

MERCHANT AGREEMENT: TERMS AND CONDITIONS

This Merchant Agreement ("Agreement" or "Merchant Agreement") is made between Nuvei Technologies Inc., Finical Holdings LLC (together with Nuvei, "Nuvei" or "ISO"), Wells Fargo Bank, N.A. ("Bank"), and Merchant, as each may be further defined in the Application, and shall be effective as of the date on which the Application is approved by Servicer.

For the purposes of this Agreement, Bank and Nuvei are referred to collectively as "Servicer". Subject to the requirements of the Card Brand rules, Nuvei and Bank may allocate their respective duties and obligations between themselves as they deem appropriate at their sole discretion, and Nuvei and Bank may jointly or individually assert or exercise the rights or remedies provided to the Servicer hereunder.

WHEREAS, Merchant wishes to have the ability to initiate and receive payments and has requested that Servicer supply the payment processing and related services described in this Agreement, including the Application and any Schedules attached hereto, which are incorporated into and form a part of this Agreement; and

WHEREAS, Servicer has agreed to supply such payment processing services, on the terms set out in this Agreement;

NOW, THEREFORE, in consideration of the mutual promises, covenants, undertakings, understandings, and agreements set out in this Agreement, Nuvei, Bank and the Merchant agree as follows:

PART ONE

CARD ACCEPTANCE – TERMS AND CONDITIONS APPLICABLE TO MERCHANT'S ACCEPTANCE OF VISA, DISCOVER, MASTERCARD, AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, UNIONPAY AND ANY OTHER CARD

1. DEFINITIONS

"Account" means a commercial checking or demand deposit account maintained by Merchant for the crediting of collected funds and the debiting of fees and charges under this Agreement.

"ACH" means the Automated Clearing House paperless entry system controlled by the Federal Reserve Board.

"Acquirer" means a financial institution or other third party that enables the Merchant to (a) accept payment by Cardholders using Cards; and (b) receive value in respect of Card payments. An Acquirer may be Bank, a third party which is in an arrangement with Nuvei, or Nuvei, when it utilizes its membership with a Card Brand in providing Services.

"Agreement" means the Application, these Terms and Conditions, all Schedules attached to these Terms and Conditions or the Application, and any other documents related to such Agreement.

"Alternative Payment Method" or "APM" means a payment method (other than Cards) which Nuvei may provide to Merchant, when available and dependent on the Merchant's region (as notified by Nuvei to the Merchant from time to time).

"APMP" means a third party which regulates or is responsible for processing any APM(s) and which is in an arrangement with Nuvei which enables Nuvei and the Merchant to (a) accept payment by End Users using APMs; and (b) receive value in respect of such payments.

"Applicable Law" means all laws, statutes, regulations, rules, codes, directives and ordinances of regulators, authorities, courts and government bodies having jurisdiction over a party and/or the subject matter, including but not limited to those relating to anti-money laundering and terrorist financing regulations, anti-bribery laws, consumer protection, distance selling, electronic business, consumer credit laws, daily fantasy sports, sports betting, gambling, gaming and lotteries laws, Data Protection Laws, all of the above to the extent applicable to a party, to the performance or business of that party or to the services provided by or on behalf of that party.

"Application", "Application Form" or "Merchant Application" means the Servicer application form completed by the Merchant, and which references these Terms and Conditions.

"Assessment" means any and all assessments, fees, fines, penalties, reimbursements or charges (may be titled 'issuer reimbursement', 'filing fee', 'administrative fee', 'technical fee', 'review fee', 'arbitration decision' or otherwise) of any nature which may be directly or indirectly assessed or imposed: (i) on the Merchant by Servicer; and/or (ii) on the Merchant and/or Servicer by Card Brands, Card Issuers, Acquirers, APMP or regulators, authorities, courts or government bodies, having jurisdiction over the parties and/or the subject matter of this Agreement, as a result of the Merchant's actions, omissions, performance and/or use of the Services including but not limited to the Merchant's failure to comply with the provisions of this Agreement, the Rules or Applicable Law. For the sake of clarity, Assessments shall not include assessments, fees, fines, penalties or charges imposed as a result of an act or omission of Nuvei.

"Authorization" means the issuance of a request to charge a Payment Method to the respective Card Brand, Card Issuer or APMP and the subsequent approval (or decline) of a Transaction by the respective Card Brand, Card Issuer or APMP.

"Business Day" means a day other than Saturday or Sunday on which banks in New York, NY are open for normal business.

"Card" means (i) a valid credit or debit card in the form issued under license from a Card Brand; or (ii) any other valid credit or debit card accepted by Merchant by agreement with Servicer.

"Card Brand" means Visa U.S.A., Inc., Visa International, Inc., Discover Financial Services ("Discover"), Mastercard International, Inc., American Express Travel Related Services Company, Inc., China UnionPay Co. Ltd., any affiliate of the foregoing, or any other Card networks that provide Cards accepted by Merchant pursuant to an agreement with Servicer.

"Card Issuer" means the financial institution or company which has provided a Card to a Cardholder.

"Cardholder" (sometimes referred to as "Card Member" in certain Card Brand materials) shall mean any person authorized to use the Cards or the accounts established in connection with a Card.

"Cardholder Information" means any non-public, sensitive information about a Cardholder, including any combination of Cardholder name plus the Cardholder's social security number, driver's license or other identification number or credit or debit card number, or other Servicer account number.

"Chargeback" means any direct or indirect dispute, reversal or debit of a Transaction by an End User, Card Brand, Acquirer, APM or APMPs, because of such Transaction being invalid, disputed, unauthorized (or there are grounds to believe it was not authorized), suspicious, the goods or services were not delivered at all or as agreed, or otherwise for any reason. Chargebacks can be procedural or substantive.

"Confidential Information" means all confidential or proprietary information of a party, designated as such or which is reasonably expected to be treated in a confidential manner, whether in written, oral, electronic or other form, including without limitation any information of a technical, business or other nature including without limitation the existence and the content of business and contractual relations between the parties and any and all intellectual property, trade secrets, techniques, know-how, inventions, technology, systems, software, designs, drawings, specifications, documentation, diagrams, economic and financial information and analyses, processes and procedures including but not limited to security procedures, sales and marketing techniques plans and materials, price lists and pricing policies. Confidential Information shall also include all personal, confidential or proprietary information of third parties (investors, partners, vendors, customers, consumers, employees etc.) including such third parties' names and means of identification. Confidential Information does not include information that: (1) is or subsequently becomes publicly available (through no fault of the recipient); (2) the recipient lawfully possesses before its disclosure; (3) is received by the recipient from a third party that is not obligated to keep it confidential or (4) is independently developed without reliance on the discloser's Confidential Information. For purpose of this definition, Confidential Information of other merchants, Card Brands, Acquirers, APMs and service providers used in the provision of Services shall be considered as Servicer Confidential Information.

"Cooling Off Period" shall have the meaning set forth in Section 5.2 (Termination).

"Credit Voucher" means a document executed by a Merchant evidencing any refund or price adjustment relating to Cards to be credited to a Cardholder account.

"Data Protection Laws" means (i) the General Data Protection Regulation ((EU) 2016/679) (GDPR); and (ii) any federal, state or local laws, regulations and secondary legislation enacted from time to time in the United States relating to data protection, the use of information relating to individuals, the information rights of individuals and/or the processing of Personal Data.

"Deductions" means any and all of the following: (1) fees and charges to Servicer, Card Brands, Acquirers and/or APMPs as per the provisions of this Agreement; (2) Chargebacks, refunds, credits, payments imposed and any other amounts deducted from settled Transactions by the Card Brands, Acquirers and/or APMPs; (3) Assessments; (4) the Reserve amounts, if any, and any amount required to maintain the Reserve at the designated level; (5) amounts of overpayment, however made; (6) payments made in respect of invalid Transactions; and (7) any amounts owed or due to Servicer, Card Brands, Acquirers and/or APMPs or recoverable by Servicer and/or on behalf of Card Brands, Acquirers and/or APMPs under this Agreement or otherwise.

"End User" means (i) a Cardholder, or (ii) a person that purchases goods or services from the Merchant through an ACH Transaction or the use of an APM.

"Imprint" means (i) an impression on a Sales Draft manually obtained from a Card through the use of an imprinter, or (ii) the electronic equivalent obtained by swiping a Card through a terminal and electronically capturing Card Data and printing a Sales Draft.

"KYC Requirements" shall have the meaning set forth in Section 2.7.1.

"Marks" mean brands, names, logos, trademarks, trade names or service marks.

"Mid or Non-Qualifying Transaction" means any sale Transaction that fails to qualify for lowest interchange rate assigned by the applicable Card Brand for Merchant's standard card industry code and which may be charged fees as set forth in the Application.

"Payment Method" means a Card, ACH or APM.

"Personal Data" shall have the meaning set forth in the Data Protection Schedule.

"Platform" means the technology, hardware and software upon and in conjunction with which certain Services are provided by Nuvei and its affiliated entities, any code or software (payment page, SDK, API etc.) which may be provided to the Merchant or for the Merchant's use under this Agreement, any web interface to the Services and to Nuvei online systems, and any work products created and/or delivered and related documentation in connection with this Agreement.

"Reserve Account" shall have the meaning set forth in Section 4.6.

"Remittance" means a transfer of money to Merchant for the amount actually collected by Servicer or APMPs with respect to Merchant's Transactions processed, less Deductions.

"Rules" means all current and future by-laws, rules, regulations, policies, procedures and guidelines issued by the respective Acquirers, APMPs, Card Brands, Nacha (or National Automated Clearing House Association) and any other relevant payment provider and, where applicable, includes any direct engagement between Merchant and such entities.

"Sales Draft" means the electronic or paper record, whether electronically or manually imprinted, evidencing a sale Transaction.

“**Services**” means any of the Services which are set forth in Section 2.2 of this Agreement or any additional Services as shall be mutually agreed by the Merchant and Servicer from time to time.

“**Transaction**” means any payment or refund made by the use of a Payment Method or its unique identifier (e.g. Card number or otherwise) to debit or credit the End User’s Payment Method account, and any process undertaken by Servicer or the respective Card Brand or APMP following a request from the Merchant to collect any payment from the End User on the Merchant’s behalf or perform any related action in relation to any of these activities. There can be several types of Transactions in each payment, namely registration of the Payment Method, Authorization, settlement, credit, void, etc.

“**Voice Authorization**” means a direct phone call to a designated number to obtain credit approval on a Transaction from the Card Issuer, whether by voice or voice-activated systems.

2. SUPPLY OF SERVICES

- 2.1. Merchant wishes to receive the Services as described in this Agreement from Servicer. Services shall be provided by Servicer in its sole discretion with respect to each Card Brand and APMP with which, and for as long as, Servicer has an agreement with such Card Brand or APMP, and the Parties have signed the respective pricing and terms and conditions as set forth in the Application. The form of Service and contractual structure and provisions may vary as shall be further provided in the Application. In certain instances, the aggregation of funds and/or remittance to the Merchant may be provided by Bank and APMP and not by Nuvei. Services and rights of use are provided strictly to the Merchant.
- 2.2. In consideration of the fees and subject to the Merchant’s compliance with the provisions of this Agreement, the Merchant orders and Servicer shall provide the Merchant with the following Services:
 - i. Requesting Authorization for Transactions, processing and settling Transactions and Remittance of funds;
 - ii. Access to an online reporting and actions interface forming part of the Platform.
- 2.3. Remittances shall be remitted to the Merchant in accordance with the provisions of this Agreement. Remittance is always subject to receipt by the party remitting funds from the respective Payment Method (Acquirer, APMP, Card Brand or otherwise, including but not limited to the payer’s payment method).
 - (i) Remittances may be postponed or delayed due to weekends or banking holidays in the respective jurisdictions of Servicer, Merchant, the respective Card Brand, Acquirers, APMPs or other Payment Methods, or due to any technical delays or malfunctions of the relevant systems.
 - (ii) Servicer may at any time and without notice use third parties for the purpose of payment of Remittances. All payments to the Merchant’s account by third parties shall be deemed payment by Servicer, for all intents and purposes. Notwithstanding, where Remittances are made directly by such third parties, such transfer of funds shall be subject to the third party’s practices and the third party may deduct wire fees for each remittance in accordance with its terms. Servicer shall not have any liability to Merchant with respect to such payments by such third parties.
- 2.4. MERCHANT ACKNOWLEDGES, UNDERSTANDS AND ACCEPTS THAT NO REMITTANCE OF ANY TRANSACTION SHALL BE FINAL SO LONG AS THE TRANSACTION IS SUBJECT TO REFUNDS, CHARGEBACK, INVESTIGATION OF FRAUD OR REPAYMENT, THAT SERVICER MAY REVOKE PRIOR PROVISIONAL SETTLEMENTS AND THAT ALL SETTLEMENTS, REMITTANCE AND CREDITS BY SERVICER ARE PROVISIONAL AND MADE CONDITIONALLY AND SUBJECT AT ALL TIMES TO DEDUCTIONS OR ANY OTHER RIGHT TO SET OFF REGARDLESS OF TIME OF DEDUCTION (IF, FOR EXAMPLE, A DEDUCTION IS DUE AFTER THE REMITTANCE HAS BEEN MADE).
- 2.5. Servicer shall have the right, upon a thirty days’ notice (unless a shorter term is mandated by Card Brand(s), Acquirers and/or APMPs), to change the terms, conditions or specifications of any of the Services (i) to comply with the request of any Card Brand(s), Acquirers or APMPs; or (ii) as required in connection with changes in Applicable Law, the Rules or any other regulatory guidelines which affect Servicer’s ability to provide Services or the Merchant’s ability to use or receive Services. Changes in the Services which are made at Merchant’s request and the respective effect on fees (if any) shall be addressed separately.
- 2.6. Without derogating from any other right available to Servicer under this Agreement, Applicable Law or otherwise, it is agreed that Servicer has the right, in its sole discretion, to suspend processing in any jurisdiction at any time and for any period of time on the basis of risk management considerations or as required to remain in compliance with any Rules or Applicable Law.
- 2.7. The Merchant must ensure that its systems and the Transactions processed comply at all times with all reasonable technical, communications, implementation and integration requirements as provided by Servicer from time to time. Such compliance is mandatory to Servicer’s ability to provide Services as described and Merchant should not make alterations to the Merchant’s systems which may affect integration with Servicer without first consulting with Servicer and properly testing the change.
- 2.8. Certain components of the Services may be provided by or rely on third parties (e.g. Card Brands, Acquirers, APMPs, internet service providers, Servicers, processing networks, money transfer systems, external databases etc.) and such Services are also subject to such third party’s performance, availability and terms and conditions and Servicer will not be responsible for the performance, availability or service levels (or lack thereof) of these third parties.

2.9. Documentation and Information.

- 2.9.1. Provision of Documentation and Information. The Merchant shall be entitled to use the Services after and for as long as it has satisfied certain Servicer verification, know-your-Merchant and risk based related requirements (“KYC Requirements”). KYC Requirements may be updated or supplemented from time to time and may vary between Services.
- 2.9.2. Changes in Documentation or Information. The Merchant undertakes to notify Nuvei promptly of any changes which may occur regarding any documentation and information it provided including but not limited with respect to the Merchant’s business (goods and services, tradenames or URLs, geographical targets, Account details, etc.), the Merchant’s location (physical address), equity or beneficial ownership and fixed place of business through which it conducts its business, as such address was disclosed to and approved by Servicer, as well as with respect to the Merchant’s financial standing and ability to meet its obligations in this Agreement. In certain cases, Servicer may approach Merchant as to such changes if they come to Servicer’s attention and the Merchant shall cooperate in providing information to Servicer accordingly. Said notice shall be in writing and shall include all relevant details and updated documents and information. The Merchant acknowledges and agrees that Servicer shall have the right to examine these changes and determine whether such changes affect Servicer’s decision to provide Services or the manner in which Services are provided to the Merchant and to notify the Merchant accordingly.
- 2.9.3. Full Cooperation. The Merchant shall fully cooperate with Servicer’s initial and ongoing requests for documentation and information and undertakes to assist Servicer in the verification and compliance with the KYC Requirements as shall be required, including by providing any required documentation and other information, executing any required agreements, instruments and other certifications.
- 2.9.4. Essentiality of Cooperation. The Merchant acknowledges that Merchant’s meeting these provisions is essential to Servicer’s ability to provide Services and understands that Merchant’s failure to comply in a timely manner entitles Servicer to suspend the Merchant’s access to part or all of the Services with immediate effect. The Merchant acknowledges that funds may be withheld until such time as all the documentation that has been requested has been provided.

