**MERCHANT SERVICES AGREEMENT TERMS AND CONDITIONS**

These Terms and Conditions attach to the NomuPay Merchant Services Agreement and, along with all schedules and attachments, and any supplements to any of such documents, comprise the Agreement. These Terms and Conditions shall come into force and become effective as of the Effective Date and shall remain in full force and effect until terminated as part of the Agreement. By signing the main body of the Agreement, Merchant agrees to these Terms and Conditions below, all schedules and any other documents that form part of the Agreement.

1. DEFINITIONS

Capitalized words used in the Agreement that are not otherwise defined have the meanings set out in Schedule A of these Terms and Conditions.

1. INTERPRETATION
   1. **Headings**. The division of the Agreement into Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of any provision of the Agreement.
   2. **Extended Meanings**. Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. A definition applies to other forms of the word.
   3. **Performance on Business Days**. Except as expressly provided for herein, if any payment is required to be made or other action is required to be taken pursuant to the Agreement on a day which is not a Business Day, then such payment or action may be made or taken on the next Business Day.
   4. **References**.
      1. Any reference in the Agreement to any Applicable Law shall, unless otherwise expressly stated, be deemed to be a reference to such Applicable Law as amended, restated or re-enacted from time to time.
      2. Any reference to a section or schedule in the Agreement is deemed to be a reference to the applicable section or schedule contained in or attached to the Agreement and to no other agreement or document unless specific reference is made to such other agreement or document.
      3. All references to “herein”, “hereafter”, “hereunder”, or like words shall refer to the Agreement as a whole and not to any particular section, subsection, or clause contained in the Agreement.
      4. The terms “include”, “includes” and “including” are not limiting and, when used in the Agreement mean, respectively, “include without limitation”, “includes without limitation” and “including without limitation”.
   5. **Discretion**. The terms “discretion” or “sole discretion”, when used in reference to a Party, means the right to make a decision arbitrarily, without an implied obligation to act reasonably or in good faith or to justify the decision to the other Party.
2. MERCHANT SERVICES
   1. **Services Provided**

Subject to the terms and conditions of this Agreement, we will provide you with the Merchant Services that you have selected and that we have approved. If you request additional Merchant Services during the Term of this Agreement and we agree to provide them to you, then we may, in our sole discretion:

* + 1. create one or more additional Merchant Account(s) for you in connection with the additional Merchant Services, and we may provide you with a new application and/or agreement that will cover the additional Merchant Services. If we provide you with a new agreement, it will govern the additional Merchant Services but, unless we advise you otherwise, it will not replace this Agreement, which will also remain in full force and effect; or
    2. provide the additional Merchant Services under your existing Merchant Account, in which case this Agreement will also govern those additional Merchant Services unless we advise you otherwise.
    3. We may provide some or all of the Merchant Services through one or more affiliates or service providers.
  1. **ISO as Primary Contact.** ISO will be your primary contact for Application processing, customer service and training matters. You must provide your Application to ISO, and contact ISO for customer service and training matters. We may also provide some or all of the Merchant Services through one or more affiliates or other service providers.
  2. **ISO as Party to this Agreement.** The performance of ISO’s obligations under this Agreement are subject to the following: (i) although ISO is the exclusive Agent of NomuPay for the purposes of carrying out Application processing, customer service and training, NomuPay remains entirely responsible for, and in control of, ISO’s performance, (ii) NomuPay must approve, in advance, any fee payable to or obligation of the Merchant arising from this Agreement; (iii) ISO will not have access to any Cardholder Data, and, except when acting under a power of attorney or secretary’s certificate, pursuant to Section 3.4, any data used to initiate, authorize, clear, and/or settle a Transaction, any Merchant Account or any Merchant funds; (iv) and ISO may not subcontract, sublicense, assign or otherwise transfer to any third party any of its rights or obligations under this Agreement.
  3. Solely with respect to Transactions that we must settle to you, Merchant hereby appoints ISO as Merchant’s representative to provide instructions to NomuPay in respect of the timing and amount of all payments to your Settlement Account, and you further authorize ISO to provide instructions to NomuPay to transfer some or all of such amounts to ISO as compensation for the services ISO provides to you under this and any other agreement between you and ISO.
  4. **Changes.** You must tell us immediately of any change in the information provided by you about your business, and of any material changes in the nature of your business or the way you do business, including if you start to accept Card Not Present Transactions. As a result of a change in your business, we may amend or terminate this Agreement.
  5. **APM Service.** We offer acquiring services for merchants that accept Alternative Payment Methods. APM Transaction specifications, including settlement times, can vary considerably. For the most current list of available APMs, their settlement times and other relevant information, please contact your ISO representative.

1. Set-Up and Procedures

Providing the Merchant Services to you may require the interconnection of your systems and our systems. We agree to make the Services operational and available through a mutually agreed upon implementation plan. Unless and until such functionality has been established and is operationalized, we shall be under no obligation to provide Services to you, provided that we will provide certain set-up services to you to assist with interconnection of the Parties’ respective systems. You agree to, at all times, cooperate with us and provide us with all necessary information and assistance required by us to provide the Services in accordance with the Payment Card Network Rules and Applicable Law. You shall carry out transactions and payments on your website/online shop through secure networks, encryption, 3-D Secure or SSL (Secure Socket Layer) encryption, as well as use the card code verification process (CVC2/CVV2) in each transaction made by payment card.

