This Merchant Agreement ("Agreement" or "Merchant Agreement") is made between Nuvei Technologies Inc., Finality Holdings LLC (together with Nuvei, "Nuvei" or "Nuvei") 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 made out of Bank. 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 APMPs; 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 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 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 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, APMPs 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, refunds or chargebacks; and (6) 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 APMP.

"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.

"Recall 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., 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. Servicer shall be provided by Servicer in its sole discretion with respect to each Card Brand and APMP with which, and as far 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 Methods, i.e., Card, APMP, 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 remitted by Servicer, for all intended 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 the 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 or terminating in any Merchant’s behalf and for any reason, including but not limited to 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 for or specified by the Merchant and Servicer from time to time, 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, 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 change which may occurring regarding any documentation and Information it provided including but not limited with respect to the Merchant’s business (goods and services, trademarks 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 any other information, executing any required agreements, instruments and other certifications.

2.9.4. Essentially 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 entitled 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, SATISFACTORY QUALITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR USE, OR ACCURACY IN RELATION TO OR ARISING OUT OF OR IN CONNECTION WITH 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 to accept such Brands it will accept 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 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 Card Transaction or telephoned sale) for 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 location(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.

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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 in its face; (b) if a Cardholder has presented a Card, 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 using theembossing data, (ii) note the signature of the Cardholder 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 all applicable taxes) or deliver the goods or services ordered by the Cardholder 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) mark as 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 attempt 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 used to send a Cardholder’s Card to Merchant.

3.5. Retention and Retrieval of Cards. Merchant will use its best efforts, by reasonable and peaceful means, to recover a Lost or Stolen Card. Merchant will 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. No more than one 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 of a credit card company and/or merchant associations.

3.7. Telephone Orders, Mail Orders, Internet, Preauthorized Orders and Installment Orders. Unless Merchant has been approved by Servicer to accept mail, telephone or internet 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 Card Transactions accepted by mail, internet or telephone 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 record containing Cardholder’s signature, 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 a Transaction for which the Merchant did not obtain an Imprint or 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 not incurred in the amount paid. Regardless of the amount 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 regarding each Card Brand’s regulations may apply. Subsequent transactions are not cancellable, except in the case of non-cancelable 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 the sales slips and returned to Servicer. An acceptable approach is to place the note 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 thirty days prior to the change. Merchants shall not make 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 prepay and present a Transaction for the purpose of affecting a deposit to the Cardholder’s account.

3.11. Cash Advances; Scrub 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 scrp terminal, and either action will be grounds for Servicer’s immediate termination of this Agreement.


3.13. Deposit of Fraudulent Transactions. Merchant may not accept or deposit any fraudulent Transaction and shall not accept any Transaction which originated with any other merchant or any other source. Merchant will not deposit any Transaction on a Card with an altered, counterfeit or fraudulent signature. Merchant shall 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.

3.14. 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 allowed limit, invalid signature and any unauthorized cash in cash or preauthorized tender, submitting false Transactions to Servicer, obtaining extra credit from a Card Issuer by using transaction types of pre-authorization, purchase cancellation & purchase cancellation reversal, partial transaction completion cancellation & pre-authorization cancellation 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 of accepting Cards. Merchant 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 and/or Cardholder secure transaction methods such as SSL or 3-D Secure; install and maintain functional and up-to-date security practices; restrict and track employee access to data 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 card management usage 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 and other rules and regulations as well as any applicable laws and regulations related to data security, data integrity and the safeguarding of Cardholder Information including the Payment Card Industry Data Security Standard ("PCI") (https://www.pcisecuritystandard.org), 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.discoverworknetwork.com/merchants/data-security/disc.html), Mastercard’s Site Data Protection Program ("SDP") (http://www.mastercard.com/us/company/en/whatsnew/site_data_protection.html) and the American Express Data Security Requirements ("DSR")
a Card for the purchase or escrow; (m) accept a Card for manual cash disbursement; (n) accept a Card to collect or refinance existing debt that has been deemed uncollectible by the Merchant providing the associated goods or services; (o) enter into a Transaction the purpose or effect of which is to circumvent or otherwise violate the terms of this Agreement or to avoid any of its provisions; (p) change the Cardholder's name or account number on a charge or debit slip after the purchase of goods or services from Merchant; (q) disburse funds in the form of cash; (r) disburse funds in the form of checks; (s) disburse funds in the form of checks to a third party; and (t) disburse funds in the form of credit to a third party.