2.10. Disclaimer. THE MERCHANT RECOGNIZES THAT SERVICER PROVIDES SERVICES ON AN “AS-IS” AND “AS AVAILABLE” BASIS. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, SERVICER SPECIFICALLY AND EXPLICITLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY TYPE OR NATURE WHATSOEVER WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION: (1) WARRANTIES OF MERCHANTABILITY, SUITABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR USE, OR ACCURACY IN RELATION TO OR ARISING OUT OF OR IN CONNECTION TO ANY INFORMATION PROVIDED; OR (2) ANY WARRANTIES OF ANY NATURE RELATING TO THE PLATFORM, SERVICES OR OTHERWISE TO SERVICER’S PERFORMANCE. SERVICER MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY OR COMPLETENESS OF THE RESPECTIVE PLATFORM, SERVICES AND PRODUCTS OR THAT THE RESPECTIVE PLATFORM, SERVICES AND PRODUCTS WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE OR THAT DEFECTS IN THE OPERATION OR FUNCTIONALITY WILL BE CORRECTED.

3. TRANSACTION SPECIFIC GUIDELINES

- 3.1. Honoring Cards. Merchant will accept all valid Cards when properly presented by Cardholders in payment for goods or services, subject to applicable Card Brand rules requiring Merchant to elect whether it will accept credit only, debit only or both debit and credit Cards. Merchant’s election is set forth in the Application Form. Merchant may not establish minimum or maximum amounts for Card sales as a condition for accepting any Card.

Merchant may not require any Cardholder to pay as a surcharge any part of any discount or charge imposed upon Merchant by this Agreement, whether through any increase in price or otherwise require a Cardholder to pay any charge or price as a condition of sale that is not also required from a customer paying cash. Notwithstanding the foregoing sentence, Merchant may impose a surcharge on certain Card Transactions, but only where permitted by Applicable Law and the Card Brand rules. Merchant (and not Servicer) is solely responsible for ensuring that it is permitted by Applicable Law and the Card Brand rules to impose a surcharge. Merchant may be required to provide notification to the Card Brands if it imposes a surcharge and hereby authorizes Servicer to provide such notification and furnish any necessary documentation, on Merchant’s behalf, to the Card Brands.

However, Merchant may not, by this term, be prevented from offering discounts to Cardholders for cash purchases. Merchant may not engage in a Transaction (other than a mail, internet, telephone order, or preauthorized sale to the extent permitted under this Agreement) if the person seeking to charge the purchase to his or her Card account does not present the Card to permit Merchant to compare the signature on the Card to the signature on the Sales Draft and obtain an Imprint or otherwise use the physical Card to complete the Transaction.

- 3.2. Advertising. Merchant will prominently display the promotional materials provided by Servicer in its place(s) of business. Merchant’s use of promotional materials and use of any Marks associated with a Card is limited to informing the public that the Card will be accepted at Merchant’s place(s) of business. Merchant’s use of promotional materials and Marks is subject to the Servicer’s direction. Merchant may use promotional materials and Marks only during the term of this Agreement and will immediately cease use and return any inventory to Servicer upon any termination of this Agreement. Merchant may not use any promotional materials or Marks associated with the Card Brands in any way

which suggests or implies that any of the Card Brands endorses any goods or services other than payment Card services. If relevant, Merchant is required to display UnionPay's service hotline number at Merchant's place of business.

- 3.3. Card Acceptance. When accepting a Card, Merchant will follow the steps provided by Servicer for accepting Cards and will: (a) determine in good faith and to the best of its ability that the Card is valid on its face; (b) obtain Authorization from the Card Issuer to charge the Cardholder's account; (c) unless the Sales Draft is electronically generated or is the result of a mail, internet, phone or preauthorized order, (i) obtain an Imprint of the Card including embossed data from the merchant imprinter plate; and (ii) obtain the Cardholder's signature on the Sales Draft and compare that signature to the signature on the Card; (d) enter a description of the goods or services sold and the price thereof (including any applicable taxes); (e) deliver a true and completed copy of the Sales Draft to the Cardholder at the time the goods are delivered or services performed, or, if the Sales Draft is prepared by a point-of-sale terminal, at the time of the sale; (f) offer the Sales Draft to Servicer for purchase according to Servicer's procedures and the terms of this Agreement; and (g) make a Card Imprint, if the Transaction is not based upon a mail, internet, phone or pre-authorized order.
- 3.4. Authorization. Merchant will obtain an Authorization for all Card sales. If Merchant cannot, for any reason, obtain an electronic Authorization through the use of a terminal, Merchant will request a Voice Authorization from Servicer's designated authorization center and will legibly print the authorization number on the Sales Draft. Merchant will not obtain or attempt to obtain Authorization from Servicer's authorization center unless Merchant intends to submit to Servicer a Transaction for the authorized amount if Authorization for the Transaction is given. Merchant may not divide a single Transaction between two or more Sales Drafts on a single Card to avoid Authorization limits that may be set by the Card Issuer. The Merchant shall not use Sales Drafts (paper or electronic), for purposes outside of the scope of this Agreement, nor shall a third party not included in this Agreement be allowed to use them. Merchant acknowledges that an Authorization provides only that the Cardholder account has sufficient credit available to cover the amount of the current sale and that an Authorization is not a guarantee that the Transaction will not be subject to dispute or Chargeback and does not warranty the Cardholder's identity. Merchant may not attempt to obtain an Authorization by successively decreasing the sale amount. Servicer may refuse to purchase or process any Sales Draft presented by Merchant: (a) unless a proper Authorization or approval code has been recorded on the Sales Draft; (b) if Servicer determines that the Sales Draft is or is likely to become uncollectible from the Cardholder to which the Transaction would otherwise be charged; or (c) if Servicer has reason to believe that the Sales Draft was prepared in violation of any provision of this Agreement. Merchant will use, and may not circumvent, fraud identification tools requested by Servicer, including address verification service checks and CVV2/CVC2/CID processing, and acknowledges that the use of these tools may prevent Merchant from accepting certain Cards as payment. Merchant acknowledges that its use of fraud identification tools may not prevent fraudulent Card usage and agrees that any fraudulent Transaction may ultimately result in a Chargeback, for which Merchant retains full liability under this Agreement.
- 3.5. Retention and Retrieval of Cards. Merchant will use its best efforts, by reasonable and peaceful means, to retain or recover a Card when receiving such instructions when making a request for Authorization or if Merchant has reasonable grounds to believe the Card is counterfeit, fraudulent or stolen. Merchant's obligations under this Section does not authorize a breach of the peace or any injury to persons or property, and Merchant will hold Servicer harmless from any claim arising from any injury to person or property or other breach of the peace in connection with the retention or recovery of a Card.
- 3.6. Multiple Transaction Records; Partial Consideration. Merchant may not prepare more than one Sales Draft for a single sale or for a single item but will include all items of goods and services purchased in a single Transaction in the total amount on a single Sales Draft except under the following circumstances: (a) for purchases in separate departments of a multiple department store; (b) for partial payment, installment payment, delayed delivery or an advance deposit; or (c) for delayed or amended charges governed by rules for travel and entertainment merchants and Transactions.
- 3.7. Telephone Orders, Mail Orders, Internet, Preauthorized Orders and Installment Orders. Unless Merchant has been approved by Servicer to accept mail, internet or telephone orders, Merchant warrants that it is a walk-in trade business, located in a retail business place where the public moves in and out freely in order to purchase merchandise or obtain services. If Servicer determines Merchant has accepted unapproved Card Transactions which are placed by telephone, generated through telephone solicitation, mail order or other means that does not create a Sales Draft that bears the Card Imprint and Cardholder's signature, this Agreement will be immediately terminated and the value of all Sales Drafts collected from the first day of processing may be charged back to Merchant and all funds therefrom held as provided in Section 4.6 (Reserve Account). Unless approved by Servicer, this Agreement does not contemplate regular acceptance of Cards for sales accepted by mail, internet or telephone nor through preauthorized orders. If an occasional Card Transaction is made by mail, phone or preauthorized order, the Sales Draft may be completed without the Cardholder's signature or an Imprint, but in such case Merchant will create a sales slip containing Cardholder data, an Authorization number, the sale amount and the letters "MO", "TO" or "PO", as appropriate. Receiving an Authorization will not relieve the Merchant of liability for Chargeback on any Transaction for which the Merchant did not obtain an Imprint of the Cardholder's signature.
- 3.8. Lodging and Vehicle Rental Transactions. Merchant must estimate and obtain Authorization for the amount of the Transaction based upon the Cardholder's intended length of stay or rental. Additional Authorization must be obtained and recorded for charges actually incurred in excess of the estimated amount. Regardless of the terms and conditions of any written preauthorization form, the Sales Draft amount for any lodging or vehicle rental Transaction must include only that portion of the sale, including any applicable taxes, evidencing a bona fide rental of real or personal property by Merchant to the Cardholder and may not include any consequential charges. Nothing contained herein is intended to restrict Merchant from enforcing the terms and conditions of its preauthorization form through means other than a Card Transaction.
- 3.9. Returns and Adjustments; Credit Vouchers. Merchant's policy for the exchange or return of goods sold and the adjustment for services rendered will be established and posted in accordance with operating regulations of the applicable Card Brand's regulations. Merchant will disclose, if applicable, to a Cardholder before a Card sale is made, that if merchandise is returned: (a) no refund, or less than a full refund, will be given; (b) returned merchandise will only be exchanged for similar merchandise of comparable value; (c) only a credit toward purchases will be given; or (d) special conditions or circumstances apply to the sale (e.g., late delivery, delivery charges, or other non-credit terms). If Merchant does not make these disclosures, a full refund in the form of a credit to the Cardholder's Card account must be given. Disclosures must be made on all copies of Sales Drafts or invoices in letters approximately 1/4" high in close proximity to the space provided for the Cardholder's signature or on an invoice issued at the time of the sale or on an invoice being presented for the Cardholder's signature. Any change in Merchant's return or cancellation policy must be submitted in writing to Servicer not less than 14 days prior to the change. Servicer may refuse to process any Sales Draft made subject to a revised return or cancellation policy of which Servicer has not been notified as required herein.
- 3.10. Cash Payments. Merchant may not receive any payments from a Cardholder for charges included in any Transaction resulting from the use of any Card nor receive any payment from a Cardholder to prepare and present a Transaction for the purpose of affecting a deposit to the Cardholder's Card account.
- 3.11. Cash Advances; Scrip Purchases. Merchant may not deposit any Transaction for the purpose of obtaining or providing a cash advance either on Merchant's Card or the Card of any other party and may not accept any Card at a scrip terminal, and either action will be grounds for Servicer's immediate termination of this Agreement.
- 3.12. Duplicate Transactions. Merchant may not deposit duplicate Transactions. Servicer may debit Merchant for any adjustments for duplicate Transactions and Merchant is liable for any Chargebacks resulting therefrom.
- 3.13. Deposit of Fraudulent Transactions. Merchant may not accept or deposit any fraudulent Transaction and may not under any circumstances present for processing or credit, directly or indirectly, a Transaction which originated with any other merchant or any other source other than Transactions arising from bona fide purchases from Merchant for the goods and services for which Merchant has been approved under this Agreement. If Merchant deposits any prohibited Transaction, Servicer may: (a) immediately terminate this Agreement; (b) withhold funds and demand an escrow as provided in this Agreement; (c) report Merchant to the Card Brands under Section 5.4. Merchant's employees' actions are chargeable to Merchant under this Agreement.
- 3.14. Merchant violations. The following actions are prohibited for Merchant: (i) alteration of the amount on Transaction receipts, split Transactions, cash out, acceptance of credit cards listed in the card recovery bulletin, excessive usage above the authorized limit, insufficient signature and expiry date checking, refund in cash, late presentment, submitting false Transactions to Servicer, obtaining extra credit from a Card Issuer by using transaction types of pre-authorization, purchase cancellation & purchase cancellation reversal, pre-authorization completion cancellation & pre-authorization completion cancellation reversal etc.
- 3.15. Collection of Pre-existing Debt. Merchant may not prepare and present to Servicer for purchase any Transaction representing the refinancing of an existing Cardholder obligation including, but not limited to, obligations: (a) previously owed to Merchant; (b) arising from the dishonor of a Cardholder's personal check or relating to a Chargeback; or (c) representing the collection of any other pre-existing indebtedness, including collection of delinquent accounts on behalf of third parties.
- 3.16. Data Security/Personal Cardholder Information. Merchant may not, as a condition of sale, impose a requirement on Cardholders to provide any personal information as a condition for honoring Cards unless such information is required to provide delivery of goods or services, or Merchant has reason to believe the identity of the person presenting the Card may be different than that of the Cardholder. Merchant will not, under any circumstances, release, sell or otherwise disclose any Cardholder Information to any person other than Servicer or the applicable Card Brand, except as expressly authorized in writing by the Cardholder, or as required by Applicable Law.
 - a) Safeguards. Merchant will maintain appropriate administrative, technical and physical safeguards for all Cardholder Information. These safeguards will: (a) ensure the confidentiality of Cardholder Information; (b) protect against any anticipated threats or hazards to the security or integrity of Cardholder Information; (c) protect against unauthorized access to or use of Cardholder Information that could result in substantial harm or inconvenience to any Cardholder; and (d) properly dispose of all Cardholder Information to ensure no unauthorized access to Cardholder Information. Merchant will maintain all such safeguards applicable to Merchant or Servicer in accordance with Applicable Law, rules, regulations and guidance. Merchants transacting in electronic commerce must: offer Cardholders secure transaction methods such as SSL or 3-D Secure; install and maintain network firewalls; regularly update security patches; restrict and track employee access to all data relating to Cardholders and Card Transactions ("Data"); encrypt all stored Data sent over open networks; use only approved or validated payment software applications; establish policies for properly managing use and allocation of passwords; and consistently assess and revise security systems and processes.
 - b) Compliance with Card Brand Rules. Merchant represents, warrants and covenants that it is and will remain throughout the term of this Agreement in compliance with Card Brand bylaws, operating regulations and rules related to data security, data integrity and the safeguarding of Cardholder Information including the Payment Card Industry Data Security Standard ("PCI") (https://www.pcisecuritystandards.org/security_standards/), Visa's Customer Information Security Program ("CISP") (http://usa.visa.com/merchants/risk_management/cisp.html), Discover's Information Security and Compliance (DISC) program (<http://www.discovernetwork.com/merchants/data-security/disc.html>), Mastercard's Site Data Protection Program ("SDP") (http://www.Mastercard.com/us/company/en/whatwedo/site_data_protection.html) and the American Express Data Security Requirements ("DSR")

(<http://www.americanexpress.com/dsr>) in effect, and Merchant will cause all of its service providers, subcontractors and agents to comply with PCI, SDP, CISP, DSR and DISC requirements at all times. Merchant will report any non-compliance immediately to Servicer. To accomplish the foregoing, Merchant will encrypt all debit, credit or stored value card numbers whether in storage, transport or backup and will not store data security codes on its systems, network or software.