1. ACCEPTING CARDS
   1. You will accept all Cards presented by a Customer for payment in respect of any Transaction.
   2. You will submit all Transactions to us for Authorization in accordance with the terms of this Agreement and any other standards and procedures that we may notify you of from time to time.
      1. You understand that an Authorization only indicates approval by a Card issuer or third party that a Transaction may proceed and does not mean that a Transaction has been authorized by the Cardholder or that it is authentic or valid.
      2. If you have received an Authorization, this does not limit our rights under this Agreement, including our right to refuse to process a Transaction or to Chargeback the amount of the Transaction.
   3. You will not do any of the following in respect of a Transaction:
      1. Surcharge unless permitted by a Payment Card Network;
      2. require that a minimum amount of goods or services be purchased before accepting a Card;
      3. anything that discriminates against or discourages use of one Card in favour of another Card;
      4. attempt to obtain multiple Authorizations for a single Transaction on a single Card or to reduce or disguise the amount of any Transaction by the use of multiple Transaction Records (known as “split ticketing”);
      5. process a Transaction for another individual or entity (known as “factoring”). For greater certainty, you must only submit Credit Card Transactions for payments by Cardholders to you for goods or services provided by you;
      6. submit any Credit Card Transaction that represents a cash advance or the refinancing of an existing obligation of a Cardholder, including any obligation that the Cardholder owes to you;
      7. accept Cards for types of businesses, goods or services that we or a Payment Card Network deem unacceptable including, without limitation, the goods/services listed hereinafter, as may be amended from time to time: [https://NomuPay.com/prohibited-products](https://nomupay.com/prohibited-products);
      8. accept payment for goods or services which we consider in our sole discretion to be inconsistent with the list of goods and services, or the description of your business that you provided to us and that we deemed acceptable at the time of the applicable Transaction;
      9. fail to adhere to the merchant category code or codes assigned to the applicable Transaction;
      10. submit a Transaction where a Card was used that we had notified you not to honour, that has been declined or in respect of which you have been unable to obtain an Authorization; or
      11. knowingly submit any Transaction that is illegal or that you should have known was illegal.
   4. You will submit all Transactions to us and close all Batches in a timely manner. If you consistently fail to submit Transactions within five (5) days, we may adjust the fees and charges applicable to late Transactions. If you fail to close a Batch (if applicable) within five (5) days, we may close the Batch at a later time.
   5. If any Transaction submitted to us is not readable or capable of being processed because it does not comply with our standards, or is not permitted under this Agreement, that Transaction will not be processed by us or credited to your Settlement Account. For clarity, whether or not we process the Transaction and credit it to your Settlement Account, we may withhold or debit from your Settlement Account, and in each case retain, the amount of that Transaction if, with respect to the Transaction, you are in breach of Section 5.3.
2. CARD PRESENT TRANSACTIONS
   1. For Card Present Transactions, you will follow the instructions and prompts on the Terminal in order to complete the Transaction, which may include obtaining the Cardholder’s signature, and you will complete and provide to the Cardholder a Transaction Record once the Transaction is complete.
   2. We will provide to you as part of the New Merchant Onboarding Materials, and you will abide by, instructions for processing Card Present Transactions using a PIN.
   3. We will provide to you as part of the New Merchant Onboarding Materials, and you will abide by, instructions for processing Card Present Transactions, other than a Contactless Transactions without using a PIN, including in circumstances when your Terminal does not function or the Authorization System is Off-Line.
3. CARD NOT PRESENT TRANSACTIONS
   1. You understand that Card Not Present Transactions carry a greater risk of rejection by Cardholders, and refusals and Chargebacks by us, because the Transaction is conducted without you, the Cardholder, and the Card being in the same location.
   2. You may not accept Internet Transactions without our prior written approval. If we have agreed to process Internet Transactions for you, the requirements set out in Schedule Bapply.
   3. You may obtain permission from a Cardholder to periodically bill that Cardholder’s Credit Card for a Recurring Transaction where that is permitted by a Payment Card Network, and in accordance with the applicable Payment Card Network Rules.
4. REPRESENTATIONS AND WARRANTIES
   1. **Mutual Representations and Warranties**. Each Party represents, warrants and covenants to the other Party that, as of the Agreement Date, the following are true and correct, and will remain true and correct at all times during the term of this Agreement:
      1. This Agreement constitutes a valid and legally binding obligation of such Party enforceable upon such Party according to its terms.
      2. It is and shall remain for the duration of this Agreement a legally existing business entity, qualified to do business and appropriately licensed, as applicable and if required, in each jurisdiction in which it is doing business.
   2. **Merchant Warranties.** You represent, warrant and covenant that all information and documents provided in connection with your request for Services are complete and accurate and properly reflect your business, financial condition, principal partners, owners and officers.
   3. **Transaction Representations and Warranties.** Each time you submit a Transaction you represent and warrant the following to us in respect of that Transaction:
      1. it represents a genuine sale of goods or services and arises from a bona fide Transaction or, in the case of a Debit Card Transaction, the advance of money, in the ordinary operation of your business;
      2. the Transaction was entered into by you and the Cardholder and represents a valid and enforceable obligation of the Cardholder to you for the amount of the Transaction (including taxes, but without any Surcharge unless permitted by the Payment Card Network Rules), not more or less;
      3. the amount charged for the Transaction is not subject to any dispute, setoff or counterclaim;
      4. except for any delayed delivery or advance deposit Transactions that are permitted by us or the Payment Card Network Rules, the good or service was actually delivered or provided to the Cardholder by you at the time of purchase;
      5. you have no knowledge or notice of anything that would indicate that the Transaction was fraudulent, illegal or not authorized by the Cardholder, or that would otherwise impair the validity or collectability of the Cardholder’s obligation arising from the Transaction or relieve the Cardholder from liability;
      6. in the case of Internet Transactions, the Transaction was entered into on an Approved Website; and
      7. the Transaction was made in accordance with this Agreement, applicable Payment Card Network Rules, Operating Standards and Applicable Law and would not damage the goodwill of a Payment Card Network, as determined in the sole discretion of the Payment Card Network.
5. COMPLIANCE WITH APPLICABLE LAW; PAYMENT CARD NETWORK RULES; OTHER PROCEDURES
   1. **Compliance with Applicable Law and Payment Card Network Rules**
      1. Each Party is responsible for determining all Applicable Law that is applicable to it and for complying with all such Applicable Law in performing its obligations under this Agreement.
      2. Each Party will comply with the Payment Card Network Rules as they apply to it and all applicable Payment Card Network Rules are incorporated by reference into this Agreement.
      3. You acknowledge that lack of knowledge of an Applicable Law or Payment Card Network Rule shall not serve as a defense to your responsibilities under this Section.
      4. You acknowledge and agree that the Payment Card Network Rules provide that each NomuPay entity may only provide the Services to merchants in the same Payment Card Network region as the NomuPay entity. The Merchant’s address on the first page hereof will be used to determine which NomuPay entity will provide Card Services to the Merchant.
   2. **Other Procedures**.
      1. In addition to the Payment Card Network Rules, we may at different times provide you with, or make available to you, various other procedures, forms, rules, instructions, manuals and Payment Card Network-mandated systems or operational changes for Cards and Alternative Payment Methods. You will implement and comply with all of these procedures, forms, rules, instructions, manuals and changes.
      2. You are responsible for the conduct of your employees, agents and representatives and their compliance with this Agreement, Applicable Law, and Payment Card Network Rules and any rules and guidelines of Alternative Payment Method providers.
6. DISPUTES AND REFUNDS
   1. You must disclose your return/refund policy to Cardholders in accordance with the Payment Card Network Rules.
   2. You will settle any claims or disputes between you and a Cardholder or any other person about goods or services or the amount of a Transaction directly with the Cardholder or other person.
   3. If you have already received a credit from us for the amount of a Credit Card Transaction and the Transaction has not been charged back to your Settlement Account, you will make any refund or money adjustment payable to a Cardholder in respect of the Transaction by issuing a refund directly to the Cardholder. You must submit any such refund Transaction to us in accordance with Section 5.4.
   4. If a Cardholder claims that the wrong amount of funds is debited to the Cardholder’s account for a Debit Card Transaction, you will not provide any refund to the Cardholder and you will instruct the Cardholder to contact his or her financial institution to dispute the amount of the debit. You are liable for any attempts by you or your employees or agents to correct any incorrect debit, including without limitation a double debit of the Cardholder’s account or a cash refund.
7. BANKING; SETTLEMENT OF TRANSACTIONS
   1. **Deposit Account for Settlement**.
      1. You will at all times maintain the Settlement Account for this Agreement with us or at a financial institution that we approve, and you agree to provide us with the proper authorization to debit the Settlement Account.
      2. You acknowledge that all debits for fees, payments and Chargebacks and other amounts for which you are liable under the terms of this Agreement will be made to the Settlement Account.
      3. You may not close or change the Settlement Account without written notice to us.
      4. You will be solely liable for all fees and costs associated with the Settlement Account and for all overdrafts and you shall immediately deposit into the Settlement Account an amount sufficient to cover any overdraft and any related service charges or fees.
      5. All credits and debits to the Settlement Account made hereunder are subject to review, verification and acceptance by us**.**  In the event of error, you authorize us to make correcting credits or debits, as the case may be, without notice to you.
   2. **Settlement**.
      1. All settlement funds received from Payment Card Networks and owing to you pursuant to this Agreement (the “**Settlement Funds**”) will be held by us until transferred to the Settlement Account. Such funds will not bear interest, charges or fees. We will not be liable for any delays in receipt of Settlement Funds or errors in debit and credit entries caused by third parties, including any Payment Card Networks or financial institution, but excluding our service providers and affiliates.
      2. We shall settle Transactions based on gross sales, less credits/refunds, adjustments, applicable fees, Chargebacks, Fines and any other amounts that you owe us under this Agreement.
      3. All deposits and credits (and other payments) to your Settlement Account are subject to our final audit, Chargebacks and any Fines. You agree that we may debit/credit your Settlement Account and/or Reserve Account for any deficiencies, overages, fees, pending Chargebacks and any pending Fines, without any deduction or setoff. We may elect to invoice you for any such amounts, net due thirty (30) days after the invoice date or on such earlier date as may be specified.
8. REFUSALS AND CHARGEBACKS FOR TRANSACTIONS
   1. Even if you have received an Authorization for a Transaction by or on behalf of the Card issuer, we may:
      1. refuse to credit your Settlement Account for any reason in our sole discretion,
      2. deduct from any payment due to you the total amount of any Transaction, or
      3. Chargeback to your Settlement Account, in whole or in part the amount of any Transaction in any circumstance permitted by the Payment Card Network Rules.

Some of the circumstances that commonly result in such refusals, deductions or Chargebacks are set out in Schedule C.

For greater certainty, you acknowledge that we will also have the right to refuse to credit your Settlement Account and to retain the amount of any Transaction that is not carried out in accordance with this Agreement, is not permitted under this Agreement, or is not a Transaction for which we have agreed to provide Merchant Services to you under this Agreement.

* 1. You are responsible for all fees, discounts, refusals and Chargebacks resulting from unsigned, unimprinted, manually keyed or unauthorized Transactions. The amount of any Chargeback and the costs we incur in collecting and processing any Chargeback are amounts that you must pay to us on demand.
  2. We will advise you of any Transaction that we have refused to pay or have charged back to you. At our option, we may do so after we have already refused to pay or charged back the Transaction.
  3. In the event of a Chargeback, you may pursue any available remedies against the Cardholder. We are not obligated to resolve any disputes arising between you and the Cardholder.
  4. Except for the Transactions that we have refused to credit to you, or which have been subject to a Chargeback, you must not receive payment in respect of a Transaction from any party except from us.

