This Merchant Agreement contains the terms and conditions under which Servicer, defined herein below, and/or other third parties will provide services to you (the "Merchant") and includes the Merchant Agreement signed by Merchant. For the purposes of this Agreement, Nuvei Technologies shall be referred to hereinafter as "ISO".

PART ONE: CARD ACCEPTANCE – TERMS AND CONDITIONS APPLICABLE TO MERCHANTS ACCEPTING VISA, DISCOVER, MC, TRAVEL RELATED SERVICES COMPANY, UNIONPAY AND ANY OTHER CARD

Subject to the requirements of applicable Card Brand rules, ISO and Wells Fargo Bank, N.A. may allocate their respective duties and obligations between themselves as they deem appropriate at their sole discretion, and ISO or Wells Fargo Bank, N.A. may jointly or individually assert or exercises the rights or remedies provided to the Servicer hereunder. For purposes of Part One of this Agreement, Wells Fargo Bank, N.A. and ISO are collectively referred to hereinafter as the "Servicer".

ARTICLE I - DEFINITIONS

1.1 "Account" means a commercial checking or demand deposit account maintained by Merchant referred to in Section 5.16 for the crediting of collected funds and the debiting of fees and charges under this Agreement.

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

1.3 "Agreement" means the Application Form, these terms and conditions, any supplementary documents referenced herein, and valid schedules and amendments to the foregoing.

1.4 "American Express" means the Cards bearing the Marks of, and Card Brand operated by, American Express Travel Related Services Company, Inc. or its affiliates.

1.5 "Application Form" or "Merchant Application" means the ISO application form completed by the Merchant.

1.6 "Authorization" means a computerized function or a direct phone call to a designated number to examine individual Transactions to obtain approval from the Card Issuer to charge the Card for the amount of the sale.

1.7 "Card" means (i) a valid credit card in the form issued under license from Visa U.S.A., Inc., Visa International, Inc., Discover, MasterCard International, Inc., American Express, or UnionPay; or (ii) any other valid credit card accepted by Merchant by agreement with Servicer.


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

1.10 "Card Not Present (CNP)" means that an Imprint of the Card is not obtained at the point-of-sale.

1.11 "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 the Cards.

1.12 "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 bank account number.

1.13 "Chargeback" means the procedure by which a Sales Draft (or disputed portion thereof) is returned to Servicer by a Card Issuer because such item does not comply with the applicable Card plan's operating regulations.

1.14 "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.

1.15 "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.

1.16 "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 Schedule A.

1.17 "mPOS" means any mobile point of sale, including smartphones, tablets, or any other dedicated wireless devices that perform the functions of a cash register or electronic point of sale terminal.

1.18 "ISO Marks" means the names, marks, designs, slogans, signs, acronyms and other insignia (whether registered or unregistered) used or to be used by ISO including all variations thereof and amendments thereto from time to time.

1.19 "Public Announcement" means disclosure in a press release reported in the associated press or comparable national news service or in a document publicly filed by ISO.

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

1.21 "Transaction" means any sale of products or services, or credit for such, from a Merchant for which the Cardholder makes payment through the use of any Card and which is presented to Servicer for collection.

1.22 "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.

ARTICLE II - CARD ACCEPTANCE

2.1 Honoring Cards.

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

Merchant may not require any Cardholder to pay as a surcharge any part of any discount or charge imposed upon Merchant by this Agreement, whether through any increase in price or otherwise require a Cardholder to pay any charge or price as a condition of sale that is not also required from a customer paying cash. Notwithstanding the foregoing sentence, Merchant may impose a surcharge on certain Card Transactions, but only where permitted by federal law, state law and the Card Brand rules. Merchant (and not Servicer) is solely responsible for ensuring that it is permitted by federal law, state 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 prohibited practice including, but not limited to, the following: (i) a discount of any kind (other than a mail, internet, telephone order, or preauthorized sale to the extent permitted under this Agreement) if the person seeking to charge the purchase to his or her Card account does not present the Card to permit Merchant to compare the signature on the signature to the signature on the Sales Draft and obtain an Imprint or otherwise use the physical Card to complete the Transaction.

2.2 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 trade name, trademark, service mark or logo type ("Marks") associated with a Card is limited to informing the public that the Card will be accepted at Merchant's place(s) of business. Merchant's use of Marks is limited to informing the public that the Card will be accepted at Merchant's place(s) of business. Merchant's use of 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 termination thereof. Merchant may not use any promotional materials or Marks associated Visa, American Express, Discover, MasterCard and UnionPay in any way which suggests or implies that either endorses any goods or services other than payment Card services. Merchant is required to display UnionPay service hotline at Merchant's place of business.

2.3 Card Acceptance.

When accepting a Card, Merchant will follow the steps provided by Servicer for accepting Cards and will: (a) determine in good faith and to the best of its ability that the Card is valid on its face; (b) obtain Authorization from the Card Issuer to charge the Cardholder's account; (c) unless the Sales Draft is electronically generated or is the result of a mail, internet, phone or preauthorized order, (d) obtain an Imprint of the Card including embossed data from the merchant imprinter plate; and (e) obtain the Cardholder's signature on the Sales Draft and compare that signature to the signature on the Card; (f) enter a description of the goods or services sold and the price thereof (including any applicable taxes); (g) deliver a true and complete copy of the Sales Draft to the Cardholder at the time the goods are delivered or services performed, or, if the Sales Draft is prepared by a point-of-sale terminal, at the time of the sale; (f) offer the Sales Draft to the Cardholder for purchase according to Servicer's procedures and the terms of this Agreement; and (g) make a Card Imprint, if the Transaction is not based upon a mail, internet, phone or preauthorized order.

2.4 Authorization.

Merchant will obtain an Authorization for all Card sales. If Merchant cannot, for any reason, obtain an electronic Authorization through the use of a terminal, Merchant will request a Voice Authorization from Servicer's designated authorization center and will legibly print the authorization number on the Sales Draft. Merchant will not obtain or attempt to obtain authorization from Servicer's authorization center unless Merchant intends to submit to Servicer a Transaction for the authorized amount if Authorization for the Transaction is given. Merchant may not divide a single Transaction between 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 the Merchant Agreement, nor shall a third party not included in the agreement be allowed to use them. Merchant acknowledges that an Authorization provides only that the Cardholder account has sufficient credit available to cover the amount of the current sale and that an Authorization is not a guarantee that the Transaction will not be subject to dispute or Chargeback and does not warranty the Cardholder's identity. Merchant may not attempt to obtain an Authorization by successively decreasing the sale amount. Servicer may refuse to purchase or process any Sales Draft presented by Merchant: (a) unless a proper Authorization or approval code has been recorded on the Sales Draft; (b) if Servicer determines that the Sales Draft is or is likely to become uncollectible from the Cardholder to which the transaction would otherwise be charged; or (c) if Servicer has reason to believe that the Sales Draft was prepared in violation of any provision of this Agreement. Merchant will use, and may not circumvent, fraud identification tools requested by Servicer, including Address Verification System processing and CV2/CVC2/CID processing, and acknowledges that the use of these tools may prevent Merchant from accepting certain Cards as payment. Merchant acknowledges that the use of fraud identification tools may not prevent fraudulent Card usage, and agrees that any fraudulent Transaction may ultimately result in a Chargeback, for which Merchant retains full liability under this Agreement.

2.5 Retention and Retrieval of Cards.
Merchant Agreement

Merchant will use its best efforts, by reasonable and peaceful means, to retain or recover a Card when it believes such actions are necessary for the safety or security of the Merchant or any other source other than Transactions arising from bona fide purchases from Merchant or any other source other than Transactions arising from a Cardholder's personal or relative transactions, and will hold Merchant 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.

2.6 Multiple Transaction Records; Partial Consideration.
Merchant may not prepare more than one Sales Draft for a single sale or for a single item but will include all items of goods and services purchased in a single Transaction in the total amount on a single Sales Draft except under the following circumstances: (a) for purchases in separate departments of a multiple department store; (b) for partial payment, installment payment, delayed delivery or an advance deposit; or (c) for delayed or amended charges governed by rules for travel and entertainment merchants.

2.7 Telephone Orders, Mail Orders, Internet, Preauthorized Orders and Installment Orders.
Unless Merchant has been approved by Servicer to accept mail, internet or telephone orders, Merchant warrants that it is a walk-in trade business, located in a retail business place where the public moves in and out freely in order to purchase merchandise or obtain services. If Servicer determines Merchant has accepted unapproved Card Transactions which are placed by telephone, generated through telephone solicitation, mail order or other means that does not create a Sales Draft that bears the Card Imprint and Cardholder’s signature, this Agreement will be immediately terminated and the value of all Sales Drafts collected from the first day of processing may be charged back to Merchant and all funds therefrom held as provided in Article IV. Unless approved by Servicer, this Agreement does not contemplate regular acceptance of Cards for sales accepted by mail, internet or telephone nor through preauthorized orders. If an occasional Card Transaction is made by mail, phone or preauthorized order, the Sales Draft may be completed without the Cardholder's signature or an Imprint, but in such case Merchant will create a slip containing Cardholder data, an Authorization number, the sale amount and the letters “MO”, “TO” or “PO” with the appropriate. Receiving from the Cardholder the fee for Card transactions on any Transaction for which the Merchant did not obtain an Imprint or the Cardholder’s signature.