- c) Annual Certification. Merchant will provide an annual certification to Servicer if requested by Servicer (in a form acceptable to Servicer) certifying compliance with the data security provisions of this Agreement, including compliance with applicable Card Brand requirements such as PCI, SDP, CISP, DSR and DISC. Merchant will provide annual certifications for Merchant's service providers, subcontractors and agents.
- d) Information Use Limitations. Merchant may not sell, disclose, or otherwise make Cardholder Information available, in whole or in part, in a manner not provided for in this Agreement, without Servicer's prior written consent. Merchant may, however, disclose Cardholder Information to its service providers, subcontractors and agents who have a need to know such information to provide the Services described in this Agreement, provided that those individuals or entities have assumed confidentiality obligations in accordance with this Agreement, or as may be required by legal process or Applicable Law, rules, regulations and guidance and have entered into a written agreement with Merchant containing Merchant's and such individuals' or entities' agreement to the foregoing data security provisions including compliance with Card Brand rules, regulations or bylaws.
- e) Response to Unauthorized Access. Merchant will notify Servicer within 24 hours after it knows of any breach in security resulting in an unauthorized access to Cardholder Information. Merchant will provide any assistance that Servicer, the issuing bank of any Cardholder, and their regulators and the Card Brands deem necessary to contain and control the incident to prevent further unauthorized access to or use of Cardholder Information. Such assistance may include, but not be limited to, allowing Servicer and Card Brands to use its risk information for normal business practices, preserving records and other evidence and compiling information to enable Servicer and the issuing bank(s) or the Card Brands to investigate the incident and provide assistance and cooperation to: (a) file suspicious activity reports (as applicable); (b) notify their regulators (as applicable); and (c) notify the affected Cardholder (as required). Unless the unauthorized access was due to Servicer's acts or omissions, Merchant will bear the cost of notifying affected Cardholder. Servicer has the right to immediately stop all Transactions, enforce rectification and terminate the Merchant Agreement immediately for cause if Merchant trespasses the transaction security protocol or uses a mobile point of sale, including a smartphone, tablet, or any other dedicated wireless device that performs the functions of a cash register or electronic point of sale terminal without Servicer's authorization.
- f) Miscellaneous. Merchant may not make a claim against Servicer or hold Servicer liable for the acts or omissions of other merchants, service providers, Card Brands, financial institutions or others that do not have a written contractual relationship with Servicer or over which Servicer has no control. These provisions supplement, augment and are in addition to obligations of indemnification, audit, confidentiality and other similar provisions contained in this Agreement. This Section 3.16 and each of its subsections will survive this Agreement's termination. Merchant may not store in any system or in any manner discretionary Card read data including without limitation CVV2/CVC2/CID data, PIN data, address verification data or any other information prohibited by Card Brand rules. Merchant agrees that Servicer may disclose to any Card Brand information regarding Merchant and Merchant's Transactions to any Card Brand, and that such Card Brand may use such information to perform its responsibilities in connection with its duties as a Card Brand, promote the Card Brand, perform analytics and create reports, and for any other lawful business purposes, including commercial marketing communications purposes within the parameters of Card Brand Card acceptance, and transactional or relationship communications from a Card Brand. A Card Brand may use the information about Merchant obtained in this Agreement at the time of setup to screen and/or monitor Merchant in connection with the Card Brand marketing and administrative purposes. Merchant agrees it may receive messages from a Card Brand, including important information about Card Brand products, services, and resources available to its business. These messages may be sent to the mailing address, phone numbers, email addresses or fax numbers of Merchant. Merchant may be contacted at any telephone numbers, including cellular phone numbers, and the communications sent may include autodialed short message service (SMS or "text") messages or automated or prerecorded calls. Merchant agrees that it may be sent fax communications. As a service provider, ISO acknowledges that it is responsible for the security of Cardholder data it possesses, stores, processes or transmits on behalf of Merchant.
- 3.17. Compliance with Card Brand Rules. Merchant will comply with and conduct its Card activities in accordance with all applicable Card Brand rules and regulations. Failure to comply with such rules and regulations may result in Merchant being terminated for cause and listed on various Card Brand and industry databases, including the Consortium Merchant Negative File (CMNF), the CTFM (Combined Terminated Merchant File) and the Merchant Alert to Control High Risk Merchants file ("MATCH"). Merchant may not: (a) accept Cardholder payments for previous Card charges incurred at the Merchant location; (b) establish a minimum or maximum Transaction amount as a condition for honoring a Card; (c) require a Cardholder to complete a postcard or similar device that includes the Cardholder's account number, card expiration date, signature, or any other card account data in plain view when mailed; (d) add any surcharge to Transactions; (e) add any tax to Transactions, unless Applicable Law expressly requires that Merchant be permitted to impose a tax (any tax amount, if allowed, must be included in the Transaction amount and not collected separately); (f) enter into interchange any transaction receipt for a Transaction that was previously charged back to Servicer and subsequently returned to Merchant, irrespective of Cardholder approval (Merchant may pursue payment from the Cardholder outside the Card Brand system); (g) accept a card for an unlawful Internet gambling transaction; (h) request or use an account number of any purpose other than as payment for its goods or services; (i) disburse funds in the form of travelers cheques, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Merchant; (j) disburse funds in the form of cash, unless: (i) Merchant is a lodging or cruise line merchant disbursing cash to a Cardholder, (ii) Merchant is dispensing funds in the form of travelers cheques, Cards, or foreign currency, or (iii) Merchant is participating in the Card Brand cash back service; (k) accept

a Card for the purchase or scrip; (l) accept a Card for manual cash disbursement; (m) accept a Card to collect or refinance existing debt that has been deemed uncollectible by the Merchant providing the associated goods or services; (n) enter into a Transaction that represents collection of a dishonored check; or (o) charge a convenience fee which does not meet the criteria set by the Rules. Merchant will pay all Assessments which are, in Servicer's discretion, attributable to Merchant's Transaction processing or business.

- 3.18. Merchant will notify Servicer immediately if it intends to (a) transfer or sell any substantial part of its total assets, or liquidate; (b) change the basic nature of its business, including selling any products or services not related to its current business; (c) change ownership or transfer control of its business; (d) enter into any joint venture, partnership or similar business arrangement whereby any person or entity not a party to this Agreement assumes any interest in Merchant's business; (e) alter in any way Merchant's approved monthly volume, average, or maximum ticket; (f) changes its return policies or to another fulfillment house different from those identified in the Merchant Application; or (g) changes to its Account. Merchant will notify Servicer promptly in writing if it becomes subject to any voluntary or involuntary bankruptcy or insolvency petition or proceeding. Merchant's failure to provide notice as required above may be deemed a material breach and will be sufficient grounds for termination of Merchant and for Servicer's exercise of all its rights and remedies provided by this Agreement. If any change listed above occurs, Servicer may immediately terminate this Agreement.
- 3.19. Merchant's Warranties. Merchant represents and covenants that: (a) all information contained in the Merchant Application or any other documents delivered to Servicer in connection therewith is true and complete and properly reflects Merchant's business, financial condition and principal partners, owners or officers; (b) Merchant has power to execute, deliver and perform this Agreement, and this Agreement is duly authorized, and will not violate any provisions of law, or conflict with any other agreement to which Merchant is subject; (c) Merchant holds all licenses, if any, required to conduct its business and is qualified to do business in every jurisdiction where it is required to do so; (d) there is no action, suit or proceeding at law or in equity now pending or to Merchant's knowledge, threatened by or against or affecting Merchant which would substantially impair its right to carry on its business as now conducted or adversely affect its financial condition or operations; (e) each Sales Draft presented to Servicer for collection is genuine and is not the result of any fraudulent or prohibited Transaction or is not being deposited on behalf of any business other than Merchant as authorized by this Agreement; (f) each Sales Draft is the result of a bona fide Card Transaction for the purchase of goods or services from Merchant by the Cardholder in the total amount stated on the Sales Draft; (g) Merchant has performed or will perform all of its obligations to the Cardholder in connection with the Card Transaction evidenced thereby; (h) Merchant has complied with Servicer's procedures for accepting Cards, and the Card Transaction itself does not involve any element of credit for any other purposes other than as set forth in this Agreement, and is not subject to any defense, dispute, offset or counterclaim which may be raised by any Cardholder under the Card Brands' rules, the Consumer Credit Protection Act (15 USC §1601) or other relevant state or federal statutes or regulations; and (i) any Credit Voucher which it issues represents a bona fide refund or adjustment on a Card sale by Merchant with respect to which a Sales Draft has been accepted by Servicer.
- 3.20. False Statements. During the term of this Agreement and for two years following its expiration or termination, Merchant shall not make, publish or communicate to any person or entity or in any public forum any false statements (written or oral) about Servicer, its directors, officers or employees, or its products or services, where such statements harm or are likely to harm the goodwill, reputation, stature or profitability of Servicer or deter others from doing business with Servicer.
- #### 4. PRESENTMENT, PAYMENT, CHARGEBACKS, RESERVE ACCOUNT
- 4.1. Acceptance. Servicer will accept from Merchant all Sales Drafts deposited by Merchant under the terms of this Agreement and will present the same to the appropriate Card Issuers for collection against Cardholder accounts. Merchant must transmit Sales Drafts and Credit Vouchers to Servicer or its processing vendor on the same or next business day immediately following the day that such Sales Drafts and Credit Vouchers have been originated. All presentment and assignment of Sales Drafts, collection therefor and reassignment or rejection of such Sales Drafts are subject to the terms of this Agreement and regulations of the Card Brand.
- 4.2. Servicer will only provisionally credit the value of collected Sales Drafts to Merchant's Account and reserves the right to adjust amounts collected to reflect the value of Chargebacks (actual and anticipated), fees, penalties, late submission charges, reserve deposits, negative Sales Draft batch deposits and items for which Servicer does not receive final payment.
- 4.3. Endorsement. By presenting Sales Drafts to Servicer for collection and payment, Merchant agrees to sell and assign all its right, title and interest in each Sales Draft completed in conformity with Servicer's acceptance procedures and constitutes an endorsement by Merchant to Servicer of such Sales Drafts. Servicer may supply such endorsement on Merchant's behalf.
- 4.4. Prohibited Payments. Bank may receive payment of any Sales Draft presented by Merchant and paid by Bank unless and until there is a Chargeback. Unless specifically authorized in writing by Servicer, Merchant may not collect or attempt to collect any Sales Draft, including Chargebacks, and will hold in trust for Bank and promptly deliver in kind to Servicer any payment Merchant receives, in whole or in part, of the amount of any accepted Transaction, together with the Cardholder's name and account number and any correspondence accompanying payment.
- 4.5. Chargebacks. Merchant will accept for chargeback any sale for which the Cardholder disputes the validity of the sale according to prevailing Card Brand regulations, or a Card Issuer or Servicer determines that Merchant has in any way failed to comply with Card Brand regulations or Servicer's procedures in accepting a Card and presenting the resulting Sales Draft to Servicer for purchase. Section 3.3 notwithstanding, Servicer may charge back the amount of a Card sale for which the Cardholder disputes having authorized the charge if Merchant failed to obtain the Card Imprint or the Cardholder's signature. Merchant may not initiate a sale Transaction in an attempt to collect a

Chargeback. Merchant will pay the current published fees for each Chargeback as listed on Schedule A of the Merchant Application.

- 4.6. Reserve Account. Servicer may require that all or any part of the additional collateral to the security interest granted by Merchant pursuant to the terms of this Agreement take the form of a non-interest bearing Reserve Account, established as hereinafter set forth in this Section, at any time when: (i) this Agreement, or the provision of Services hereunder, shall have terminated for any reason, or any party hereto shall have given notice of termination thereof, or (ii) there shall have occurred an event which entitles Servicer to terminate this Agreement or the provision of Services hereunder or which, with the giving of notice and/or the passage of time, or both, would entitle Servicer to terminate this Agreement or the provision of Services hereunder, and the Merchant has not provided alternative additional collateral security of a kind and in amounts satisfactory to Servicer as set forth above in this Section, or (iii) neither (i) nor (ii) above in this Section is applicable, but Servicer has determined, for any reason in its sole and absolute discretion, that additional collateral security is required, has requested that the Merchant provide same, and the Merchant has failed to provide alternative additional collateral security of a kind and in amounts satisfactory to Servicer as set forth above in this Section. Any Reserve Account that is established shall be subject to the terms and conditions of Section 6.8 (Security Interest) and all other terms and conditions of this Agreement relating to the "Reserve Account."

Whenever Servicer requires that additional collateral security take the form of a Reserve Account, the following provisions of this Section shall apply:

- a) Reserve Account During Term of Agreement:
- i. the Merchant may be required to deposit, or Servicer may deposit by deducting from any payment due to Merchant or from any funds in the Account or any other deposit account of the Merchant, into an account maintained by Servicer (or at another approved depository institution) (the "Reserve Account"), initially or at any time in the future as requested by Servicer, sums sufficient to satisfy the Merchant's current and/or future obligations, including, but not limited to, Chargebacks, anticipated Chargebacks, Credit Vouchers, fees, fines, penalties, loss allocations, damages, expenses (including, without limitation, attorneys' fees, investigatory and/or remediation expenses), charges, Assessments, registrations, certification expenses, payment obligations owed by the Merchant to Servicer under this Agreement (including, without limitation, indemnity obligations), and any and all or other amounts due to Servicer, the Card Brands, or any governmental, or regulatory agency, or claimed by third parties, arising out of this Agreement or involving the Merchant's business, actions, omissions, or use of the services contemplated under this Agreement, in such amount as determined by Servicer in its sole and absolute discretion.
- ii. The Reserve Account will be separate from the Account. Merchant shall have no right of withdrawal from the Reserve Account. The Reserve Account shall be under the sole control of Servicer. Any and all earnings from deposits of the Merchant to the Reserve Account shall be the sole property of Servicer.
- b) Reserve Account Deposits and Additions:
- i. At any time (whether during an Initial or Renewal Term or after termination) in Servicer's sole and absolute discretion, Servicer may (i) designate the minimum balance required to be deposited in the Reserve Account, (ii) require that the amount on deposit in the Reserve Account be increased, (iii) require that the Merchant deposit, or Servicer may deposit for Merchant into the Reserve Account, a percentage of, or a fixed amount from, each Transaction processed, or (iv) otherwise determine the amount to be deposited in the Reserve Account. Servicer at its sole and absolute discretion may require that each month the Merchant deposits, or Servicer may deposit by deducting from any payment due to Merchant, from any funds in the Account, or any other deposit account of the Merchant, sums into the Reserve Account no later than the twentieth (20th) day of the month. Servicer shall notify the Merchant as to the amount of the funds to be deposited each month.
- ii. Without limiting any of Servicer's rights or remedies set forth in the above Section or elsewhere in this Agreement, if Servicer has reason to believe, in its sole and absolute discretion, that Merchant may be liable to customers or Servicer for Chargebacks, anticipated Chargebacks, or any other reason or amounts exceeding the balance of the Reserve Account, Servicer may (i) immediately place in the Reserve Account up to 100% of amounts due to Merchant (including for provisional credits or Transactions) and/or stop processing Transactions for Merchant until such time as the extent of Merchant's obligations to Servicer, or Merchant's liability for Chargebacks or other amounts, or Merchant's liability to its customers is known, and Servicer no longer deems itself insecure, and/or (ii) demand from Merchant an amount that, in Servicer's judgment, is needed to ensure payment of Merchant's obligations and liabilities owed under this Agreement. In addition to all of its other rights and remedies under this Agreement, Merchant's failure to pay any amount requested or otherwise fund the Reserve Account with an amount acceptable to Servicer, within one (1) Business Day after Servicer's request, will permit Servicer to immediately terminate this Agreement and suspend processing of Transactions for Merchant without advance notice.
- iii. Merchant acknowledges and agrees that the Reserve Account may contain both funds deposited by the Merchant and funds of other merchants of the Servicer. Merchant acknowledges and agrees that, until such time as all of the amounts owed by Merchant and its obligations are paid to Servicer in full, all funds in the Reserve Account shall be considered to be held by Servicer for Servicer's sole interest, benefit, and protection, shall be considered to be the property of Servicer, and shall not be considered to be held for the benefit of Merchant or be considered to be an asset for or property of Merchant. The aforementioned rights and remedies are not intended to be Servicer's exclusive rights or remedies, all of which are expressly reserved, and all rights and remedies are intended to be cumulative with all other rights and remedies of Servicer under this Agreement and Applicable Law.
- iv. Merchant further acknowledges and agrees that the Reserve Account is not required to be an interest-bearing account and that, if any interest accrues, such accrued interest is the sole property of Servicer and not Merchant.