1. TERMINALS
   1. When you use a Terminal to request Authorization of a Transaction, you will follow all instructions and abide by all responses communicated by means of a Terminal.
   2. The provisions set out in Schedule D apply to Terminals used by you.
   3. Your Terminal may be capable of running third party software applications (“**Third Party Applications**”), which may be installed for use on the Terminal. The provisions set out in Schedule E apply to the downloading of Third Party Applications on your Terminal, and your access to and use of Third Party Applications through your Terminal.
2. SECURITY INTEREST, RESERVE ACCOUNT AND WITHOLDING FUNDS
   1. **Security**. We have the right to require, at any time, that you provide security in a form and amount that is acceptable to us to secure the performance of your Payment Obligations and/or your Other Obligations.
      1. We have the right to require, at any time during the Term, that you increase the amount of your security by an amount that is acceptable to us.
      2. You grant to us a first priority security interest in your security, and you agree to sign any documents that we may require to perfect and otherwise confirm our security interest.
      3. If you do not provide the required security or increased security within five (5) days of our request to you, or immediately in the event of an allegation of fraud or if one of the circumstances described in Section 17.1(b)(i) through (xi) occurs, we may withhold or suspend providing Merchant Services until you provide the security or increased security.
   2. **Withholding Funds**. We have the right, at any time and without notice to you, including while we complete an investigation with respect to your Merchant Account, to withhold settlement of Transactions; and/or hold, or otherwise freeze and retain funds in your Settlement Account, in an amount sufficient to cover any Payment Obligations and/or your Other Obligations, as determined by us in our sole discretion.
   3. **Reserve Account**. We have the right, at any time and for any reason, to require that you create or maintain a specified minimum reserve through funds held on deposit without the involvement of an independent escrow agent, in a separate or comingled Reserve Account in an amount that is acceptable to us to secure the performance of your Payment Obligations and/or your Other Obligations.
      1. The Reserve Account may be funded by:
         1. direct payment by you (if you are requested to do so by us); and/or
         2. offsets by us against Settlement amounts or other amounts that are due to you from us under this Agreement.
   4. The minimum reserve amount will be determined by us in our sole discretion based on a number of factors, including, without limitation, a requested change in annual approved transaction volume, volumes in excess of annual approved transaction volume, change in business model, or high Chargeback volumes.
      1. You grant to us a first priority security interest in your Reserve Account, and you agree to sign any documents that we may require to perfect and otherwise confirm our security interest.
      2. If you do not fund or increase the amount in your Reserve Account within five (5) days of our request to you pursuant to this Section 14.4, or immediately, in the event of an allegation of fraud or if one of the circumstances described in Section 17.1(b)(i) through (xi) occurs, we may withhold or suspend providing Merchant Services until you fund or increase the amount in the Reserve Account or we may terminate this Agreement.
      3. In addition to any other rights, Merchant hereby authorizes NomuPay to, at any time and from time to time, set off, recoup, appropriate and apply any and all funds in the Reserve Account against and on account of Merchant's obligations to NomuPay under this Agreement and any other agreement with NomuPay, whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured. NomuPay will not be required to give any notice to or make any demand on the Merchant in order to exercise these rights of set off, recuperation, appropriation and application.
      4. No interest shall accrue on any funds in the Reserve Account or any funds withheld by NomuPay.
      5. Until the claims referred to in this Section are fully and finally settled, the Merchant shall have no right to the funds in the Reserve Account. NomuPay's rights to the funds in the Reserve Account shall survive any termination of this Agreement and NomuPay shall be entitled to maintain the Reserve Account even after the termination of this Agreement for such period as it deems necessary for the discharge of the stated purposes.
3. STATEMENTS AND TRANSACTION RECORDS

**Review of Settlement Account Activity and Reports.**

* 1. You must promptly and carefully review statements and reports provided or made available to you (physically, electronically or otherwise) reflecting Transaction activity, including activity in the Settlement Account. If you believe any discrepancies exist or adjustments are needed with respect to any debits or credits made to the Settlement Account, or if you have any other concerns regarding Transactions that are processed and settled under this Agreement, you must notify us in writing of any errors or omissions in your statement within thirty (30) days of the report or statement.In the event you believe that we have failed in any way to provide the Services, you agree to provide us with written notice, specifically detailing any alleged failure, within thirty (30)days of the date on which the alleged failure first occurred.
  2. We will investigate errors or omissions if we receive written notice from you within the above time period. If we do not receive written notice from you within such time period, then every item on your statement will be considered to be correct and you may not afterwards make any claim against us about any error or omission in your statement.
  3. All credits to your Settlement Account are subject to Chargebacks or other deductions, and to final audit by us. We may debit or credit your Settlement Account at any time to correct any error or omission.

**Transaction Records.**

* 1. You will ensure that any Transaction Record that you issue is legible.
  2. You will keep all Transaction Records for a minimum of twenty-four (24) months after the Transaction date. We have the right to have access to and examine and copy your Transaction Records at any reasonable time and you agree to provide us with access to your Transaction Records when requested within five (5) Business Days, even after termination of this Agreement.
  3. If you fail to provide us with a copy of any Transaction Record for a Transaction within the time that we request, we may Chargeback that Transaction.

1. SUSPENSION OF SERVICES

We may suspend provision of the Services to you without liability if:

* + 1. we reasonably believe that the Services are being used, have been used, or will be used by you in breach of this Agreement or violation of Applicable Law;
    2. you do not cooperate with our investigation of any suspected breach of this Agreement or any violation of Applicable Law;
    3. we reasonably believe that Services provided to you have been accessed or manipulated by a third party without your consent or in breach of this Agreement;
    4. we reasonably believe that suspension of the Services is necessary to protect us or other third parties;
    5. your continued use of the Services may adversely impact the Services, systems, or content of any other merchant;
    6. we reasonably believe that your use of the Services may subject us, our affiliates, or any third party to liability; or
    7. Applicable Law, a regulatory agency, a Payment Card Network and/or bank requires suspension.
  1. We will give you reasonable advance notice of a suspension under this part of the Agreement and a chance to cure the grounds on which the suspension is based, except that we will not give reasonable advance notice if we determine that a suspension on shorter or contemporaneous notice is necessary to protect us or other merchants from a Fine, operational, security, or other risk, or a regulator, court or other judicial body orders the suspension.
  2. If we suspend your right to access or use all or parts of the Services, we may terminate your access to end-user information or other databases during the suspension, and we will not be liable to you for any damages or losses you may incur because of the suspension.