3.18. Merchant will notify Servicer immediately if it intends to (a) transfer or sell any substantial part of its total assets, or (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 any Merchant's approved monthly volume, average, or maximum ticket; (f) change its returns policy or to another fulfillment house different from those identified in the Merchant Identification; (g) change its Account. Merchant will notify Servicer promptly in writing if it becomes subject to any voluntary or involuntary bankruptcy proceeding, or if any involuntary petition is filed against it. Merchant will be deemed to have failed 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 rights and remedies provided for in 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 affecting Merchant which would substantially interfere with its ability to perform this Agreement or any provisions thereof in the future or to prevent or delay the performance of its obligations under this Agreement; (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 presented on behalf of any person not a party to 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 thereon and has been processed in accordance with all applicable rules, regulations and guidance and has 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.

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 Issuer for presentment against the Cardholder account. Merchant must provide Sales Drafts to Servicer 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 thereof and related documentation (and the credit of 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 presented by Servicer or to its processing vendor on the same or next business day. Servicer may, 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.

4.4. 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 any amounts 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 for any of the reasons. Merchant constitutes a chargeback or chargeback authorization, the Issuer or Issuer’s servicer 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 Drafts to Servicer or its processing vendor, if applicable. Merchant may change the amount of the Cardholder account but only to the extent that the Cardholder has elected to authorize the charge if Merchant fails to obtain the Card Imprint or the Cardholder’s signature. Merchant may not initiate a sale Transaction in an attempt to collect a
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 and from time to 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, and the Merchant has not provided alternative additional collateral 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 such collateral, and the Merchant has failed to provide such collateral within 3 Business Days after Servicer has given written notice to the Merchant that such collateral is required, or (iv) the 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.

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, 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, plus the period of any warranty, guarantee, and/or return policy on goods/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 shall request or cause to be transferred 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.

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 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 (the "Reserve Account") any amount sufficient to pay for such obligation of Merchant, in addition to any 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.

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, Credit Vouchers, fines, 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 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 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.

The Reserve Account will be separate from the Account. Merchant shall have no right to withdraw or withdraw the Reserve Account from the Reserve Account 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.

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 amount owed to Merchant or charged to Merchant's account under any arrangement, agreement, or contract by Servicer with Merchant. Servicer shall also have the right to offset against any other deposit account of the Merchant, any amount due to Servicer from the Account or any other deposit account of Merchant with another depository institution (including accounts of Merchant's principals, guarantors, and general partners if Merchant is a partnership), or any account of Merchant's, any and all deficiency deposits or other transactions conducted by Servicer, including, but not limited to, fines, fees, and any 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, in such amount as determined by Servicer in its sole and absolute discretion, that Merchant may be liable to customers or Servicer for Chargebacks, anticipated Chargebacks, fines, fees, or any other item described above in this Section, Servicer shall request or cause to be transferred 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.

d) Distributions from Reserve Account. If funds are not available in the Account, or if Servicer's determination as to the sole and absolute discretion that may be liable to Merchant is incorrect, or if any amount 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, in such amount as determined by Servicer in its sole and absolute discretion, that Merchant may be liable to customers or Servicer for Chargebacks, anticipated Chargebacks, fines, fees, or any other item described above in this Section, or if funds deposited in the Reserve Account have been reduced by Servicer, 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, 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 anticipated 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 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 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, that Merchant may be liable to customers or Servicer for Chargebacks, anticipated Chargebacks, fines, fees, or any other item described above in this Section, Servicer shall request or cause to be transferred 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.

f) Reserve Account After Agreement Terminates. Servicer may continue to hold or deposit funds in the Reserve Account, 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 anticipated 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 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 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, that Merchant may be liable to customers or Servicer for Chargebacks, anticipated Chargebacks, fines, fees, or any other item described above in this Section, or if funds deposited in the Reserve Account have been reduced by Servicer, 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.

