

Service Agreement for

Client Details

Full Company Name

Registered Address

Contact Person

E-mail

Telephone

Client and Newgen Payment Gateway Private Limited have agreed to enter into a service agreement, which shall include this cover sheet, the general terms and conditions (Appendix A) and all other appendices attached hereto as applicable to the services as ticked in the box(es) below ('Agreement'). In consideration of payment of the Fees by Client to Newgen, Newgen hereby undertakes to provide any and all Services (as defined in Appendix A), as the same may be amended from time to time, in accordance with the terms and subject to the conditions contained in this Agreement.

By signing this agreement, the Client hereby acknowledges and agrees that it has received, read and accepted the said terms and conditions.

The Alliance services (as defined in Appendix B) will be provided to you by Acapture B.V., a limited liability company, based in Amsterdam, The Netherlands, Chamber of Commerce registration number 58184082 ("Alliance") on the basis of a direct Alliance agreement. The Alliance is a Payment Institution licensed by the Dutch Central Bank to provide payment services. By signing this service agreement, the Client agrees to apply for the Alliance Service, and acknowledges and agrees that it has received, read, accepted and is bound to the terms and condition set forth in Appendix C.

Terms, Services and Pricing

<input type="checkbox"/>	General Terms and Conditions (Appendix A)
<input type="checkbox"/>	Processing Services (Appendix B)
<input type="checkbox"/>	Terms and Conditions Alliance (Appendix C)

[Commercial Details]

[Admin Details]

Signed by the duly authorized representatives of the parties

Agreed and signed in duplicate,

On behalf of Newgen Payment Gateway Pvt. Ltd.	On behalf of Client
<hr/> <p>Name: Sunil Jhamb Title: CEO Date:</p>	<hr/> <p>Name: <input type="text"/> Title: <input type="text"/> Date: <input type="text"/></p>

Appendix A – General Terms and Conditions

1. Scope of Services

Newgen Payment Gateway Private Limited (a branch office of the New Delhi head office, based in Amsterdam, the Netherlands, Chamber of Commerce registration number 64567443, hereinafter referred to as 'Newgen'), offers financial technology services, which may include web design, digital marketing, payment processing and fraud prevention services (hereinafter the 'Services'). Client elects to benefit from these Services.

2. Rights and Obligations of Newgen

2.1 Newgen will provide the Services using reasonable due care and skill, in accordance with applicable laws. Except as specifically provided by the foregoing, Newgen makes no other warranties, guarantees or undertakings, express or implied, regarding the performance of such Services, and nothing contained in this Agreement will constitute such a warranty.

2.2 All work developed by Newgen and delivered to the Client shall remain the property of Newgen until all amounts owed by the Client are paid to Newgen in full.

2.3 Newgen will not be responsible for loss or damages suffered by Client as a result of Newgen's failure to perform its obligations under this Agreement due to any event beyond Newgen's control which events include, but are not limited to, electricity outages, fire, floods, war or terrorist activities, civil commotion, government actions, fire, riots and 'acts of god' ('Force Majeure'). In the event the Force Majeure lasts longer than thirty (30) days, either party shall have the right to terminate this Agreement, without incurring any further liability.

3. Rights and Obligations of Client

3.1 Client agrees to comply with any instructions, policies and procedures provided by Newgen and shall provide all information necessary for Newgen to provide its Services. Client shall refrain from any behavior which may obstruct or delay the Newgen's performance of the Services.

3.2 The Client is fully responsible for the data that it processes in the context of using a service of Newgen. The Client guarantees that the content, use and/or processing of the data are not unlawful and do not infringe any third party rights.

4. Fees

4.1 Client shall pay the Fees as set forth in the cover sheet and as may be amended from time to time on agreement of the Parties. Fees are exclusive of VAT and other government levies imposed. Payment shall become due within fourteen (14) days after receipt of invoice.

4.2 Newgen may revise the Fees from time to time on written agreement with the Client, which amended Fees, shall be effective upon the mutual written agreement of the Parties.

