

## Operational Terms and Conditions

The following terms are supplemental to the Payment Facilitator Agreement entered into between the Payment Facilitator and Member. Capitalized terms not defined herein shall have the meaning ascribed to them in the Payment Facilitator Agreement. Payment Facilitator acknowledges and agrees that the provisions hereof are required for Member to comply with applicable regulation and license requirements and shall strictly adhere to the terms hereof throughout the term of the Payment Facilitator Agreement.

### 1. Definitions

I. The following capitalised terms shall bear the meaning ascribed thereto:

**'Adjustments'** shall mean Fees, any other fees, charges, assessments, surcharges, fines, penalties, or expenses (including for the avoidance of doubt those attributable to issues relating to PCI Standards, Interchange and registration fees and similar fees and assessments due to the Card Schemes) which the Card Schemes have charged to or passed on to the Member in connection with the provision of Member Services under this Agreement and other payments or amounts due by a Sub-Merchant and/or due by the Payment Facilitator under this Agreement or otherwise with respect to services provided by the Member or with respect to Transactions, and shall include, for the avoidance of doubt, any amounts due as a result of Chargebacks, refunds and liabilities owed to third parties by the Payment Facilitator and/or a Sub-Merchant.

**'Affiliate'** shall, when used with reference to a specific entity, mean any entity that, directly or indirectly, or through one or more intermediaries, owns or controls, is owned or controlled by or is under common ownership or common control with, such specific entity. As used herein, "control" means the power to direct the management or affairs of an entity either through minority rights or otherwise, and "ownership" means the beneficial ownership of 50% or more of the voting equity securities of the entity;

**'Agreement'** shall mean the Payment Facilitator agreement in its entirety, entered into by the Payment Facilitator with the Member including these Online Terms and Conditions and online Data Processing Addendum, as the same may be amended from time to time, in whatever form, whether substantial or otherwise;

**'Authorisation'** shall mean an affirmative response, by or on behalf of an Issuer to a request to effect a Transaction, that a Transaction is within the Cardholder's available credit limit and that the Cardholder has not yet reported the Card lost or stolen. All Transactions require Authorisation;

**'Business Day'** means a day when the Member is open for business, and excludes Saturdays, Sundays, bank holidays and public holidays in Malta;

**'Card'** shall mean any valid payment card issued under any Card Scheme;

**'Card Schemes'** shall mean Visa, MasterCard or any other similar payment schemes;

**'Card Scheme Rules'** shall mean rules, regulations, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Card Scheme from time to time

**'Cardholder'** shall mean the person or entity authorized to use a Card;

**'Change of Control'** shall occur if the person or persons who ultimately control(s) any company or undertaking ceases to do so, or if another person or persons acquire(s) ultimate control of it; provided always that a "Change of Control" shall not be deemed to occur in the event of a solvent reorganization of a group of companies of which the relevant Party is a member.

**'Chargeback'** shall mean a transaction that is disputed by a Cardholder or Issuer and is returned, in accordance with the Card Scheme Rules;

**'Chip and Pin Card'** means a Card embedded with a Chip that communicates information to a Point of Sale Terminal and is protected by a personal identification numeric code that is used to identify the Cardholder in an authorisation request;

**'Confidential Information'** shall mean (i) the confidential information of a Party, including any data, including the API and the Software or information that is a trade secret or competitively sensitive, whether or not such information is reduced to a tangible form or marked in writing as "confidential", and/or (ii) any and all information which has been, or which may be, derived or obtained from any of the information detailed in (i); and (iii) any data in respect of Transactions.

**'Data Protection Law'** means the Data Protection Act (Chapter 440 of the Laws of Malta), the GDPR 2016/679, as amended from time to time and any other regulation and/or legislation implementing applicable European Union data protection legislation;

- a. **'Event of Default'** means any activities the Payment Facilitator engages in, as following: (a) if the Payment Facilitator is insolvent, bankrupt, ceases to trade, or goes into or commences proceedings for liquidation or makes an agreement with its creditors, or any security provided to Member fails or ceases to have full force and effect for any reason;(b) goes into litigation, arbitration, administrative or other investigation, including by the Card Schemes, which is reasonably likely to be adversely determined and if adversely determined is reasonably likely to result in a claim for damages which may have a material adverse effect on the operations of the Payment Facilitator; (c) is in violation of the Card Scheme Rules and/or the PCI Standards and/or Requirements of Law , or causes the Member to be in breach of the Card Scheme Rules or the PCI Standards or the Requirements of Law; or (d) damages the goodwill of the Member or of the Card Schemes; (e) the Payment Facilitator or any of its representatives commits fraud or willful intentional misconduct; (f) any representation made by the Payment Facilitator or any of its employees, agents or representatives proves to have been false or misleading in any material respect; (g) the Payment Facilitator, its directors, or ultimate beneficial owners are in breach of any material obligation specified in this Agreement, including but not limited to clauses of Confidentiality and Data Protection, and Representations and Warranties underwriting policies and other policies and guidelines established from time to time by the Member in the event of unauthorised changes to banking details;