- c) Replenishment of Reserve Account Deficiencies. Whenever the balance in the Reserve Account is less than the minimum balance required, or is otherwise deficient, Servicer may, without prior notice, deposit the deficiency into the Reserve Account by reducing any payment to Merchant required by this Agreement or deduct the deficiency from the Account or any other deposit account of Merchant with another depository institution (including accounts of Merchant's principals, guarantor(s), and general partners if Merchant is a partnership) and deposit it into the Reserve Account. Merchant authorizes deductions from all of its accounts about which Servicer obtains account information, regardless of the timing, reason, or manner in which Servicer obtained such account information, by ACH entry, sight draft, preauthorized check, reverse wire, or otherwise as Servicer deems appropriate under the circumstances, without giving prior notice to the Merchant. In addition to, and without limiting the Servicer's foregoing rights, Merchant will deposit any deficiency into the Reserve Account within one (1) Business Day after receiving Servicer's oral or written request. Without limiting and in addition to Servicer's other remedies, Merchant's failure to deposit any deficiency on time will permit Servicer, without advance notice, to suspend or cease processing additional Transactions and Credit Vouchers.
- d) Deductions from Reserve Account. If funds are not available in the Account, or if Servicer determines, in its sole and absolute discretion that Merchant may be liable to Merchant's customers or Servicer for Chargebacks, anticipated Chargebacks, or for any reason or amount, Servicer, without prior notice to Merchant, may deduct from the Reserve Account any amount sufficient to pay for such obligation of Merchant, including, but not limited to, Chargebacks, anticipated Chargebacks, Credit Vouchers, fees and any other fees owed, fines, penalties, loss allocations, damages, expenses (including, without limitation, attorneys' fees, investigatory and/or remediation expenses), charges, Assessments, registrations, certification expenses, payment obligations owed by Merchant to Servicer under this Agreement (including, without limitation, indemnity obligations), and any and all or other amounts due to Servicer, the Card Brands, or any governmental, banking, or regulatory agency, or claimed by third parties, arising out of this Agreement or involving Merchant's business, actions, omissions, or use of the services contemplated under this Agreement. Notwithstanding any of the foregoing, as an additional and cumulative right under this Agreement, if Servicer reasonably believes that Merchant will in the near future owe any such amounts under this Agreement, including for Chargebacks, anticipated Chargebacks, fines, fees, or any other item described above in this Section, Servicer may also identify, sequester, or transfer to itself (including its own Servicer account(s)) any portion of the Reserve Account that Servicer believes is needed to pay such obligation, and Servicer may hold and use such amount for its own benefit and protection (as opposed to any such amount of the Reserve Account being held for Merchant's benefit or the benefit of any third party, regardless of how the account in which such funds are held is titled). The aforementioned rights and remedies are not intended to be exclusive and are intended to be cumulative of all of Servicer's other rights and remedies under this Agreement and Applicable Law.
- e) Reserve Account After Agreement Terminates. Servicer may continue to hold or deposit funds in the Reserve Account after termination of this Agreement, regardless of whether termination is by Merchant or Servicer, or the reason for termination. Upon termination of this Agreement by Merchant or Servicer, Servicer may retain sufficient funds to satisfy any and all Chargebacks, anticipated Chargebacks, Credit Vouchers, fees, and any other fees owed, fines, penalties, loss allocations, damages, expenses (including, without limitation, attorneys' fees, investigatory and/or remediation expenses), charges, Assessments, registrations, certification expenses, payment obligations owed by Merchant to Servicer under this Agreement (including, without limitation, indemnity obligations), and any and all or other amounts due Servicer, the Card Brands, or any governmental, banking, or regulatory agency, or claimed by third parties, arising out of this Agreement or involving Merchant's business, actions, omissions, or use of the services contemplated under this Agreement. Notwithstanding any of the foregoing, as an additional and cumulative right under this Agreement, if Servicer reasonably believes that due to the circumstances of the termination of this Agreement, the amount of Chargebacks, anticipated Chargebacks, fines, fees, or any other item described above in this Section, may equal or exceed the amount held in the Reserve Account, Servicer may also identify, sequester, or transfer to itself (including its own Servicer account(s)) any portion of the Reserve Account or other funds held by Servicer that Servicer believes is needed to pay such obligation, and Servicer may hold and use such amount for its own benefit and protection (as opposed to any such amount of the Reserve Account being held for Merchant's benefit or the benefit of any third party). If no funds have been deposited into the Reserve Account before termination of this Agreement, Servicer, at Servicer's sole option, may notify Merchant to deposit funds into the Reserve Account (in an amount identified by Servicer in its sole and absolute discretion) upon termination of this Agreement. All provisions which apply to a pre-termination Reserve Account will apply after termination, including replenishment of deficiencies. The Reserve Account will be held by Servicer or its designated agent for a period of not less than three hundred and sixty-five (365) days from the date of the last Card Transaction processed under the Agreement, plus the period of any warranty, guarantee, and/or return policy on goods and/or services sold, or until such time as Servicer determines, in its sole and absolute discretion, that the release of Reserve Account funds to Merchant is prudent, in the best interest of Servicer, and commercially reasonable and that all of Merchant's payment obligations to Servicer under this Agreement are fully resolved. Upon expiration of this period, except as set forth to the contrary above, Servicer will return the balance in the Reserve Account to Merchant after Servicer reasonably determines that the risk of Chargebacks, anticipated Chargebacks, and any other amounts potentially owed by Merchant under the Agreement has ended and after deducting all amounts that Merchant owes to Servicer under this Agreement or any other agreement.

5. TERM AND TERMINATION

- 5.1. Term. This Agreement will be effective once Servicer accepts it, and unless otherwise terminated in accordance with Section 5.2 below, will continue for an initial term of three years. Following the initial term, this Agreement will automatically renew for successive one-year terms, unless Merchant provides written notice of non-renewal at least sixty (60) days before the end of the initial term or any then-current renewal term.
- 5.2. Termination.
- a) Without Cause. Servicer may terminate this Agreement, without cause, upon 30 days

advance written notice to Merchant. Merchant may terminate this Agreement without prior notice in the three (3) day period following Servicer's acceptance of the Merchant Application (the "Cooling Off Period").

- b) For Cause. Servicer may terminate this Agreement in its sole discretion, effective immediately, upon written or verbal notice, or by closing Merchant's point-of-sale terminal, if Servicer reasonably determines that any of the following conditions exists: (i) Merchant has violated any provision of this Agreement; (ii) there is a material adverse change in Merchant's financial condition; (iii) if any case or proceeding is commenced by or against Merchant under any Applicable Law dealing with insolvency, bankruptcy, receivership or other debt relief; (iv) any information which Merchant provided to Servicer, including Application Form information, was false, incomplete or misleading when received; (v) at any time during the term of this Agreement, Merchant has had a monthly ratio of Chargebacks to total Transactions exceeding Card Brand requirements or 1%, or Chargebacks exceed 3% of any monthly dollar amount of total Transactions; (vi) an overdraft in the Account exists for more than three days; (vii) Merchant or any of Merchant's officers or employees has been involved in processing Transactions arising from fraudulent or otherwise unauthorized transactions; (viii) Merchant is or will be unable or unwilling to perform its obligations under this Agreement or Applicable Law; (ix) Merchant has failed to timely pay Servicer any amount due; (x) Merchant has failed to promptly perform or discharge any obligation under its Account or the Reserve Account; (xi) any of Merchant's representations or warranties made in connection with this Agreement was not true or accurate when given; (xii) Merchant has defaulted on any agreement it has with the Servicer; (xiii) Servicer is served with legal process seeking to attach or garnish any of Merchant's funds or property in Servicer's possession, and Merchant does not satisfy or appeal the legal process within 15 days of such service; (xiv) any Card Brand rules are amended in any way so that the continued existence of this Agreement would cause Servicer to be in breach of those rules; (xv) any guaranty supporting Merchant's obligations is revoked, withdrawn, terminated or altered in any way; (xvi) if any circumstances arise regarding Merchant or its business that create harm or loss of goodwill to any Card Brand; (xvii) termination is necessary to prevent loss to Servicer or Card Issuers; (xviii) Merchant's type of business indicated on the Application Form or as conducted by Merchant could endanger the Servicer's safety or soundness; (xix) Merchant's owner, officer, guarantor, or corporate entity has a separate relationship with the Servicer and that relationship is terminated, (xx) Merchant appears on any Card Brand's security reporting; or (xxi) Servicer's security for repayment becomes impaired, (xxii) failure to comply with the Servicer's requirements repeatedly and refusal to remedy any violations; (xxiii) Merchant delays the response to inquiries or the fulfillment of retrieval requests deliberately or without good reason; or (xxiv) Merchant incurs an increased risk due to other activities of the Merchant; or (xxv) a Card Brand prohibits Merchant from operating hereunder.
- 5.3. Effect of Bankruptcy. Any account or security held by Servicer will not be subject to any preference, claim or stay by reason of bankruptcy or similar law. The parties expressly agree that the acquisition of Card Transactions hereunder is a financial accommodation and if Merchant becomes a debtor in any bankruptcy or similar proceeding, this Agreement may not be assumed or enforced by any other person and Servicer will be excused from performance hereunder.
- 5.4. Effect of Termination. When termination becomes effective, the parties' rights and obligations existing under this Agreement survive. If this Agreement is terminated, regardless of cause, Servicer may withhold and discontinue the disbursement for all Cards and other Merchant Transactions in the process of being collected and deposited. If Merchant is terminated for cause, Merchant acknowledges that Servicer may be required to report Merchant's business name and the names and other identification of its principals to the MATCH file maintained by the Card Brands and/or the CMNF file maintained by Discover. Merchant expressly agrees and consents to such reporting if Merchant is terminated for any reason requiring listing on the MATCH file or CMNF. Merchant waives and will hold harmless Servicer from any claims that Merchant may raise as a result of Servicer's MATCH file reporting, or Discover's CMNF reporting. Merchant will also immediately cease requesting Authorizations. If Merchant obtains any Authorization after termination, the fact that any Authorization was requested or obtained will not reinstate this Agreement. Further, Merchant will return all Servicer property, forms, or equipment. All obligations for Transactions prior to termination (including payment for Chargebacks and Servicer's expenses relating to Chargebacks) survive termination. Servicer is not liable to Merchant for damages (including prospective sales or profits) due to termination. Following termination, Merchant will upon request provide Servicer with all original and electronic copies of Sales Drafts and Credit Vouchers that have been retained by Merchant as of the date of termination. Upon termination, any amounts due to Servicer will accelerate and be immediately due and payable, without any notice, declaration or other act whatsoever by Servicer. Servicer shall terminate the acceptance of Cards by Merchant upon the termination of the Merchant Agreement.
- 5.5. Early Termination. If e-commerce accounts for 50% or more of Merchant's Transactions, as indicated in the Application, then, in consideration of the resulting risk, effort and expense incurred by ISO to provide services to Merchant given its sales profile, the parties agree that the Monthly Minimum set forth in Section 6.7 ("Fees and Charges") shall continue to apply notwithstanding this Agreement's early termination for any reason other than a material uncured breach by ISO, and this for the balance of the then-current term. If, for any reason other than a material uncured breach by ISO, this Agreement is terminated after the Cooling Off Period but before completion of the then-current term, Merchant shall, to the extent permitted by Applicable Law, be liable for de-conversion fees in accordance with the following terms: (a) if the Average Processing Volume ("APV") is equal to or exceeds \$25,000 per month, Merchant will pay a flat fee of \$495; (b) if, during the total number of months processed, up to a maximum of the last 12 months, the APV is less than \$25,000 per month, Merchant shall pay ISO a flat fee of \$395. APV means the average processing volume of the Merchant calculated over the total number of months processed, up to a maximum of 12 months and based on all credit and debit card Transactions and based on a minimum of \$1 transaction during the calendar month.
- 5.6. Data After Termination. The delivery of data to Merchant by Servicer further to the expiration or termination of this Agreement shall be made at a cost and on terms and conditions to be then agreed upon. If Merchant does not request the delivery of data within 30 days of the expiration or termination hereof or if Merchant and Servicer fail to

agree on such cost, terms and conditions, Servicer shall, unless prohibited by Applicable Law or the Card Brand rules, have the right to delete any such data found in Servicer's systems or otherwise under Servicer's control.

6. MISCELLANEOUS

- 6.1. Account Monitoring. Merchant acknowledges that Servicer will monitor Merchant's daily deposit activity. Servicer may upon reasonable grounds suspend disbursement of Merchant's funds for any reasonable period of time required to investigate suspicious or unusual deposit activity. Servicer will make good faith efforts to notify Merchant promptly following suspension. Servicer is not liable to Merchant for any loss, either direct or indirect, which Merchant may attribute to any suspension of funds disbursement.
- 6.2. Forms. Merchant will use only the forms or modes of transmission of Sales Drafts and Credit Vouchers that are provided or approved in advance by Servicer, and Merchant may not use such forms other than in connection with Card Transactions.
- 6.3. Indemnification. Merchant will defend, indemnify and hold Servicer and its officers, directors, members, shareholders, partners, employees, agents, subcontractors, representatives and any Card Brand harmless from and against any and all fines, penalties, claims, damages, expenses, liabilities or fees of any nature whatsoever, including attorneys' fees and costs ("Damages"), asserted against or incurred by Servicer arising out of, relating to or resulting from, either directly or indirectly: (a) a breach of the security of the system safeguarding Cardholder Information resulting in unauthorized access to Cardholder Information; (b) a breach of any representation, warranty or term of this Agreement, including, but not limited to, the data security provisions, or any act or omission relating to a Transaction, by Merchant, or any service provider, subcontractor or agent of Merchant; (c) the negligence, or willful misconduct of Merchant in the performance of its obligations under this Agreement, including, but not limited to, the data security provisions; (d) any violation of Applicable Law, rules, regulations and guidance and Card Brand rules by Merchant; and (e) all third party claims arising from the foregoing, including without limitation any Cardholder claim relating to a dispute between such Cardholder and Merchant or to the Services. Notwithstanding the preceding, Merchant is not liable to ISO if Damages are caused by, related to or arise out of ISO's recklessness or willful misconduct, or ISO's breach of this Agreement. Merchant will promptly reimburse Servicer for any Assessments imposed by the Card Brand in connection with this Agreement, including the data security provisions, and authorizes Servicer to deduct any such sums from amounts to be cleared and settled with Merchant.
- 6.4. Records. In addition to any records Merchant routinely furnishes to Servicer under this Agreement, Merchant will preserve a copy of Sales Drafts and Credit Vouchers, in paper or electronic form, and any written authorization of the Cardholder for at least two years after the date Merchant presents the Transaction to Servicer. Merchant shall bear financial losses incurred due to inappropriate retention or loss of Sales Drafts or Credit Vouchers.
- 6.5. Requests for Copies. Immediately after Merchant receives the request by Servicer, Merchant will provide to Servicer either the original or a legible copy (in a size comparable to the actual Sales Draft) of the paper Sales Draft and any other documentary evidence available to Merchant that Servicer reasonably requests to meet Servicer's obligations under Applicable Law (including its obligations under the Fair Credit Billing Act) or otherwise to respond to questions concerning Cardholder accounts.
- 6.6. Compliance with Rules and Applicable Law. Merchant will comply with all Rules and Applicable Law, including without limitation all state and federal consumer credit and consumer protection statutes and regulations.
- 6.7. Fees and Charges. Merchant will pay to Servicer the fees and charges set forth in the Application including any additional charges applied to Transactions that fail to meet Card Brand requirements for the lowest interchange levels. "Cost Plus Surcharge", as appears in the Application, is calculated by adding: (i) the interchange fee; plus (ii) applicable surcharge fees; plus (iii) up to 100 basis points for credit card Transactions and 100 basis points for debit card Transactions (as the case may be); plus (iv) access fees, dues and Assessments as determined by Servicer.

Where applicable, Merchant shall also pay the following fees: Voice/ARU Authorization: \$0.95 per authorization request; ACH Modifications: \$25.00 per event; ACH Return (applicable to ACH returns not subject to any ACH guarantee): \$25 per return; Operator Assisted Voice Auth.: \$2.95 per call; Dispute Resolution Fee: \$25; Third Party Helpdesk Calls: \$5.00 per call; Unsupported Terminals: \$20 per call; Security/Compliance Fee: \$150.00 annually, if applicable; PCI Non-Compliance Monthly Fee: \$29.99; monthly PCI Non-Compliance Assessment of .17% applied to all Transactions; Handling Fee: \$69 for accounts approved yet inactivated. A Risk Fee of up to 50 basis points on all Transactions processed may apply if the Merchant account is designated as high risk in nature, to offset the additional risk associated with this type of account. Merchant will be notified if the Risk Fee applies, in which case the fee will also appear on Merchant's monthly statements. A monthly minimum of \$25 or 100 basis points on Merchant's approved monthly volume, whichever is greater, shall apply. If e-commerce accounts for 50% or more of Merchant's Transactions, as indicated in Merchant's Application Form, then, in consideration of the resulting risk, effort and expense incurred by ISO to provide services to Merchant given its sales profile, the parties agree that the monthly minimum shall continue to apply notwithstanding this Agreement's early termination for any reason other than a material uncured breach by ISO, and this for the balance of the then-current term. Pass-through Card Brand fees include Visa Acquirer Processing fee, Visa Misuse of Auth. fee, Visa International Service Assessment (ISA), Visa Zero Floor Limit fee, Visa International Acquirer fee, MC Acquirer Program Support fee, MC Cross Border fee, and the MC Network Access and Brand Usage (NABU) fee. Account will be debited through ACH or withheld from daily payments to Merchant for such amounts and for any other fees, charges or adjustments incurred or owed by Merchant hereunder. Upon thirty (30) days written notice to Merchant, Servicer may change fees, including without limitation by adding fees for additional services utilized by Merchant and/or increasing fees for any adverse change to Merchant's risk profile, as reasonably determined by Servicer.

With respect to American Express, in addition to those fees set forth in the Application, Merchant shall pay the following fees where applicable: Technical Specifications of Non-Compliance Fee: 0.75% of the face amount of the Transaction; Data Quality Fee: 0.75%

of the face amount of the Transaction. Data Incident Non-Compliance Fee: refer to DSOP for applicable amounts; Data Security Non-Validation Fee: refer to DSOP for applicable amounts; Existing AXP Merchant Access Fee: 0.3% of the face amount of the Transaction; Amex Inbound Fee: 0.40% of the face amount of the Transaction; Non-swiped Application-Initiated Transaction Fee: 0.30% of the face amount of each non-swiped Transaction. American Express may assess a Data Pass Violation Fee from Merchant as follows: (i) where charge volume is less than \$1,000,000, a fee of \$2,500 and warning specifying date of correction shall apply to the first violation and a fee of \$5,000 and final notice shall apply to the second violation; (ii) where charge volume is between \$1,000,000 and \$10,000,000, a fee of \$5,000 and warning specifying date of correction shall apply to the first violation and a fee of \$10,000 and final notice shall apply to the second violation and; (iii) where charge volume is above \$10,000,000, a fee of \$25,000 and warning specifying date of correction shall apply to the first violation and a fee of \$50,000 and final notice shall apply to the second violation. American Express may also assess an Excessive Dispute Fee as follows: \$5 per disputed Transaction if the merchant is enrolled in the Immediate Chargeback Program or \$15 per disputed Transaction if the Merchant is not enrolled in the Immediate Chargeback Program.