4.3 In addition to clause 4.2, the Client acknowledges that any fees for the processing services set forth in the Agreement may be adjusted to reflect increases or decreases by Alliances and/or Card Schemes (as defined in Appendix C). Further, the Client acknowledges that its fees for processing services are based on its representation as to its methods of doing business, volume of transactions (if applicable), method of processing, type of business and other criteria as represented in the client application. To the extent any of the actual data differs from this information, and in addition to clause 4.2, Newgen may amend the fees with 30 days' prior written notice.

4.4 The Client has no right to set-off or to withhold payments to Newgen in connection with any amounts due by Newgen to the Client.

5. Indemnification

5.1 Client shall be liable for and indemnify, defend and hold harmless Newgen, its respective affiliates, employees, directors and agents (hereinafter collectively referred to as "Indemnified Parties") from and against any and all claims made by Client' s customers or any other third party threatened, asserted or filed against any Indemnified Party arising out of this Agreement, and for all other claims (third party or otherwise),

actions, proceedings, loss, damages, liability, legal fees and other costs and expenses (including reasonable legal costs) paid or incurred by any Indemnified Party that arise out of: (i) Client' s breach of this Agreement, the agreement signed between Client and its customers and/or applicable laws or (ii) any claim by an Alliance or any third party on the basis of any other fault, act or omission by the Client or its affiliated companies, provided that Newgen as soon as practically possible notifies the Client of any such claims.

5.2 Newgen shall be liable for and indemnify, defend and hold harmless Client, its respective affiliates, employees, directors and agents (hereinafter collectively referred to as "Indemnified Parties") from and against any and all claims made by a third party threatened, asserted or filed against any Indemnified Party arising out of this Agreement, and for all other claims (third party or otherwise), actions, proceedings, loss, damages, liability, legal fees and other costs and expenses (including reasonable legal costs) paid or incurred by any Indemnified Party that arise out of: (i) Newgen's breach of any representations, undertakings, warranties or covenants made by it under this Agreement; or (ii) Newgen's gross negligence or willful misconduct related to this Agreement or the Services.

6. Limitation of Liability

6.1 Except as provided herein, Newgen disclaims all warranties, express or implied, written or oral, in respect of its Services including but not limited to warranties of Client' s ability and fitness for a particular purpose. The Client acknowledges that Newgen' s service may not be uninterrupted and that the services provided by the Alliances to Newgen which is passed on to the Client under this Agreement, can be brought to an abrupt end in any event whatsoever by the Alliances for any reason whatsoever. It is further clarified that Newgen is not providing to the Client any warranty or covenant on the quality or service provided by the Alliances. Notwithstanding the foregoing, Newgen shall use reasonable efforts to procure/enforce the quality of the Alliances' obligations/services to it to the extent it is able to do so under the terms of its direct agreements with such Alliances.

6.2 The maximum liability of Newgen under this Agreement shall not exceed in aggregate an amount equal to the Fees paid by Client to Newgen for providing Services during the last six (6) months prior to the claim arising.

6.3 Notwithstanding anything in this Agreement to the contrary, in no event shall any party, their affiliates or any of their respective directors, officers, employees, agents or subcontractors be liable for loss of profit, loss of revenues, loss of business opportunities, exemplary, punitive, special, incidental, indirect or consequential loss or damages, even if such loss was reasonably foreseeable.

6.4 The limitations set forth in this clause will not apply to Client' s indemnity obligation under clause 5.1, Newgen' s indemnity obligation under clause 7.2, and any payment obligations under this Agreement or in the event of gross negligence or wilful misconduct by either Party.

7. Intellectual Property

7.1 This Agreement will not in any way transfer the intellectual property rights of parties, except for any design services as agreed between Parties and expressly provided in this Agreement.

7.2 In the event of any claim against Client by a third party asserting that its use of (part of) the Services or any deliverables pursuant design services provided by Newgen, infringes or misappropriates a patent, copyright, or database right of the third party ('IPR Claim'), Newgen shall, at its own expense, defend, remedy or settle the IPR Claim in such manner and on such terms as it deems appropriate; provided, however, that it shall not, without the prior written consent of Client (which consent shall not be unreasonably withheld or delayed) effect any settlement or compromise of any such IPR Claim. This obligation to indemnify shall not apply if the alleged infringement concerns: (i) materials made available to Newgen by the Client for use, modification, integration and/or processing; or (ii) changes made by the Client or a third party as commissioned by the Client. The Client indemnifies Newgen against any claim of a third party based on the allegation that the making available, use, integration and/or processing of the material referenced in sub (i) above infringes a right of that third party.