**"Fees" ('Buy Rate')** shall mean the fee established by the Member and imposed on the Payment Facilitator as remuneration for the provision of its services. The Buy Rate shall be as specified in the Fee Schedule A including but not limited to Member's margin, Card Schemes fees (including but not limited to interchange fees) and/or other costs, expenses or liabilities owed to third parties;

**'Introduced Sub-Merchant'** shall mean a merchant referred by the Payment Facilitator to the Member and has subsequently been approved by the Member by means of an e-mail notification;

**'Issuer'** shall mean a member of the Card Scheme that enters into a contractual relationship with a Cardholder for the issuance of one or more Cards;

**'Member Services'** means the services, including without limitation to authorisation, processing, settlement, clearing services provided to the Payment Facilitator by the Member pursuant to this Agreement and the Card Scheme Rules, for the Introduced Sub-Merchant to be able to accept payments and all other services which the Member is required to provide under this Agreement;

**'Net Settlement Funds'** shall mean those funds which are to be transferred by the Member to the Payment Facilitator Bank Account/s and which comprise the amounts received by the Member from the Card Schemes less Adjustments due by the Payment Facilitator or Sub-Merchant under this Agreement or the Card Scheme Rules;

**"OTC"** - shall mean these Online Terms and Conditions.

**'Payment Facilitator Bank Account'** means a bank account in the Payment Facilitator's name held at a credit institution as accepted by Member in one or more currencies utilized to settle Transactions processed by the Member for Sub-Merchants pursuant to the merchant agreement and effecting appropriate debits and credits to and from such account;

**'PCI Standards'** shall mean the Payment Cards Industry Data Security Standards as issued and modified by the Card Schemes from time to time;

**'PIN'** shall mean the Cardholder's Personal Identification Number, that is to say a numeric password possessed by a Cardholder, that is used to authenticate the Cardholder to the Point of Sale Terminal and/or to obtain Authorisation.

**'Point of Sale Terminal'** shall mean an attended or unattended access device located in or at a Merchant's premises that meets the Card Schemes requirements, and that permits a Cardholder to initiate and effect a transaction for the purchase of products or services sold by such Merchant with a card in accordance with the Card Scheme Rules.

**'Quasi-Cash'** shall mean a product or item that is representative of actual cash and which has stored or representative value, including but not limited to such as money orders, traveler's cheques, foreign currency, lottery tickets or casino gaming chips.

**'Reserve'** shall mean an amount withheld and retained from Payment Facilitator by Member (based on a reasonable assessment of the potential Adjustments, exposure and other liabilities and on the basis of the information provided by the Merchant regarding its anticipated use of the Credorax Services at the time of onboarding), as a security against any sums due (including Chargebacks) to Credorax by the Merchant under the Agreement. The Reserve may take the form either of a fixed sum or a percentage of the settlement funds (Rolling Reserve) as may be set by Credorax from time to time and may be funded by one or more of the following means: (i) an extended settlement period of settlement funds to the Payment Facilitator and/or Sub-Merchant/s; (ii) one or more deductions or offsets to any settlement funds otherwise due to Payment Facilitator and/or Sub-Merchant/s, before any deductions or payments are made from the amounts processed by the Payment Facilitator and/or Sub-Merchant/s; and/or (iii) transfer of a monetary value to Member by or on behalf of Payment Facilitator and/or Sub-Merchant/s;

**'Required Information'** shall mean that information required by the Card Schemes in order to register a Sub-Merchant with same as may be amended from time to time and communicated to the Payment Facilitator by the Member;

**'Requirements of Law'** shall mean any applicable laws, regulations, rules, codes, directives issued or promulgated by any government or EU Institutions.

**'Settlement Funds'** shall mean the Transaction amounts paid by the Card Schemes to the Member;

**'Sub-Merchant'** shall mean a seller who accepts card not present payments and/or card present Point of Sale Terminal payments making use of Payment Facilitator Services through the Payment Facilitator and accepted by Member;

**'Sub-Merchant Agreement'** shall mean an agreement between the Payment Facilitator and the Sub-Merchant under which the Payment Facilitator provides a centralised solution for various payment systems through various acquiring processors in various jurisdictions;

**'Sub-Merchant Discount Rate'** shall mean the fee established by the Payment Facilitator for the provision of the Payment Facilitator Services. The Sub-Merchant Discount Rate must be higher than the Buy Rate and shall be imposed by the Payment Facilitator on the Sub-Merchant through the Sub-Merchant Agreement;

**‘Transaction’** shall mean the acceptance of a Card or information on the Card, for payment of goods sold and/or leased and/or services provided to Cardholders by the Sub-Merchant, and receipt of payment from Member, whether the Transaction is approved, declined, or processed as a forced sale. The term ‘Transaction’ also includes credits, errors, returns, refunds and adjustments.

