, for instance by implementing fraud prevention measures, providing accurate descriptions of the products/services you offer, and ensuring excellent Customer service. We will provide you with reasonable assistance and support in managing and resolving Chargebacks and disputes. However, your cooperation is essential in Chargeback investigations and resolutions. Therefore, you must promptly respond to inquiries and provide us with all requested information as part of a Chargeback. You agree that you bear full liability and must indemnify us for Chargebacks arising from Transactions Processed through our Services, including, but not limited to, the disputed amount, associated Fees, charges and penalties. In addition, you agree that excessive Chargebacks may lead to various consequences, including additional Fees, penalties and restrictions on our Services, imposed based on the severity of the situation.
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12 Fees and payment

- 12.1 The provision of the Services to you is subject to the Fees and (other) charges specified or referenced in the Merchant Agreement. Amounts payable to us exclude VAT and other applicable taxes and government levies, unless explicitly indicated otherwise. You are responsible for identifying and managing any relevant taxes or fees associated with your use of the Services, including assessment, collection, reporting, and remittance to the relevant tax authorities. If required, we will deduct the corresponding tax amounts from your Balance and remit them to the appropriate tax authority.
- 12.2 Subject to the conditions outlined in the Agreement, we will periodically make Pay-outs after deducting the applicable Fees and other permissible deductions (“**net settlement**”). If we have agreed to make Pay-outs without deducting the Fees and other charges and to charge them separately (“**gross settlement**”), we retain the right to switch to net settlement at any time. We will notify you of any such changes within a reasonable timeframe after such switch has been made.
- 12.3 Maintaining a negative Balance is not permitted. In the event of a negative Balance, you must immediately restore it to a positive Balance. In case of receiving payments to which you are not entitled, you are obligated to promptly return them upon our request. Accordingly, you commit to settling any outstanding debts owed to us without delay.
- 12.4 You are prohibited from suspending your payment obligations, deducting amounts or offsetting your debts against any claim you may have against us. Conversely, we reserve the right to demand immediate payment of outstanding amounts, offset them against your Balance or collect payment using your direct debit mandate (if applicable).
- 12.5 In the event of non-payment, you are considered in default from the debiting date and are liable to pay statutory commercial interest on the outstanding amount. You are obligated to settle your debt, including interest and any associated collection costs, without delay.
- 12.6 We will periodically provide you with statements detailing payments and the applicable Fees and other charges related to the Agreement. Upon receipt, you must review each statement and notify us within 30 days should you identify any errors. Failure to report errors within this timeframe will be construed as your acceptance of the statement’s accuracy.

13 Foundation and financial securities

- 13.1 To safeguard the funds transferred to or received from you, we have established a separate legal entity called “**Stichting Third Party Funds EMS**” (the “**Foundation**”). The Foundation is responsible for holding and managing the funds related to the Agreement in line with our instructions. Payments made or received through the Foundation are regarded as payments to or from us. The Foundation cannot be held liable for any failures in the transfer and receipt of funds. Consequently, you waive your rights to pursue legal claims against the Foundation regarding these payments and agree to address any such claims directly with us. This clause constitutes a third-party clause, to which you explicitly agree. You are not entitled to any interest related to the funds held by the Foundation on your behalf.
- 13.2 You establish a primary right of pledge in our favour over all claims arising from the Agreement. This right of pledge secures all current and prospective claims held by us against you. You confirm your authority to grant and establish this pledge, warranting that our claims remain unencumbered by any other pledges. We acknowledge and accept this pledge. We reserve the right to enforce this security without prior notice, applying it to all present and future amounts owed to us under the Agreement.
- 13.3 We reserve the right to establish a (rolling) Reserve, the amount of which may vary based on factors, including your Transaction volume. Furthermore, you must provide additional security for your upcoming obligations under the Agreement. This security may include various measures, such as establishing a right of pledge on other assets, cash deposits, letters of credit, personal or corporate guarantees or other forms of security as determined by us. You are obligated to comply with our requests for additional security. We may use any credit or other amounts payable to you under the Agreement to establish and maintain the Reserve, blocking the Reserve amount from your Balance. Should the Reserve or other collateral at any time be insufficient to meet your payment obligations, you are required to promptly pay the difference, along with any associated costs incurred by us.