7.3 To receive the benefits of an indemnification under this clause, Client must: (i) promptly provide Newgen written notice of any IPR Claim or threatened claim; (ii) reasonably cooperate, inform and assist in defending such IPR Claim; and (iii) tender to Newgen sole control and authority with respect to the defence, settlement, and/or compromise of such IPR Claim.

7.4 If a final injunction granted by a court of competent jurisdiction prevents Client's continued use of (part of) the Services and/or the deliverables, Newgen will, at its option and expense, either procure for Client the right to continue receiving the Services or the affected parts of it; or replace or modify the infringing part of the Services and/or deliverables so that they become non-infringing; or, if the aforementioned are not reasonably or commercially feasible (in Newgen's reasonable discretion), terminate this Agreement.

8. Confidentiality

8.1 The receiving party of any Confidential Information (as defined herein) will at all times maintain, and cause its agents, employees and affiliates to maintain the confidentiality of all Confidential Information belonging to the disclosing party. The receiving party will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of Confidential Information, including, at a minimum, those measures it takes to protect its own Confidential Information of a similar nature. The Receiving Party will not use Confidential Information of the Disclosing Party for any purpose whatsoever other than those specifically set forth in this Agreement. Confidential Information shall mean: (i) any and all trade secrets; (ii) any commercial, marketing, technical or other information relating to the business activities of the Parties; (iii) bank account and cardholder information and (iii) any other information of whatever nature made available to a Party by another Party which would reasonably be understood to be confidential.

8.2 All Confidential Information will remain the exclusive property of the disclosing party. The receiving party will notify the disclosing party immediately upon discovery of any unauthorized use or disclosure of Confidential Information. The receiving party will cooperate with the disclosing party in every reasonable way to help the disclosing party regain possession of such Confidential Information and prevent its further unauthorized use.

8.3 The receiving party will return or destroy all materials embodying Confidential Information (in any form and including all summaries, copies and excerpts of Confidential Information) promptly following the disclosing party's written request and/or upon termination of this Agreement, except for any material the receiving party is required to retain to comply with applicable laws. The obligations in this clause shall survive the termination or expiry of this Agreement.

9. Representations and Warranties

9.1 Each Party hereby represents and warrants to the other that:

- a. it is an entity duly constituted and validly existing under the laws of its home country;
- b. it holds necessary licenses, approvals and consents as may be required for the conduct of its business and such licenses, approvals and consents are valid and subsisting;
- c. it has, in terms of applicable laws and its constitution documents, capacity to enter into and perform this Agreement and it has taken all actions (including obtaining necessary statutory and other approvals required for its entering into this Agreement);
- d. neither making nor performance of this Agreement nor use of the Services will violate any law or conflict with or result in the breach or constitute a default (either by Client or Newgen) or require any consent under any decree, order, judgment, indenture or agreement; and
- e. it shall comply with applicable union, state and local laws, ordinances, regulations and codes to which it is subject or which is otherwise applicable to it, in performing its obligations hereunder, including the procurement of licenses, permits and certificates and payment of taxes where required.

9.2 The Client represents and warrants that, as at the date of and throughout the term of this Agreement:

- a. it and its goods and/or services sold and the information provided to its customers (on its website and other commercial communication) comply with all applicable rules, laws and regulations;
- b. its goods and/or services do not infringe upon any third party rights and interests including – but not limited to – intellectual property rights and proprietary rights;
- c. all information and documentation provided to Newgen is true, accurate and complete and properly reflects the corporate structure,

business and financial condition of the Client and not to be or become involved – directly or indirectly – in withholding information or providing misleading or incorrect or other than fair information;

d. it is not aware of any information which Newgen and/or its Alliances (as defined in Appendix C if applicable) would reasonably require and expect to be informed of for the purpose of making an informed assessment of the Client and its ability to perform its obligations under this Agreement; and

e. it shall be in possession of all licenses, permits, approvals whether regulatory or otherwise required in terms of applicable laws to carry out its business lawfully.