1. TERM AND TERMINATION
   1. This Agreement, a Merchant Account or certain of the Merchant Services, may be terminated:
      * 1. by us at any time upon providing ten (10) days’ notice to you;
        2. by us immediately without notice to you in the following circumstances:
           1. you fail to comply with this Agreement;
           2. you fail to maintain the minimum credit standard established by us for your Settlement Account from time to time, or we believe that a material adverse change has occurred in your creditworthiness, assets, business or financial condition including, without limitation, due to a change in your business;
           3. you become insolvent or the subject of bankruptcy or insolvency proceedings, commit an act of bankruptcy, make any assignment for the benefit of your creditors, or a receiver is appointed for your business or any part of your property;
           4. we determine, in our sole discretion, that any statement made by you to induce us to enter into this Agreement was false in any way when made, or becomes false;
           5. you are in default of any Payment Obligation under this Agreement or in default of paying any amount owing by you under any loan, debt or Other Obligation to us or anyone else;
           6. you do not submit a Transaction or use any of the other Merchant Services for a period of twelve (12) consecutive months;
           7. you cease to carry on business;
           8. we consider the number or amount of Chargebacks, potential Chargebacks, contingent Chargebacks or pending Chargebacks under this Agreement to be excessive or your Transactions to be irregular or any other circumstances that we consider, in our sole discretion, may increase our exposure to Chargebacks or otherwise present a financial or security risk to us;
           9. any Transactions are irregular;
           10. any act or omission by you may, in our sole discretion, create harm or loss of goodwill for us;
           11. a Payment Card Network requires that we terminate this Agreement including, without limitation, because a merchant’s act or omission may, in the Payment Card Network’s sole discretion, create harm or loss of goodwill for the Payment Card Network.
   2. We may, with or without notice to you, change or suspend any or all of the Merchant Services and/or suspend payments to you under this Agreement in any of the circumstances set out in Section 17.1(b), while we investigate the circumstances, or if we have made reasonable efforts to contact you regarding the Merchant Services or any other aspect of this Agreement but have not been able to reach you.
   3. Our right to terminate this Agreement, a Merchant Account or any of the Merchant Services does not limit any of our other legal or equitable rights.
   4. When this Agreement ends (either by termination by us or you for any reason):
      * 1. all amounts payable by you under this Agreement will be immediately due and payable on demand;
        2. your right to accept Cards or Alternate Payment Methods will immediately end but the terms of this Agreement will remain in effect for any Transaction delivered to us for processing before the termination date; and
        3. all equipment (including Terminals and imprinters) and other material bearing the name or Mark of us or any Payment Card Network or any representation of them will be returned to us immediately at your expense and risk and you will immediately discontinue all references to, uses of, or displays of all Marks or names, unless you are permitted to do so under another agreement.
   5. **Final Settlement**. Within thirty (30) days of the date of termination of this Agreement, we will credit your Settlement Account with all Settlement Funds owing to you under this Agreement less a holdback equal to any outstanding, potential or anticipated fees, charges, adjustments, Fines, applicable taxes, Chargebacks and any other amounts which may be or become payable by you pursuant this Agreement after its termination. The holdback will be used to settle any such amounts that become due after termination, and the unused portion of the holdback will be credited to your Settlement Account in accordance with the Card Network Rules and as otherwise required by an Alternative Payment Method provider. If the holdback is insufficient to cover all Chargebacks and other outstanding amounts that become due after termination, you agree to pay us any deficiency promptly on demand.
   6. **Liability Upon Termination**. NomuPay will have no liability for any direct or consequential loss you suffer which may result from termination of this Agreement or the exercise by NomuPay of any of its rights hereunder.
   7. **Survival**. All provisions of this Agreement which by their nature are intended to survive termination of this Agreement shall survive the termination of this Agreement. The termination of this Agreement will not release either Party from any obligation or liability that occurred prior to the date of termination of this Agreement. For greater certainty, notwithstanding termination of this Agreement, you will continue to be responsible for your Payment Obligations and Other Obligations under this Agreement.
2. CONFIDENTIALITY
   1. For the purposes of this Agreement, the term “**Confidential Information**” means any trade secrets, proprietary, or other confidential information or items of a Party whether in written, oral, graphic, photographic, electronic or any other form, and including: scientific, technical, or business information, product makeup lists, ideas, concepts, designs, drawings, techniques, plans, calculations, system designs, formulae, algorithms, programs, software (source and object code), hardware, manuals, test procedures and results, identity and description of computerized records, identity and description of suppliers, customer lists, processes, procedures, “know-how”, marketing techniques and material, marketing and development plans, price lists, pricing policies, and all other financial information which, at the time of disclosure by that party to the other party, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgment, to be confidential.
   2. Except as expressly authorized by prior written consent of the other Party, or as provided in this Agreement, each Party agrees to:
      * 1. limit access to any Confidential Information received by it to its employees and agents who have a need-to-know in connection with this Agreement;
        2. advise its employees and agents having access to the Confidential Information of the proprietary nature thereof and of the confidentiality obligations included in this Agreement;
        3. safeguard all Confidential Information received by it using a reasonable degree of care, but not less than that degree of care used by it in safeguarding its own similar information or material;
        4. use all Confidential Information received by it solely for purposes of performance of this Agreement; and
        5. not disclose any Confidential Information received by it to any third party except as required for purposes of performance of this Agreement; for clarity, NomuPay may disclose Merchant’s Confidential Information to ISO and ISO may disclose Merchant’s Confidential Information to NomuPay.
   3. **Exclusions**. The obligations of confidentiality and restriction on use do not apply to any Confidential Information which the recipient of Confidential Information can establish:
      * 1. was publicly available prior to the date of this Agreement or subsequently became publicly available through no fault of the recipient;
        2. was lawfully received by the recipient from a third party free of any obligation of confidence to the third party;
        3. was already in the possession of the recipient prior to the receipt thereof, directly or indirectly, from the disclosing Party;
        4. is subsequently and independently developed by employees, consultants or agents of the recipient without reference to the Confidential Information disclosed under this Agreement; or
        5. is required to be disclosed: (i) in response to a court order, search warrant or other demand or request which the recipient believes to be valid; or (ii) to meet requests for information from regulators, including self-regulatory organizations, or to satisfy applicable legal and regulatory requirements.
   4. **Return or Destruction**. Except to the extent otherwise set forth in this Agreement, the receiving party will return or destroy any Confidential Information promptly after the earlier of: (a) the disclosing Party’s request, or (b) the date the receiving Party no longer requires Confidential Information to perform its obligations, or ensure the other Party’s performance of its obligations, under this Agreement.
   5. **Ownership of Confidential Information**. As between the Parties, each Party’s Confidential Information shall remain the property of that Party. Nothing contained in this Agreement shall be construed as obligating a Party to disclose its Confidential Information to the other Party, or as granting to or conferring on a Party, expressly or impliedly, any rights or license to the Confidential Information of the other Party, and any such obligation or grant shall only be as provided by other provisions of this Agreement.
   6. **Remedies**. Each Party hereby expressly acknowledges that the improper disclosure or use of the other Party’s Confidential Information may give rise to irreparable harm and damage to the disclosing Party, inadequately compensable in damages and that, accordingly, the disclosing Party may seek and obtain, in addition to any legal remedies that may be available, injunctive relief against the breach or threatened breach by the receiving Party of any of the provisions of this Section.
3. PRIVACY, INFORMATION AND DATA SECURITY
   1. You will collect, use, disclose, store and otherwise handle Cardholder Data in accordance with Privacy Laws.
   2. You will not use Cardholder Data or other Transaction information for any purpose other than for the sole purpose of assisting you in completing a Transaction, or as specifically required by Applicable Law.
   3. You will not disclose, sell or provide access to Cardholder Data or other Transaction information to any third party other than: (i) us or our designated agent as contemplated by this Agreement or otherwise as required in connection with our provision of Merchant Services; (ii) as required by court order, search warrant or other valid request of law enforcement; or (iii) as required by applicable legal or regulatory requirements.
   4. **Data Protection**. Without limiting your Other Obligations under this Agreement, you will implement appropriate physical, technological and administrative security measures to protect Cardholder Data and other Transaction information from loss or theft, or unauthorized access, use or disclosure. You will take reasonable precautions to ensure that each Cardholder is adequately protected from the disclosure of Cardholder Data when a Card is tendered as payment for a Transaction. You will store all Transaction Records and any other materials in any form containing Cardholder Data and other Transaction information in a safe and secure manner, in an area where access is limited to selected personnel who require access in connection with their role. Any deletion or destruction of Transaction Records or Cardholder Data will be carried out in a secure manner that renders the deleted or destroyed data permanently unreadable.
   5. **Audit Right**. You will allow us or a Payment Card Network to inspect your premises and computers for the purposes of verifying that Cardholder Data and other Transaction information is securely stored and processed in accordance with the requirements of this Section 19.
   6. **Third Party Provider**. If you make arrangements with a third party for the collecting, processing or storing of Cardholder Data or other Transaction information, you will execute a written contract with the third party that includes obligations regarding security and confidentiality of Cardholder Data and other Transaction information and the right to inspect the third party’s premises and computers that are similar to those in this Section 19. Upon NomuPay’s request, you agree to provide us with a copy of PCI DSS compliance certificate for any intermediary technical service providers prior accepting payment cards.
   7. **Breach**. You will notify us immediately of any suspected or confirmed loss or theft of Cardholder Data or other Transaction information. You will co-operate with the Payment Card Network and with us in any investigation of suspected or confirmed loss or theft of Cardholder Data or other Transaction information. All of the costs incurred by us under this Section 19.7 constitute an amount that you must pay us on demand.
   8. **Data Security**. You acknowledge and agree that you are solely responsible for the security and integrity of your own systems, software, equipment, and data centers that you use in your business or in connection with the Services. Throughout the Term of this Agreement, you will comply with all Applicable Laws relating to data security and privacy and with any contractual commitments with third parties relating to privacy and data security. You shall be solely responsible for any unauthorized transmissions from your own systems, and you agree to notify us immediately of any unauthorized disclosure of information or other actual or potential use of the Services, or of any fraud of which you become aware of that are contrary to this Agreement. You agree to co-operate with us with respect to any investigation and/or additional requirements related to a suspected Data Incident.
   9. **PCI Compliance**. You will comply with the Payment Card Industry Data Security Standard (“**PCI DSS**”) and, as applicable, the Payment Application Data Security Standard (“**PA DSS**”), the Visa Account Information Security Program, the MasterCard Site Data Protection Program, the Discover Information and Security Compliance program and the American Express Data Security Requirements, details of which are available at pcisecuritystandards.org,[www.visa.com/cisp](http://www.visa.com/cisp),mastercard.com/sdp. The PCI DSS also applies to any agent or third party provider that you may use to store, process or transmit Cardholder Data. In addition, any of your agents or third party providers must be registered with the applicable Payment Card Network and any Alternative Payment Method provider requiring registration. Therefore, you must:
      * 1. notify us in writing of any agent or third party provider that engages in, or proposes to engage in, the provision of payment related services and/or the storing, processing or transmitting of Cardholder Data on your behalf, regardless of the manner or duration of those activities; and
        2. ensure that all of your agents and third party providers are (i) registered with the applicable Payment Card Network; (ii) comply with all applicable data security standards, including the PCI DSS; and (iii) are bound by a written contract with you that requires them to process Cardholder Data in compliance with this Section 19.

You are solely responsible for the compliance of any and all third parties that are given access by you to Cardholder Data and of any third party software that you may use, including for greater certainty, any point of sale (POS) solution, application or software for facilitating payment processing.