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 a 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 notice to Merchant. Merchant may provide written notice of termination to Servicer at any time, but notice of termination by Merchant will not become effective until the end of the then-current renewal term.
advantage 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. Servicer reasonably determines that any of the following conditions exist:

- Merchant has violated any provision of this Agreement;
- there is a material adverse change in Merchant’s financial condition;
- if any case or proceeding is commenced by or against Merchant under any Bankruptcy Act, or any act or proceeding is commenced by or against Merchant to adjudicate Merchant’s bankruptcy, receivership or other debt relief;
- any information which Merchant provided to Servicer, including Application Form information, was false, incomplete or misleading when received by Servicer in the term of this Agreement. Merchant, this Agreement’s ratio of Chargebacks to total Transactions exceeding Card Brand requirements or 1%, or Chargebacks exceed 3% of any monthly dollar amount of total Transactions; an overdraft in the Account exists for more than thirty (30) days; or
- Merchant or any of Merchant’s employees or officers has been involved in Processing Transactions arising from fraudulent or otherwise unauthorized transactions;
- Merchant is or will be unable or unwilling to perform its obligations under this Agreement or Applicable Law; (ix) Merchant is failed to timely or accurate service; (x) Merchant fails to promptly or temporarily 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 were not true or accurate when given; (xii) Merchant has defaulted on any Agreement with which it has a relationship. 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 fifteen days of such service; (xv) 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; (xvi) any guaranty supporting Merchant’s obligations is revoked, withdrawn, terminated or altered in any way; (xvii) in the event of default, Servicer must, in any bankruptcy proceeding or otherwise, 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 under this Agreement that fraudulently or without authority or with intent to injure, Servicer will not reimburse Merchant for any such sums from amounts to be cleared and settled with Merchant.

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 bankrupt or files for similar bankruptcy, this Agreement may not be amended 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 the cause, Servicer may continue 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 to Credit Bureaus and the information may be used by Credit Bureaus.

6. Termination for Cause

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 activity or to ensure that Servicer has done its due diligence 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 transmittal of Sales Drafts and Credit Vouchers that are provided or approved in advance by Servicer, and Merchant may not use any forms or modes of transmittal with Card Transactions.

6.3. Indemnification. Merchant will defend, indemnify and hold Servicer, 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, without limitation, fines, fees or any other amounts charged or caused to be charged 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. 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, Merchants must maintain copies of checks, drafts, 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 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 rules and Merchant will be required to reimburse Servicer for any such chargeback. These fees, together with any service fees, represent a part of Servicer’s cost in providing services to Merchant. Merchant agrees that these fees, together with any service fees, are reasonable and customary in the amount charged by all merchants, including without limitation, the fees charged to merchant accounts for

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 of the Risk Fee, in which case the fee will also appear on Merchant’s monthly statements. A 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 sales volume, the following additional fees (if any) may apply:

- up to 100 additional fees are applicable 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 will pay the following fees: American Express Acceptance Agreement: Technical Modifications of Non-Compliance Fee: 0.75% of the 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. Non-Compliance Fee: 0.3% 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 Validation Fee from Merchant: (a) when charge volume is less than $1,000,000, a fee of $2,000 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 $2,000,000, a fee of $2,000 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. ISO will provide Merchant with monthly electronic statements reflecting the fees and charges paid by Merchant. Merchant acknowledges that 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 of its (a) Trading Agreements; (b) Trading Agreements; (c) accounts receivable and payment rights relating to or arising from this Agreement, including all amounts due Merchant (including any rights to receive and collect payments thereon); (d) all deposits, drafts, and other writings and instruments with respect to the foregoing; (e) all of the Merchant’s book and records relating to the foregoing; and (f) any and all other property, collateral, proceeds, and other assets of Merchant with respect to the foregoing. Servicer will have priority over any similar security interest in the same Collateral granted by Merchant to any third party. The Security Interest granted to Servicer hereunder shall continue in effect for a period of three (3) years after the expiration or cancellation of this Agreement.