## **2. Territory**

- I. This Agreement shall govern the activities of the Parties in the Territory. The geographical area which is determined by reference to the current acquiring license of the Member (“Territory”), i.e. the following:

Austria Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, France, Finland, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Netherlands, United Kingdom, Gibraltar, Isle of Man, Jersey, Alderney, Switzerland.

The Member shall inform the Payment Facilitator of all and any changes to the Territory.

## **3. Sub Merchant Agreement:**

- I. The Payment Facilitator shall provide the Sub-Merchants with all the documentation, information, full technical, operational and commercial advice so that the latter may engage in Transactions in compliance with the obligations set out in this Agreement, the Agreement between the Payment Facilitator and its Sub-Merchants, in accordance with the Card Scheme Rules.
- II. The Sub-Merchant Agreement shall include all of the following provisions, which the Payment Facilitator undertakes towards Member, and where requested confirms to Member, as follows:
  - a. The Sub-Merchant shall provide Payment Facilitator with the current address of each of its offices, all “doing business as” names used by the Sub-Merchant, and a general description of goods sold and/or services provided to Cardholders;
  - b. The Payment Facilitator shall be responsible for the Card acceptance policies and procedures of the Sub-Merchant, and may require changes to its website or otherwise that it deems necessary or appropriate to ensure that the Sub-Merchant remains in compliance with the standards governing the use of the marks of the Card Schemes;
  - c. The Sub-Merchant Agreement shall include immediate termination clause for, at least the following terms:
    - a. if the Card Schemes de-registers the Payment Facilitator or if the Member ceases to be a Member for any reason or if the Member fails to have a valid license with the Card Schemes, or to use any Mark accepted by the Sub-Merchant;
    - b. in case that any activity of the Sub-Merchant deemed to be fraudulent or otherwise harmful to the business of the Payment Facilitator, the Member, or the Card Schemes.
  - d. The Sub-Merchant shall agree in the Sub-Merchant Agreement to comply with all applicable policies of the Member, Card Scheme Rules, including, not to contest the ownership of the Marks for any reason and Requirements of Law, as amended from time to time;
  - e. The minimum amount of details below shall appear in a clear way in the Sub Merchant web-site:

- the specifications of the products and services offered;
  - the prices and currencies of the products and services;
  - in the event of regular or recurrent payments, the amount, the frequency and duration of the same must be clearly stated together with the procedure for cancelling a subscription or payments;
  - the purchase cancellation and product return policy. The Cardholder must accept the cancellation and returns policy before being able to make his/her purchase;
  - the merchandise shipping policy, delivery date, and delivery prices. The Sub-Merchant must be able to provide information about the status of the shipment of the merchandise at the request of the Cardholder;
  - customer service details and how to contact the said service;
  - fair terms and conditions, easily accessible and consumer friendly;
  - privacy policy and data protection in compliance with prevailing legislation;
  - that the Card Schemes are the sole and exclusive owner of the Marks
- f. The Sub-Merchant shall be notified that the Card Schemes may at any time: (i) immediately and without advance notice, prohibit the Sub-Merchant from using any of the Marks for any reason; (ii) enforce the Card Scheme Rules and prohibit the Sub-Merchant and/or the Payment Facilitator from engaging in any conduct the Card Schemes deems could potentially injure the Card Schemes, including damage to reputation, or that could adversely affect the integrity of the Interchange System, the Card Schemes' confidential information (as defined in the Card Scheme Rules) or both;
- g. the Sub-Merchant shall not take any action that could interfere with or prevent the exercise of this right by the Card Schemes.
- h. the Sub-Merchant shall not discriminate between persons paying for goods or services in cash or by utilizing a Card.
- i. Sub-Merchant offering Point of Sale Terminal payment services, the Point of Sale Terminal and other related or ancillary equipment must always be used by the Sub-Merchant and/or its authorized staff and never by the Cardholder, unless the Cardholder is required to enter the Cardholder's PIN in the presence of the Sub-Merchant and/or its authorized staff.
- j. Prior to accepting a Point of Sale Terminal Card payment the Sub-Merchant agrees to verify that:
- a. authorisation must be obtained for every Transaction, except for any cases in which this is not required under the Card Scheme Rules.
  - b. the four (4) digits printed above (or under) the embossed Card Number match the first 4 digits of the Card number. Sub-Merchants whose Transactions are based on Quasi-Cash shall include the said digits on the Sub-Merchant's copy of the relevant Point of Sale Terminal chit or receipt.
  - c. the signature on the Transaction receipt matches the name embossed on the face of the Card, the Cardholder's signature on the Card and the signature on any identification documents presented, if applicable;
  - d. the presenter of the Card is the person whose name is embossed on the face of the Card;
  - e. the embossed account number on the face of the Card matches the printed number on the back of the Card and the account number of the Transaction receipt;
  - f. the Card, and in particular the signature panel, must not be visibly altered or mutilated;
  - g. the Card has not expired;
  - h. if applicable, that the presenter of the Card resembles the person depicted in any photograph intended for identification on the Card;
  - i. the Card must be kept by the Sub-Merchant until the Cardholder signs the Transaction receipt;
  - j. if the Card is not signed or the signature on the Transaction receipt differs from that on the Card, identification should be requested. In this case, the name and signature must be matched with the identification documents presented;