1. MARKS AND OTHER INTELLECTUAL PROPERTY
   1. All Payment Card Network Marks are the property of such organizations. You acknowledge and agree that Payment Card Networks are the sole and exclusive owners of all their Marks, and you agree not to contest the ownership of those Marks for any reason. We are the owner of “NomuPay” trademark. You shall not mislead customers or create the impression that you are the owner of such trademarks.
   2. **Use of Marks:** You are not permitted to use any of our Marks or any Payment Card Network Mark or any representation of them including in any advertising materials without our or the Payment Card Network’s prior approval in writing (as applicable).
   3. **Display**:
      1. You agree to prominently display decals, signs, digital Marks or other digital assets provided or approved by us in your premises, on promotional material and on any Approved Website, indicating that you accept Cards. You will not more prominently display acceptance of one Card than that of any other Card. You will submit for our prior approval any advertising or promotional materials that refer to us, any Card or any Payment Card Network. You will not make any representation that we or a Payment Card Network endorse your goods or services.
      2. You must display all Payment Card Network Marks in accordance with the Payment Card Network Rules and any other standards or guidelines relating to Marks published from time to time by the applicable Payment Card Network.
   4. **Merchant Marks**. You hereby grant us and our affiliated entities a non-exclusive, non-transferable, royalty-free license to use your Marks including, without limitation, services marks, domain names or other indicia of source, association or sponsorship in any announcement, statement, press release or other publicity or marketing materials relating to this Agreement.
   5. Neither Party will assign to any person the rights to use the Marks of the other Party or their agents. All right, title, and interest in and to all intellectual property related to the Services (including, without limitation, the content of any materials, web screens, layouts, processing techniques, procedures, algorithms, and methods), owned, developed or licensed by such other Party prior to, during the Term of, or after the Agreement, or employed by such other Party in connection with the Services and any updates, changes, alterations or modifications to or derivative works from such intellectual property, will be and remain, as among the Parties, such other Party exclusive property. Except as specifically provided for herein, no license is hereby granted to any Party to any patent, industrial design, trademark, copyright, trade secret or other proprietary rights of any other Party.
2. DISCLAIMERS; INDEMNITIES; LIMITATION OF LIABILITY
   1. **Disclaimers**.
      1. **THIS AGREEMENT IS A SERVICE AGREEMENT. TO THE EXTENT PERMITTED BY APPLICABLE LAW WE DISCLAIM ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, COLLATERAL OR STATUTORY, AND WHETHER MADE TO YOU OR ANY OTHER PERSON, INCLUDING ANY WARRANTIES OR CONDITIONS REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE OF ANY EQUIPMENT OR SERVICES PROVIDED BY US UNDER OR INCIDENTIAL TO THIS AGREEMENT.**
      2. We will not be responsible for any claims, suits, damages, losses, Fines, penalties, assessments (including under PCI DSS), costs or expenses incurred directly or indirectly by you (unless resulting from our gross negligence or willful misconduct) resulting from:
         1. disputes between you and a Cardholder, a third party or any other person relating to the receipt, quality, price or satisfaction of goods or services furnished by you or any act or omission of you arising out of a Transaction;
         2. the merchant category code (MCC) that we assign to you, including the amount of any interchange fees paid by you and remitted to a Payment Card Network as a result;
         3. the installation, operation, failure to operate, security or maintenance of a Terminal, Third Party Application, Electronic Commerce Facilities or other equipment or services;
         4. errors, mistakes, or inaccuracies of content not originating from us;
         5. interruption or cessation of transmission to or from the Services or the website unless caused by our intentional act or gross negligence;
         6. bugs, viruses, Trojan horses, malware, ransomware, or other disabling code that may be transmitted to or through the Service by any person that might infect your computer or affect your access to or use of the Service, your other services, hardware, or software that were not originated by NomuPay or which may have been inadvertently transmitted through us;
         7. incompatibility between the Service and your other services, hardware, or software;
         8. your use of a Third Party Application;
         9. breakdown of or interruption of Services as a result of communication services;
         10. errors in messages transmitted through a Terminal, Electronic Commerce Facilities, or other equipment or services;
         11. Transactions submitted electronically to us and data produced using information transmitted through a Terminal, Electronic Commerce Facilities or other equipment or services;
         12. any failure or delay in the performance of any of the Merchant Services;
         13. unauthorized or fraudulent use of or errors in the use of Terminals, Electronic Commerce Facilities, Terminal Access Numbers or other equipment or services and any resulting unauthorized, fraudulent or erroneous Transactions; or
         14. your failure to receive any communications provided or made available to you by us under this Agreement.
      3. We are not responsible for equipment or services provided by third parties, including, software vendors, Internet service providers, other providers of services in respect of Electronic Commerce Facilities, third party processors, providers of Terminals and other equipment and services. Any approval by us of any third party or certification of equipment or services provided by a third party is for our own purposes and is not a representation or warranty with respect to the third party or its equipment or services. You will not make any representation that we or a Payment Card Network endorse or certify a third party’s equipment or services.
   2. **Indemnities**.
      1. You (for the purposes of this Agreement, an “**Indemnifying Merchant**”) must protect, indemnify, and hold harmless NomuPay and its affiliated entities, and each of the directors, officers, employees and agents of NomuPay and its affiliated entities, from any and all actual or threatened claims, demands, obligations, losses, costs, Fines, assessments (including under PCI DSS), liabilities and/or expenses (including, without limitation, actual legal fees, costs of investigation, and disbursements) resulting from and/or arising in connection with any act or omission of any person, including without limitation any of the following:
         1. the Indemnifying Merchant, its affiliated entities, or any person associated with the Indemnifying Merchant or its affiliated entities (including, without limitation, such Indemnifying Merchant’s directors, officers, employees and agents, and all direct and indirect parents, subsidiaries, and affiliates of the Indemnifying Merchant);
         2. any Cardholder in connection with any Merchant Services and/or any other of Indemnifying Merchant’s business;
         3. any Payment Card Network (including, without limitation, any Payment Card Network agents, all direct and indirect parents, subsidiaries, and affiliates of any Payment Card Network);
         4. any third party, or any other of Indemnifying Merchant’s suppliers, service providers, counterparties or other entities engaged by Indemnifying Merchant, whether directly or indirectly in relation to Indemnifying Merchant’s business, whether in relation to Merchant Services or otherwise; or
         5. any governmental or regulatory authority having jurisdiction over any of the foregoing.
   3. **Limitation of Liability. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, AND SUBJECT TO APPLICABLE LAW, NOMUPAY’S CUMULATIVE LIABILITY, IN THE AGGREGATE (INCLUSIVE OF ANY INDEMNIFICATION OBLIGATION UNDER THIS AGREEMENT, WHETHER SUCH CLAIMS ARE RELATED OR UNRELATED TO ONE ANOTHER) FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES, OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING THOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT) AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY WILL NOT EXCEED THE AMOUNT OF FEES (OTHER THAN THIRD PARTY BASED FEES) RECEIVED BY NOMUPAY PURSUANT TO THIS AGREEMENT FOR THE SERVICES IN THE IMMEDIATELY PRECEDING SIX (6) MONTHS (NET OF INTERCHANGE, FINES AND ANY OTHER FEES IMPOSED ON US OR YOU BY A PAYMENT CARD NETWORK OR THIRD PARTY).**
   4. **Exclusion of Consequential Damages. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT WILL NOMUPAY BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MERCHANT ACKNOWLEDGES AND AGREES THAT PAYMENT OF ANY LIQUIDATED DAMAGES AS PROVIDED ELSEWHERE IN THIS AGREEMENT WILL NOT BE PROHIBITED BY THIS PARAGRAPH.**
3. GENERAL PROVISIONS
   1. **Disputes**. The Parties agree that they will attempt to settle any dispute arising out of or relating to this Agreement through good faith negotiations in the spirit of mutual cooperation between representatives of each Party with authority to resolve the dispute.
   2. **Publicity**. In no event will either Party publicly disparage the other Party.
   3. **Time of Essence**. Time is of the essence of this Agreement.
   4. **Amendment.** We may amend this Agreement from time to time by providing no less than thirty (30) days’ notice to you by sending you the amendment or by directing you to view, print or download the amendment from our website or to contact us by telephone requesting that the amendment be mailed to you.
   5. **Assignment.**
      1. This Agreement will be binding upon the Parties and their heirs, successors and permitted assigns. However, you are not permitted to assign this Agreement or any obligations without our prior written approval. Any attempt to so assign shall be null and void. In the event you become a debtor in bankruptcy or become subject to restructuring or insolvency proceedings, this Agreement cannot be assumed or enforced, and we will be excused from performance hereunder.
      2. We may transfer, sell or otherwise assign this Agreement, any portion of this Agreement, or any rights and obligations without your approval and without prior notice to you.
      3. If we assign this Agreement, we may disclose information about you and the individuals who are your principals to anyone to whom we assign or may assign this Agreement, our rights and obligations.
   6. **Waiver.** Any waiver by us of any of the provisions of this Agreement must be made expressly and in writing and will not constitute a waiver of any other provision (whether similar or not), or a continuing waiver of that particular provision unless expressly provided by us in writing.
   7. **Severability.** If any term or provision of this Agreement or any application thereof is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement and any other application of such term or provision shall not be affected.
   8. **English Language.** This Agreement shall be written and executed in, and all other communications under or in connection with this Agreement shall be in, the English language. Any translation into any other language shall not be an official version thereof, and in the event of any conflict in interpretation between the English version and such translation, the English version shall control.
   9. **Governing Law; Jurisdiction; Venue.** This Agreement will be governed by, and construed and enforced in accordance with, the laws of England, without regard to conflicts of law provisions. The Parties hereby agree to submit to the exclusive jurisdiction of the courts of England for any action or proceeding arising out of or in any way relating to this Agreement**.**
   10. **Entire Agreement.** This Agreement, including(i) the Terms and Conditions in this Appendix A, (ii) all related schedules to the Agreement, (iii) the New Merchant Onboarding Materials provisions For Card Present Transactions with PIN and for Card Present Transactions without PIN, and (iv) any other documents referred to and incorporated therein, and (v) any amendments to the Agreement that are made in accordance with Section 22.4 or otherwise permitted by the Agreement, constitutes the entire agreement between the Parties and supersedes all prior oral or written representations, conditions, warranties, understandings, proposals or agreements related to the subject matter of this Agreement. All references to this Agreement shall be deemed to include this Appendix A and all schedules to the Agreement.
   11. **No Third-Party Beneficiary.** This Agreement does not and is not intended to confer any rights or remedies upon any person other than the Parties.
   12. **Further Assurances.** You agree to promptly execute and deliver all further documents, provide all other information, and do all acts and things as NomuPay determines from time to time are reasonably necessary or appropriate to give effect to the provisions and intent of this Agreement.
   13. **Relationship of Parties.** It is understood and agreed that the relationship of the Parties is that of independent parties contracting for services and nothing herein contained may be construed as constituting a partnership, joint venture or agency between us and you.
   14. **Force Majeure.** Neither Party will be liable for any loss or damage or for any delay or failure in performance due to acts beyond the control of such Party whether or not such acts could reasonably be anticipated (including acts of God, legislative, judicial or regulatory acts of any government, court or regulatory authority, acts of any of our subcontractors or any third party providers of goods or services to us, labour disruptions, blackouts, embargoes), except that non-payment of amounts due under this Agreement will not be excused by this provision.
   15. **Counterparts**. This Agreement may be executed and delivered in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
   16. **Electronic Execution; Delivery**. The Parties agree that electronic signatures will have the same legal effect as original (i.e. ink) signatures and that delivery of an executed signature page to this Agreement by any Party by electronic transmission or other comparable means will have the same legal effect as delivery of a manually executed copy of the Agreement by such Party and an electronic, scanned, facsimile, or duplicate copy of any signatures will be deemed an original may be used as evidence of execution.