6.10. Warranty Disclaimer. SERVICER MAKES NO WARRANTIES REGARDING THE USE, OPERATION OR PERFORMANCE OF SOFTWARE AND SYSTEMS UTILIZED FOR THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, REGARDING THE SERVICES IT PROVIDES HEREUNDER. SYSTEMS UTILIZED FOR THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, REGARDING THE SERVICES IT PROVIDES HEREUNDER. WITH REGARD TO THE ALLEGED LIABILITY WITHIN 30 DAYS AFTER ANY SUCH CLAIM IS MADE OR FILED AGAINST SERVICER FOR ANY LOSS, 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 SALESRAFT IN CONNECTION WITH THE TRANSACTION, LESS ANY APPLICABLE FEES AND CHARGES. IF THERE ARE ERRORS, OMISSIONS, INTERRUPTIONS OR DELAYS RESULTING FROM BANKS OR ISO’S PERFORMANCE OR ANY FAILURE TO PERFORM BANKS AND ISO’S AGREEMENTS HEREUNDER TO CONTACT SUCH ERRORS, IF COMMERCIALLY REASONABLE, NEITHER BANK NOR ISO SHALL BE LIABLE FOR ANY LOSS, DAMAGES, OR DAMAGES DAMAGES, OR DAMAGES ARISING OUT OF OR RESULTING FROM ANY ACT, OMISSION OR PAYMENT OF MERCHANT’S OBLIGATIONS UNDER THIS AGREEMENT. MERCHANT WAIVES ALL CLAIMS AGAINST SERVICER FOR ANY LOSS, CLAIM, DEMAND, PENALTIES, ACTION, DELAY, COST OR EXPENSE (INCLUDING REASONABLE ATTORNEYS’ FEES) OF ANY KIND UNLESS MERCHANT PROVIDES WRITTEN NOTICE TO SERVICER OF THE OCCURRENCE OF AN EVENT THAT GAVE RISE TO THE ALLEGED LIABILITY WITHIN 30 DAYS MERCHANT KNEW OR SHOULD HAVE KNOWN OF THE OCCURRENCE. IN ADDITION, MERCHANT IS SUBJECT TO MERCHANT’S CURE OR LIABILITY TOWARDS MERCHANT FOR ANY REASON WHATSOEVER SHALL NOT EXCEED THE AMOUNT OF FEES RECEIVED BY SERVICER PURSUANT TO THIS AGREEMENT OR MERCHANT’S CURE OR LIABILITY TOWARDS MERCHANT FOR ANY REASON WHATSOEVER SHALL NOT EXCEED THE AMOUNT OF FEES RECEIVED BY SERVICER PURSUANT TO THIS AGREEMENT.

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 the 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; Nuve Technology 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 personal jurisdiction of such courts. 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 personal jurisdiction of such courts. 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 personal jurisdiction of such courts.

6.16. Entire Agreement; Assignment. 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, delegated, or transferred in whole or in part by Merchant, nor may Servicer assign this Agreement to any third party 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 hereto and their respective 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 other charges shall be made to the Account maintained by Merchant at the bank designated by Servicer. Merchant hereby grants Servicer a security interest in the Account to the extent of any and all fees, payments, and other charges which may be assessed against the Account, and all amounts on deposit in the Account. 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. Merchant hereby grants Servicer a security interest in the Account to the extent of any and all fees, payments, and other charges which may be assessed against the Account, and all amounts on deposit in the Account.

6.18. Credit and Financial Inquiries; Additional Locations; Inspections. Servicer may, at its sole discretion, request additional locations and inspections.

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any time, any credit inquiries 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. No person other than a person who has 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 will accept Cards only at locations approved by Servicer. Additional requirements may be added by Servicer from time to time. 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 or perform any other actions 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 give Servicer the obligation to conform all aspects 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 guidelines 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 and 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 for any fashion except to perform obligations under this Agreement; (iii) take reasonable precautions 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 remediating 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 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, 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 applying only to Merchants with American Express Card acceptance

7.1. The following terms and conditions apply to Merchant’s participation in the American Express OpBlueSM 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 definitions as set forth in the Program. For purposes of the Program, “American Express” shall be deemed to mean American Express as defined 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/merchantguide, 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); (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 matching Merchants with Cardholders of a Card Brand, promoting the American Express Network, and important transactional or relationship communications from American Express. Merchant agrees that American Express may use the information obtained in Merchant’s applications 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 reserves the right to charge a marketing opt-out fee. If Merchant opts 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 those three (3) from any Merchant establishment agreements 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 based on 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 any purchase refunds on the American Express Card. If Merchant has exercised the right to do so. Merchant may be converted to 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 those three (3) from any Merchant establishment agreements 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 based on Merchant.