10. Term and Termination

10.1 This Agreement shall come into effect at the signing date of the cover sheet and shall remain in force for one (1) year, which shall be automatically renewed annually for further periods of one (1) year, unless terminated by either Party as set forth herein.

10.2 A Party may terminate this Agreement:

a. in the event of a material breach, provided first written notice of any alleged breach has been given and such breach remains unremedied for a period of fourteen (14) calendar days following receipt of the written notice; or

b. if a Party is unable to pay its debts as and when such debts fall due or becomes bankrupt or insolvent, or has a receiver or manager, provisional liquidator, liquidator or administrator appointed in respect of any material part of its assets, then the other party has the right to terminate this Agreement by written notice, which termination will be effective on the date set out in that notice; or

c. at any time without cause, subject to ninety (90) calendar days' notice.

10.3 Termination shall not affect any initiated Services, which shall be finalized in a manner and time frame as agreed between Parties. Any already made (upfront) payments of Fees shall not be refunded.

11. General

11.1 This Agreement does not create a partnership or joint venture between the Parties. The Parties render or accept the Services as independent contractors and independent parties. No Party is authorized to act as the others' agent or representative except to the extent necessary to provide or accept the Services set forth in this Agreement.

11.2 The Parties agree that this Agreement and any project scope documents (if any) constitute the entire agreement between Parties in relation to the subject matter hereof. None of the Parties have relied on any verbal or written information provided by the other Parties unless it is set out or expressly referred to in those documents.

11.3 If any of the clauses (or part thereof) of this Agreement is or becomes invalid or unenforceable for any reason whatsoever, the validity of the remaining clauses or part thereof will not in any way be affected or impaired. If any invalid or unenforceable clause or part thereof of this Agreement would be valid or enforceable if its form or effect were modified in any way, it shall be deemed to have the modified form or effect provided that Newgen gives its consent.

11.4 Newgen reserves the right to fulfil any of its duties and powers under this Agreement by the use of Alliances (as defined in Appendix B) and sub-contractors (on the basis that Newgen will continue to remain liable to the Client as principal).

11.5 In the event of a conflict between the documents comprising this Agreement, the following order of priority will apply: (i) the cover sheet, (ii) the project scope document(s) if any; (iii) the general terms and conditions as set forth in this Appendix A; and (iv) any other appendices (if any).

11.6 Departures from and additions to these general terms and conditions shall only be valid if they are agreed between the Parties in writing.

11.7 This Agreement shall be governed by and construed in accordance with the laws of the Netherlands. The Parties agree that the courts of Amsterdam have jurisdiction to settle any disputes in connection herewith and accordingly submit to the jurisdiction of such courts.

Appendix B – Processing Services

Client may opt to make use of the payment processing services provided by Newgen. In such event, the following terms and conditions shall apply in addition to those in Appendix A. The definition of “Services” shall be extended to encompass the services as described in clause 1.1.

1. Newgen Services

1.1 Newgen shall provide the following processing services: operating and maintaining a technical gateway, capturing and transaction data and transmitting that data to Alliances for further processing and settlement, providing fraud support services, handling of chargeback disputes, providing reconciliation and reporting statements and/or any ancillary services required to facilitate the processing of transactions, as agreed between Parties (hereinafter the “Services”). Newgen shall not collect or receive any funds underlying the transactions, as the related Alliances (see clause 2) will undertake to collect and transfer any such funds to the client.

1.2 Newgen shall act as a facilitator enabling the Client to accept payments from its customers by processing transactions for the purpose of receiving payments. The Client shall connect to the system of Newgen in accordance with the specifications and instructions provided by Newgen in order for Newgen to carry out the Services. The Client acknowledges and agrees not to use the Services in any manner whatsoever:

- (i) which constitutes a violation of any law or regulation,
- (ii) which may cause Newgen to be subject to any investigation or legal action;
- (iii) and/or for any type of business which in the opinion of Newgen or Alliances is unacceptable.

2. Alliance Services

2.1 The Client acknowledges that Newgen is not a financial or credit institution and does not offer payment processing services. Therefore, in order to provide the Client with payment and settlement services (“Alliance Services” which are further defined in Appendix C), Newgen shall maintain relationships with payment service providers, payment method suppliers and acquirers, which parties are in charge of – amongst others – the collection and transfer of any collected payments (collectively referred to as “Alliances”).