**Schedule A**

**Definitions**

Unless otherwise defined in the Agreement, the following terms and phrases have the following meanings:

* 1. “**Alternative Payment Method**”or “**APM**”means a Transaction using a mobile enabled device, mobile wallet, e-wallet or any other non-Card method of payment provided under this Agreement.
  2. “**Applicable Law**” means any and all domestic laws in the Philippines or foreign laws, regulations, government mandated decisions, terms and guidance which has relevant standing in the relevant jurisdiction, as well as any decision made by relevant and competent government entities, including courts and financial services regulators, on Anti Money Laundering (AML), Counter Terrorist Financing (CTF), Embargos, Sanctions, Bribery, Misconduct, Confidential Information (including intellectual property and trade secrets), behaviour of financial institutions, and Privacy Laws.
  3. “**Application**” means the initial form and subsequent informational material submitted by Merchant to NomuPay in furtherance of the provision of the Services.
  4. “**Approved Website**” has the meaning set out in Section 1 of Schedule B.
  5. “**Authorization**” means approval by, or on behalf of a Card issuer or Alternative Payment Method provider to validate a Transaction.
  6. “**Authorization Number**” means the number provided by us to you which confirms Authorization of the Transaction for which Authorization was requested.
  7. “**Authorization System**” means the communication links between the computers, and the computers themselves, which are operated by or for you and us, which are used, among other things, to communicate Authorization Numbers from us to you upon your request for Authorization.
  8. “**Batch**” means a single submission by you to us of a group of Transactions (sales and credits) for settlement.
  9. “**Batch Close**” means a Terminal function which submits all the accumulated Transactions processed through the Terminal to us or a third party.
  10. “**Business Day**” means any day, other than a Saturday, Sunday or statutory holiday observed in the country where the Merchant is located, as set out on the first page hereof.
  11. “**Card**” means:
      1. a valid and unexpired Credit Card or a valid Debit Card in any and all forms or applications that may be made available by a Payment Card Network from time to time including, without limitation, card plastic and mobile.
      2. that you have consented to accept in your Application or otherwise.
  12. “**Card Not Present Transaction**” means a Transaction conducted by telephone, by mail, by Internet or other medium in which the Cardholder, the Card used by the Cardholder for payment and/or the merchant are not present at the same physical premises.
  13. “**Card Present Transaction**” means a Transaction in which the Cardholder, the Card used by the Cardholder for payment and the merchant are all present at the same physical premises, including a Contactless Transaction.
  14. “**Cardholder**” or “**Customer**” means, as the context requires, (i) a person who is issued or otherwise authorized to use a Credit Card, Debit Card, gift card or loyalty card; and (ii) any individual who possesses and uses a Card and who purports to be the person in whose name the Card was issued or whose signature appears on the Card as an authorized user, and who is a party purchasing goods or services from you and includes a person who uses Alternative Payment Method for Transactions.
  15. “**Cardholder Data**” means Cardholder name, Card number, Card expiry date, Cardholder PIN, Card Verification Value (CVV), Card Verification Value2 (CVV2) and any or other information about an identifiable Cardholder.
  16. “**Chargeback**” means our right to return a Transaction and be reimbursed for the amount of the Transaction by you out of the Settlement Account or otherwise, as permitted by this Agreement, the Payment Card Network Rules and the rules of any Alternative Payment Method provider.
  17. “**Contactless Transaction**” means a Transaction that is initiated at a Terminal that does not require contact between the Card and the Terminal and includes payment by way of any Alternative Payment Method.
  18. “**Credit Card**” means a valid and unexpired credit card that is made available by a Payment Card Network from time to time.
  19. “**Data Incident**” means any alleged or actual compromise, unauthorized access, disclosure, theft, or unauthorized use of Card or Cardholder information, regardless of cause, including without limitation, a breach of or intrusion into any system, or failure, malfunction, inadequacy, or error affecting any server, wherever located, or hardware or software of any system, through which Card information resides, passes through, and/or could have been compromised.
  20. “**Debit Card**” means any valid debit card that is made available by us, is bearing the relevant service marks licensed by any Payment Card Network, or which we are otherwise able to accept from time to time.
  21. “**Electronic Commerce Facilities**” means the computer software and hardware that enables the processing of Internet Transactions.
  22. “**Excessive Chargeback Program**” means the program or programs of one or more Payment Card Networks that monitors merchant activity for excessive Chargebacks and may result in Fines.
  23. “**Fine**” means any fine, fee, penalty or other type of assessment (including under PCI DSS or under an Excessive Chargeback Program), including non-compliance fees.
  24. “**Floor Limit**” means the maximum amount that may be charged in any single Transaction when the Authorization System is Off-Line without obtaining Authorization from us. We must approve any Floor Limit greater than zero ($0) and any changes to your Floor Limit.
  25. “**Internet Transaction**” means a Card Not Present Transaction conducted by a Cardholder via the Internet.
  26. “**Mark**” means a name, logo, trade name, logotype, trademark, or service mark.
  27. “**Merchant Account**” means an account with a unique merchant identification number created by us in respect of a merchant upon acceptance by us of a merchant’s application for Merchant Services.
  28. “**Merchant Services**” or “**Services**” means: (i) the Alternative Payment Method and Card acquiring services that we provide to allow a merchant’s customers to pay for goods and services, including authorizing Transactions, submitting Transactions for settlement and the clearing and settling of Transactions and, in connection with the acquiring of Transactions includes any hardware, software, Terminals or other devices, together with any tasks, work, advice, operations or labour provided by or on behalf of NomuPay to you; (ii) Third Party Applications; (iii) ancillary services, including billing and reporting services, that we provide to merchants; and (iv) any other service that offer and designate as a Merchant Service from time to time.
  29. “**New Merchant Onboarding Materials**” means the New Merchant Onboarding Materials we provide to you, either directly or through ISO, that includes additional terms incorporated into this Agreement by reference, regarding provisions for Card Present Transactions with a PIN and provisions for Card Present Transactions without a PIN.
  30. “**Off-Line**” means any situation in which you are unable to obtain a response to a request for an Authorization through the use of the Authorization System.
  31. “**Operating Standards**” or “**Operating Guide**” means the operating manuals, certification and security standards and specifications of NomuPay, the Payment Card Networks, and PCI Security Standards Council, LLC., collectively, as applicable, provided or made available to Merchant by NomuPay, and any amendments from time to time.
  32. “**Other Obligation**” means any obligation imposed on the merchant under this Agreement that is not a Payment Obligation.
  33. “**Payment Card Network**” means Visa Inc., MasterCard International Inc. and any other Card sponsorship organization or association or scheme and their Affiliates governing the issue and use of Cards acceptable to NomuPay on or after the Effective Date, and any successor organization or association to any of the foregoing.
  34. “**Payment Card Network Rules**” means the all applicable bylaws, operating rules, regulations, guidelines and procedures of a Payment Card Network relating to Cards, Transactions, and any other payment methods and any payments or processing of Transaction data relating thereto, as amended, extended, consolidated or supplemented from time to time, all of which are published and updated by a Payment Card Network from time to time, including without limitation those made available to Merchant by us from time to time.
  35. “**Payment Obligation**” includes any fees, charges, adjustments and applicable taxes which have been or may be incurred by you in respect of the Merchant Services, any Chargeback liability or potential, contingent or pending Chargeback liability, or any potential, pending or actual Fine which may be imposed on you or us by a Payment Card Network or otherwise as a result of your acts or omissions in connection with the processing of your Transactions.
  36. “**PIN**” means a confidential personal identification number for sole use by the Cardholder in conjunction with the Cardholder’s Credit Card or Debit Card to authenticate the Cardholder’s instructions for Credit Card or Debit Card Transactions at a Terminal.
  37. “**Privacy Laws**” means the Personal Data (Privacy) Ordinance (Cap. 486) and any national implementation laws and any applicable laws and regulations in any national territory, province, state or other recognized jurisdiction relating to the processing of personal data (as may be defined in said law) within the relevant jurisdiction in which the Services are provided, as amended or supplemented from time to time, and any applicable legislation now in force or that may in the future come into force governing the protection of personal data applicable to Merchant or NomuPay or to the Services or activities contemplated under this Agreement.
  38. “**Recurring Transaction**” means multiple Transactions processed at predetermined intervals not to exceed one year between Transactions, representing an agreement between you and a Cardholder to purchase goods or services over a period of time.
  39. “**Reserve Account**” means the pool of funds, belonging to and under the control of NomuPay, created pursuant to the terms of this Agreement to provide for the risks and or obligations of the Merchant.
  40. “**Settlement Account**” means the deposit or other account initially designated in your Application, and any other account that you have designated and we have approved, to be used for the purpose of settling Transactions and making payments due by you or us under this Agreement.
  41. “**Surcharge**” means imposing any fees, other charges or other conditions for the use of a Card as a means of payment.
  42. “**Terminal**” means equipment and/or point of sale software application(s) which we provide to you or agree may be used by you for the purpose of communicating with us respecting Transactions, including a PIN pad device incorporating an alphanumeric keyboard, to be used by the Cardholder for secure entry of his or her PIN.
  43. “**Terminal Access Number**” means a confidential personal identification number also known as a supervisor/admin number issued by us for use by you to permit Debit Card Transaction refunds or reversals or to access other Terminal functionality from time to time.
  44. “**Transaction**” means the sale of goods or provision of services by you in respect of which a Card or Alternative Payment Method was used for payment, or a refund of such payment.
  45. “**Transaction Record**” means the printed form dispensed by the Terminal, or the electronic transaction record otherwise issued, upon completion of a Transaction which must include the following information:
      1. the number of the Card except that at least 4 digits of the Card must be suppressed or disguised on the Cardholder copy;
      2. your name and full address;
      3. the date of the Transaction;
      4. the amount of the Transaction in the currency of the Transaction;
      5. the Authorization Number obtained for the Transaction from the Terminal;
      6. where required, the signature of the Cardholder obtained immediately after completion of the Transaction Record; and
      7. the Transaction type (purchase or credit).