2.8 Lodging and Vehicle Rental Transactions.
Merchant must estimate and obtain Authorization for the amount of the Transaction based upon the Cardholder’s intended length of stay or rental. Additional Authorization must be obtained and recorded for charges actually incurred in excess of the estimated amount. Regardless of the terms and conditions of any prior preauthorization, the Sales Draft for any amount of 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 informing the terms and conditions of its preauthorization form through means other than a Card Transaction.

2.9 Returns and Adjustments; Credit Vouchers.
Merchant’s policy for the exchange or return of goods sold and the adjustment for services rendered will be established and posted in accordance with operating regulations of the applicable Card Brand’s regulations. Merchant will disclose, if applicable, to a Cardholder before a Card sale is made, that if merchandise is returned: (a) no refund, or less than a full refund, will be given; (b) returned merchandise will only be exchanged for similar merchandise of comparable value; (c) only a credit toward purchases will be given; or (d) special conditions or circumstances apply to the sale (e.g., late delivery, delivery charges, or other non-credit terms). If Merchant does not make these disclosures, a full refund in the form of a credit to the Cardholder’s Card account must be given. Disclosures must be made on all copies of Sales Drafts or invoices in letters approximately 1/4” high in close proximity to the space provided for the Cardholder’s signature or on an invoice issued at the time of the sale or on an invoice being presented for the Cardholder’s signature. Any change in Merchand’s return or cancellation policy must be submitted in writing to Servicer not less than 14 days prior to the change. If any Transaction is completed without the Cardholder’s signature or an Imprint, but in such case Merchant will create a slip containing Cardholder data, an Authorization number, the sale amount and the letters “MO”, “TO” or “PO” with the appropriate. Receiving from the Cardholder the fee for Card transactions on any Transaction for which the Merchant did not obtain an Imprint or the Cardholder’s signature.

2.10 Cash Payments.
Merchant may not receive any payments from a Cardholder for charges included in any Transaction resulting from the use of any Card or receive any payment from a Cardholder to prepare and present a Transaction for the purpose of affecting a deposit to the Cardholder’s Card account.

2.11 Cash Advances, Scrip Purchases.
Merchant may not deposit any Transaction for the purpose of obtaining or providing a cash advance either on Merchant’s Card or the Card of any other merchant and may not accept any Card at a scrip terminal, and either action will be grounds for Servicer’s immediate termination of this Agreement.

2.12 Duplicate Transactions.
Merchant may not deposit duplicate Transactions. Servicer may debit Merchant for any adjustments for duplicate Transactions and Merchant is liable for any Chargebacks resulting therefrom.

2.13 Deposit of Fraudulent Transactions.
Merchant may not accept or deposit any fraudulent Transaction and may not under any circumstances present for processing or credit, directly or indirectly, a Transaction which originated with any merchant or any other source other than Transactions arising from bona fide purchases for Merchant for the goods and services for which Merchant has been approved under this Agreement. If Merchant deposits any prohibited Transaction, Servicer may: (a) immediately terminate this Agreement; (b) withhold funds and demand an escrow as provided in this Agreement; (c) report Merchant to Visa, American Express, Discover, MasterCard and UnionPay under Section 4.04. Merchant’s employees’ actions are chargeable to Merchant under this Agreement.

2.14 Merchant violations.
The following actions are prohibited for Merchant: (i) alteration of the amount on transaction receipts, split transactions, cash out, acceptance of credit cards listed in the card recovery bulletin, excessive usage above the authorized limit, insufficient signature and expire date checking, refund in cash, late presentation, submitting false transactions to Acquirer, obtaining extra credit from a Card Issuer by using transaction types of pre-authorization, purchase cancellation & purchase cancellation reversal, preauthorization completion cancellation & pre-authorization completion cancellation reversal etc.

2.15 Collection of Pre-existing Debt.
Merchant may not prepare and present to Servicer any Transaction representing the refinancing of an existing Cardholder obligation including, but not limited to, obligations: (a) previously owed to Merchant or any other source other than Transactions arising from a Cardholder’s personal or relative transactions, and will hold Merchant 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.

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business purposes, including some non-marketing communications purposes within the parameters of Card Brand Card acceptance, and transactional or relationship communications from a Card Brand. A Card Brand may use the information about Merchant obtained in this Agreement at the time of setup and/or monitor Merchant in connection with the Card Brand marketing and administrative purposes. Merchant agrees it may receive messages from a Card Brand, including important information about Card Brand products, services, and resources available to its business. These messages may be sent to the mailing address, phone numbers, email addresses or fax numbers of Merchant. Merchant may also be contacted via a wireless telephone number and the communications sent may include automated short message service (SMS or "text") messages or automated or prerecorded calls. Merchant agrees that it may be sent fax communications.

2.16 Compliance with Card Brand Rules. Merchant will comply with and conduct its Card activities in accordance with all applicable Card Brand rules and regulations. Failure to comply with such rules and regulations may result in Merchant being terminated for cause and listed on various Card Brand and industry databases, including the Consortium Member Negative File (CMNF), the Chargeback or Dispute Database (Card Brand-Owned), if any, and the Merchant Alert to Control High Risk Merchants file ("MATCH"). Merchant may not: (a) accept Cardholder payments for previous Card charges incurred at the Merchant location; (b) establish a minimum or maximum transaction volume, average, or maximum ticket; (c) change its return policies or to another fulfillment house different from those identified in Merchant Application; or (d) change to its Account . Merchant may not (e) change its Account or add any tax to transactions, unless applicable law expressly requires that Merchant be permitted to impose a tax (any tax change must be communicated to Servicer at least 30 days prior to implementation); (f) add any tax to transactions, unless applicable law expressly requires that Merchant be permitted to impose a tax (any tax change must be communicated to Servicer at least 30 days prior to implementation); (g) any joint venture, partnership or similar business arrangement whereby any person or entity not a party to this Agreement participates in or controls Merchant's business or otherwise substantially impairs its right to carry on its business as now conducted or adversely affect its financial condition or operations; (e) each Sales Draft presented to Servicer is genuine and is not the result of any fraudulant or prohibited Transaction or is not being deposited on behalf of any business other than Merchant as authorized by this Agreement; (f) each Sales Draft is the result of a bona fide Transaction for the purchase of goods or service from Merchant by the Cardholder in the total amount stated on the Sales Draft; (g) Merchant has performed or will perform all of its obligations to the Cardholder in connection with the Card Transaction evidenced thereby; (h) Merchant has complied with Servicer's procedures or rules; (i) the Card Transaction itself does not involve any element of credit for any other purposes other than as set forth in this Agreement, and is not subject to any defense, dispute, offset or counterclaim which may be raised by any Cardholder under the Card Brands' rules; (j) Merchant has complied with the Consumer Credit Protection Act, 15 USC §1601 et seq. and all relevant state or federal statutes or regulations; and (k) any Credit Voucher which issues represents a bona fide refund or adjustment on a Card sale by Merchant with respect to which a Sales Draft has been accepted by Servicer.

ARTICLE III - PRESENTMENT, PAYMENT, CHARGEBACK

3.1 Acceptance. Merchant will accept from Servicer all Sales Drafts delivered by Merchant under the terms of this Agreement and will present the same to the appropriate Card Issuers for collection against Cardholder accounts. Merchant must transmit Sales Drafts and Credit Vouchers to Servicer or its processing vendor on the same or next business day immediately following the day that such Sales Drafts and Credit Vouchers have been originated. All presentment and assignment of Sales Drafts, collection therefor and reassignment or rejection of such Sales Drafts are subject to the terms of this Agreement and regulations of the Card Brand. 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 did not receive final payment.

3.2 Endorsement. By presenting Sales Drafts to Servicer for collection and payment, Merchant agrees to sell and assign all its right, title and interest in each Sales Draft completed in conformity with Section 2.03 and any other card account data in compliance with all applicable standards and procedures and constitutes an endorsement by Merchant to Servicer of such Sales Drafts. Servicer may supply such endorsement on Merchant's behalf.

3.3 Prohibited Payments. Servicer may receive payment of any Sales Draft presented by Merchant and paid by Servicer unless and until there is a Chargeback. Unless specifically unauthorized in writing by Servicer, Merchant may not collect or attempt to collect any Sales Draft, including Chargebacks, and will hold in trust for Servicer and promptly deliver in kind to Servicer any payment received, 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.

3.4 Chargebacks. Merchant will accept for chargeback any sale for which the Cardholder disputes the validity of the sale according to prevailing Card Brand regulations, or a Card Issuer or Servicer determines that Merchant has in any way failed to comply with Card Brand regulations or Servicer's procedures in accepting a Card and presenting the resulting Sales Draft to Servicer for purchase. Section 2.03 notwithstanding, Servicer may charge back the amount of a Card sale for which the Cardholder disputes that authorizing the charge if Servicer determines that the Card sale contained any fraudulent or prohibited Transaction or is not being deposited on behalf of any business other than Merchant as authorized by this Agreement, and will hold in trust for Servicer and promptly deliver in kind to Servicer any payment received, 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.