ISO will provide Merchant with monthly electronic statements reflecting the fees and charges to be paid by Merchant. Merchant must review the statements and inform Servicer of any errors within 60 days of the date of the statement. Servicer will have no obligation to provide refunds for errors that the Merchant fails to report within such 60-day period.

- 6.8. Security Interest. To secure payment of Merchant's obligations under this Agreement, Merchant grants to Servicer a security interest in all now existing or hereafter acquired: (a) Transactions, Sales Drafts, Credit Vouchers and other items submitted to Servicer for processing by or for Merchant; (b) accounts receivable and payment rights relating to or arising from this Agreement, including all amounts due Merchant (including any rights to receive credits or payments hereunder); (c) accounts including without limitation all deposit accounts maintained with the Servicer or any institution other than Servicer, including the Reserve Account, in the name of or for the benefit of, Merchant or any guarantor of Merchant's obligations under this Agreement; (d) deposits, regardless of source, to Merchant's or any guarantor's accounts with Servicer or any institution other than Servicer, including the Reserve Account; (e) all deposits and all other property and funds deposited by Merchant or withheld by Servicer, including funds and property withheld as the result of security monitoring; and (f) proceeds of the foregoing. As between Bank and ISO, Bank's security interest in the foregoing shall have priority over ISO's security interest therein, and ISO covenants and agrees to take any and all actions requested by Bank to honor such priority and allow Bank to perfect such superior security interest in the foregoing. If Servicer reasonably determines that Merchant has breached any obligation under this Agreement, or that proceeds of Merchant's future card sales are unlikely to cover anticipated Chargebacks, credits, fees and adjustments, as reasonably determined by Servicer (whether because this Agreement has been terminated or for any other reason), Servicer may setoff or otherwise exercise its security interest without notice or demand by immediately withdrawing from or freezing any account (including, without limitation, the Reserve Account) or otherwise exercising its rights under this Agreement or those rights available under Applicable Law, including the Uniform Commercial Code, or in equity. In addition to the collateral pledged above, Servicer may require Merchant to furnish such other and different security as Servicer deems appropriate in its sole discretion to secure Merchant's obligations under this Agreement. Servicer may fully or partially prohibit withdrawal by Merchant of funds from Merchant's deposit accounts maintained with Servicer or financial institutions other than Servicer, pending Servicer's determination from time to time to exercise its rights as a secured party against such accounts in partial or full payment of Merchant's obligations to Servicer. Merchant will execute any documents and take any actions required to comply with and perfect any security interest under this Section, at Merchant's cost. Merchant represents and warrants that no other party has a security interest or lien in any of the collateral pledged above, and Merchant will obtain Servicer's written consent before it grants a lien or security interest in that pledged collateral to any other person. Merchant shall not assign to any third party any payments due to it under this Agreement, and all indebtedness arising from Transactions will be for bona fide sales of goods and services (or both) at its business locations and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that Merchant may sell and assign future Transaction receivables to Servicer, its affiliated entities and/or any other cash advance funding source that partners with Servicer or its affiliated entities, without consent from any Card Brand. Notwithstanding the foregoing, Servicer prohibits Merchant from selling or assigning future Transaction receivables to any third party without Servicer's prior written consent.
- 6.9. Modifications to Agreement. This Agreement is subject to amendment to conform with Card Brand regulations, as amended from time to time. From time to time, Servicer may amend any provision or provisions of this Agreement, including, without limitation, those relating to the discount rate or to other fees and charges payable by Merchant by sending written notice to Merchant of the amendment prior to the effective date of the amendment, and the amendment will become effective unless Servicer receives Merchant's notice of written termination of this Agreement before such effective date. Amendments required due to changes in any of the Rules, Applicable Law or a judicial decision, may become effective on such shorter period of time as Servicer may specify if necessary, to comply with the applicable rule, regulation, law or decision. The term of this Agreement shall be automatically extended an additional three years in the event of a price decrease or the introduction of a new product or service used by Merchant (including any equipment upgrade), effective as of the date such price change is implemented, or new product-service accepted by Merchant.
- 6.10. Warranty Disclaimer. SERVICER MAKES NO WARRANTIES REGARDING THE USE, OPERATION OR PERFORMANCE OR NON- PERFORMANCE OF SOFTWARE AND SYSTEMS UTILIZED FOR THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, AND SERVICER EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SERVICER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES IT PROVIDES HEREUNDER.
- 6.11. Limitation of Liability. SERVICER'S LIABILITY WITH RESPECT TO ANY CARD TRANSACTION MAY NOT EXCEED THE AMOUNT OF THE SALES DRAFT IN

CONNECTION WITH THE TRANSACTION, LESS ANY APPLICABLE FEES AND CHARGES. IF THERE ARE ERRORS, OMISSIONS, INTERRUPTIONS OR DELAYS RESULTING FROM BANK'S OR ISO'S PERFORMANCE OR ANY FAILURE TO PERFORM, BANK'S AND ISO'S LIABILITY SHALL BE LIMITED TO CORRECTING SUCH ERRORS, IF COMMERCIALY REASONABLE. NEITHER BANK NOR ISO SHALL BE LIABLE FOR ANY LOST PROFITS, REVENUES, OR BUSINESS OPPORTUNITIES, NOR ANY EXEMPLARY, PUNITIVE, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (WHETHER DIRECT OR INDIRECT) TO MERCHANT OR TO ANY THIRD PARTY IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE SERVICES TO BE PERFORMED BY BANK OR ISO PURSUANT TO THIS AGREEMENT. MERCHANT WAIVES ALL CLAIMS AGAINST SERVICER FOR ANY LOSS, CLAIM, DEMAND, PENALTY, ACTION, DELAY, COST OR EXPENSE (INCLUDING REASONABLE ATTORNEYS' FEES) OF ANY KIND UNLESS MERCHANT PROVIDES WRITTEN NOTICE TO SERVICER OF THE OCCURRENCE THAT GAVE RISE TO THE ALLEGED LIABILITY WITHIN 30 DAYS AFTER MERCHANT KNEW OR SHOULD HAVE KNOWN OF THE OCCURRENCE. IN ADDITION TO WHAT IS PROVIDED HEREIN, SERVICER'S CUMULATIVE LIABILITY TOWARDS MERCHANT FOR ANY REASON WHATSOEVER SHALL NOT EXCEED THE AMOUNT OF FEES RECEIVED BY SERVICER PURSUANT TO THIS AGREEMENT, FOR SERVICES PERFORMED IN THE IMMEDIATELY PRECEDING SIX (6) MONTHS. MERCHANT WILL INDEMNIFY AND HOLD SERVICER HARMLESS FROM ANY CLAIM RELATING TO ANY SALES DRAFT PAID FOR BY SERVICER AS MAY BE MADE BY ANYONE BY WAY OF DEFENSE, DISPUTE, OFFSET, COUNTERCLAIM OR AFFIRMATIVE ACTION, OR FOR ANY DAMAGES OF OR LOSSES THAT SERVICER MAY INCUR AS A RESULT OF MERCHANT'S BREACH OF THIS AGREEMENT. FURTHER, MERCHANT WILL REIMBURSE SERVICER FOR ALL EXPENSES AND COSTS, INCLUDING ATTORNEYS' FEES, WITH REGARD THERETO. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE BANK'S OBLIGATION UNDER THIS AGREEMENT SHALL BE LIMITED TO SPONSORSHIP AND SETTLEMENT. CARD BRAND ASSESSMENTS AND OTHER AMOUNTS FOR WHICH MERCHANT IS LIABLE UNDER THIS AGREEMENT (INCLUDING AMOUNTS IMPOSED BY A REGULATORY AUTHORITY THAT ARE SPECIFICALLY DUE TO MERCHANT'S FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT) ARE NOT EXCLUDED BY THIS SECTION.

- 6.12. Waiver. Servicer's failure by Servicer to enforce one or more of the provisions of this Agreement will not constitute a waiver of the right to enforce the same or other provision in the future.
- 6.13. Written Notices. All written notices and other written communications required or permitted under this Agreement will be deemed delivered immediately when hand-delivered or sent via facsimile or email with confirmation of delivery, and upon mailing when sent first class mail, postage prepaid. Notices shall be addressed as follows:
- a) If to ISO: Nuvei Technologies Inc., 1375 N Scottsdale Rd Suite 400, Scottsdale, AZ 85257, United States, Facsimile: 877-669-5703, Attn: Loyalty Department;
 - b) If to Bank: to the address indicated on the Merchant Application.
 - c) If to Merchant: To the facsimile number, email address or address provided as the billing address, and to the contact listed on the Merchant Application.
- 6.14. A written notice shall also be deemed sent and received if notification is given to the Merchant: (i) through any technological Platform offered by Servicer and used by Merchant to access its account; or (ii) by way of any billing statement sent to Merchant, whether such billing statement is sent via a technological Platform, by commercial courier or by mail.
- 6.15. Choice of Law; Jurisdiction. This Agreement shall be governed exclusively by Delaware law, without regard to its choice of law provisions. Merchant agrees that any legal action or proceeding arising out of or relating to the relationship between Servicer and Merchant shall be instituted solely in the state or federal courts of the State of Arizona and hereby submits to the jurisdiction of such courts in any such action or proceeding. Merchant hereby waives releases and agrees not to assert any rights it may have under any foreign law or regulation that would be inconsistent with the terms of this Agreement as governed by Delaware law. Merchant also waives its right to a trial by jury of any disputes arising from its relationship with Servicer.
- 6.16. Entire Agreement; Assignability. This Agreement expresses the entire understanding of the parties with respect to the subject matter hereof and except as provided herein, may be modified only in writing executed by Servicer and Merchant. This Agreement may not be assigned by Merchant, directly or by operation of law, without Servicer's prior written consent. Any purported assignment in violation of this clause is ineffective, void, and unenforceable. Each of ISO and Bank may assign their rights and delegate their duties under this Agreement, without notice to Merchant. This Agreement will be binding upon and inure to the benefit of the parties' respective heirs, personal representatives, successors and assigns.
- 6.17. Deposit Account. Merchant will at all times maintain an Account at a bank that is a member of the Federal Reserve ACH system and will provide Servicer with proper authorization to debit the Account. All credits for collected funds and debits for fees, payments and Chargebacks and other amounts for which Merchant is liable under the terms of this Agreement will be made to the Account. Merchant may not close or change the Account without written notice to Servicer. Merchant will be solely liable for all fees and costs associated with the Account and for all overdrafts. Merchant hereby grants to Servicer a security interest in the Account to the extent of any and all fees, payments and Chargebacks and other amounts due which may arise under this Agreement, and Merchant will execute any document and obtain any consents or waivers from the bank at which the Account is maintained as requested by Servicer to perfect and protect its security interests therein. As between Bank and ISO, the security interest of Bank shall have priority over the security interest of ISO, and ISO covenants and agrees to take any and all actions requested by Bank to honor such priority and allow Bank to perfect such superior security interest in the foregoing.
- 6.18. Credit and Financial Inquiries; Additional Locations; Inspections. Servicer may make, at

any time, any credit inquires which it may consider necessary to accept or review acceptance of this Agreement or investigate Merchant's deposit or Card acceptance activities subsequent to acceptance of this Agreement. Such inquiries may include, but are not limited to, a credit and/or criminal check of the business including its proprietor, partners, principal owners or shareholders or officers. Upon Servicer's request, Merchant will provide the written consent of any person for which an inquiry has been or is to be made if such person has not executed this Agreement and will provide any financial statements, income tax and business tax returns and other financial information as Servicer may consider necessary to perform initial or periodic reviews of Merchant's financial stability and business practices. Merchant may accept Cards only at locations approved by Servicer. Additional locations may be added, subject to Servicer's approval. Any party to this Agreement may delete any location by providing notice as provided herein. Merchant will permit Servicer, at any time and from time to time, to inspect locations to confirm that Merchant has or is adhering to the terms of this Agreement and is maintaining the proper facilities, equipment inventory, records and license or permit (where necessary) to conduct its business. However, nothing in this Section may be deemed to waive Merchant's obligation to comply in all respects with the terms of this Agreement. Servicer, its internal and external auditors, and its regulators may audit compliance with this Agreement, compliance with Applicable Law, rules, regulations and guidance applicable to the services, Card acceptance and Transaction processing, and data security provisions, including Card Brand compliance. Merchant will make available its records maintained and produced under this Agreement, and Merchant's facilities will be made accessible, upon notice during normal business hours for examination and audit. Nothing in this Section may be construed to require Merchant to give access to its facilities, personnel or records in a manner that unreasonably interferes with its business operations. Each party will bear its expenses of any audit, save that Merchant will bear the cost of any audit carried out by Bank or at the request of a Card Brand.

- 6.19. Confidential Information. Merchant acknowledges that certain Confidential Information may be communicated by Servicer to Merchant or its designees. As a condition to the receipt of the Confidential Information from Servicer, Merchant shall: (i) not disclose to any third party, directly or indirectly, any portion of the Confidential Information; (ii) not use Confidential Information in any fashion except to perform obligations hereunder or with Servicer's express prior written consent; (iii) disclose Confidential Information, in whole or in part, only to its employees and agents who need to have access thereto for internal business purposes related to this Agreement; (iv) take all necessary steps to ensure that its employees and agents are informed of and comply with the confidentiality restrictions contained in this Agreement; and (v) take all necessary precautions to protect the confidentiality of the Confidential Information received hereunder and exercise at least the same degree of care in safeguarding the Confidential Information as it would with its own confidential information, and in no event apply less than a reasonable standard of care to prevent disclosure. Merchant shall promptly notify Servicer of any unauthorized disclosure or use of the Confidential Information. Merchant shall cooperate and assist Servicer in preventing or remedying any such unauthorized use or disclosure.
- 6.20. Marketing of Payment Card Services. From time to time, Servicer may offer to Merchant certain additional products and services which may or may not be related to the processing of credit card Transactions. If such offers are made, Merchant may decline the offers or be deemed to have accepted the offers and be liable for payment therefor.
- 6.21. Force Majeure. The parties will be released from liability hereunder if they fail to perform any obligation where the failure occurs by reason of any act of God, fire, flood, storm, earthquake, tidal wave, communications failure, sabotage, war, military operation, terrorism, national emergency, pandemic, epidemic, mechanical or electronic breakdown, civil commotion or the order, requisition, request or recommendation of any governmental authority, or either party's compliance therewith, or governmental regulation or priority, or any other similar cause beyond either party's reasonable control.
- 6.22. No Third Party Beneficiary. No other person or entity may be deemed to be a third-party beneficiary of this Agreement.
- 6.23. Inconsistency. In the event of any inconsistency between the terms of this Agreement and the Merchant Application, the provisions of the Merchant Application shall prevail.
- 6.24. Application of Certain Terms. For the sake of clarity and notwithstanding any provision of this Agreement to the contrary, in the event and to the extent any activity occurs under or in connection with this Agreement or the provision of any Service that involves or relates to any Card Brand of which Bank is not a member or APM that does not directly involve Bank: (i) the term "Servicer", as it relates to any such activity or Service, refers solely and exclusively to Nuvei; (ii) Merchant will look only to Nuvei for the performance of such Services and Servicer-related obligations; and (iii) Merchant hereby releases Bank from any obligation, and irrevocably waives any right, claim or cause of action Merchant may have against Bank, in connection with or arising under any provision of this Agreement that relates to such activity or Service.

PART TWO

7. AMERICAN EXPRESS. Additional terms and conditions applicable only to Merchants with American Express Card acceptance.
 - 7.1. The following terms and conditions apply to Merchant's participation in the American Express OptBlueSM Program (the "Program"). Merchant's participation in American Express Card Acceptance is subject to the approval of American Express. All capitalized terms under this Part Two that are not defined in this Agreement shall be given the definition assigned by American Express. For the purposes of this Part Two, any conflict between defined terms and those terms defined by American Express, the definition by American Express shall control.
 - 7.2. American Express Merchant Operating Guide. Merchant shall be bound by the American Express Merchant Operating Guide: www.americanexpress.com/merchantopguide, which is incorporated by reference into this Agreement and as may be amended from time to time.
 - 7.3. General Terms. Merchant authorizes ISO and/or its affiliates to submit American Express Transactions to, and receive settlement on such Transactions from, American Express

or Servicer on behalf of Merchant. Merchant agrees that (i) ISO and/or its affiliates may collect and disclose Transaction Data (as defined in the American Express Merchant Operating Guide), Merchant Data, and other information about Merchant to American Express (where "Merchant Data" means the mandatory, conditional, and optional requirements including, but not limited to names, postal and email addresses, tax ID numbers, names and social security numbers of the authorized signer, and similar identifying information about Merchants, as set forth in the American Express Technical Specifications); and (ii) American Express may use such information to perform its responsibilities in connection with the Program, promote the American Express Network, perform analytics and create reports, and for any other lawful business purposes, including commercial marketing communications purposes within the parameters of the Program, and important transactional or relationship communications from American Express. Merchant agrees that American Express may use the information obtained in Merchant's application at the time of setup to screen and/or monitor Merchant in connection with Card marketing and administrative purposes.