14 Duration, suspension and termination

- 14.1 Subject to your successful onboarding in accordance with article 5.1, the Agreement takes effect on the Effective Date and will remain in effect indefinitely until the date on which the Agreement is terminated. Either Party may, at all times, terminate the Agreement by providing at least 30 days' written notice to the other Party.
- 14.2 We reserve the right to, at all times, suspend or terminate the Agreement (including any Additional Terms), the Services or specific elements thereof or the Processing of (specific) Transactions with immediate effect if: (i) you breach (any provision of) the Agreement, (ii) (we reasonably suspect that) you breach the Applicable Regulations or our instructions, (iii) (we reasonably suspect that) you or your Customers engage in fraudulent or unlawful activities, (iv) you refuse to cooperate with our KYC checks or the outcome thereof is not to our satisfaction, (v) your assets held by us or the Foundation are seized through pre-judgment attachment or attachment in execution, (vi) you pose a risk to our security, reputation, integrity or financial position, (vii) you and/or any party related to you (such as a shareholder) is included on a (financial) sanction list, (viii) Chargebacks exceed acceptable limits or circumstances arise that may increase the risk of Chargebacks, (ix) we are required to do so under the Applicable Regulations, by a supervisory authority or a Payment Scheme (x) there is a substantial change in your financial standing or creditworthiness, (xi) there is a change in your ownership or control, (xii) you have not used the Services for 6 months or more, (xiii) your Account has a negative Balance for 30 days or more, (xiv) the Reserve (if any) amount is not met, (xv) we will terminate or suspend our activities due to commercial or economic reasons or (xvi) any other event or situation justifies suspension or termination.
- 14.3 Upon expiry or termination of the Agreement, your access to and use of our Services will immediately cease. In addition, all Additional Terms will automatically terminate. However, the provisions of the Agreement that, by their nature, are deemed to survive expiry or termination, including those on confidentiality, intellectual property rights, dispute resolution, Reserve, collateral and any outstanding obligations or liabilities you have, will remain in effect. You must continue to fulfil your obligations and the liabilities incurred by you under the Agreement, including any payment obligations related to Chargebacks, in accordance with the terms of the Agreement. The Reserve and collateral provided by you will remain effective until all your liabilities under the Agreement to us have been settled.
- 14.4 In case of suspension or termination, we will provide you with a written notice specifying the reasons. We retain the right to communicate such suspension or termination, along with the underlying reasons, to the relevant Payment Scheme, supervisory authorities or any law enforcement or investigative entity. Suspension or termination does not release you from any outstanding obligations or liabilities incurred before that point, which may be subject to additional conditions.
- 14.5 We are not liable to you or any third party for damages, losses or liabilities arising from or connected with the termination or expiry of the Agreement. In addition, we may retain your Account data or information (including Personal Data) for the period required or allowed by the Applicable Regulations.

15 Liability and indemnity

- 15.1 Our liability under the Agreement is subject to the limitations outlined in this article 15, except if prohibited by the Applicable Regulations. We will not be liable for indirect, incidental, special, consequential or punitive damages or for loss of profits, revenue or data, unless caused by our wilful misconduct or gross negligence. The maximum amount for which we can be held liable is (i) €30,000 per incident (treating a series of related incidents as a single incident) or (ii) the total fees we received from you in the twelve months immediately preceding the incident. You must notify us in writing within two months of becoming aware of any incident that gives rise to liability or your right to claim damages expires. We are explicitly not liable for costs and/or damages arising from acts or omissions of you or third parties. This exclusion expressly applies to acts or omissions of Payment Schemes, Issuers, Terminal Providers, DCC Providers and Customers or (other) third party service providers.
- 15.2 You must indemnify, defend and hold us harmless from and against any and all claims, liabilities, damages, losses, costs, and expenses (including reasonable attorneys' fees) arising out of or in connection with your use of our Services, your breach of the Agreement, your violation of the Applicable Regulations or claims from your Customers against us. You agree to cooperate fully in the defence of any such claim, that we have the right to assume the exclusive defence and control of any matter subject to indemnification by you and that you may not settle any such matter without our prior written consent. Furthermore, we may, at our own discretion, decide whether or not to put forward defences against a claim submitted by a Customer against us. We reserve the right to settle with the Customer and hold you liable for related costs and/or damages,

retaining the right to defend. We will indemnify you for third-party claims alleging ownership rights to the Fiserv Systems, including costs and damages incurred, subject to your timely notice and our discretion to assume defence. However, this indemnification does not extend to unauthorized modifications, non-compliance with laws or misuse of the Fiserv Systems.

15.3 Neither Party will be considered in breach of the Agreement or held liable for failure or delay in fulfilling their obligations due to events that cannot reasonably be imputed to them. Such events may include acts of God, natural disasters, pandemics, war or warlike conditions, terrorism, civil unrest, sabotage, strikes, governmental acts, orders or restrictions.

16 Inspections

- 16.1 We reserve the right to perform unannounced inspections on your business to verify compliance with the Agreement and the Applicable Regulations. You must fully cooperate with our inspection activities, providing all necessary assistance, information, and documentation to facilitate the inspection process.
- 16.2 Upon identifying discrepancies or breaches, you must promptly take corrective actions as specified by us to rectify the issues. You are liable for covering all reasonable costs associated with the inspection, including the fees of third-party investigators.
- 16.3 Both Parties agree to treat inspection findings and related information as confidential and will not disclose them to third parties without the explicit consent of the other Party or when required by the Applicable Regulations. Notwithstanding the above, we retain the right to share inspection findings with Payment Schemes, Issuers and other relevant stakeholders when necessary for compliance and risk management purposes.