3.5 Reserve Account. Notwithstanding anything to the contrary in this Agreement, Servicer may establish (without notice to Merchant) and Merchant agrees to fund a non-interest bearing reserve account (the "Reserve Account"), and Servicer may deposit in the Reserve Account any reasonable funds for termination of Merchant’s business, or otherwise, at any time or for any reason. Specific examples might include: (a) Merchant engages in any charge processing that creates an overcharge to a Cardholder by duplicating charges; (b) any activity designed by Merchant to circumvent a “call center” message when attempting to process a transaction; (c) Merchant breaches this Agreement, violates any representation, covenant or warranty herein, violates any applicable Card Brand rule or applicable law; (d) Merchant’s application is in any way inaccurate or becomes inaccurate subsequent to Servicer’s approval of the application; (e) Merchant changes its type of business without Servicer’s prior written approval; (f) fraud, Merchant processes an unauthorized charge, or other action that violates Servicer’s applicable risk management standards or is likely to cause a loss; (g) Merchant has chargebacks exceeding 1% of the total number of transactions completed by Merchant in any 30 calendar day period; (h) excessive numbers of requests from consumers or issuers Servicer to retrieve documentation; (i) Merchant’s financial stability is in question or Merchant ceases doing business; or (j) Merchant terminates this Agreement. Once the Reserve Account is established, collected funds will be placed in the Reserve Account. Before releasing funds after this Agreement is terminated, Merchant will pay any equipment cancellation fees and any outstanding charges, losses or amounts, and Chargebacks for which Merchant has provided indemnification under this Agreement. Further, Merchant may be required to deposit additional amounts as a basket upon Merchant’s processing history and/or anticipated risk of loss to Servicer into the Reserve Account. Once established, unless Servicer determines otherwise at its sole discretion, the Reserve Account will remain in place for 180 days and a reasonable period thereafter during which Cardholder disputes may remain valid under applicable Card Brand rules. The purposes and amounts remaining in the Reserve Account are to be used by Servicer at its discretion to settle disputes and to reimburse Merchant for any losses that the Settlement Fund is not adequate to cover. Any remaining funds remaining in the Reserve Account after the period hereinabove shall be returned to Merchant.

ARTICLE IV - TERMINATION AND EFFECT OF TERMINATION

4.1 Term. This Agreement will be effective once Servicer accepts it, and unless otherwise terminated in accordance with Section 4.2 below, will continue for three years and will automatically renew for successive one-year terms, unless Merchant provides written notice of non-renewal at least 60 days before the end of the then-current term.

4.2 Termination. (a) Without Cause. Servicer may terminate this Agreement, without cause, upon 30 days advance written notice to Merchant. Merchant may terminate, without prior notice, this Agreement in the three (3) days following Servicer’s acceptance of the ("Cooling Off Period").

(b) For Cause. Servicer may terminate this Agreement in its sole discretion, effective immediately, upon written or verbal notice, or by closing Merchant’s point-of-sale terminal, if Servicer reasonably determines that any of the following conditions exists: (i) Merchant has violated any provision of this Agreement; (ii) there is a material adverse change in Merchant's financial condition; (iii) if any case or proceeding is commenced by or against Merchant under any federal or state law dealing with insolvency, bankruptcy, receivership or other debt relief; (iv) any information which Merchant provided to Servicer, including Application Form information, was false, incomplete or misleading when received; (v) at any time during the term of this Agreement, Merchant has had a monthly ratio of Chargebacks to total transactions exceeding 2.5% of total transactions, or Chargebacks exceed 3% of any monthly dollar amount of total transactions; (vi) an overdraft in the settlement account exists for more than three days; (vii) Merchant or any of Merchant's officers or employees has been involved in processing transactions arising from any of the Rules or Payment98202-0CT2018-3YF-WF-Nuetec Technologies
settlement account or the Reserve Account; (vi) any of Merchant’s representations or warranties made in connection with this Agreement were not true, accurate or complete; and (vii) Merchant has defaulted on any agreement it has with the Servicer; (viii) Servicer is served with legal process seeking to attach or garnish any of Merchant’s funds or property in Servicer’s possession, and Merchant does not satisfy or appeal the legal process within 15 days of such service; (ix) 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; (x) any guaranty supporting Merchant’s obligations is revoked, withdrawn, changed or altered in any way; (xi) if any circumstances arise regarding Merchant or its business that create harm or loss of goodwill to any Card Brand; (xii) termination is necessary to prevent loss to Servicer or Card Issuers; (xiii) Merchant’s type of business indicated on the Application Form or as conducted by Merchant could endanger the Servicer’s safety or soundness; (xiv) Merchant’s officers, owner, guarantor, or corporate entity has a separate relationship with the Servicer and that relationship is terminated; (xxv) Merchant appears on any Card Brand’s security reporting; or (xvii) Servicer’s security for repayment becomes impaired, (xvi) failure to comply with the Servicer’s requirements; (xviii) anyviolations; (xix) Merchant delays the response to inquiries or the fulfillment of retrieval requests deliberately or without good reason; or (xxv) Merchant incurs an increased risk due to other activities of the Merchant.

4.3 Effect of Bankruptcy.

Any account or security held by Servicer will not be subject to any preference, claim or stay by reason of bankruptcy or similar law. The parties expressly agree that the acquisition of Card Transactions hereunder is a financial accommodation and if Merchant becomes a debtor in bankruptcy or bankruptcy proceeding, this Agreement may not be assumed or enforced by any other person and Servicer will be excused from performance hereunder.

4.4 Effect of Termination.

When termination becomes effective, the parties’ rights and obligations existing under this Agreement survive. If this Agreement is terminated, regardless of cause, Servicer may withhold and discontinue the Merchant’s access to funds deposited for the minimum number of months processed, up to a maximum of 12 months and based on all credit and debit card transactions and based on a minimum of $1 transaction during the calendar month.

ARTICLE V - MISCELLANEOUS

5.1 Account Monitoring.

Merchant acknowledges that Servicer will monitor Merchant’s daily deposit activity. Servicer may upon reasonable grounds suspend disbursement of Merchant’s funds for any reasonable period of time required to investigate suspicious or unusual deposit activity. Servicer will make good faith efforts to notify Merchant promptly following suspension. Servicer is not liable for any loss, either direct or indirect, which Merchant may attribute to any suspension of funds disbursement.

5.2 Forms.

Merchant will use only the forms or modes of transmission of Sales Drafts and Credit Vouchers that are provided or approved in advance by Servicer, and Merchant may not use such forms other than in connection with card transactions.

5.3 Indemnification.

Merchant will defend, indemnify and hold Servicer and its officers, directors, members, shareholders, partners, employees, agents, subcontractors and representatives harmless from and against any and all claims, demands, liabilities, costs, expenses and damages (including attorneys’ fees and costs (“Damage”)), asserted against or incurred by Servicer arising out of, relating to or resulting from, either directly or indirectly: (a) a breach of the security of the system safeguarding Cardholder information resulting in unauthorized access to Cardholder information; (b) a breach of any representation, warranty or term of this Agreement, including, but not limited to, the data security provisions by Merchant, or any service provider, sub contractor 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 federal and state laws, rules, regulations and guidance and Card Brand rules by Merchant; and (e) all third party claims arising from the foregoing. Notwithstanding the preceding, Merchant is not liable to Servicer for any damages caused by, resulting from or in connection with the breach of this Agreement, including, but not limited to, the data security provisions, and authorizes Servicer to deduct any sums from amounts to be cleared and settled with Merchant.

5.4 Records.

In addition to any records Merchant routinely furnishes to Servicer under this Agreement, Merchant will preserve a copy of actual paper Sales Drafts and Credit Vouchers and any written authorization of the Card Brand, and any other information available to Servicer that Merchant reasonably requires to meet any requirements of the Card Brand (including requests under the Fair Credit Billing Act) or otherwise to respond to questions concerning Cardholder accounts.

5.5 Requests for Copies.

Immediately after Merchant receives the request, Servicer will provide Merchant 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 any requirements of the Card Brand (including requests under the Fair Credit Billing Act) or otherwise to respond to questions concerning Cardholder accounts.

5.6 Compliance with Law.

Merchant will comply with all laws applicable to Merchant, Merchant’s business and any Card Transaction, including without limitation all state and federal consumer and protection statutes and regulations.

5.7 Fees and Charges.

Merchant will pay to Servicer the fees and charges set forth in Schedule A including any additional charges applied to Transactions that fail to meet Card Brand requirements for the lowest interchange level. “Cost Plus Surcharge,” as appears in Schedule A, is calculated by: (i) the interchange fee; plus (ii) applicable surcharge fees; plus (iii) up to 100 basis points for Card Transactions and 100 basis points for debit/credit Card Transactions (as the case may be); plus (iv) access fees, dues and assessments as determined by Servicer.

Where applicable Merchant shall also pay the following fees:

- **Voice/ARU Authorization:** $0.95 per authorized request; **ACH Modifications:** $25.00 per event; **ACH Return:** $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:** $190.00 annually; if applicable; **Handling Fee:** $69 for accounts approved yet inactivated. A monthly minimum of $25 shall apply. **Pass-Through Brand fees include Visa Acquirer Processing fee, Visa Misuse of Auth. fee, Visa International Service Assessment (ISA), Visa Zero Floor Limit fee, Visa International Acquirer fee, MC Acquirer Program Support fee, MC Cross Border fee, and the MC Network Access and Brand Usage (NABU) fee. Account will be debited through ACH or withdrawn from daily payments to Merchant for such amounts and for any other fees, charges or adjustments incurred or owed by Merchant hereunder. Upon 30 days written notice to Merchant, Servicer may charge fees, including additional fees for 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 Schedule A, Merchant shall pay the following fees where applicable: **Technical Specifications of Non-Compliance Fee:** 0.75% of the face amount of the Charge; **Data Quality Fee:** 0.75% of the face amount of the Charge; **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 Charge. **Annex Indebted Fee:** 0.40% of the face amount of the Charge; **Non-swiped Application-initiated Transaction Fee:** 0.30% of the face amount of each non-swiped Charge.