- 7.4. Marketing Message Opt-Out. Merchant may opt-out of receiving future commercial marketing communications from American Express by contacting ISO. Note that Merchant may continue to receive marketing communications while American Express updates its records to reflect this choice. Opting out of commercial marketing communications will not preclude Merchant from receiving important transactional or relationship messages from American Express.
- 7.5. Conversion to American Express Direct Merchant. Merchant acknowledges that it may be converted from American Express Card OptBlue program to a direct relationship with American Express if and when it becomes a High CV Merchant, where a "High CV Merchant" is a Merchant whose payment or purchase volume, less refunds and Chargebacks, is (i) greater than USD \$1,000,000 in a rolling twelve (12) month period or (ii) greater than USD \$100,000 in any three (3) consecutive months (which total shall include the volume from all Merchant's establishments under the same tax identification number (TIN)). If this occurs, upon such conversion, (i) Merchant will be bound by American Express' then-current Card Acceptance Agreement; and (ii) American Express will set pricing and other fees payable by Merchant.
- 7.6. American Express as Third-Party Beneficiary. Notwithstanding anything in the Agreement to the contrary, American Express shall have third-party beneficiary rights, but not obligations, to the terms of this Agreement applicable to American Express Card acceptance to enforce such terms against Merchant.
- 7.7. American Express Opt-Out. Merchant may opt out of accepting American Express Cards at any time without directly or indirectly affecting its rights to accept Cards bearing the Marks of other Card Brands.
- 7.8. Refund Policies. Merchant's refund policies for purchases on the American Express Card must be at least as favorable as its refund policy for purchase on any other Cards, and the refund policy must be disclosed to Cardholders at the time of purchase and in compliance with Applicable Law. Merchant may not bill or attempt to collect from any Cardholder for any purchases or payments on the Card unless a Chargeback has been exercised, Merchant has fully paid for such Chargeback, and it otherwise has the right to do so.
- 7.9. Establishment Closing. Upon termination of this Agreement or Merchant's participation in the Program, Merchant will cease all use of, and remove American Express Licensed Marks from the Merchant's website and wherever else they are displayed. ISO may immediately terminate Merchant's participation in the Program (i) if Merchant breaches any provision in this Agreement pertaining to American Express Card Acceptance, (ii) if Merchant breaches any provision in the American Express Merchant Operating Guide, (iii) for cause or fraudulent or other activity, or (iv) at the request of American Express.
- 7.10. Data Incidents. Merchant must report all instances of a Data Incident (as defined in the American Express Merchant Operating Guide) immediately to ISO after discovery of the incident. Merchant must ensure data quality and that Transaction Data and customer information is processed promptly, accurately, and completely, and complies with the American Express Technical Specifications.

THE FOLLOWING SERVICES ARE PROVIDED BY ISO ONLY. Bank shall not have any obligation or liability of any nature in connection with such services.

PART THREE

8. UNIONPAY. Additional terms and conditions applicable only to Merchants with UnionPay Card acceptance. In case of conflict or inconsistency between this Part and other Parts of this agreement, this Part shall prevail.
 - 8.1. Merchant undertakes to prominently display the UnionPay acceptance logos at their premises where Card transactions take place.
 - 8.2. Merchant agrees to accept all valid UnionPay-branded Cards.
 - 8.3. Except as permitted by the local regulator or UnionPay and unless an additional surcharge has already been imposed on other Card Brands, the Merchant shall undertake not to impose an additional surcharge on a UnionPay Cardholder; and shall accept UnionPay Cards at the same price and terms as cash.
 - 8.4. The Merchant shall not retain account numbers, PIN and other UnionPay Card transaction data and shall keep confidential all UnionPay Card information. Merchant shall not provide account information or transaction data to a third party other than ISO or an institution designated by ISO.
 - 8.5. The Merchant undertakes to be responsible for the storage and maintenance of payment terminals.
 - 8.6. If Merchant only accepts UnionPay Cards and does not accept any other Card Brand, then Bank shall not be a party to and shall not be bound by any provisions of this Agreement. ISO shall assume all rights and obligations of Bank herein and Bank shall have no liability to Merchant whatsoever. Merchant waives any and all rights it may have

against Bank.

PART FOUR

9. **TERMINAL BAILMENT.** If Merchant has accepted to receive a terminal from ISO that is neither leased nor purchased, the following additional terms and conditions of this Part shall apply.
- 9.1. **Bailment.** ISO hereby agrees to bail to Merchant, the terminal(s) described in the Merchant Application Form ("Terminal"), subject to the terms and conditions hereof. The bailment term shall commence on the date of delivery and shall end upon termination: (i) by ISO upon five (5) days prior notice; (ii) by Merchant upon thirty (30) days prior written notice; or (iii) immediately and without notice where the Agreement is terminated.
- 9.2. **Activation.** Merchant understands and agrees that bailment of the Terminal is conditional upon: (i) Merchant actively processing, pursuant to this Agreement within thirty (30) days of the date of delivery of the Terminal; and (ii) continued processing under this Agreement.
- 9.3. **Maintenance.** Merchant shall at all times during the term of this Agreement maintain the Terminal in good operating order, repair, and condition; and protect same from damage or deterioration. Merchant shall not use Terminal for any purpose other than that for which it was intended under this Agreement.
- 9.4. **Return.** In the event of a termination of this Agreement, this bailment shall be deemed automatically terminated and Merchant shall, at Merchant's sole expense, immediately return Terminal to ISO in its original condition, save for normal wear and tear, failing which Merchant agrees to immediately pay ISO an amount equal \$600.
- 9.5. **Delivery.** Delivery shall be as of the time that Terminal is received by Merchant.
- 9.6. **Representations and Warranties.** AS REGARDS THE TERMINAL AND ANY DATA STORED THEREIN, ISO MAKES ABSOLUTELY NO REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, CONDITION, QUALITY, DURABILITY OR SUITABILITY OF THE EQUIPMENT, TITLE OR NON-INFRINGEMENT AND EXPRESSLY DISCLAIMS SAME.
- 9.7. **Risk of Loss.** Merchant assumes all risk of loss or damage to the Terminal as at the time of delivery. Merchant agrees to indemnify and hold ISO harmless from and against all claims, liability, damage, loss or expenses which may occur to or arise from the Terminal during or after such time.
- 9.8. **Entire Agreement.** This Part, together with any documents to be delivered pursuant hereto, constitutes the entire agreement between Merchant and ISO pertaining to the bailed terminals and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written, of such parties.
- 9.9. **Limitation of Liability: Amount.** IN NO EVENT SHALL ISO BE LIABLE TO MERCHANT FOR ANY LIABILITY, WHETHER BASED UPON WARRANTY, CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, IN AN AMOUNT GREATER THAN THE WHOLESALE VALUE OF THE TERMINAL.
- 9.10. **Limitation of Liability: Damages.** IN NO EVENT SHALL ISO BE LIABLE TO THE MERCHANT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, TREBLE OR OTHER INDIRECT DAMAGES, OR FOR LOSS OF PROFITS AND REVENUE, LOSS OF DATA OR LOSS OF USE DAMAGES, ARISING OUT OF THE MANUFACTURE, SALE, SUPPLYING OR FAILURE OR DELAY IN SUPPLYING OF THE TERMINAL, WHETHER BASED UPON WARRANTY, CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF AWARE OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. UNDER NO CIRCUMSTANCES SHALL ISO'S AGGREGATE LIABILITY TO MERCHANT EXCEED THE TERMINAL VALUE INDICATED IN THE APPLICATION HERETO. MERCHANT ACKNOWLEDGES THAT BANK HAS PROVIDED NO WARRANTIES, EITHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY EQUIPMENT AND THAT BANK HAS NO LIABILITY WITH RESPECT TO ANY EQUIPMENT.

PART FIVE

10. **MERCHANT DASHBOARD - WEB REPORTS & ALERTS**
- 10.1. Merchant shall be automatically enrolled in Merchant Dashboard - WEB REPORTS & ALERTS, an advanced online reporting tool that is accessible at <https://merchant.nuvei.com>.
- 10.2. **Free Trial Period.** During the first 60 days following enrolment, Merchant will have free access to Merchant Dashboard - WEB REPORTS & ALERTS. Merchant shall have the right to use a free trial period one time, upon its initial enrolment into Merchant Dashboard - WEB REPORTS & ALERTS. After expiration of the initial trial period, Merchant will be charged a monthly membership fee of \$9.75 per merchant identification number. The monthly membership fee will be automatically debited via ACH and is non-refundable.
- 10.3. **Cancellation.** To cancel access to Merchant Dashboard - WEB REPORTS & ALERTS, Merchant must opt out at least three business days before the first day of the calendar month as of which enrollment is cancelled. Merchant may opt out by contacting Client Care 1 (877) 772-3346 or by email at support@merchant-support.com. If the amount of the fee changes after enrolment for any reason, ISO will provide at least thirty (30) days advance written notice to Merchant regarding any such change.

PART SIX

11. **ADDITIONAL SERVICES AGREEMENT - E-COMMERCE / GATEWAY**

- 11.1. **Services.** ISO will provide the transactional gateway services and related goods and services (the "Gateway Services") to Merchant as set forth in the Application. ISO and Merchant shall agree upon the equipment and services to initially be provided under this Agreement and may update and change the goods and services provided to Merchant by mutual consent.
- 11.2. **Limited License.** ISO hereby grants to Merchant a limited, revocable, worldwide, non-exclusive, non sub-licensable and non-transferable license under intellectual property rights owned or licensed by ISO, to use Gateway Services, provided however that:
 - a) such license is subject to all obligations and restrictions imposed on Merchant in this Agreement;
 - b) such license extends only to Merchant's employees and contractors, but only to the extent that such employees and contractors use the Gateway Services for the sole purpose of collecting payments on behalf of Merchant, and for no other purpose whatsoever;
 - c) such license extends only to Merchant's use of Gateway Services solely to perform the functions specified herein and in compliance therewith, and
 - d) while exercising such license, Merchant shall treat the Gateway Services as ISO's Confidential Information under this Agreement.
- 11.3. **Limitations on Rights Granted.** Except as expressly provided to the contrary in this Agreement, Merchant shall not, and shall not knowingly cause or permit any third party to use or reproduce Gateway Services. Merchant shall not, and shall not knowingly cause or permit any third party to disassemble, decompile, decrypt, extract, reverse engineer, or prepare a derivative work based upon the Gateway Services, or otherwise apply any procedure or process to Gateway Services in order to ascertain, derive, or appropriate for any reason or purpose, the source code or source listings for the Gateway Services, or any algorithm, process, procedure or other information contained in the Gateway Services. Except as expressly authorized herein, Merchant may not rent, lease, distribute, assign, sublicense, transfer, modify, alter, or time share the Gateway Services.
- 11.4. **Control Panel.**
 - 11.4.1. To access the Nuvei online reporting system ("Nuvei Control Panel"), Merchant shall provide a valid, working administrative email address and identify an "Administrator" to access the Nuvei Control Panel. Subsequent changes in the identity of the Administrator will require submitting additional documentation signed by the Administrator or a C-level executive of the Merchant. Nuvei recommends that the Administrator be a C-level executive of the Merchant. By electing to allow the Administrator access to the Nuvei Control Panel, Merchant hereby grants the Administrator full access/action permissions to Merchant's account(s) on the Nuvei Control Panel. Unless expressly requested by Merchant or the Administrator, the Administrator is the only person who is authorized on behalf of Merchant to define, allocate and manage the access of the Merchant's additional authorized users to the Nuvei Control Panel. This includes, but is not limited to, role management, requesting password re-allocation, and granting a shared log-in ("Administrator Permissions"). Merchant specifically authorizes the Administrator to appoint authorized users with Administrator Permissions without the need for further Merchant approval. Merchant is fully aware of the scope and potential consequences of such permission. When contacting Nuvei, the Administrator and authorized users with Administrator Permissions will be taken through security procedures to validate their identity.
 - 11.4.2. Account activation email shall be initiated by the Nuvei Control Panel directly by the Administrator and those users authorized by the Administrator. The Administrator and such authorized users shall be referred to jointly as "Authorized Users". Unless expressly waived by Nuvei, only company e-mail domain addresses are acceptable for Authorized Users (i.e. not Hotmail, Gmail, Yahoo, etc.). Generic email accounts (e.g., admin@merchantcompany.com) must be role-based and may not be an internal distribution group. Any changes to the identity of the Administrator must be made via the administrative email address provided. Password resets are only available by calling the Nuvei Technical Support Team. A password reset may only be initiated by the Administrator. The Administrator is authorized to perform a password reset for any Authorized User.
 - 11.4.3. Merchant shall not attempt, nor permit persons who are not identified herein, or by the Administrator, and confirmed by Nuvei as an Authorized User, to access the Nuvei Control Panel. Any action taken by an Administrator or an Authorized User while such person was logged into the Nuvei Control Panel shall be deemed to be authorized by the Merchant. Nuvei shall not be responsible for any loss occurring as a result of a failure to maintain access permissions or to keep those access permissions secure. Merchant shall be fully and solely responsible for the establishment and maintenance of procedures to ensure the control and confidentiality of access permissions and any account passwords. Merchant is solely responsible for terminating access permissions for an Administrator or Authorized User that is no longer authorized to access the Nuvei Control Panel because such person has left the company or otherwise. Merchant represents and warrants that it has in place, and shall continue to maintain and enforce, stringent security policies that address, amongst other things, the proper guidelines for authorized users to use the Nuvei Control Panel and how to retain and safeguard user IDs and passwords, such as periodical password changes, prohibition of usage of public computers/networks, and disablement of utilities/browsers that remember username/password.
 - 11.4.4. The Nuvei Control Panel is accessed through the internet which is a public system over which Nuvei has no control. Merchant fully agrees to use the Nuvei Control Panel at Merchant's sole risk.
 - 11.4.5. ANY PERSON WHO ENTERS THE CORRECT ACCOUNT IDENTIFICATION AND SECURITY VALIDATION AND VERIFICATION INFORMATION IN THE NUVEI CONTROL PANEL WILL BE ABLE TO ACCESS THE MERCHANT'S ACCOUNT. ANY TRANSACTION COMPLETED USING THOSE ACCESS PERMISSIONS WILL BE DEEMED AUTHORIZED BY MERCHANT. NUVEI SHALL HAVE NO LIABILITY FOR ANY LOSS OR DAMAGE THAT MAY OCCUR AS A RESULT OF ANY

UNAUTHORIZED ACCESS TO THE NUVEI CONTROL PANEL USING AN ADMINISTRATOR'S OR AUTHORIZED USER'S CORRECT ACCOUNT IDENTIFICATION AND SECURITY VALIDATION AND VERIFICATION INFORMATION.