- k. when the Card is a Chip and PIN Card, the Sub-Merchant is to process the Card as prompted by the Point of Sale Terminal and the Cardholder shall be required to input any applicable PIN number, when and if prompted by the Point of Sale Terminal.
- k. Sub-Merchants offering Point of Sale Terminal payment services, regardless of the Transaction value, the Sub-Merchant shall request manual telephone Authorisation in the following cases: (i) the Card signature panel is not signed; (ii) the Sub-Merchant is suspicious of the transaction; (iii) if the Sub-Merchant is in receipt of a negative or stop-list from an Issuer; (iv) the Transaction is processed manually.
- l. The Sub-Merchant is to ensure that the entry of a Cardholder's PIN into the Point of Sale Terminal is not recorded on camera.
- m. The Payment Facilitator shall confirm to the Member that each Prospective Sub-Merchant:
  - i) is legally incorporated or duly registered as may be required and in accordance with the Laws of the country within the Territory;
  - ii) is willing to hold a Sub-Merchant Bank Account/s at a Credit Institution, in accordance with criteria defined by the Member from time to time in his full discretion, in accordance with the applicable regulations
  - iii) does not undertake any of the prohibited activities listed below in the OTC
  - iv) has the relevant legal licenses and permits, sufficient economic soundness, and appropriate technical and commercial infrastructure, effective quality controls and adequate customer service;
  - v) is able to meet the obligations that they will be assuming on signing the Sub-Merchant Agreement with Payment Facilitator;
  - vi) has authorized the Payment Facilitator to submit the Required Information into the customer relationship management system;
  - vii) Is PCI compliant to a level as required by the Member from time to time;
- n. The Payment Facilitator shall retain records concerning the investigation of any of the Sub-Merchants with which it has entered into a Sub-Merchant Agreement for a minimum of two (2) years after the date the Agreement is terminated or expires, together with the names, addresses and URLs, if applicable, of each of its Sub-Merchants. Such records shall be provided to the Member immediately upon request.
- o. If a Sub-Merchant Agreement has already been entered into by the Payment Facilitator and the Sub-Merchant, the Payment Facilitator shall if necessary amend and update the existing Sub-Merchant Agreement to include the provision of the Payment Facilitator Services and the requirements set out in this Agreement in the Sub-Merchant Agreement and the Payment Facilitator shall notify the Member in writing thereof. The Member reserves the right to request a copy of the Sub-Merchant Agreement from the Payment Facilitator, in order to ensure that the terms and conditions therein are in compliance with the terms of this Agreement, with applicable Requirements of Law and/or Card Scheme Rules.
- p. The Payment Facilitator will provide the Member with the required information about each prospective Sub-Merchant as required by the Member and by terms of the Agreement ('the Required Information'). The Payment Facilitator undertakes to grant or allow access to Member and/or its agents and/or the representatives of the Card Schemes, at all reasonable times to its premises and/or the property found therein, including by way of computer inspection or any other inspection or audit which may be deemed necessary by Member or the Card Schemes for the purposes of ensuring and verifying compliance with the terms and conditions of this Agreement and the Card Scheme Rules by the Payment Facilitator and its Sub-Merchants. The Payment Facilitator undertakes to facilitate such access, inspections or audits and to pay any costs thereof. The costs shall however be divided by the Member and the Payment Facilitator if it results that the Payment Facilitator and its Sub-Merchants fully complied with their obligations under this Agreement and/or the Card Scheme Rules;

#### **4. Authorisation and Transaction Procedures**

- l. The Payment Facilitator further undertakes:
  - a) to maintain for a period of not less than 12 months from the date of the Authorisations and/or the Transaction as applicable, accurate and up-to-date records of Authorisations and Transactions processed via the Software;