American Express may assess a Data Pass Violation Fee from Merchant as follows: (i) where charge volume is less than $1,000,000, a fee of $2,500 and warning specifying date of correction shall apply to the first violation and a fee of $5,000 and final notice shall apply to the second violation; (ii) where charge volume is between $1,000,000 and $10,000,000, a fee of $5,000 and warning specifying date of correction shall apply to the first violation and a fee of $10,000 and final notice shall apply to the second violation and; (iii) where charge volume is above $10,000,000, a fee of $25,000 and warning specifying date of correction shall apply to the first violation and a fee of $50,000 and final notice shall apply to the second violation.

American Express may also assess an Excessive Dispute Fee as follows: $5 per dispute charge if the merchant delays or fails to follow the disputed transaction. **APV Program or** $15 per disputed Charge if the Merchant is not enrolled in the Immediate Chargeback Program.

5.8 Security Interest.

To secure payment of Merchant’s obligations under this Agreement, Merchant grants to Servicer a security interest in all of Merchant’s business and any Card Transaction, including without limitation all state and federal consumer and protection statutes and regulations.

### Accessibility Statement

This document is accessible and can be read using screen readers and other assistive technologies. The content is structured according to common web standards, ensuring compatibility with various devices and platforms. The use of plain text and semantic markup facilitates easy navigation and interpretation by assistive technologies. Accessibility features include alternative text for images, proper use of headings, and clear structuring of content. Links are descriptive and provide context for the content they reference. The document is available in various formats, including HTML, PDF, and accessible Word documents, to accommodate different accessibility needs. The focus is on ensuring that all users, regardless of their abilities, can effectively access and understand the information provided. Supports for visually impaired users include descriptions of images, captions for multimedia, and instructions for alternative access methods. The document is reviewed regularly to ensure ongoing compliance with accessibility guidelines. Accessibility tools and features are integrated throughout the document to support users with disabilities. The document is developed in collaboration with accessibility experts and includes feedback from a diverse group of users with different needs and abilities. The accessible version is available in formats that are compatible with screen readers and other assistive technologies, ensuring that everyone can read and understand the content. The accessible version is updated to reflect changes made to the original document, maintaining consistency in accessibility practices. The document is reviewed and maintained to ensure continued compliance with accessibility standards and guidelines.
Merchant will obtain Servicer’s written consent before it grants a lien or security interest in that pledged collateral to any other person. Merchant shall not assign to any third party any payments due to it under this Agreement, and all indebtedness arising from Transactions will be for bona fide sales of goods and services (or both) at its business locations and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that Merchant may sell and assign future Transaction receivables to Servicer, its affiliated entities and/or any other cash advance funding source that partners with Servicer or its affiliated entities, without consent from any Card Brand. Notwithstanding the foregoing, Servicer prohibits Merchant from selling or assigning future Transaction receivables to any third party without Servicer’s prior written consent.

5.9 Modifications to Agreement.

This Agreement is subject to amendment to conform with Card Brand regulations, as amended from time to time. From time to time Servicer may amend any provision or provisions of this Agreement, including, without limitation, those relating to the discount rate or to other fees and charges payable by Merchant by sending written notice to Merchant of the amendment prior to the effective date of the amendment, and the amendment will become effective unless Servicer receives Merchant’s notice of written termination of this Agreement before such effective date. Amendments required due to changes in either Card Brand’s rules and regulations or any law or judicial decision may become effective on such shorter period of time as Servicer may specify if necessary to comply with the applicable rule, regulation, law or decision. The term of this Agreement shall be automatically extended an additional three years in the event of a price decrease or the introduction of a new product or service used by Merchant (including any equipment upgrade), effective as of the date such price change is implemented or new product-service accepted by Merchant.

5.10 Warranty Disclaimer.

SERVICER MAKES NO WARRANTIES REGARDING THE USE, OPERATION OR PERFORMANCE OR NON-PERFORMANCE OF SOFTWARE AND SYSTEMS UTILIZED FOR THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, AND SERVICER EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

5.11 Limitation of Liability.

Servicer’s liability with respect to any Card Transaction may not exceed the amount of the Sales Draft in connection with the Transaction, less any applicable fees and charges. Servicer is not liable for all or any incidental or consequential damages whatsoever. Merchant waives all claims against Servicer for any loss, claim, demand, penalty, action, cost, delay or expenses (including reasonable attorneys’ fees) of any kind unless Merchant provides written notice to Servicer of the occurrence that gave rise to the alleged liability within 30 days after Merchant knew or should have known of the occurrence. In addition to what is provided herein, Servicer’s cumulative liability towards Merchant for any reason whatsoever shall not exceed the amount of fees received by Servicer pursuant to this Agreement, for services performed in the immediately preceding six (6) months.

Merchant will indemnify and hold Servicer harmless from any claim relating to any Sales Draft paid for by Servicer as may be made by anyone by way of defense, dispute, offset, counterclaim or affirmative action, or for any damages or losses that Merchant may incur as a result of Merchant’s breach of this Agreement. For any such claim, Merchant will reimburse Servicer for all expenses and costs, including attorneys’ fees, with regard thereto.

5.12 Waiver.

Servicer’s failure by Servicer to enforce one or more of the provisions of this Agreement will not constitute a waiver of the right to enforce the same or other provision in the future.

5.13 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 and the sender obtains a fax or email confirmation receipt, and upon mailing when sent first class mail, postage prepaid, addressed as follows:

(a) if to Servicer: Nuvi Technologies, 5000, Legacy Drive, Suite 320, Plano, Texas, 75024, Facsimile: 877-669-5703, Attn: Loyalty Department;

(b) if to Merchant: At the facsimile number, email address or address provided as the billing address, and to the contact listed on the Merchant Application.

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 Merchant billing statement, whether such billing statement is sent via a technological platform or mail.

5.14 Choice of Law; Jurisdiction.

This Agreement shall be governed exclusively by Texas 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 Texas and hereby submits to the jurisdiction of such courts in any such action or proceeding. Merchant hereby waives repetitions and agrees not to assert any rights it may have under any foreign law or regulation that would be inconsistent with the terms of this Agreement as governed by Texas law. Merchant also waives its right to a trial by jury of any disputes arising from its relationship with Servicer.

5.15 Entire Agreement; Assignability.

This Agreement expresses the entire understanding of the parties with respect to the subject matter hereof, and except as provided herein, may be modified only in writing executed by Servicer and Merchant. This Agreement may not be assigned by Merchant, directly or by operation of law, without Servicer’s prior written consent. Servicer may assign this Agreement, without notice to Merchant. This Agreement will be binding upon and inure to the benefit of the parties’ respective heirs, personal representatives, successors and assigns.

5.16 Deposit Account.

Merchant will at all times maintain an Account at a bank that is a member of the Federal Reserve ACH system and will provide Servicer with proper authorization to debit the Account. All credits for collected funds and debits for fees, payments and Chargebacks and other amounts for which Merchant is liable under the terms of this Agreement will be made to the Account. Merchant may not close or change the Account without written notice to Servicer. Merchant will be solely liable for all fees and costs associated with the Account and for all overdrafts. Merchant hereby grants to Servicer a security interest in the Account to the extent of any and all fees, payments and Chargebacks and other amounts due which may arise under this Agreement, and Merchant will execute any document and obtain any consents or waivers from the bank at which the Account is maintained as requested by Servicer to protect its security interests therein.

5.17 Credit and Financial Inquiries; Additional Locations; Inspections.

Servicer may make, at 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 if such person has not executed this Agreement and will provide any financial statements, income tax and business tax returns and other financial information as Servicer may consider necessary to perform initial or periodic reviews of Merchant’s financial stability and business practices. Merchant may accept Cards only at locations approved by Servicer. Additional locations may be added, subject to Servicer’s approval. Any party to this Agreement may delete any location by providing notice as provided herein. Merchant will permit Servicer, at any time and from time to time, to inspect locations to confirm that Merchant has or is adhering to the terms of this Agreement and is maintaining the proper facilities, equipment inventory, records and license (where necessary) to conduct its business. However, nothing in this paragraph may be deemed to waive Merchant’s obligation to comply in all respects with the terms of this Agreement. Servicer, its internal and external auditors, and its regulators may audit compliance with this Agreement, compliance with federal and state laws, rules, regulations and guidance applicable to the services, Card acceptance and Transaction processing systems and related 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.

5.18 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.

5.19 Force Majeure.

The parties will be released from liability hereunder if they fail to perform any obligation where the failure occurs by reason of any act of God, fire, flood, storm, earthquake, tidal wave, communications failure, sabotage, war, military operation, terrorism, national emergency, mechanical or electronic breakdown, civil commotion or the order, requisition, request or recommendation of any governmental authority with which either party is subject to governmental regulation or priority, or any other similar cause beyond either party’s reasonable control.

5.20 No Third Party Beneficiary.

No other person or entity may be deemed to be a third party beneficiary of this Agreement.

5.21 Exclusivity.

Merchant agrees that Servicer will be Servicer’s exclusive acquirer for Visa, American Express, MasterCard and Discover transactions. Accordingly, Merchant shall not use the services of any Servicer, corporation, entity or person other than Servicer for authorization and/or processing of payment transactions during the term of this Agreement.

5.22 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.

PART TWO: ADDITIONAL TERMS AND CONDITIONS APPLICABLE ONLY TO MERCHANTS WITH AMERICAN EXPRESS CARD ACCEPTANCE


A1.2. With respect to participation in an American Express acceptance program, in the event of a conflict between the terms below and other terms of this Agreement, the terms below shall control.