- 11.4.6. Nuvei reserves the right to change the access guidelines and requirements to access the Nuvei Control Panel at any time and without notice. Nuvei may, at any time, suspend or otherwise restrict certain or all functionalities and/or access permissions including, but not limited to, instances in which Nuvei suspects unauthorized access or compromise of the account security.
- 11.5. ISO Marks. Subject to the limitations in this Agreement and subject to ISO's prior written approval, ISO grants Merchant the non-exclusive right and license to use ISO's Marks during the term of this Agreement solely in conjunction with the use of the Gateway Services. ISO grants no rights in the ISO Marks or in any other trademark, trade name, service mark, product designation, business name or goodwill of ISO, except as licensed hereunder or by separate written agreement of the parties. Merchant agrees that it will not at any time during and after this Agreement assert or claim any interest in or do anything that may adversely affect the validity of any ISO Marks or any other trademark, trade name, service mark, product designation, business name or goodwill belonging to or licensed to ISO (including, without limitation registering or attempting to register any ISO Mark or any such other trademark, trade name, service mark or product designation). During the term of this Agreement, Merchant agrees not to use any trademark, trade name, service mark, product designation or business name likely to create confusion with a trademark, trade name, service mark, product designation or business name of ISO, except for the ISO Marks expressly licensed hereunder. Upon expiration or termination of this Agreement, Merchant will immediately cease all display, advertising and use of all of the ISO Marks and will not thereafter use, advertise or display any trademark, trade name, service mark, product designation or business name which is, or any part of which is, likely to create confusion with any ISO Mark or with any trademark, trade name or product designation of ISO.
- 11.6. Intellectual Property. "Intellectual Property" means all of the following owned by a party hereto: (i) trademarks, service marks (registered and unregistered), trade names, product designations and business names and goodwill associated therewith; (ii) patents, patentable inventions, computer programs, and software; (iii) databases; (iv) trade secrets and the right to limit the use or disclosure thereof; (v) copyrights in all works, including software programs; and (vi) domain names. The rights owned by a party in its Intellectual Property shall be defined, collectively as "Intellectual Property Rights." Other than the express licenses granted by this Agreement, ISO grants no right or license to Merchant by implication, estoppel or otherwise to the Gateway Services or any Intellectual Property Rights of ISO. Each party shall retain all ownership rights, title, and interest in and to its own products and services (including in the case of ISO, in the Gateway Services) and all intellectual property rights therein, subject only to the rights and licenses specifically granted herein. ISO alone (and not Merchant) shall have the right, but not the obligation, to pursue trademark, service mark, copyright and patent protection, in its sole discretion, for the Gateway Services and any Intellectual Property Rights incorporated therein. Merchant will cooperate with ISO in pursuing such protection, including without limitation executing and delivering to ISO such instruments as may be required to register or perfect ISO's interests in any Intellectual Property Rights and any assignments thereof. Merchant shall not remove or destroy the proprietary, confidentiality, trademark, service mark, copyright or patent markings or notices placed upon or contained in any materials or documentation received from ISO in connection with this Agreement.
- 11.7. Merchant's Responsibilities. Merchant understands and acknowledges that Gateway Services are merely a processing conduit. ISO has no control of or responsibility for accepting, processing or filling any orders for purchases by Merchant's customers, or for handling any related inquiries. Merchant shall be fully and solely responsible for verifying the accuracy and completeness of all card transactions submitted and processed via Gateway Services, including determining the appropriate action to be taken for each such transaction (approve, void, reject or decline). ISO shall not be liable for any improperly processed transaction or illegal or fraudulent access to Merchant's gateway account. Merchant agrees and acknowledges that it shall be fully and solely responsible for all activities conducted through Gateway Services. Merchant shall be fully and solely responsible for the content and promotion of its website. Merchant represents and warrants that it is the owner and/or that it has full right and authority to disseminate all information, data, graphics, text, video, music or other intellectual property which forms part of its Web site, which is provided by Merchant to persons purchasing goods or services from Merchant, or which is used by Merchant in its advertising and promotion.
- 11.8. Third-Party Providers. If ISO uses third-party payment processing services providers, other than or in addition to ISO, Merchant shall verify ISO's list of payment processing services providers in order to determine if ISO can properly transmit the necessary Card information to Merchant's third-party providers. Merchant acknowledges that ISO's list can be modified from time to time and must be verified by Merchant prior to being set up with ISO. Merchant shall obtain the proper authorization from Merchant's other provider and/or settlement bank to be able to use Merchant's Account for key entry transactions and transactions being processed over the internet or online. Merchant shall be responsible for credits, returns, disputes and all costs associated with data transmissions. Merchant shall obtain accurate Card and ACH transaction information and authorization from its participating customers, and will transmit said information to ISO via the internet or service agreed upon by Merchant and ISO.
- 11.9. Merchant Obligations. (1) Merchant shall provide a valid, working administrative email address on enrolment. Any changes to Merchant's account must be made via the administrative email address provided upon enrolment. The security of Merchant's account is dependent in part upon Merchant maintaining the security of such administrative email address. Merchant shall be fully and solely responsible for any unauthorized changes to Merchant's account via this email address. (2) Merchant will be given an ID code and password to allow Merchant to have access to Gateway Services. Merchant shall be fully and solely responsible for the establishment and maintenance of procedures to insure the control and confidentiality of identification codes and passwords and other access procedures ("Codes"). FAILURE TO PROTECT THE CODES MAY ALLOW UNAUTHORIZED PARTIES TO ACCESS THE GATEWAY SERVICES.
- 11.10. Unauthorized Access Risk Mitigation. Merchant is required to put in place internal procedures to limit the risk of unauthorized access to the gateway services, including, but not limited to (a) changing the password at least once every 120 calendar days; (b) keeping every identification code under secure conditions; and (c) not keeping, in any form or in any place, any list of passwords. Merchant agrees to comply with any access or identification procedures and security protocols established from time to time by ISO, and if Merchant believes that any Code or security procedures has or may have become known by an unauthorized person (whether employed by Merchant or not), Merchant shall immediately notify ISO by telephone and confirm to ISO in writing such oral notification within 24 hours.
- 11.11. Authorizations. Merchant will obtain from each of its participating customers, the required payment information in proper form authorizing automatic debits to customers' bank accounts to transfer payment amounts to the Account. Merchant warrants that Merchant will properly warehouse all authorizations obtained from its participating customers and will provide such authorizations for inspection upon request by ISO or any regulatory body governing these types of transactions. Merchant hereby authorizes ISO to debit Merchant for fees and other charges as set forth in this Agreement.
- 11.12. Ownership. The ownership of the tokens created by ISO hereunder, if any, shall rest with ISO at all times.
- 11.13. Providing Gateway Services. During the term of this Agreement, ISO shall provide the Gateway Services and use its commercially reasonable efforts to provide the Gateway Services and maintain them in an uninterrupted and error-free fashion consistent with its practices in effect as of the date of this Agreement. However, the parties acknowledge that the Gateway Services are computer-network based and may be subject to outages and delays. In such an event, ISO shall use commercially reasonable efforts to diligently and promptly remedy any and all material interruptions. ISO will not be liable in any manner for any interruptions, outages, or other delays relating to the Gateway Services, including any attributed to ISO's vendors. ISO may arrange for any portion of the Gateway Services to be provided to Merchant by any of its parent, affiliate or subsidiary corporations, without any liability of such parent, affiliate or subsidiary to Merchant.
- 11.14. Indemnification. Merchant shall defend, indemnify, and hold harmless ISO and any of its officers, directors, agents and employees, from and against any and all claims, actions, proceedings and suits, and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including reasonable attorneys' fees and other litigation expenses) incurred by ISO, arising out of or relating to ("Claim"): (a) any breach or alleged breach by Merchant of any representation, warranty, or obligation of Merchant set forth in this Merchant Agreement; (b) any damage or loss caused by negligence, fraud, dishonesty or willful misconduct by Merchant or any of its employees, agents or customers; (c) the reliability, accuracy, or legitimacy of payment data or purchase orders submitted by Merchant to ISO; (d) Card transactions submitted by Merchant to ISO and rejected by ISO or ISO; (e) claims by Merchant's Cardholders, including, without limitation, claims relating to the disclosure of Data; (f) any alleged or actual violation by Merchant of Applicable Law; or (g) any fines and/or penalties charged or to be charged to ISO by the Card Brands or any other entity. Upon written notice from ISO to Merchant, Merchant shall immediately undertake the defense of any such Claim, by representatives of Merchant's own choosing, subject to ISO's reasonable approval; and/or reimburse ISO for any expense or loss arising from or relating to a Claim.
- 11.15. Limitation of Liability. MERCHANT AGREES AND ACKNOWLEDGES THAT USE OF GATEWAY SERVICES ARE AT MERCHANT'S SOLE RISK. ANY GATEWAY SERVICES, GOODS OR SOFTWARE PROVIDED HEREUNDER ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS, AND ISO GIVES NO OTHER EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, OR CONDITIONS OF ANY KIND, WHETHER STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO: WARRANTIES THAT THE GATEWAY SERVICES WILL BE COMPLETE, ACCURATE, SECURE, TIMELY, AVAILABLE, ACCESSIBLE, UNINTERRUPTED OR ERROR-FREE; IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE; OR THOSE ARISING BY OPERATION OF LAW, COURSE OF DEALING OR USAGE OF TRADE. MERCHANT UNDERSTANDS AND ACKNOWLEDGES THAT ISO SHALL NOT BE LIABLE FOR ANY IMPROPERLY PROCESSED OR AUTHORIZED TRANSACTION, OR ILLEGAL OR FRAUDULENT ACCESS TO MERCHANT'S GATEWAY ACCOUNT OR DATA. THIS DISCLAIMER OF WARRANTIES CONSTITUTES AN ESSENTIAL PART OF THIS MERCHANT AGREEMENT. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS MERCHANT AGREEMENT.
- 11.16. EXCEPT AS OTHERWISE PROVIDED IN THIS MERCHANT AGREEMENT, MERCHANT EXPRESSLY AGREES THAT ISO SHALL NOT BE LIABLE FOR ANY LOSS (HOWEVER ARISING, INCLUDING NEGLIGENCE), ARISING FROM OR RELATED TO: (A) MERCHANT'S FAILURE TO PROPERLY ACTIVATE, INTEGRATE OR SECURE ITS GATEWAY ACCOUNT; (B) IMPROPER, ILLEGAL, UNAUTHORIZED OR FRAUDULENT TRANSACTIONS PROCESSED THROUGH MERCHANT'S GATEWAY ACCOUNT; (C) DISRUPTION OF MERCHANT SERVICES, SYSTEMS, SERVER OR WEB SITE BY ANY MEANS, INCLUDING WITHOUT LIMITATION, DDOS ATTACKS, SOFTWARE VIRUSES, TROJAN HORSES, WORMS, TIME BOMBS, OR ANY OTHER TECHNOLOGY; (D) ACTIONS OR INACTIONS BY ANY THIRD PARTY, INCLUDING WITHOUT LIMITATION, A MSP OR BANK; OR (E) UNAUTHORIZED ACCESS TO (i) DATA, CARDHOLDER INFORMATION (INCLUDING CREDIT CARD NUMBERS AND OTHER DATA), TRANSACTION DATA OR PERSONAL INFORMATION BELONGING TO ISO, MERCHANT OR ANY THIRD PARTY OR (ii) THE GATEWAY SERVICES, OR ANY SYSTEM OR PROGRAM ASSOCIATED THEREWITH; OR (F) THE LIMITATION OF THE FUNCTIONING OF ANY GATEWAY SERVICES OR SOFTWARE, HARDWARE, OR EQUIPMENT ASSOCIATED THEREWITH. ISO MAKES NO REPRESENTATION, WARRANTY OR GUARANTEE WHATSOEVER IN RELATION TO THIRD PARTY PRODUCTS OR SERVICES (INCLUDING THOSE OF A MSP). MERCHANT'S USE OF ANY SUCH THIRD PARTY PRODUCTS OR SERVICES IS AT ITS OWN RISK. ISO ASSUMES NO RESPONSIBILITY AND EXPRESSLY DISCLAIMS ANY LIABILITY FOR CLAIMS OF LOSS AND/OR FRAUD INCURRED RESULTING FROM THE USE OF OR CONCLUSIONS DRAWN FROM ANY THIRD PARTY PRODUCT OR SERVICE, REGARDLESS OF WHETHER OR NOT ISO IS A RESELLER OF OR REFERRAL

AGENT FOR SUCH PRODUCT OR SERVICE.

- 11.17. Data Security Compliance. Merchant shall ensure that any of its agents or subcontractors to whom it provides Cardholder Information received from, created or received by Merchant on behalf of ISO, agrees to the same restrictions and conditions that apply through this Agreement to Merchant with respect to such information. Upon five (5) business days' notice or immediately upon any unauthorized access to, use or disclosure of any Cardholder Information, ISO may at its discretion, conduct an on-site audit and review of Merchant's procedures and systems.
- 11.18. Data Accuracy. Merchant shall provide ISO with data necessary for the electronic funds transfer ("collection data") in the form and at the times prescribed by ISO and shall make periodic checks and updates necessary to cause the collection data to be current and accurate at all times. The format and schedule requirements for delivery of collection data by Merchant may be changed by ISO during the term of this Agreement, and Merchant shall deliver collection data in conformity with changed requirements set forth from time to time by ISO. Merchant warrants to ISO that all data and entries delivered to ISO by Merchant will (a) be correct in form, (b) contain true and accurate information, (c) be fully authorized by its customer, and (d) be timely under the terms and provisions of this Agreement.
- 11.19. Use of Data. ISO shall have the right to use the data received from Merchant to help create, develop, operate, deliver, and improve its products, services, content and advertising, and for loss prevention and anti-fraud purposes.
- 11.20. Records. Merchant shall be solely responsible for compiling and retaining records of all transactional information for Merchant's records. Except as otherwise provided herein, ISO shall not have the obligation to store, retain, report or otherwise provide any copies of or access to any Data collected or processed by ISO or any of its suppliers. Merchant shall be solely responsible for all equipment, hardware and software required to access or use Gateway Services.
- 11.21. Fees. Merchant shall pay to ISO the fees listed in the Application, including all applicable taxes. ISO shall issue monthly invoices to Merchant in arrears. Merchant agrees to pay ISO for the Gateway Services via deduction of all fees and charges due directly from the Account via ACH. Merchant must review the invoices and inform ISO of any errors within 60 days of the date of the invoice. ISO will have no obligation to provide refunds for errors that the Merchant fails to report within such 60-day period.
- 11.22. Inconsistency. In the event of any inconsistency between the terms of this Part and any other terms and conditions of this Merchant Agreement, the provisions of this Part shall prevail.
- 11.23. Termination. The license to Gateway Services shall immediately terminate upon the earlier of: (i) termination of expiration of this Merchant Agreement; (ii) termination of the Gateway Services; or (iii) failure of Merchant to comply with any provisions of this Part. ISO may terminate Gateway Services for any reason with or without notice.
12. FOREIGN CURRENCY PROCESSING
- 12.1. Multi-Currency Processing Services (MCP). Multi-currency processing ("MCP") enables a Merchant to price its goods and services in various selected currencies (each an "Acceptance Currency") and the Cardholder then decides to purchase the goods and services in the currency of his/her choice (e.g. Euro) ("MCP Transaction"). The Cardholder provides the card details at the point of sale and completes the Transaction in the chosen Acceptance Currency (e.g. Euro). The Transaction is authorized and submitted to the Card Brands for clearing and settlement in the chosen Acceptance Currency. However, the Merchant receives settlement of the MCP Transaction in US Dollars in the same way as it receives settlement of other Transactions under the Merchant Agreement.
- 12.2. Acceptance Currencies. It is the Merchant's responsibility to set its prices in the various Acceptance Currencies. ISO can make available to the Merchant for download a daily currency exchange rate table. However, the Merchant can choose to set prices for its goods and services as it wishes, either by reference to such exchange rate table, or any other exchange rate source, or as localized pricing in a fixed amount in the Acceptance Currency (e.g. £29.99). MCP Transactions will be cleared through the applicable Card Brands in the selected Acceptance Currency. The MCP shall apply only to those Cards issued under the brands of Visa, Mastercard or such other Card Brands included within the MCP that are billed to the Cardholder in an Acceptance Currency.
- 12.3. Conversion of MCP transaction. The conversion of the MCP Transaction from the Acceptance Currency to US Dollars will be effected based upon a daily exchange rate table produced for the conversion of transactions from the involved Acceptance Currency to US Dollars, which is obtainable from ISO. Upon authorization of a MCP Transaction, the authorization message returned to the Merchant will contain the US Dollar amount into which that MCP Transaction will be converted to assist Merchants in reconciling their accounting. Merchant acknowledges that because of the fluctuation in currency exchange rates, localized pricing of goods and services in foreign Acceptance Currencies is likely to result in the Merchant receiving different amounts in US Dollars from day to day, which may be more or less than the typical US Dollar price of the Merchant's goods or services. This risk is reduced if Merchant uses the daily exchange rate table made available by ISO.
- 12.4. Termination or suspension. ISO reserves the right to add, delete or suspend any Acceptance Currency to or from the MCP, as the case may be, at any time without notice to Merchant. Further, ISO may terminate or suspend MCP services for any reason upon notice to the Merchant.
- 12.5. MCP Service Requirements. Merchant will comply with all reasonable instructions provided by ISO pertaining to Merchant's participation in MCP. Without limiting the foregoing, Merchant agrees to comply with the following specific MCP requirements:
- a) Disclosure of Foreign Currency Amount at Point of Sale: In order to comply with Card Brand regulations, the Merchant must display the amount of the MCP Transaction at the point of sale, including an Internet website buy page, in the various Acceptance