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 (including, but not limited to, fraud or other activities which do not comply with the Program), or (iv) on request of American Express. ISO and/or its affiliates may, from time to time, update its records to reflect any changes to this Agreement that relate to the Program. ISO may perform analytics and create reports, and for any other lawful business purposes, including matching Merchants with Cardholders of a Card Brand, promoting the American Express Network, and important transactional or relationship communications from American Express. Merchant agrees that American Express may use the information obtained in Merchant’s applications of setup to screen and/or monitor Merchant in connection with Card marketing and administrative purposes.

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 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 information about Merchants, as set forth in the American Express Technical Specifications.

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 BALMENT. 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. Balment. 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 shall commence on the date delivery shall be made and shall end upon: (i) notice 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 POSSIBILTY 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 ISO 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) 773-3346 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, 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, decompiler, 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 exercising to allow the Administrator access to the Nuvei Control Panel, Merchant hereby grants the Administrator full access and permissions to Merchant’s account(s) on the Nuvei Control Panel. Unless expressly requested by the Merchant or the Administrator, the Administrator will be 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 resets, and deactivating a shared login (“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 must acknowledge and agree to a “Nuvei: Terms of Use”, which includes, but is not limited to, waiving any rights to the source code or source listings for the Gateway Services, 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 and only 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 designed to ensure the security of access permissions and any associated 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 interval 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 ACTIVATION COMPUTED 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
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, non-transferable right of use of the ISO Marks solely in connection 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, business name abbreviation, or any of the trademarks, service marks, trademarks, 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 other such 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 a 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, patent applications, patent rights, and extensions or renewals thereof; (iii) copyrights, software; (iv) processes, designs; (v) trade secrets and the right to limit the use or disclosure thereof; (vi) copyrights in all works, including software programs; and (vii) domain names. The rights owned by a party in its Intellectual Property shall be protected in the United States and all other countries from which ISO or ISO, and their respective licensors, derive substantial benefit. Merchant shall be fully and solely responsible for ensuring that any 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 specifically granted herein. ISO (alone and not Merchant) shall have the right, but not the obligation, to pursue enforcement of its Intellectual Property mark, copyright, trademark, patents, trade secrets, and other proprietary rights 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, by executing such documents or agreements 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 Trademark Rights of ISO. Merchant agrees to comply with any access policies, 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 over or responsibility for accepting, processing or filing any orders for products or services handled by the Merchant for handling any related inquiries. Merchant shall be fully and solely responsible for verifying the correctness and completeness of all card transactions submitted and processed. Gateway Services, including determining the appropriate action to be taken for each such transaction. Merchant must review, void, reject, and/or decline any transaction not in accordance with any set of parameters for fraud or security, including but not limited to ISO’s anti-fraud guidelines. Merchant must not be liable for any improperly processed transaction or illegal or fraudulent access to Merchant’s gateway account. Merchant acknowledges and agrees that it shall be fully and solely responsible for all activities conducted through the Gateway Services. Merchant shall obtain an 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.