A1.3 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 American Express.

A1.4 Marketing Message Opt-Out. Merchant may opt-out of receiving future commercial marketing communications from American Express by contacting ISO. Note that Merchant may continue to receive marketing communications while American Express updates its records to reflect this choice. Opting out of commercial marketing communications will not preclude Merchant from receiving important transactional or relationship messages from American Express.

A1.5 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 its Transaction volumes exceed the eligibility thresholds for the OptBlue program. If this occurs, upon such conversion, (i) Merchant will be bound by American Express’ then-current Card Acceptance Agreement; and (ii) American Express will set pricing and other fees payable by Merchant.

A1.6 American Express as Third Party Beneficiary. Notwithstanding anything in the Agreement to the contrary, American Express shall have third-party beneficiary rights, but no obligations, to the terms of this Agreement applicable to American Express Card acceptance to enforce such terms against Merchant.

A1.7 American Express Opt-Out. Merchant may opt out of accepting American Express at any time without directly or indirectly affecting its rights to accept Cards bearing Marks of other Card Brands.

A1.8 Refund Policies. Merchant’s refund policies for American Express purchases must be at least as favorable as its refund policy for purchase on any other Card Brand, and the refund policy must be disclosed to Cardholders at the time of purchase and in compliance with Law. Merchant may not bill or attempt to collect from any Cardholder for any American Express Transaction unless a Chargeback has been exercised, Merchant has fully paid for such Chargeback, and it otherwise has the right to do so.

A1.9 Establishment Closing. If Merchant closes any of its Establishments, Merchant must follow these guidelines: (i) notify ISO immediately; (ii) policies must be conveyed to the Cardholder prior to completion of the Transaction and printed on the copy of a receipt or Transaction record the Cardholder signs; (iii) if not providing refunds or exchanges, post notices indicating that all sales are final (e.g., at the front doors, by the cash registers, on the Transaction record and on websites and catalogs); (iv) return and cancellation policies must be clearly disclosed at the time of sale; and (v) for Advance Payment Charges or Delayed Delivery Charges, Merchant must either deliver the goods or services for which Merchant has already charged the Cardholder or issue credit for any portion of the Transaction for which Merchant has not delivered the goods or services.

PART THREE: ADDITIONAL TERMS AND CONDITIONS APPLICABLE ONLY TO MERCHANTS WITH UNIONPAY CARD ACCEPTANCE, IN CASE OF CONFLICT OR INCONSISTENCY BETWEEN PART THREE AND OTHER PARTS OF THIS AGREEMENT, PART THREE SHALL PREVAIL.

C1.1 Merchant undertakes to prominently display the UnionPay acceptance logos at their premises where Card transactions take place.

C1.2 Merchant agrees to accept all valid UnionPay-branded Cards.

C1.3 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.

C1.4 The Merchant shall not retain account numbers, PIN and other UnionPay Card transaction data and shall keep confidential all UnionPay Card information. Merchant shall not provide account information or transaction data to a third party other than Servicer or an institution designated by Servicer.

C1.5 The Merchant undertakes to be responsible for the storage and maintenance of payment terminals.

C1.6 If Merchant only accepts UnionPay Cards and does not accept any other Card Brand, then Wells Fargo Bank, N.A. 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: TERMINAL BAILMENT

If Merchant has accepted to receive a terminal from ISO that is neither leased nor purchased, the following additional terms and conditions of this Part shall apply.

1. Bailment. ISO hereby grants to Merchant, the terminal(s) described in the Merchant Application Form (“Terminal”), subject to the terms and conditions hereof. The bailment term shall commence on the date of delivery and shall end upon termination: (i) by ISO upon five (5) days prior notice; (ii) by Merchant upon thirty (30) days prior written notice; or (iii) immediately and without notice where the Agreement is terminated.

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.

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 rendering the services for which it was intended under this Agreement.

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 to $500.

5. Delivery. Delivery shall be as of the time that Terminal is received by Merchant.

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 ALL.

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 arise from the Terminal during or after such time.

1. Entire Agreement. This Part, together with any documents to be delivered pursuant hereto, constitutes the entire agreement between Merchant and ISO pertaining to the bailment terminals and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written, of such parties.

1. 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, REGARDLESS OF THE AMOUNT, IN VALUE OR OTHER TERM OF THE TERMINAL.

1.10 Limitation of Liability: Damages. In NO EVENT SHALL ISO BE LIABLE TO THE MERCHANT FOR 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 OF DELAY IN SUPPLYING OF THE TERMINAL. WHETHER BASED UPON WARRANTY, CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF AWARE OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. UNDER NO CIRCUMSTANCES SHALL ISO’S AGGREGATE LIABILITY TO MERCHANT EXCEED THE TERMINAL VALUE INDICATED IN THE AGREEMENT HERETO.

PART FIVE: GlobalOnePay360 - WEB REPORTS & ALERTS

Merchant shall automatically have access to GlobalOnePay360 - WEB REPORTS & ALERTS, an advanced online reporting tool.

1.1 Free Trial Period. During the first 60 days following enrolment, Merchant will have free access to Global license extends only to Merchant’s use of GlobalOnePay360. Merchant shall have the right to use a free trial period one time, upon its initial enrolment into 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.

1.2 Cancellation. To cancel access to GlobalOnePay360 - WEB REPORTS & ALERTS, Merchant must do so prior to the end of the 60-day trial period. If Merchant cancels GlobalOnePay360 - WEB REPORTS & ALERTS, Merchant must do so prior to the end of the 60-day trial period. If Merchant cancels GlobalOnePay360 - WEB REPORTS & ALERTS, Merchant must do so prior to the end of the 60-day trial period. In the event that Merchant’s trial period ends, Merchant may opt out by contacting Client Care 1-888-751-0744 or by email at support@globalonpay.com and 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: ADDITIONAL SERVICES AGREEMENT

E-COMMERCE / GATEWAY

1. Services. ISO will provide the transactional gateway services and related goods and services (the “Gateway Services”) to Merchant as set forth in Schedule A of the Application Form. ISO and Merchant shall agree upon the equipment and services to be provided under this Agreement and may update and change the goods and services provided to Merchant by mutual consent.

1.1 Limited License. ISO hereby grants to Merchant a limited, revocable, worldwide, non-exclusive, 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.

1.3 Limitations on Rights Granted. Except as expressly provided to the contrary in this Agreement, Merchant shall not, and shall not knowingly cause or permit any third party to use or reproduce Gateway Services. Merchant shall not, and shall not knowingly cause or permit any third party to disassemble, decompile, decrypt, extract, reverse engineer, or prepare a derivative work based upon the Gateway Services or any portion thereof. Merchant shall not reproduce, copy, modify, alter, use or authorize anyone to use, modify, alter, 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 theGateway Services. Except as expressly authorized herein, Merchant may not rent, lease, distribute, assign, sublicense, transfer, modify, alter, or time share the Gateway Services.

1.4 Trademarks. Subject to the limitations in this Agreement and subject to ISO’s prior written approval, ISO grants Merchant the non-exclusive right and license to use ISO’s trademarks (the “Trademarks”) during the term of this Agreement solely in conjunction with the use of the Gateway Services. ISO grants no rights in the Trademarks or in any other trademark, trade name, service mark, product designation, business name or goodwill of ISO, except as licensed hereunder or by separate written agreement of the parties. Merchant agrees that it will not at any time during and after this Agreement assert or claim any interest in or to anything that may adversely affect the validity of any Trademark or any other trademark, trade name, service mark, product designation, business name or goodwill belonging to or licensed to ISO (including, without limitation registering or attempting to register any Trademark or any such other trademark, trade name, service mark or product designation). During the term of this Agreement, Merchant agrees not to use any trademark, trade name, service mark, product designation or business name likely to create confusion with a trademark, trade name, service mark, product designation or business name of ISO, except for the Trademarks expressly licensed hereunder. Upon expiration or termination of this Agreement, Merchant will immediately cease all display, advertising and use of all of the Trademarks and will not thereafter use, advertise or display any trademark, trade name, service mark, product designation or business name which is, or any part of which is, likely to create confusion with any Trademark or with any trademark, trade name or product designation of ISO.

1.5 Intellectual Property. “Intellectual Property" means all of the following owned by a party hereto: (i) trademarks, service marks (registered and unregistered), trade names, product designations and business names and goodwill associated therewith; (ii) patents, patentable inventions, computer programs, and
Merchants Responsibilities. Merchant understands and acknowledges that Gateway Services are merely a processing conduit. ISO has no control of or responsibility for accepting, processing or filling any orders for purchases by Merchant's customers, or for handling any related inquiries. Merchant shall be fully and solely responsible for the content and promotion of its website. Merchant agrees and acknowledges that it shall be fully and solely responsible for all activities conducted through Gateway Services. Merchant shall be fully and solely responsible for the content and promotion of its website. Merchant represents and warrants that it is the owner and/or that it has full right and authority to disseminate all information contained as part of its Web site, which is provided by Merchant to persons purchasing goods or services from Merchant, or which is used by Merchant in its advertising and promotion.

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 operate, deliver, and improve its products, services, content and advertising, and for loss prevention and anti-fraud purposes.

1.13 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 resulting liabilities, damages, settlements, penalties, fines, costs or expenses (including reasonable attorneys' fees and other litigation expenses) incurred by ISO, arising out of or relating to ("Claim"): (a) any breach or alleged breach by Merchant of any representation, warranty, or obligation of Merchant set forth in this Merchant Agreement; (b) any damage or loss caused by negligence, fraud, dishonesty or willful misconduct on the part of Merchant or any of its officers, agents, employees, independent contractors or subcontractors; (c) any unauthorized disclosure or use of the Confidential Information. Merchant shall cooperate and assist ISO in preventing or remedying any such unauthorized use or disclosure.