- Currencies that the Merchant wishes to offer, to enable the Cardholder to select the Acceptance Currency for the Transaction BEFORE providing his Card information for payment. Merchant agrees that it will at its sole cost use a point of sale device, or system which is certified or supported by ISO for use with the MCP.
- b) Disclosure of Foreign Currency Amount on Receipt: In accordance with Card Brand rules, all MCP Transaction receipts must show the amount of the Transaction in the correct Acceptance Currency chosen by the Cardholder and such amount must be preceded by the appropriate international currency symbol, or currency code for that Acceptance Currency.
- c) Timely Presentation of MCP Transactions: The Merchant must present all MCP Transactions for settlement to ISO within one day after authorization, in order to minimize the risk of loss attributable to movement in the currency exchange rates for the various Acceptance Currencies between the time that a Foreign Transaction is completed and the submission of the batch clearing and settlement files to ISO. For the avoidance of doubt, neither ISO nor any of its vendors bears responsibility for any foreign exchange loss attributable to an MCP Transaction processed using MCP.
- d) Credits>Returns: In the event that Merchant issues a credit, reflecting either the partial or complete return or reimbursement of a MCP Transaction, Merchant must process said credit in the Acceptance Currency. In determining the US Dollar amount of the credit to be deducted from the Merchant's account, ISO shall use the MCP exchange rate applicable on the date of presentation of the credit or return transaction by Merchant. Due to the differences in the currency exchange rates applied to the underlying MCP Transaction and the related credit respectively, Merchant acknowledges that the final amount of the US Dollars and could well be more. Merchant acknowledges that it will be responsible for the full amount of the credit, as set forth in the Merchant Agreement.
- e) Chargebacks: A Chargeback incurred in connection with a Foreign Transaction will be transmitted to ISO by the applicable Card Brand in the Acceptance Currency and converted by such Card Brand into US Dollars at the Card Brand's designated foreign exchange rate. Due to the variances in currency exchange rates applied to the underlying MCP Transaction and the related Chargeback respectively, Merchant acknowledges that the final amount of the Chargeback will differ from the original settlement amount received by the Merchant for the MCP Transaction in US Dollars and could well be more. Merchant acknowledges that it will be responsible for the full amount of the Chargeback, as set forth in the Merchant Agreement.
- f) Merchant Options: Merchant shall indicate which currencies it wishes to use as Acceptance Currencies by checking the applicable box in Schedule 1. Merchant can change options by written request to ISO not less than 30 days' notice.
- 12.6. Dynamic Currency Conversion (DCC):
- a) The Dynamic Currency Conversion enables certain of Merchant's customers, whose Cards are denominated in certain currencies ("Program Currency") other than US Dollars ("Foreign Cardholders"), to present a Card at Merchant's point-of-sale and to pay for a purchase in the currency of the Foreign Cardholder, based upon a rate of exchange determined by ISO, while Merchant receives settlement of the foreign transaction in US Dollars (collectively, a "Foreign Transaction").
- b) Merchant acknowledges and agrees that a Foreign Transaction will be converted to the Program Currency in which the Card is denominated based upon an exchange rate in effect at the time of authorization for retail transactions and that the Foreign Transaction, as converted, will be cleared through the "Card Brands" in the currency in which the Card is denominated. The DCC program shall apply only to those Cards issued by Visa, Mastercard or under the brands of such other Card Brands included within the DCC program that are billed to the Foreign Cardholder in a Program Currency. Additionally, DCC may not apply to credit-return transactions, or certain Foreign Transactions that are referred to ISO for authorization or otherwise authorized by Merchant via telephone. ISO reserves the right to add, delete or suspend any currency to or from the DCC program, as the case may be, at any time without notice to Merchant. Further, ISO may terminate or suspend DCC services for any reason upon notice to the Merchant.
- 12.7. DCC Service Requirements. Merchant will comply with all reasonable instructions provided by ISO pertaining to Merchant's participation in the DCC program. Without limiting the foregoing, Merchant agrees to comply with the following specific DCC requirements:
- a) Program Disclosure: Merchant agrees to comply with all instructions and specifications applicable to DCC as provided by ISO from time to time. Without limiting the generality of the foregoing, Merchant shall follow DCC program procedures, as may be amended by ISO from time to time.
- b) Foreign Cardholder Opt-In: Merchant shall provide Foreign Cardholders with the ability to "opt-in," or consent to participate in DCC. In the event that a particular Foreign Cardholder elects not to opt-in, it is understood that ISO will process that Foreign Cardholder's transaction in US Dollars. Merchant agrees to make such reasonable modifications as ISO may request to increase the likelihood of Foreign Cardholders opting-into the DCC program. It is understood that any Foreign Transaction for which Merchant fails to provide a Foreign Cardholder with the opt-in procedure as described herein may be subject to a Chargeback as defined in the Agreement.
- c) Timely Presentation of Foreign Transactions: Merchant acknowledges that the timely presentation of Foreign Transactions is necessary for participation in the DCC program. For the avoidance of doubt, Foreign Transactions must be presented within twenty-four (24) hours of the completion of the Foreign Transaction. Notwithstanding the foregoing, Foreign Transactions submitted by Merchants involved in the hotel, lodging and cruise industries must be submitted within twenty-four (24) hours of a Foreign Cardholder's checkout from the Merchant's establishment, failing which Merchant may be subject to additional charges.
- d) Credits>Returns: Unless Merchant uses point-of-sale technology that is not capable of processing credit-returns in the Program Currency in the manner required by ISO, a credit-return to a Foreign Cardholder's account, reflecting either the partial or complete

return or reimbursement of a Foreign Transaction, will be converted to the Program Currency using the exchange rate applicable on the date of presentment of the credit by Merchant, and that credit, as converted, will be cleared through the applicable Card Brand in the Program Currency in which the Card is denominated, and if such support is not in place, then such credit or return transaction will be processed in US Dollars, subject always to applicable Card Brand rules.

- e) Chargebacks: A Chargeback incurred in connection with a Foreign Transaction will be transmitted to ISO by the applicable Card Brand in the Program Currency and converted by such Card Brand into US Dollars at the Card Brand's designated foreign exchange rate. Given the potential variances in exchange rates applied to the underlying Foreign Transaction and Chargeback, Merchant acknowledges that the original amount of the Chargeback will likely differ from the original settlement amount received by the Merchant for the Foreign Transaction in US Dollars. Notwithstanding anything herein to the contrary, Merchant acknowledges that it will be responsible for the full amount of the Chargeback under the terms of this Merchant Agreement.
- f) Interchange cost Merchant agrees that any increased Interchange cost attributable to the increase in the price of the goods or services in US Dollars prior to its conversion by the

applicable service fee shall be borne by Merchant.

- 12.8. Indemnification. Merchant agrees to indemnify ISO, the Card Brands, and other card sponsors against any and all claims, demands, losses, damages, liability, actions, costs, judgments, arbitral awards and expenses (including reasonable attorneys' fees), to which ISO, , the Card Brands and other card sponsors may be subjected arising in whole or in part from the MCP and DCC services, any Card transaction involving Merchant, any act or omission of Merchant in connection with any such Card transaction, use of any third-party vendor, any breach of the Merchant Agreement by Merchant, or the Merchant's or any third-party vendor's violation of Applicable Law or Card Brand operating regulations, or any return of goods, price adjustment or other dispute with or claim by a Cardholder against Merchant (whether or not such Foreign Cardholder's claim is valid), including, but not limited to, claims or losses of any Cardholder or of any third party. Without limiting the generality of the foregoing or any other provision in this Merchant Agreement, Merchant agrees to be solely responsible for its actions in honoring or refusing to honor Cards and in retaining Cards in accordance with Card Brand merchant operating procedures; and Merchant will indemnify, defend and hold the Card Brands, ISO, and other members of the Card Brands harmless from any claim, loss or liability arising from any injury to persons, property or reputation which occurs as a result thereof.

SCHEDULE- DATA PROTECTION

1. Definitions

1.1 In this Data Protection Schedule the following words shall have the following meanings:

(a) **Controller, process, and processor** have the meanings given to them in the applicable Data Protection Law;

(b) **Data Subject** means an individual who is the subject of personal data;

(c) **Data Protection Law** means: (i) the General Data Protection Regulation ((EU) 2016/679) (GDPR); and (ii) any other laws, regulations and secondary legislation enacted from time to time in United States of America relating to data protection, the use of information relating to individuals, the information rights of individuals and/or the processing of personal data; and

(d) **Personal Data** means information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person.

1.2 Terms and expressions not defined in this Schedule shall have the meaning set out in the Merchant Agreement.

2. Compliance with data protection law

2.1. Merchant and Nuvei shall comply with the applicable Data Protection Law as it applies to personal data processed under this Agreement. This clause is in addition to, and does not relieve, remove, or replace, Merchant or Nuvei's obligations under the applicable regulation.

3. Data processing

3.1. Merchant and Nuvei agree and acknowledge that for the purpose of Data Protection Laws Merchant will be acting as a data controller and Nuvei will be acting as a data processor in respect of the Personal Data that is the subject of this agreement.

3.2. The Merchant is solely and wholly responsible for establishing and maintaining the lawful basis for the processing of personal data by Nuvei under this Agreement in order to fulfil its obligations and with respect to including (where applicable) the obtaining of all necessary consents from data subjects.

3.3. A description of the data processing carried out by Nuvei under this Agreement is set out in Part 1 of the Appendix to this Data Protection Schedule.

3.4. The Merchant acknowledges that aggregated, anonymized data may be created based on Personal Data. Data subjects are not identifiable from this data. This Data may be used and or shared with third parties for the purposes of billing, product enablement and build, testing or product improvement and for the purposes of replying to requests from public authorities.

3.5. The Merchant and Nuvei agree to ensure that all staff are appropriately trained in line with their responsibilities under applicable data protection law.

3.6. Data protection enquiries should be addressed to Nuvei's Data Protection Officer at privacy@nuvei.com

3.7. In respect of the personal data processed by Nuvei as a data processor acting on behalf of the Merchant under this Agreement, Nuvei shall:

(a) process the personal data only on the Merchant's written instructions, for compliance with legal obligations to which Nuvei is subject (in which case it shall, if permitted by such law, promptly notify the Merchant of that requirement before processing), and where processing is necessary for the purposes of the legitimate interests pursued by Nuvei including the prevention of fraud and the maintenance of information security (except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, or where the data subject is a child);

(b) ensure that it has in place appropriate technical and organizational measures to protect against unauthorized, unlawful or accidental processing, including accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to personal data, such measures in each case to be appropriate to the likelihood and severity of harm to data subjects that might result from the unauthorized, unlawful or accidental processing, having regard to the state of technological development and the cost of implementing any measures.

(c) ensure that persons engaged in the processing of personal data are bound by appropriate confidentiality obligations;

(d) keep a record of the processing it carries out, and ensure the same is accurate;

(e) comply with any lawful request from the Merchant requesting access to, copies of, or the amendment, transfer or deletion of the Personal Data to the extent the same is necessary to allow the Merchant to fulfil its own obligations under the Data Protection Law, including the Merchant's obligations arising in respect of a request from a data subject;

(f) notify the Merchant, except if otherwise prohibit by other applicable laws or regulation, if it receives any complaint, notice or communication (whether from a data subject, competent supervisory authority or otherwise) relating to the processing, the personal data or to either party's compliance with the Data Protection Law as it or they relate to this Agreement, and provide the Merchant with reasonable co-operation, information and other assistance in relation to any such complaint, notice or communication;

(g) notify the Merchant if, in its opinion, an instruction from the Merchant infringes any Data Protection Law (provided always that the Merchant acknowledges that it remains solely responsible for obtaining independent legal advice regarding the legality of its instructions) or Nuvei is subject to legal requirements that would make it unlawful or otherwise impossible for Nuvei to act according to the Merchant's instructions or to comply with Data Protection Law;

(h) ensure in each case that prior to the processing of any personal data by any sub-processor, terms equivalent to the terms set out in this Data Protection Schedule are included in a written contract between Nuvei and any sub-processor engaged in the processing of the personal data;

(i) subject always to the requirement of sub-clause 3.7(h) regarding a written contract, the Merchant hereby gives its prior written authorization to the appointment by Nuvei of each of the sub-processors or categories of sub-processors (as the case may be) who will process personal data listed in Part 2 of the Appendix to this Data Protection Schedule, and to the extent this authorization is in respect of a category of sub-processors, Nuvei shall inform the Merchant of any intended changes concerning the addition or replacement of other categories of sub-processors;

(j) For personal data collected in regards to European Union, only transfer the personal data outside of the European Union (including to the UK if it ceases to be a member of the European Union) if it has fulfilled one of the following conditions:

i. the Personal Data is transferred to a country approved by the European Commission as providing an adequate level of protection for Personal Data,

ii. the transfer is made pursuant to European Commission-approved standard contractual clauses for the transfer of Personal Data

iii. or other appropriate legal data transfer mechanisms are used.

The transfer of personal data may take place worldwide subject to the aforementioned arrangements. If the legal means by which adequate protection for the transfer is achieved ceases to be valid, Nuvei will work with the Merchant to put in place an alternative solution. The Merchant acknowledges that Nuvei may disclose the data to any applicable Acquirer, APMP, Card Scheme and their respective sub-processors, (including sub-processors located outside the EEA and such other entities to which it may be reasonably necessary to disclose and transfer personal data including the competent regulatory authority, law enforcement authorities and anti-terrorism or organized crime agencies to whom it is necessary to disclose data.

(k) inform the Merchant (and in any event within five business day of becoming aware of such an event) if any personal data processed under this Agreement is lost or destroyed or becomes damaged, corrupted, or unusable or is otherwise subject to unauthorized or unlawful processing including unauthorized or unlawful access or disclosure;

(l) inform the Merchant (and in any event within five (5) business days) if it receives a request from a data subject for access to that person's personal data and shall:

i. promptly provide the Merchant with reasonable co-operation and assistance in relation to such request; and

ii. not disclose the personal data to any data subject (or to any third party) other than at the request of the Merchant or as otherwise required under this Agreement;

(m) provide reasonable assistance to the Merchant in responding to requests from data subjects and in assisting the Merchant to comply with its obligations under Data Protection Law with respect to security, breach notifications, data protection impact assessments and consultations with supervisory authorities or regulators;

(o) subject to the requirements of commercial and client confidentiality, make available to the Merchant such information as is reasonably required to demonstrate compliance with this Data Protection Schedule and, subject to any other conditions set out in this Agreement regarding audit, allow for and contribute to audits, including inspections, of compliance with this Data Protection Schedule conducted by the Merchant or a professional independent auditor engaged by the Merchant. The following requirements apply to any audit:

i. the Merchant must give a minimum sixty (60) days' notice of its intention to audit;

ii. the Merchant may exercise the right to audit no more than once in any calendar year;

iii. commencement of the audit shall be subject to agreement with Nuvei of a scope of work for the audit at least ten (10) days in advance;

iv. Nuvei may restrict access to certain parts of its facilities and certain records where such restriction is necessary for commercial and/or client confidentiality;

v. the audit shall not include penetration testing, vulnerability scanning, or other security tests;

vi. the right to audit does not include the right to inspect, copy or otherwise remove any records, other than those that relate specifically and exclusively to the Merchant;

vii. any independent auditor will be required to sign such non-disclosure agreement as is reasonably required by Nuvei prior to the audit; and

viii. the Merchant shall compensate Nuvei for its reasonable costs (including for the time of its personnel, other than the client relationship manager) incurred in supporting any audit.

Appendix to the Data Protection Schedule

Part 1 – Description of the processing

Subject matter of the processing	The processing of personal data to the extent necessary for the provision of the services set out in this Agreement between Nuvei and Merchant.
Duration of the processing	The duration of the processing of personal data by Nuvei under this Agreement is the period of this Agreement and the longer of such additional period as: (i) is specified in any provisions of this Agreement regarding data retention; and (ii) is required for compliance with law.
Nature of the processing	Such processing as is necessary to enable Nuvei to comply with its obligations, pursue its legitimate interests, exercise its rights under this Agreement, and to comply with its statutory obligations, including collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure, or destruction.
Purpose of the processing	The performance of Nuvei's obligations, exercise of its rights under this Agreement, the pursuit of its legitimate interests, its compliance with statutory obligations, including the performance of functions required or requested by the Merchant.
Personal data types	Personal data provided to Nuvei by or on behalf of the Merchant, including personal data provided directly to Nuvei by a data subject or third party: (i) on the instruction or request of the Merchant; or (ii) on the request of Nuvei where Nuvei has been authorized to make such request by the Merchant or is legally required to make such request. The personal data processed under this Agreement will include (depending on the scope of Services provided): name; address; date of birth; gender; nationality; location; email address; billing address; address; Country; Country code; zip code; post code; user ID; telephone number; IP address, primary account number and associated card information (or similar number or code identifying an alternative payment method).
Categories of data subjects	Personal data related to individuals associated with the Merchant (including its past, current, and future shareholders and directors). Personal data related to individuals purchasing goods and/or services from the Merchant.
Obligations and rights of the controller	As set out in the Agreement.

Part 2 – Authorized sub-processors and categories of sub-processor

Authorized sub-processor / category of sub-processor	Description of the processing carried out by the sub-processor / category of sub-processor
Other members of the Nuvei Group and Affiliates	Any of the processing carried out by Nuvei
Nuvei's partners, service providers, affiliates and subsidiaries	Use of personal data in the provision of payments and ancillary services, chargebacks, the investigation of suspected incidents of fraud and other services necessary to support the provision of payment services.
Any applicable Acquirer, Alternative Payment Method Provider, Financial Institution, Card Scheme and their respective sub-processors, (including sub-processors located outside the EEA)	Use of personal data in the provision of payments and ancillary services, chargebacks, the investigation of suspected incidents of fraud and other services necessary to support the provision of payment services.
Compliance service providers	Use of personal data in the performance of checks to identify politically exposed persons, persons that are subject to sanctions and other checks required by laws to which Nuvei is subject.
Technology service providers used in the administration of payment, reconciliation and fraud services	Use of personal data to facilitate the provision of payment services (including ancillary services) and fraud services.