11.8. 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 payment services provider. Merchant acknowledges that ISO’s list of payment processing services providers may 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/orissent bank to be able to accept payment for card payments and to authorize any and all transactions being processed over the internet or online. Merchant shall be responsible for credits, refunds, disputes, and all costs associated with data transmission and any inaccuracies which result from an inaccurate 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 valid, working administrative email address on enrolment. Any changes to Merchant’s account must be made via the administrative email address. If no administrative email address appears on Merchant’s account, the account is defunct 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 for its own personnel. Merchant acknowledges that ISO 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 an updated, current document containing complete account details 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 any action or instructions concerning access to the Gateway Services submitted in or after any such notice. Any personal identification or other passwords that have or may have become known to 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 authorization prior to authorizing any customers’ bank accounts to transfer payment amounts to the Account. Merchant warrants that ISO 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 and ISO authorizes Merchant 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 by any parent,subsidiary or other affiliated companies, without any liability of such parent, subsidiary or 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 in connection with any claim: (a) arising out of or relating to Merchant’s Breach of this 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 for any reason; (e) claims by ISO’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 Networks or any other entity. Upon written notice from ISO to Merchant, Merchant shall immediately undertake the defense of all persons or entities representing or acting on behalf 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 EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES THAT THE GATEWAY SERVICES WILL BE COMPLETE, ACCURATE, SECURE, TIMELY, AVAILABLE, ACCESSIBLE, UNINTERRUPTED OR ERROR-FREE. IMPORTANT: Warranties, Representations, or Conditions of Any Kind, Express or Implied, Including, Without Limitation, ANY WARRANTY OF 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 RESULTING FROM: (A) MERCHANT’S FAILURE TO INTEGRATE OR SECURE ITS GATEWAY ACCOUNT; (B) IMPROPER, ILLEGAL, UNAUTHORIZED OR FRAUDULENT TRANSACTIONS PROCESSED THROUGH MERCHANT’S GATEWAY ACCOUNT, OR THROUGH 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 INJUNCTIONS BY ANY THIRD PARTY, INCLUDING BUT NOT LIMITED TO ANY ACTUAL OR IMPLIED AUTHORIZED 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 SERVER OR ANY OTHER GATEWAY COMPONENT OR FUNCTION THEREOF. 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 PRODUCT OR SERVICE IS AT MERCHANT’S OWN RISK. MERCHANT ASSUMES ALL RESPONSIBILITY AND EXPRESSLY DISCLAIMS ANY LIABILITY FOR CLAIMS OF LOSS AND/OR FRAUD INCURRED RESULTING FROM THE USE OF OR CONCLUSIONS DRAWN FROM MERCHANT’S USE OF THIRD PARTY PRODUCTS OR SERVICES REGARDLESS OF WHETHER OR NOT ISO IS A RESELLER OF OR REFERRAL

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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 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 updates and uploads 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 for ISO’s 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 in other currency exchange rate tables, or as local 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 affected based upon a daily exchange rate table produced for the conversion of transactions from the involved Acceptance Currency to US Dollar, which is obtained from ISO. Upon presentation 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 accounts. 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 Transaction.

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 Presentment of MCP Transactions: The Merchant must present all MCP Transactions 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 file 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 presentment 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 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 into US Dollars by ISO. Merchant will be charged for a Foreign Transaction at the 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 credit or return transaction by Merchant will be different. Further, ISO may terminate or suspend MCP services for any reason upon notice to the Merchant.

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 at least 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 the 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 be only to certain foreign cards and the Foreign Transaction shall be referred to ISO for authorization or otherwise authorized by Merchant via telephone. ISO reserves the right to add, delete or suspend any currency or to from the DCC program, as the case may be. 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 does not opt-in, 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.

c) Timely Presentment of Foreign Transactions: Merchant acknowledges that the timely presentment 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 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: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-to-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 reply 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 that 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 prohibited 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;

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-terrorist or organized crime agencies to whom it is necessary to disclose data.

(k) 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;

(n) 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

<table>
<thead>
<tr>
<th>Subject matter of the processing</th>
<th>The processing of personal data to the extent necessary for the provision of the services set out in this Agreement between Nuvei and Merchant.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duration of the processing</td>
<td>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.</td>
</tr>
<tr>
<td>Nature of the processing</td>
<td>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.</td>
</tr>
<tr>
<td>Purpose of the processing</td>
<td>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.</td>
</tr>
<tr>
<td>Personal data types</td>
<td>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).</td>
</tr>
<tr>
<td>Categories of data subjects</td>
<td>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.</td>
</tr>
<tr>
<td>Obligations and rights of the controller</td>
<td>As set out in the Agreement.</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Authorized sub-processor / category of sub-processor</th>
<th>Description of the processing carried out by the sub-processor / category of sub-processor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other members of the Nuvei Group and Affiliates</td>
<td>Any of the processing carried out by Nuvei</td>
</tr>
<tr>
<td>Nuvei’s partners, service providers, affiliates and subsidiaries</td>
<td>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.</td>
</tr>
<tr>
<td>Any applicable Acquirer, Alternative Payment Method Provider, Financial Institution, Card Scheme and their respective sub-processors, (including sub-processors located outside the EEA)</td>
<td>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.</td>
</tr>
<tr>
<td>Compliance service providers</td>
<td>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.</td>
</tr>
<tr>
<td>Technology service providers used in the administration of payment, reconciliation and fraud services</td>
<td>Use of personal data to facilitate the provision of payment services (including ancillary services) and fraud services.</td>
</tr>
</tbody>
</table>