- b) to adopt the security and fraud prevention measures laid down by the Card Schemes and in particular with respect to the capturing and transmission of the details necessary for processing the Cards' CVV/CVC2, process transactions using 3D Secure authentication if mandated by the Member and/or implement any other security measures as agreed by the Parties from time to time;
- II. The Payment Facilitator shall regularly ensure that the Sub-Merchant is supplied with all materials necessary to effect Transactions and shall verify that the Sub-Merchant has sufficient safeguards in place to protect Cardholder and Transaction information from unauthorised disclosure or use, complies with applicable laws and that each transaction submitted by the Sub-Merchant reflects bona fide business between the Sub-Merchant and the Cardholder.
- III. The Payment Facilitator shall process the traffic of each Sub-Merchant, using the MID supplied by the Member of the appropriate Card acceptor business code (MCC) that most closely reflects the Sub-Merchant's primary business. Provided that where the Sub-Merchant carries on any gaming activities, the MCC 7995 must be assigned even where such gaming activity is a minimal part of the Sub-Merchant's business.
- IV. Once an Authorisation is initiated by the Cardholder through the Sub-Merchant's website, the Payment Facilitator shall immediately forward the Authorisation to the Member. All transactions must be transmitted online and in real time mode to the Member to obtain authorisation irrespective of the amount.
- V. Each and all Authorisations and Transactions processed via the Software shall identify the Payment Facilitator and the Sub-Merchant/s in accordance with the Card Scheme Rules in the cardholder transaction receipt, the statement and the transaction clearing record and procedures agreed to between the Member and the Payment Facilitator from time to time. The Payment Facilitator shall verify and take responsibility for ensuring that all the Transactions presented faithfully reflect the details of the Transaction made by the Cardholder, and that the Transactions have been made on the website of the Sub-Merchant as featured (including the specified contents) in the Sub-Merchant Agreement.
- VI. The name of the Payment Facilitator must appear in DE 43 (Card Acceptor Name/Location), subfield 1 (Card Acceptor Name) in conjunction with the name of the Sub-Merchant.
- VII. Any discrepancy between the information transmitted via the Software and/or stored by the Payment Facilitator and the information held on the Member's computer system, including without limiting the generality of the foregoing, any disputes regarding any requests and/or Transactions, even if raised by the Payment Facilitator or Sub-Merchants, shall be resolved, except in case of manifest error, by reference to the information held on the Member's computer systems.
- VIII. Member may set the minimum and maximum thresholds per Authorisation and/or Transaction or maximum daily, weekly or monthly limits for volumes of Requests and/or Transactions processed. Member shall keep the Payment Facilitator informed in writing of any such limits as these may change from time to time. The Payment Facilitator may in agreement with the Member also limit the number of Requests and/or Transactions.
- IX. If a request for Authorisation is not authorized by the Issuer, the Sub-Merchant will receive an electronic message of non-acceptance. Neither the Sub-Merchant nor the Payment Facilitator can amend or in any way alter the response code issued by Issuer.
- X. In the event that the level of Chargebacks in terms of the volume and value of transactions presented should exceed the tolerated monthly Chargeback thresholds of the Member or of any Card Scheme, the Member may suspend the processing of new Transactions for the particular Sub-Merchant until the Payment Facilitator and the said Sub-Merchant have taken appropriate corrective measures in their respective systems, and the Member has verified and accepted them.
- XI. The Software and API shall not be used for the submission of requests for Authorisation of payments effected by means of a Card and/or processing of Transaction, or for any other Transaction, by persons which are not Sub-Merchants or authorised by the Member

## **5. PCI-DSS card data environment**

- I. The Payment Facilitator states that it has full knowledge of the PCI-DSS security programme for the protection of Card data and undertakes to faithfully comply with it;

II. The Payment Facilitator undertakes to perform the external validation and audit processes required by the PCI-DSS security programme, complying with the stipulated frequency, and to provide the Member with the results of these validation and audit processes;

III. The Payment Facilitator shall ensure that Card security codes (including but not limited to CVV/CVC2) are not stored on its or affiliated third parties' systems;

IV. The Payment Facilitator undertakes to store only that part of the information on the Cards which is essential for processing Card payments, to safeguard all computer records and files which contain card information from the Cards in a secure place during the time it is in their possession and to restrict access to such data to authorised and accredited personnel only;

V. The Payment Facilitator shall store the details of the Card transactions for a minimum of two (2) years, and to delete or destroy all Card details relating to obsolete Transactions held for a period longer than that specified in this clause;

VI. The Payment Facilitator undertakes to notify the Member of any unauthorised access by third parties to Card details which they have stored;

VII. The Payment Facilitator shall not provide Card details and/or information relating to Cardholders to third parties and shall not use any of this information for any purpose other than those stipulated in this Agreement;

VIII. The Payment Facilitator undertakes to assume responsibility for all the costs of registration, validation and external audits of the PCI-DSS security programme and for any fees charged by the Card Schemes;

IX. The Payment Facilitator acknowledges that each Sub-Merchant that stores and/or processes cardholder account numbers, expiration dates, or other personal Cardholder data in any way, must also comply with PCI Standards on securing such data and applicable Data Protection Law.