Where the Authorization System is Off-Line, the Transaction Record will be the sales draft that you create manually in a form that we approve.

**Schedule B**

**Internet Transactions**

1. If we approve the acceptance of Internet Transactions, the approval will only apply to one or more specific websites, mobile applications or other digital platforms (each, an “**Approved Website**”) and Internet service provider. Accepting Transactions through any website, mobile application or digital platform other than an Approved Website or new Internet service provider requires our prior written approval. You authorize us and will obtain the authorization of your Internet service provider for us to conduct security assessment scans of any Approved Website and server(s) over the Internet.
2. You will not display on an Approved Website, or be hyperlinked to a website, mobile application or other digital platform that sells or displays, any goods or services or any type of business that we or a Payment Card Network deem unacceptable, including those set out in Section 5.3.7 of the Agreement. You will not accept Cards for the provision of website hosting services.
3. You will be responsible to ensure that the Electronic Commerce Facilities operate securely in accordance with a Payment Card Network-approved method to protect Cardholders from the unauthorized disclosure of information with respect to Cards. You will ensure that the Electronic Commerce Facilities comply with the Operating Standards as set by us and Payment Card Networks from time to time. We may require from time to time that the Electronic Commerce Facilities be assessed, at your expense, by us, by a Payment Card Network and/or by another third party chosen by us in order to verify compliance with the Operating Standards. You will fully co-operate with any such assessment and be responsible for all costs associated with implementing or maintaining compliance of the Electronic Commerce Facilities with the Operating Standards.
4. If at any time the operating or security standards of the Electronic Commerce Facilities do not comply with the Operating Standards, you will, at our direction, immediately suspend accepting Internet Transactions until such time as we permit re-activation.
5. Any Approved Website must contain, at a minimum, the following information:
   1. your legal name and any other name(s) under which you are carrying on business;
   2. the address of your principal place of business;
   3. customer service contact information;
   4. complete description of goods and services you offer;
   5. any geographic limitations for the sale of goods and services and any export restrictions if applicable;
   6. Transaction currency;
   7. applicable Card delivery policy, including method of delivery;
   8. return, exchange and refund policies;
   9. privacy policy governing the collection, use, disclosure and storage of Customer personal information, including Cardholder Data;
   10. security capabilities and policy for transmission of Card details;
   11. applicable acceptance Marks, in full colour, to indicate acceptance of each Card you accept under the Agreement in accordance with the brand guidelines established and made available by the relevant Payment Card Network;
   12. complaint handling procedures;
   13. details of any applicable warranties or guarantees;
   14. the total consideration payable for the goods and services;
   15. an updated and accurate itemized list of the price of goods and services to be sold to the Cardholder as well as any shipping, delivery or handling charges, taxes, custom duties, broker fees or insurance costs;
   16. the terms, conditions and method of payment;
   17. the date when the goods will be delivered or the services are to be commenced;
   18. for Recurring Transactions, a simple and easily accessible online cancellation procedure; and
   19. any other information or disclosure that we require or that is required by law from time to time in any jurisdiction in which you offer goods or services.
6. The Transaction Record for an Internet Transaction must include:
   1. merchant name;
   2. merchant online address;
   3. Transaction amount (or credit), indicated in Transaction currency;
   4. Transaction date (or credit preparation date);
   5. unique Transaction identification number;
   6. purchaser name;
   7. Authorization Number;
   8. Transaction type (purchase or credit);
   9. description of merchandise/services;
   10. date of each individual purchase (for aggregated Transactions only);
   11. amount of each individual purchase (for aggregated Transactions only); and
   12. return/refund policy (if restricted).

**Note:** Do not include the Card number on the Transaction Record.

**Schedule C**

**Refusals and Chargebacks**

The following are examples of circumstances that commonly result in us refusing to credit your Settlement Account, deducting amounts due to you from the total amount of any Transaction, or in Chargebacks after we have already credited your Settlement Account. These are provided for your reference and this is not an exhaustive list.