17 Intellectual property

- 17.1 We and/or our licensors retain all intellectual property rights, including but not limited to patents, trademarks, copyrights, trade secrets, and associated goodwill, pertaining to the Services, EMS Systems, and other systems, programs, websites, databases and materials provided in connection with the Agreement (hereafter referred to as “**EMS IPR**”). The Agreement does not transfer any intellectual property rights to you. However, subject to your compliance with the Agreement, a limited, non-exclusive, non-transferable, personal and revocable license is granted to you for accessing and using the EMS IPR solely in connection with the Services.
- 17.2 Our Services may incorporate or use third-party intellectual property, including software, APIs and other components. Your use of such third-party intellectual property is subject to the Terms and Conditions set forth by the respective licensors, and it is your obligation to comply with those terms.
- 17.3 You are expressly prohibited from copying, modifying, reproducing, distributing, reverse engineering, decompiling, disassembling or creating derivative works based on the EMS IPR. Furthermore, the use of Fiserv IPR for purposes beyond those explicitly permitted under the Agreement is strictly prohibited.

18 Confidentiality and personal data

- 18.1 Each Party must refrain from disclosing any confidential information concerning the other Party’s business, assets, affairs, customers, clients or suppliers, except to authorized personnel (including employees, officers, representatives, contractors, subcontractors or advisers) who require such information to fulfil their obligations under this Agreement or as required by the Applicable Regulations or requested by the relevant Payment Scheme, supervisory authorities or any other law enforcement or investigation body. The Party disclosing confidential information bears the sole responsibility for ensuring compliance with this article 18.
- 18.2 Both Parties, acting as “data controllers” as defined in the Applicable Data Protection Regulations, are obligated to ensure compliance with their processing of Personal Data under this Agreement in accordance with the Applicable Data Protection Regulations. Both Parties will provide reasonable assistance and cooperation to the other Party to ensure effective compliance with the Applicable Data Protection Regulations. However, a Party may refuse or limit such assistance and/or cooperation if the other Party can fulfil its obligations under the Applicable Data Protection Regulations independently. Moreover, you must promptly inform us if any “data subject” as defined in the Applicable Data Protection Regulations, (seeks to) exercise(s) their rights under the Applicable Data Protection Regulations or files a complaint or claim regarding the processing of their Personal Data by us. Subsequently, you are obligated to follow our instructions for effectively addressing and managing such requests, complaints or claims.
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19 Miscellaneous

- 19.1 We reserve the right to, at any time, assign, pledge, mortgage, charge, subcontract, delegate or deal in any other manner with (“**assign**”) any or all of our rights and obligations under the Agreement. However, your rights and obligations under this Agreement are not transferable without our prior written approval. If we assign to a party other than an affiliate of ours, we will inform you of this, thereby giving you a reasonable advance notice. You must cooperate in facilitating any assignment performed by us under the Agreement.
- 19.2 The Agreement represents the complete agreement governing the provision of the Services to you and replaces all previous agreements and arrangements between you and us.
- 19.3 You must direct any notices or communications regarding the Agreement to the designated email address we have provided or our company address. However, we reserve the right to send any notices to you through email or the Merchant Portal.
- 19.4 In case of any conflict or inconsistency between the Merchant Agreement, these Terms, and the Documentation, the order of precedence will be as follows: (i) the Merchant Agreement, (ii) the Additional Terms, (iii) these Terms and (iv) the Documentation. Furthermore, if any provision of the Agreement is determined to be null, void or invalid, the remaining provisions will remain fully applicable. In such instances, we will propose substitute provision(s) that are valid and closely aligned with the original intention of the substituted provision(s).
- 19.5 Any provisions or conditions in your general Terms and Conditions that contradict or conflict with the Agreement are expressly rejected and will not be binding on us or affect the rights and obligations of the Parties under this Agreement.
- 19.6 The primary language of these Terms is English. Any translations provided are for your convenience only, and in the event of any discrepancy between the English version and a translated version, the English version will prevail at all times. We do not warrant the accuracy or completeness of any translation of these Terms.
- 19.7 Title 7B of Book 7 of the Dutch Civil Code and all other laws and regulations implementing Directive 2007/64/EC of the European Parliament, the Council of 13 November 2007 and Directive 2015/2366 of the European Parliament and the Council dated 25 November 2015 are not applicable to the extent permitted by law to depart from these provisions in agreements concluded with non-consumers.
- 19.8 The Agreement is governed by Dutch law. Any disputes between the Parties arising from the Agreement can only be brought before the court of Amsterdam, which has exclusive jurisdiction.

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