X. The Payment Facilitator shall ensure that each Sub-Merchant is fully compliant with the PCI Standards.

XI. The Payment Facilitator shall immediately notify the Member of any suspected or confirmed loss or theft of any Cardholder data from the Payment Facilitator or a Sub-Merchant. In addition, the Payment Facilitator and/or the Sub-Merchant must provide access to and fully co-operate with the Card Schemes, or any independent third party authorized by them or the Member to perform any investigation of any security breach in accordance with the Card Schemes' requirements.

## 6. Confidentiality and Data Protection

I. **Confidentiality:** Each Party shall maintain the confidentiality of Confidential Information (including the provisions of this Agreement) which it may acquire in relation to the clients, business or affairs of the other Party or in relation to this Agreement and shall not use, communicate or divulge such information, whether directly or indirectly, except: (a) with the consent of such other Party; or (b) to the extent permitted by law; or (c) to its representatives, employees or Affiliates, but only to the extent necessary to ensure the proper performance of that Party's respective obligations under this Agreement; or (d) where through no fault of that Party, the information enters the public domain and shall also not be liable for such breaches where, through no fault or contribution of that Party, the information enters the public domain;

II. Without prejudice to any other obligations arising under the provisions of this Agreement, each Party warrants to the other that it shall:

(a) take all the necessary steps to ensure that all the data pertaining to the Member, the Payment Facilitator and Sub-Merchants, which is made available to them for the purpose of, or in connection with the performance of their obligations under this Agreement or the Member Services is protected and used only in accordance with applicable Requirements of the Law;

- (b) Each Party agrees, on the expiration or earlier termination of this Agreement for any reason, or on demand of the disclosing Party, to return to the disclosing Party, or destroy (as the disclosing Party may direct), the Confidential information, including but not limited to, copies of the API, software modifications and not retain any copies, extracts or other reproductions in whole or in part of the Confidential Information (except to the extent required by any Requirements of Law or any administrative or regulatory authority). The Party receiving any such demand further agrees to destroy all documents, memoranda, notes or other writings prepared by it or any of its directors, officers, agents, employees, representatives or advisers or for it or in its possession which incorporate or include Confidential Information (except to the extent required by any Requirements of Law or any administrative or regulatory authority). If the disclosing Party should so require, the Party receiving any such demand shall provide to the disclosing Party within thirty (3) days of the disclosing Party's request a certificate executed by a duly authorized officer of the receiving Party confirming that the recipient Party has complied with all of its obligations under this clause.

III. **Data Protection:** notwithstanding any other provision of this Agreement, during the Term and any subsequent Additional Term, comply with all applicable Data Protection Law and shall not do or cause or permit to be done anything which may cause or otherwise result in a breach by either Party of the same. Parties undertake and agree to process transaction data in accordance with the Data Protection Addendum available at <https://www.credorax.com/legal/gdpr>.

## 7. Representations and Warranties

The Payment Facilitator represents and warrants in favor of Member as of the Effective date and throughout the Term of the Agreement and any subsequent Additional Term (if applicable) that:

(a) it is validly incorporated and operating in accordance with the laws of the country of incorporation, and it is in compliance with all applicable Requirements of Law, Card Scheme Rules and PCI Standards, as may be amended from time to time;

(b) has all the requisite powers to execute and deliver this Agreement and to perform its obligations specified under this Agreement and shall perform its obligations under this Agreement exercising all reasonable skill and care expected of any experienced industry professional and that it shall act in good faith in their performance of the services;

(c) possesses and continue to possess all and any authorisations, licenses, approvals, registrations and consents from all relevant authorities, governmental bodies, Card Schemes or other regulatory bodies as are necessary or desirable to enable it to fully and effectively discharge its obligations under this Agreement and remain in full force in all respects, and it shall promptly inform the Member in the event that any authorisations, licenses, approvals, registrations are or may be revoked. Where registration is required to be renewed periodically it shall ensure that said registration is so renewed and it shall promptly inform the Member of such renewal and proof of renewal shall be provided to the Member;