1.14 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, WHETHER OR NOT MERCHANT WILL HAVE ACCESS TO THE GATEWAY SERVICES, OR THAT MERCHANT WILL BE ABLE TO USE THE GATEWAY SERVICES TO THEIR SATISFACTION, OR THAT ANY TRANSACTION OR DATA WILL BE PROCESSED PROPERLY, OR THAT ANY TRANSACTION OR DATA WILL BE AUTHORIZED OR THAT ANY TRANSACTION OR DATA WILL BE TRANSMITTED, OR THAT ISO'S LIST CAN BE MODIFIED FROM TIME TO TIME AND MUST BE VERIFIED BY MERCHANT PRIOR TO BEING SET UP OR THAT MERCHANT WILL BE ABLE TO USE MERCHANT'S ACCOUNT FOR KEY ENTRY TRANSACTIONS AND TRANSACTIONS BEING PERFORMED THROUGH GATEWAY SERVICES. MERCHANT AGREES THAT ISO IS NOT LIMITED TO: WARRANTIES THAT THE GATEWAY SERVICES WILL BE COMPLETE, ACCURATE, SECURE, TIMELY, AVAILABLE, ACCESSIBLE, UNINTERRUPTED OR ERROR-FREE, IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THOSE ARISING BY OPERATION OF LAW. COURSE OF DEALING OR USAGE OF TRADE. MERCHANT UNDERSTANDS AND ACKNOWLEDGES THAT ISO SHALL NOT BE LIABLE FOR ANY IMPROPERLY PROCESSED OR AUTHORIZED TRANSACTION, OR ILLEGAL OR FRAUDULENT ACCESS TO MERCHANT'S GATEWAY ACCOUNT OR DATA. THIS DISCLAIMER OF WARRANTIES CONSTITUTES AN ESSENTIAL PART OF THIS MERCHANT AGREEMENT. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS MERCHANT AGREEMENT.

EXCEPT AS OTHERWISE PROVIDED IN THIS MERCHANT AGREEMENT, MERCHANT EXPRESSLY AGREES THAT ISO SHALL NOT BE LIABLE FOR ANY LOSS (HOWEVER ARISING, INCLUDING NEGLIGENCE), ARISING FROM OR RELATED TO: (A) MERCHANT'S FAILURE TO PROPERLY ACTIVATE, INTEGRATE OR SECURE ITS GATEWAY ACCOUNT; (B) IMPROPER, ILLEGAL, UNAUTHORIZED OR FRAUDULENT TRANSACTIONS PROCESSED THROUGH MERCHANT'S GATEWAY ACCOUNT; (C) DISRUPTION OF MERCHANT SERVICES, SYSTEMS, SERVER OR WEB SITE BY ANY MEANS, INCLUDING WITHOUT LIMITATION: DDOS ATTACKS, SOFTWARE VIRUSES, TROJAN HORSES, WORMS, TIME BOMBS, OR ANY OTHER TECHNOLOGY; (D) ACTIONS OR INACTIONS BY ANY THIRD PARTY, INCLUDING WITHOUT LIMITATION, A MSP OR BANK; OR (E) UNAUTHORIZED ACCESS TO (I) DATA, CARDHOLDER IDENTIFICATION INFORMATION, PERSONAL IDENTIFICATION INFORMATION 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 PARTIES' OR MERCHANT'S OWN NEGLIGENCE, WHETHER OR NOT MERCHANT HAS BEEN ADVISED OR INFORMED OF THE RISK. MERCHANT AGREES THAT ISO SHALL NOT BE LIABLE FOR ANY LOSS (OF ANY KIND, WHETHER ARISING FROM CONTRACT, NEGLIGENCE, DELICT, TORT, BREACH OF STATUTORY OR OTHER IMPLIESWARRANTY OR GUARANTEE WHATSOEVER IN RELATION TO THIRD PARTY PRODUCTS OR SERVICES, REGARDLESS OF WHETHER OR NOT ISO IS A RESELLER OF OR REFERRAL AGENT FOR SUCH PRODUCT OR SERVICE.

1.15 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 to ISO under this Agreement, and shall ensure that the agent or subcontractor agrees that it will use and maintain such data in a manner consistent with all applicable laws, regulations and standards. As used in this provision, the term “Cardholder Information” means information concerning an individual's identity, in the possession or control of Merchant or any of its agents or subcontractors, whether or not such information is resident on magnetic or electronic media. Merchant shall ensure that such data is collected, used and retained only for the purposes for which it was obtained.

1.16 Data Accuracy. Merchant shall provide ISO with data necessary for the electronic funds transfer ("EFT") in the form and at the times prescribed by ISO and shall make periodic checks and updates necessary to cause the collection data to be current and accurate at all times. The format and schedule requirements for delivery of collection data by Merchant may be changed by ISO during the term of this Agreement. ISO may arrange for any portion of the Gateway Services to be provided to Merchant by any of its parent, affiliate or subsidiary corporations, without any liability of such parent, affiliate or subsidiary to Merchant.

1.17 Merchant Obligations. (1) Merchant shall provide a valid, working administrative email address on enrollment. Any changes to Merchant's account must be made via the administrative email address provided upon enrollment. The security of Merchant's account is dependent in part upon Merchant maintaining the security of such email administrative address. Merchant shall be fully and solely responsible for verifying the accuracy and completeness of all card transactions submitted and processed via Gateway Services, including determining the appropriate action to be taken for each such transaction (approve, void, reject or decline). ISO shall not be liable for any improperly processed transaction or illegal or fraudulent access to Merchant's gateway account. Merchant agrees and acknowledges that it shall be fully and solely responsible for verifying the accuracy and completeness of all card transactions processed and acknowledged by ISO. ISO alone (and not Merchant) shall have the right, but not the obligation, to pursue trademark, service mark, copyright and patent protection, in its sole discretion, for the Gateway Services and any Intellectual Property Rights incorporated therein. Merchant will cooperate with ISO in pursuing such protection, including without limitation executing and delivering to ISO any such instruments as may be required to register or perfect ISO's interests in any Intellectual Property Rights and any assignments thereof. Merchant shall not remove or destroy the proprietary, confidentiality, trademark, service mark, copyright or patent marks or notices placed upon or contained in any material used in connection with the Merchant's business or its products or services.

1.18 Authorization. Merchant will obtain from each of its participating customers, the required payment information, whether regarding a one-time transaction or ongoing payments. Merchant will provide such payment information to ISO in a timely manner, and by the same date each week, in accordance with ISO's schedule requirements for delivery of collection data by Merchant. As a condition to the delivery of data to Merchant by ISO further to the expiration or termination of this merchant agreement, Merchant shall verify ISO's list of payment processing services providers in order to determine if ISO can properly operate, deliver, and improve its products, services, content and advertising, and for loss prevention and anti-fraud purposes.

2.11 Providing Gateway Services. During the term of this Agreement, ISO shall provide the Gateway Services and use its 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 interrupted or out-of-order, and that ISO is not obligated to use its 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, without limitation, any delay or interruption caused by the fault of ISO. ISO may arrange for any portion of the Gateway Services to be provided to Merchant by any of its parent, affiliate or subsidiary corporations, without any liability of such parent, affiliate or subsidiary to Merchant.
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 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.

1.19 Fees. 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, or any other exchange rate source, or as localized pricing in a fixed amount in the Acceptance Currency (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 Brand for clearing and settlement in the chosen Acceptance Currency. However, the Merchant receives settlement from the MCP Transaction in US Dollars in the same way as it receives settlement of other Transactions under the Merchant Agreement.

1.2 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 and ISO may terminate or suspend MCP services for any reason upon notice to the Merchant. Additionally, MCP may apply only to those Cards issued by Visa, MasterCard or other such Card Brands included within the MCP that are billed to the Cardholder in an Acceptance Currency.

1.3 Conversion of MCP transaction. The conversion of the MCP Transaction from the Acceptance Currency to US Dollars will be effected based upon a daily exchange rate table published by the Card Brand in the Program Currency in which the Card is denominated, and if such support is not in place, the conversion may be applied to the MCP Transaction from the Program Currency to US Dollars, which is obtained by checking the applicable box in Schedule A. Merchant can change options by written request to ISO. Upon authorization of a MCP Transaction, the authorization message returned to the Merchant will contain the US Dollar amount into which that MCP Transaction will be converted to assist Merchants in reconciling their accounting. Merchant acknowledges that because of the fluctuation in foreign 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.

1.4 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.

1.6 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:

(i) 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. If the MCP Transaction is denominated in a Currency other than the US Dollar, Merchant shall use a Currency cost use a point of sale device, or system which is certified or supported by ISO, for use with the MCP.

(ii) Disclosure of Foreign Currency Amount on Receipt: In accordance with Card Brand rules, all MCP Transaction receipt shall 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.

(iii) Timely Presentment of MCP Transactions: The Merchant must present all MCP Transactions for settlement to ISO within one day after authorization, in order to minimize the risk of loss attributable to movement in the currency exchange rates for the various Acceptance Currencies between the time that a Foreign Transaction is completed and the submission of the batch clearing and settlement files to ISO. For the avoidance of doubt, neither ISO nor any of its vendors bears responsibility for any foreign exchange loss attributable to an MCP Transaction processed using MCP.