1. We determine, in our sole discretion, that any of the Transaction Representations and Warranties listed in Section 8.3 of the Agreement are not true at the time that you submit a Transaction.
2. A Transaction is completed when the Authorization System is Off-Line, and the Transaction Record refers to a Card that expired prior to the Transaction date.
3. The Transaction Record is not properly completed.
4. You completed the Transaction after we declined your request for Authorization of the Transaction or after we notified you not to honour the Card.
5. The Transaction Record bears a signature that does not reasonably appear to be similar to the signature on the Card signature panel or does not bear a signature at all where one was required.
6. The Cardholder claims that the goods or services referred to in the Transaction Record have not been received, are not as described, are defective, are unsatisfactory or were returned and that you failed to provide a refund to the Cardholder’s Card.
7. The Cardholder has disputed the authorization, authenticity, legality or validity of any Transaction or part of a Transaction or Transaction Record.
8. We have credited the Settlement Account more than once for the same Transaction.
9. You have done something prohibited by this Agreement or you have failed to do something required by this Agreement.
10. You or your employees or agents have defrauded or attempted to defraud NomuPay.
11. A copy of the Transaction Record was requested for submission to the issuer of the Card but was not provided by you within the time requested or required by the applicable Payment Card Network Rules.
12. A Transaction Record is altered by you without the Cardholder’s permission.
13. Any other circumstance in which we or a Payment Card Network in good faith determines it appropriate to refuse the Transaction, reduce the payment owing to you or make the Chargeback.

**Schedule D**

**Terminal Provisions**

1. If we supply you with a Terminal the following provisions apply in respect of your Terminal:
   1. each Terminal that we have supplied to you remains our exclusive property even when it is attached to any building. Each Terminal, other than a mobile Terminal that needs to connect to your smartphone in order to function, may only be moved with our prior written consent and at your expense. You will provide us with a complete address of any new location. You will keep each Terminal free and clear of all security interests, privileges, liens, encumbrances and other charges. Each Terminal will be installed and operated in accordance with the instructions that we provide, and you must keep all Terminals up to date in respect of applicable software updates, certifications and compliance with Payment Card Network Rules and Operating Standards. You will provide all necessary electrical connections and outlets at your own expense. All programs and software associated with the Terminals are confidential and you will not copy or disclose them to any other person;
   2. you will promptly report any errors, malfunctions or other problems with the Terminals to us in accordance with problem reporting procedures established by us from time to time;
   3. you are responsible, and will reimburse us, for any loss (including theft) of, or damage to, any Terminal which we supplied, from any cause whatsoever, other than ordinary wear and tear. We may debit the Account without notice to you for any cost that we incur in replacing lost, stolen or damaged equipment;
   4. subject to your compliance with this Section, we will make reasonable efforts to maintain and correct malfunctions of the Terminals that we provide; and
   5. if applicable, you will allow our employees and agents to have access to your premises as required for site preparation, installation and maintenance activities during your normal business hours. If access to your premises is required outside of your normal business hours, we will obtain your prior consent, which you may not unreasonably withhold. You will have your personnel present when our employees and agents are on your premises.
2. You are responsible for all costs of telecommunication lines, electricity and other charges related to data line or communications services.
3. You will ensure that the installation of Terminals on your premises complies with and will not violate or conflict with any law or regulation or rule, notice or guideline of any regulatory body applicable to such installation. You will obtain all consents, authorizations and approvals of any governmental authority or any regulatory body which may be required in connection with such installation.
4. You will take reasonable care to secure and protect Terminals including by appropriately instructing any of your personnel who are permitted access to any Terminal.
5. You will pay us fees for any training provided to you or your personnel in the use of Terminals. If applicable, we may offer initial training for the use of Terminals at no cost. However, you will pay fees for any additional training that we provide, and you will be responsible for all of your own out-of-pocket expenses including without limitation the cost of transporting your personnel to the applicable training location.
6. You will not make any changes to Terminals, equipment, point of sale software applications, telecommunications, Transaction Record printing and formatting functions or your Terminal provider, or make any change that otherwise impacts Transactions, without our prior written approval. You will not use Terminals that are not provided by us for the purpose of communicating with us or to obtain services from us in relation to Cards, or use Terminals provided by us but also use other equipment and/or point of sale software applications or processing services without our prior written approval. We may, in our sole discretion, not approve such changes or use of Terminals and other equipment and services not provided by us. If we do approve the change or use of Terminals and other equipment, point of sale software applications and services not provided by us, the following provisions apply:
   1. you will be responsible for all expenses associated with the care, use, maintenance, upgrades, compliance, security and replacement of Terminals, and we will not be liable for any losses you incur arising out of your use, of such Terminals equipment and point of sale software applications;
   2. we will have the right to conduct certification testing at your expense, and our prior written approval of your use of such Terminals equipment, point of sale software applications and your Terminal provider is required;
   3. Terminals must have physical attributes such as privacy shields, privacy screens or be handheld, to provide a Cardholder with protection from having their PIN observed during entry of the PIN by the Cardholder;
   4. you will allow us to inspect and confirm compliance of such Terminals, equipment and point of sale software applications with our own and Payment Card Network standards; and
   5. we are not responsible for providing any reporting services, dealing with reconciliation problems or providing records of authorization requests.
7. You will permit us, the Payment Card Networks or their agents, to verify the compliance of your Credit Card and Debit Card processing infrastructure with the Operating Standards and you will be fully responsible for all the costs of verification of your compliance.
8. You acknowledge that Terminals and Terminal Access Numbers may permit debits to your Settlement Account. You will take such steps as are necessary or advisable in order to prevent unauthorized uses of Terminals and Terminal Access Numbers, including such steps as are necessary or advisable to prevent unauthorized disclosure of the Terminal Access Numbers. You will be liable for any unauthorized use of any Terminals and Terminal Access Numbers. We have no obligation to offer you Terminal Access Numbers or any other security functionality.
9. Terminal Access Numbers are confidential identification numbers that may be issued by us to you for the sole purposes of permitting you to effect refunds or Transaction reversals pursuant to a sale by you to a Cardholder, complete a Batch Close and perform other sensitive functionality. You acknowledge that a Terminal has the capability for transactions and services other than those contemplated by this Agreement by communicating with other computer equipment, persons or institutions, and you further acknowledge that we are not liable for any loss, damage, expense or claim resulting from the processing or non-processing of any such transactions or provision of any such services using a Terminal.
10. You will notify us immediately upon discovering any loss (including theft) or damage to or unauthorized use of a Terminal and Terminal Access Numbers, or if any seal in relation to a Terminal is removed or tampered with. You will advise us immediately upon any error occurring for any Card or Transaction. A copy of the Transaction Record for the relevant Transaction must be provided to us for each Transaction being investigated.

**Schedule E**

**Third Party Software Applications**

1. We may in our sole discretion make certain third-party software applications (“**Third Party Applications**”) available to you from time to time through your Terminal (“**Third Party Application Access**”) for the purpose of improving the performance of Terminals or other systems, and for other reasons we may deem appropriate in our discretion. Third Party Application Access is a Merchant Service under the Agreement. By accessing, downloading, or using any Third Party Application through your Terminal, you confirm that you will access Third Party Applications according to the terms of this Schedule and the Agreement.
2. You must not: (i) provide, deliver or preserve any malicious code through a Third Party Application (“**malicious code**” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents, or programs, including code that is intended to or has the effect of misappropriating, commandeering, or disrupting access to or use or operation of any information, device, or system); or (ii) violate any agreements, conditions or terms of usage imposed by any Third Party Provider (as defined below) in connection with any Third Party Application (each of the above is a “**Prohibited Activity**”).

You must cooperate with us to detect, limit, prevent, and prohibit Prohibited Activity by your directors, officers, employees and agents, and by third parties. We may at any time, without notice to you, enhance, modify, alter, suspend or permanently discontinue all or any part of the Third Party Application Access or one or more of the Third Party Applications that are available.

1. Third Party Applications are offered by third party providers (“**Third Party Providers**”) and are subject to the Third Party Provider terms and conditions. We are not responsible for any Third Party Application. Any content, data, publication or other information made available through a Terminal in connection with a Third Party Application is provided by the Third Party Provider and not by NomuPay, and provided on an as-is basis for your benefit, convenience and information. **NOMUPAY DISCLAIMS ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, THAT ANY SUCH CONTENT, DATA, PUBLICATION OR OTHER INFORMATION IS ACCURATE OR COMPLETE.**
2. The fact that a Third Party Application is accessible through your Terminal does not mean that we sponsor, endorse or are affiliated with the Third Party Application or the Third Party Provider. We make no representation or warranty concerning the Third Party Application. Access and use of any Third Party Application is at your own risk.
3. Notwithstanding anything else in the Agreement, to the maximum extent permitted by Applicable Law, NomuPay waives any responsibility for any loss, and shall in no event be liable for any damages of any nature whatsoever, including direct, indirect, special or consequential damages, which may arise from or in connection with your access to or use of a Third Party Application through a Terminal, including the presence of a virus or of any other items of a destructive nature, or reliance on information contained in a Third Party Application.
4. You will settle any claims or disputes regarding a Third Party Application directly with the applicable Third Party Provider. You expressly acknowledge and agree that NomuPay, and NomuPay’s affiliated entities, and each of the directors, officers, employees and agents of NomuPay and NomuPay’s affiliated entities cannot in any way be prosecuted for damages or injuries incurred by you as a result from using a Third Party Application.