(e) it will not do or omit any act or thing which would place or would likely place Member in breach of the Card Scheme Rules, the PCI Standards or any Requirements of Law;

## 8. Limitation of Liability

- I. The Payment Facilitator shall bear sole and exclusive responsibility and liability for the provision of all Payment Facilitator Services to the Introduced Sub-Merchants. In no event shall the Member be liable to the Payment Facilitator or any Sub-Merchant for provision of the Payment Facilitator Services.
- II. The Payment Facilitator shall be fully liable to the Member for the performance of all its obligations under the Agreement and for the payment of all Adjustments, whether such amounts are assessed directly against a Sub-Merchant, the Payment Facilitator or against the Member due to an act or omission of the Payment Facilitator or Sub-Merchant. The Payment Facilitator shall pay the Member on demand the value of all such liabilities relating to the Payment Facilitator and Sub-Merchant
- III. The Payment Facilitator shall be responsible for any dispute arising between any Cardholder and the Sub-Merchants. The Payment Facilitator undertakes to keep the Member fully indemnified against any and all

claims, losses, expenses, charges or damages which the Member may incur directly or indirectly, as a consequence of any such disputes.

IV. The total liability of the Parties in respect of all liability arising in connection with this Agreement (whether arising in contract, tort or otherwise) shall not exceed EUR 50,000 provided that for Payment Facilitator such limitation shall not apply to:

- a. the obligations of Payment Facilitator under this Agreement to pay the Net Settlement Funds to the Sub-Merchant pursuant to this Agreement and any Sub-Merchant Agreement;
- b. the obligation of the Payment Facilitator to pay the Member all amounts that are to be paid to the Member under this Agreement;
- c. any fees, charges, fines, costs and/or assessments charged or incurred in relation to the Payment Facilitator Services or to a Sub-Merchant and not arising through the negligence or fault of the Member;
- d. any fees, charges, fines and/or costs charged or incurred by any administrative or regulatory authority in relation to the Payment Facilitator Services or to a Sub-Merchant and not arising through the negligence or fault of the Member.
- e. the indemnity obligations of Payment Facilitator set out in the Indemnities clause.

V. The Member will not be liable for any loss of profits or for any indirect or consequential loss or damage (howsoever caused), including any loss of sales, loss of bargain, loss of opportunity, goodwill, loss of computer equipment, software or data, or loss of time which may arise in connection with this Agreement or Member Services, even if such loss is reasonably foreseeable.

VI. The Member and the Payment Facilitator undertake to perform their obligations under this Agreement using reasonable care and skill. Except as specifically provided by this Agreement, the Member and the Payment Facilitator specifically disclaim any other warranties, express or implied, regarding the performance of their obligations (including but not limited to quality, performance, suitability or fitness for a particular purpose) arising out of or related to this Agreement, and such warranties are hereby excluded to the maximum extent permitted by law.

VII. Neither of the Parties excludes or limits any liability to the other Party for: (a) the death or personal injury arising from the negligence or willful default of itself, its employees, agents or sub-contractors; (b) fraudulent misrepresentation.

## 9. Indemnities

- I. The Payment Facilitator shall indemnify and keep indemnified the Member, and shall hold the Member harmless, from and against all losses incurred or suffered by the Member arising as a result or otherwise in connection with the provision of the Payment Facilitator Services to Sub-Merchants
- II. The Payment Facilitator agrees to indemnify, defend, protect and hold Member and its respective employees, agents and representatives harmless from and against any liabilities arising from:
  - a. the provision by the Payment Facilitator of the services contemplated under this Agreement in manner which infringes or violates the rights of any third party or causes injury or losses to said third party;
  - b. any acts or omissions of the Payment Facilitators employees agents or representatives in respect of any claim whether or not such act or omission constitutes a breach of this Agreement;
  - c. the provision of the Payment Facilitator's services or any failures whatsoever in respect thereto, whether leading to a failure of the Member in the provision of the Member Services or otherwise;
  - d. any failure of the Payment Facilitator to comply with any of its obligations under this Agreement, or the failure of any warranty or representation made true and correct;
  - e. any failure of the Payment Facilitator to comply with the Card Scheme Rules or the PCI Standards;
  - f. any negligence, misrepresentation or willful misconduct on the part of the Payment Facilitator or any of its employees, agents or representatives;
  - g. loss or theft of any cardholder data by or from the Payment Facilitator.