(iv) 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 accordance with the terms of transactions from the involved Acceptance Currency to US Dollars, which is obtained by checking the applicable box in Schedule A. Merchant acknowledges that the final amount of the US Dollars and could well be more. Merchant acknowledges that it will be responsible for the full amount of the credit, as set forth in the Merchant Agreement.

(v) Chargebacks: A Chargeback incurred in connection with a Foreign Transaction will be transmitted to ISO by the applicable Card Brand in the Acceptance Currency and converted by such Card Brand into US Dollars at the Card Brand's designated foreign exchange rate. Due to the variances in foreign exchange rates applicable to the underlying MCP Transaction and the related Chargeback, respectively, Merchant acknowledges that the final amount of the Chargeback will differ from the original settlement amount received by the Merchant for the MCP Transaction in US Dollars and could be more. Merchant acknowledges that it will be responsible for the full amount of the Chargeback, as set forth in the Merchant Agreement.

(vi) Merchant Options: Merchant shall indicate which currencies it wishes to use as Acceptance Currencies by checking the applicable box in Schedule A. Merchant can change options by written request to ISO not less than 30 days' notice.

1.8 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 Laws or Card Brand operating regulations, or any return, refund or chargeback or any overcharge or undercharge 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 herein, Merchant acknowledges that it will be responsible for the full amount of the Chargeback under the terms of this Merchant Agreement.

1.9 Chargebacks: A Chargeback incurred in connection with a Foreign Transaction will be transmitted to ISO by the applicable Card Brand in the Acceptance Currency and converted by such Card Brand into US Dollars at the Card Brand's designated foreign exchange rate. Due to the variances in foreign exchange rates applicable to the underlying MCP Transaction and the related Chargeback, respectively, Merchant acknowledges that the final amount of the Chargeback will differ from the original settlement amount received by the Merchant for the MCP Transaction in US Dollars and could be more. Merchant acknowledges that it will be responsible for the full amount of the Chargeback, as set forth in the Merchant Agreement.

1.10 Dynamic Currency Conversion (DCC)

(i) 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 Cards in the Merchant's point of sale and pay by debit or credit in the currency of the Foreign Cardholder, based upon a rate of exchange determined by ISO, while Merchant receives settlement of the foreign transaction in US Dollars (collectively, a "Foreign Transaction").

(ii) 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 Brand" in the currency in which the Card is denominated. The DCC program shall only apply to those Cards issued by Visa, MasterCard or under the brands of such other Card Brands included within the DCC program that are billed to the Foreign Cardholder in a Program Currency. Additionally, DCC may not apply to credit-return transactions, or certain Foreign Transactions that are referred to ISO for authorization or otherwise authorized by Merchant via telephone. ISO reserves the right to add, delete or suspend any currency to or from the DCC program, as the case may be, at any time without notice to Merchant. Further, ISO may terminate or suspend DCC services for any reason upon notice to the Merchant.

1.11 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:

(i) 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.

(ii) Foreign Cardholder Opt-In: Merchant shall, based upon the instructions provided by ISO and/or the Card Brands, from time to time, provide Foreign Cardholders with the ability to "opt-in," or consent to participating in the DCC program. In the case where it is not possible for Merchant to provide Foreign Cardholders the ability to opt-in to DCC, ISO understands that ISO will process that Foreign Cardholder's transaction in US Dollars. Merchant agrees to make such reasonable modifications as ISO may request to increase the likelihood of Foreign Cardholders opting into the DCC program. It is understood that any Foreign Transaction for which Merchant fails to provide a Foreign Cardholder with the opt-in procedure as described herein may be subject to a Chargeback as defined in the Agreement.

(iii) 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 completion of the Foreign Transaction. Without the foregoing, Merchant may be subject to additional charges.

(iv) Credits/Returns: Without Merchant uses point-of-sale technology that is not capable of processing credits/returns in the Program Currency in the manner required by ISO, a credit/return to a Foreign Cardholder, priced and defined either as 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 within 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.

(v) 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.

(vi) Interchange cost Merchant agrees that any increased interchange cost attributable to the increase in the price of the goods or services in US Dollars since its conversion by the applicable service fee shall be borne by Merchant.

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THE FOLLOWING SERVICES ARE NOT PROVIDED BY ISO OR SERVICER.

PART SEVEN: THIRD PARTY AGREEMENTS

The below Equipment Lease Agreement is a third party agreement between Merchant and First Data Merchant Services Corporation and will apply if Merchant has checked the box for the appropriate box or otherwise indicated its desire in the Merchant Application forming part of this Agreement to enter into such lease arrangement. The signature page found on such application or any Schedule thereto shall also serve as a signature page to this Equipment Lease Agreement.

Merchant acknowledges that First Data Merchant Services Corporation is relying upon the information contained in the Merchant Application and the Schedules thereto, all of which are incorporated by reference into the Equipment Lease Agreement.

EQUIPMENT LEASE AGREEMENT

This Equipment Lease Agreement ("Lease Agreement") is being entered into by and between First Data Merchant Services Corporation (through its business unit First Data Global Leasing) ("we," "our," "us," "Lessor") and the Merchant ("Lessee" or "you") identified on the Merchant Application forming part of this Merchant Agreement ("MA"). In this Lease Agreement, the words "we," "our" and "us" refer to First Data Merchant Services Corporation and its successors and assigns. Lessee hereby authorizes or us, our designees, successors or assigns (hereinafter "Lessor") to withdraw any amounts including any and all sales taxes now due or hereafter imposed, owed by Lessee in conjunction with this Lease Agreement by initiating debit entries to the bank account designated by the Lessee on the MA (the "Settlement Account"). In the event of default of Lessee's obligation hereunder, Lessor authorizes Lessor to credit Lessee's account for the amount due under this Lease Agreement. Further, Lessor authorizes its financial institution to accept and charge any debit entries initiated by Lessor to Lessee's account. In the event that Lessor withdraws funds erroneously from Lessee's account, Lessee authorizes Lessee to credit Lessee's account for the amount not to exceed the original amount of the debit. This authorization is to remain in full force and effect until Lessor has received written notice from Lessee of its termination in such time and in such manner as to afford Lessor a reasonable opportunity to act. Lessee also authorizes Lessee from time to time to obtain investigative credit reports from a credit bureau or a credit agency concerning Lessee.

1. Equipment. We agree to lease to you and you agree to lease from us the equipment identified on the MA or such other comparable equipment we provide you ("the Equipment"), according to the terms and conditions of this Lease Agreement. We are providing the Equipment to you "as is" and make no representations or warranties of any kind as to the suitability of the equipment for any particular purpose. The Term Equipment includes the initial Equipment leased under the Lease Agreement and/or any additions, replacements, substitutions, or additions thereto.

1.2 Effective Date, Term and Interim Rent.

a) This Lease Agreement becomes effective on the earlier of the date we deliver any piece of Equipment to you (the "Delivery Date") or acceptance by us. This Lease Agreement remains in effect until all of your obligations and all of our obligations under it have been satisfied. We will deliver the Equipment to the site designated by you.

b) The term of this Lease Agreement begins on a date designated by us after the receipt of all required documentation and acceptance by us (the "Commencement Date"). For the purposes of calculating the term of this Lease Agreement, each day from and including the Delivery Date until the date preceding the Commencement Date is considered to be a day of the term.

c) You agree to pay an interim lease payment in the amount of one-thirtieth (1/30th) of the monthly lease charge for each day from and including the Delivery Date until the date preceding the Commencement Date.

d) YOU ACKNOWLEDGE THAT THE EQUIPMENT AND/OR SOFTWARE YOU LEASE UNDER THIS LEASE AGREEMENT MAY NOT BE COMPATIBLE WITH ANOTHER PROCESSING SYSTEMS AND THAT WE DO NOT HAVE ANY OBLIGATION TO MAKE SUCH SOFTWARE AND/OR EQUIPMENT COMPATIBLE IN THE EVENT THAT YOU ELECT TO USE ANOTHER SERVICE PROVIDER. UPON TERMINATION OF YOUR MERCHANT PROCESSING AGREEMENT, YOU MAY NOT BE ABLE TO USE THE EQUIPMENT AND/OR SOFTWARE LEASED UNDER THIS AGREEMENT WITH SAID SERVICE PROVIDER.

1.3 Site Preparation. You will prepare the installation site(s) for the Equipment, including but not limited to the power supply circuits and phone lines, in conformance with the manufacturer's and our specifications and will make the site(s) available to us by the confirmed shipping date.

1.4 Payment of Amounts Due.

a) The monthly lease charge is due and payable monthly, in advance. You agree to pay all amounts due for delivery and installation equipment.

b) In addition to the monthly lease charge, you shall pay, or reimburse us for, amounts equal to any taxes, assessments on or related to the filling out of this Lease Agreement or the Equipment, and related supplies or any services, use or activities hereunder, including without limitation, state and local sales, use, property, privilege and excise tax, tax preparation, compliance expenses, but exclusive of tax associated with merchant volume processing as our and your property taxes are calculated and charged based on the average of the estimated annual property taxes over the course of the term of the lease. You will also be charged an annual Tax Handling Fee, as set forth in the MA and/or applicable Fee Schedule.

c) Your lease payments will be due despite dissatisfaction with the Equipment for any reason.

d) Whenever any payment is not made by you in full when due, you shall pay us as a late charge, an amount equal to ten percent of the amount due but no less than $5.00 for each month during which it remains unpaid (prorated for any partial month), but in no event more than the maximum amount permitted by law. You shall also pay to us an administrative charge of $10.00 for any debit we attempt to make against your Settlement Account that is rejected.

e) In the event your account is placed into collections for past due lease amounts, you agree that we can recover a collection expense charge of $50.00 for each aggregate payment requiring collection effort.