## 10. Compliance with Law

- I. Each Party acknowledges that it is subject to various applicable Requirements of Law and the Card Scheme Rules. The Parties agree to co-operate with and assist each other in identifying and resolving compliance issues with regard to applicable Requirements of Law and the Card Scheme Rules.
- II. Each Party acknowledges and agrees that during the Term and any subsequent Additional Term:
  - a. it is and shall continue to be responsible at its own cost for its own compliance with applicable Requirements of Law and the Card Scheme Rules; and
  - b. it shall notify the other Party as soon as possible where any addition or amendment to applicable Requirements of Law and the Card Scheme Rules applicable to the Parties will or may have a material effect on the other Party;

## 11. Trademarks and Logos

- b) The Payment Facilitator hereby acknowledges and agrees that the Card Schemes are the sole and exclusive owners of their respective trademarks, service marks and logos and the Payment Facilitator will not contest the ownership of such marks. Additionally, the Payment Facilitator will not use the Card Schemes' trademarks, service marks or logos except as may be permitted by the Card Schemes or under the Card Scheme Rules and after prior written approval of the Member (and the Card Schemes, if required). The Payment Facilitator acknowledges and agrees that the Card Schemes may at any time immediately and without advance notice prohibit the Payment Facilitator from using the marks of the Card Schemes for any reason. The Payment Facilitator shall have no authority to permit use of the Card Schemes' programme marks by any third party. Without limiting the foregoing, the Payment Facilitator acknowledges that 3D Secure™, MasterCard®, SecureCode™, Verified by Visa™ and V.ME™ are all trademarks of Visa, MasterCard or other third parties.
- c) The Payment Facilitator acknowledges that any and all of the copyright, trademarks, trade names, patents and other intellectual property rights, together with all of the copyright, trademarks, trade names, patents and other intellectual property rights substituting in or used in connection with the API and related Confidential Information shall be and remain the sole property of Member or such other party as may be identified therein or thereon (the 'Owner'). The Payment Facilitator undertakes not to during or at any time after the expiry or termination of this Agreement in any way question the ownership by Member and/or the Owner;

## 12. Force Majeure

- I. Neither Party shall be liable or accountable to the other for any failure, delay or interruption in the performance of its obligations under this Agreement and for any loss or damage arising therefrom due to force majeure, namely cases or events, reasonably beyond its control, including but not limited to acts of God, fire, floods or other catastrophe, acts of government or of any civil or military authority, national emergencies, insurrections, riots, war, strikes, lockouts.
- II. A Party cannot claim relief if the force majeure event is attributable to its willful act, negligence or failure to take reasonable precautions against the relevant force majeure event.
- III. The affected Party shall immediately give the other Party written notice of the force majeure event. The notification shall include details of the force majeure event together with evidence of its effect on the obligations of the affected Party, and any action the affected Party proposes to take to mitigate its effect.
- IV. As soon as practicable following the affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the force majeure event and to facilitate the continued performance of this Agreement.
- V. The affected Party shall notify the other Party as soon as practicable after the force majeure event ceases or no longer causes the affected Party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the force majeure event unless agreed otherwise by the Parties.

## 13. Marketing of Member Services by Payment Facilitator

- a. The Payment Facilitator shall actively market the Member at its own expense on a non-exclusive basis during the Term and any subsequent Additional Term to prospective Sub-Merchants. The Payment Facilitator shall reconfirm that any prospective Sub-Merchant is located and incorporated in the Territory.
- b. The Payment Facilitator shall be responsible, at its sole expense, for the development of all the promotional materials and shall bear the cost of development, printing and distribution of promotional materials. All initial promotional materials which reference to the Member, and any subsequent changes to the form and content thereof, must be approved in writing by the Member prior to the use by the Payment Facilitator, which approval shall not be unreasonably withheld or delayed. The Payment Facilitator shall ensure that all promotional materials are in compliance with the Card Scheme Rules and all applicable Requirements of Law.
- c. The Payment Facilitator shall cease its use of any promotional materials with reference to the Member that become unacceptable to the Member within three (3) days of receipt of written notice from the Member or such shorter period of time as may be required to comply with any Requirement of Law or Card Scheme Rules or to prevent any loss to the Member or its affiliates.
- d. While this Agreement is effective and for six (6) months after the expiration or earlier termination thereof, the Payment Facilitator agrees that neither the Payment Facilitator nor any of its employees, Affiliates, subsidiaries or agents, shall, whether directly or indirectly, solicit any then-current clients of the Member for the purpose, directly or indirectly, of providing or receiving Merchant or Member Services.

#### 14. Miscellaneous

**Non- exclusivity:** The Agreement is not exclusive for either Party. The Member may establish any commercial and contractual relationships with any other entities in the same way that the Payment Facilitator may establish similar relationships with other acquirer entities to process card payments.

#### Prohibited and Restricted List

For a list of business types that are prohibited or restricted by the Member, the Payment Facilitator shall refer to the list as provided by the Member and which may be amended by the Member from time to time and at its sole discretion.

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