1.5 Use and Return of Equipment; Insurance

a) You shall cause the Equipment to be operated by competent and qualified personnel in accordance with any operating instructions furnished by us or the manufacturer. You shall maintain the Equipment in good operating condition and protect it from deterioration, normal wear and tear excepted.

b) You shall not permit any physical alteration or modification of the Equipment, or change the installation, setup or location of the Equipment, without our prior written consent.

c) You shall not create, incur, assume, or allow to exist any consensual or judicially imposed liens or encumbrances on, or part with possession of, or sublease the Equipment without our prior written notice.

d) You shall comply with all governmental laws, rules and regulations relating to the use of the Equipment. You are also responsible for obtaining all permits required to operate the Equipment at your facility.

e) We or our representatives may, at any time during normal business hours, enter your premises for purposes of inspecting, examining or repairing the equipment.

f) The Equipment shall remain our personal property and shall not under any circumstances be considered to be a fixture affixed to your real estate. You shall permit us to affix suitable labels or stencils to the Equipment evidencing our ownership.

g) You shall keep the Equipment adequately insured against loss by fire, theft, and all other hazards and you shall provide proof of insurance. The loss, destruction, theft or damage of or to the Equipment shall relieve you from your obligation to pay full purchase price or total monthly lease charges hereunder.

h) You may choose not to insure the Equipment and participate in the Equipment Service Program. The Equipment Service Program provides a replacement of the Equipment for as long as you participate in the Equipment Service Program during the Lease Term. The Equipment Service Program includes (i) free overnight shipping and handling on replacement terminal if requested by 3:00 pm ET (Monday-Thursday). If you don't return your damaged equipment, you will be charged the full purchase price of the replacement equipment sent to you. The monthly fee of $9.56 for the optional Equipment Service Program is a per terminal fee. You can choose to insure the Equipment and terminate your participation in the program at any time by calling our Customer Service department.

1.6 Title to Equipment. The Equipment is, and shall at all times be and remain, our sole and exclusive property, and you shall have no right, title or interest in or to the Equipment except as expressly set forth in this Lease Agreement or otherwise agreed in writing. Except as expressly provided in Section 1.8, no transfer of intangible property rights is intended by or conferred in this Lease Agreement. You agree to execute and deliver to us any statement or instrument that we may request to confirm or evidence our ownership of the Equipment, and you irrevocably appoint us as your attorney-in-fact to execute and file the same in your name and on your behalf. If a court determines that the leasing transaction contemplated by this Lease Agreement does not constitute a financing and is not a lease of the Equipment, then we shall be deemed to have a first lien security interest on the Equipment as of the date of this Lease Agreement, and you will execute such documentation as we may request to evidence such security interest. If this Lease Agreement is deemed a loan despite the intention of the parties, then in no contingency or event whatsoever shall interest deemed charged hereunder, however such interest may be characterized or computed, exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem to be applicable.

1.7 Return or Purchase of Equipment at End of Lease Period. Upon the completion of your lease term or any extension thereof, you will have the option to (a) return the Equipment to us, or (b) purchase the Equipment from us for its then fair market value, calculated as a percentage of the aggregate lease payments in accordance with the following: if the term of this Lease Agreement is forty-eight (48) months or more, the buyout option as a percentage of the aggregate lease payments shall be ten percent (10%). If the term of this lease is thirty-six (36) to forty-seven (47) months, the buyout option as a percentage of the aggregate lease payments shall be fifteen percent (15%). If the term of this lease is twenty-four (24) to thirty-five (35) months, the buyout option as a percentage of the aggregate lease payments shall be twenty percent (20%). If the term of this lease is twelve (12) to twenty-three (23) months, the buyout option as a percentage of the aggregate lease payments shall be twenty-five percent (25%). In the absence of an affirmative election by you to purchase or return the Equipment, this lease will continue on a month-to-month basis at the existing monthly lease payment. If we terminate the lease pursuant to Section 1.12 due to a default by you, then you shall immediately return the Equipment to us no later than the tenth business day after termination, or remit to us the fair market value of the equipment, reduced by the equity you are entitled to retain according to the election you made under this Section 1.7 by debiting your bank account, and to the extent we are unable to obtain full satisfaction in this manner, you agree to pay the amounts owed to us promptly upon our request.

1.8 Software License. We retain all ownership and copyright interest in and to all computer software, related documentation, technology, know-how and processes embodied in or provided in connection with the Equipment other than those owned or licensed by the manufacturer of the Equipment (collectively "Software"), and you shall have only a nonexclusive license to use the software in your operation of the Equipment.

1.9 Limitation on Liability. We are not liable for any loss, damage or expense of any kind or nature caused or directly or indirectly resulting from or in connection with the equipment property or other property caused by the Equipment. We are not liable for the use or maintenance of the Equipment, its failure to operate, any repairs or service to it, or by any interruption of service or loss of use of the Equipment or resulting loss of business. Our liability arising out of or in any way connected with this

Merchant Agreement
Lease Agreement shall not exceed the aggregate lease amount paid to us for the particular Equipment involved. In no event shall we be liable for any indirect, incidental, special or consequential damages. The remedies available to you under this Lease Agreement are your sole and exclusive remedies.

1.10. Warranties. All warranties, express or implied, made to you or any other person are hereby disclaimed, including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular purpose, quiet enjoyment or non-infringement. You warrant that you will only use the Equipment for commercial purposes and will not use the Equipment for any household or personal purposes.

1.11. Indemnification. You shall indemnify and hold us harmless from and against any and all losses, liabilities, damages and expenses resulting from (a) the operation, use, condition, lien, against, or return of the equipment or (b) any breach by you of any of your obligations hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or willful misconduct.

1.12. Default; Remedies.

a) If any debit of your Settlement Account initiated by us is rejected when due, or if you otherwise fail to pay us any amounts due hereunder when due, or if you default in any material respect in the performance or observance of any obligation or provision of this Lease Agreement or any agreement with our affiliates or joint ventures, any such event shall be a default hereunder. Without limiting the foregoing, any default by you under a processing agreement with us or with an affiliate or joint venture to which we are a party and with which you have entered into an MA any default resulting from early termination of the MA.

b) Upon the occurrence of any default, we may at our option, effective immediately without notice, either (i) terminate this lease and our future obligations under this Lease Agreement, repossess the Equipment and proceed in any lawful manner against you for collection of all charges that have accrued and are due and payable, or (ii) accelerate and declare immediately due and payable all monthly lease charges for the remainder of the applicable lease period together with the fair market value of the Equipment (as determined by us), not as a penalty but as liquidated damages. Upon any such termination for default, we may proceed in any lawful manner to obtain satisfaction of the amounts owed to us and, if applicable, our recovery of the Equipment, including entering onto your premises to recover the Equipment. In any case, you shall also be responsible for our costs of collection, court costs, as well as applicable shipping, repair and refurbishing costs of recovered Equipment. You agree that we shall be entitled to recover any amounts due to us under this Lease Agreement by changing your Settlement Account or any other funds of yours that come into our possession or control, or within the possession or control of our affiliates or joint ventures, or by setting off amounts that you owe to us against any amounts we may owe to you, in any case without notifying you prior to doing so. Without limiting the foregoing, you agree that we are entitled to recover amounts owed to us under this Lease Agreement by obtaining directly from an affiliate or joint venture to which we are a party and with which you have entered into an MA any funds held or available as security for payment under the terms of the MA, including funds available under the “Reserve Account; Security Interest” section of the MA, if applicable.

1.13. Assignment. You may not assign or transfer this Lease Agreement, by operation of law or otherwise, without our prior written consent. For purposes of this Lease Agreement, any transfer of voting control of you or your parent shall be considered an assignment or transfer of this Lease Agreement. We may assign or transfer this Lease Agreement and our rights and obligations hereunder, in whole or in part, to any third party without the necessity of obtaining your consent.

1.14. Lease Guaranty. No guarantor shall have any right of subrogation to any of our rights in the Equipment or this Lease Agreement or against you, and any such right of subrogation is hereby waived and released. All indebtedness that exists now or arises after the execution of this Lease Agreement between you and any guarantor is hereby subordinated to all of your present and future obligations, and those of your guarantor, to us, and no payment shall be made or accepted on such indebtedness due to you from a guarantor until the obligations due to us are paid and satisfied in full.

1.15. Governing Law; Venue; Miscellaneous. This Lease Agreement shall be governed by and will be construed in accordance with the laws of the State of New York (without applying its conflicts of laws principles). The exclusive venue for any actions or claims arising under or related to this Lease Agreement shall be in the state of federal court located in Suffolk County, New York. If any part of this Lease Agreement is not enforceable, the remaining provisions will remain valid and enforceable.

1.16. Notices. All notices must be in writing, and shall be given (a) if sent by mail, when received, and (b) if sent by courier, when delivered; if to you at the address appearing on the MA, and if to us at 4000 Coral Ridge Drive, Coral Springs, Florida 33065, Attn: Lease Department. Customer Service toll free number 1-877-257-2094.

1.17. Entire Agreement. This Lease Agreement constitutes the entire agreement between parties with the respect to the Equipment, supersedes any previous agreements and understandings and can be changed only by a written agreement signed by all parties. This Lease Agreement may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Lease Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Lease Agreement.