2.2 The Client shall – for the Alliance Services – enter into a direct agreement with the Alliance to which agreement the Alliance’ s terms and conditions (see Appendix C) shall apply, as the Client acknowledges and accepts by entering into this Agreement with Newgen.

2.3 In respect of Services that are dependent upon the Alliances, the Client acknowledges that each Alliance reserves the right to not allow or keep supported the provision of the Alliance Service (in respect of such Alliance) to Newgen and/or the Client. Newgen may from time to time, in its sole discretion, elect to no longer support an Alliance and shall provide the Client reasonable written notice in that regard of at least 30 days.

2.4 Newgen will assist Client with the application process with any Alliance, for which purpose the Client agrees that Newgen may provide certain information and certain documents of the Client to such Alliance. The personal information, data and documents Newgen collects is set out in Newgen’s privacy statement (see section 8.1). Client grants a limited power of attorney to Newgen to, on behalf of the Client (i) prepare, execute, endorse and deliver in Client’ s name the documents that are necessary for the opening and maintaining of an account in name of the Client with an Alliance; (ii) accept all documents and information from an Alliance requiring communication to Client (including but not limited to transaction related information or other notices) and (iv) act as an interface and intermediary between Client and an Alliance. This Power of Attorney shall only be used with regard to the Services, duly requested by Client. Newgen shall not be authorized to perform any actions not duly authorized herein and shall, at all times, act in the best interests of the Client.

2.5 The Client acknowledges that, in order for an Alliance to accept Client as customer, the Alliance may require a reserve to be established as collateral for any potential chargebacks, penalties and other amounts due by Client to Newgen or the Alliance.

2.6 Newgen will – under no circumstances – have any responsibility and liability whatsoever towards the Client for:

- (i) any failure or delay of an Alliance to transfer any collected payments and/or to compensate the Client for any loss incurred as a result thereof; or
- (ii) any other act or omission by such Alliance. Newgen shall not bear any liability in relation to any decision of its Alliances.

2.7 If the Client has any queries about an Alliance or its services, the Client should contact Newgen at support@newgenpayments.com.

2.8 The Alliance (as identified on the cover sheet) may deduct a fee for the Alliance Services and Newgen related fees for the Services from any settlement funds. Any fees not deducted by the Alliance, as provided in the fee schedule on the cover sheet will be invoiced directly by Newgen to Client, in accordance with clause 4 of Appendix A.

3. Chargebacks, Penalties and Fraud Services

3.1 The Client acknowledges and agrees that it shall be liable for all transactions, refunds and chargebacks processed under its merchant account(s).

3.2 At all times the Client bears the ultimate responsibility for mitigating the risk of chargebacks and fraud. Newgen may provide the Client fraud support services, which enables the Client to analyze the risks it may be subject to in relation to a transaction. The fraud tool provided by Newgen is an indicative tool and Newgen does not warrant that declined transactions were in fact fraudulent nor that the tool prevents transactions to become subject of a chargeback or fraud.

3.3 The Parties agree and acknowledge that nothing shall restrict or limit the Client's liability with regards to chargebacks and penalties relating to its transactions during the term of this Agreement and after termination or expiration thereof. Any such liabilities are dealt with directly by and between the Client and the relevant Alliance. This liability is not subject to any limitation of liability that may be expressed elsewhere in this Agreement, including – but not limited to - appendix A.

4. Information Obligations for Client

4.1 The Client shall supply relevant information and documents which may be requested for the purpose of assessments, controls or audits from Newgen, Alliances and/or card scheme associations, and take all suitable measures to facilitate the work of persons instructed to carry them out. The Client is obligated to provide Newgen with any other written or oral information, including but not limited to URLs, credit-worthiness, financials and corporate information, which information needs to be true, up-to-date, correct information and in full force and effect in all respects at all times.

4.2 The Client is obligated to, inter alia, notify Newgen in writing of:

- (i) any changes in ownership, financial conditions and business products or services the Client provides,
- (ii) any regulatory actions the Client has become subject to; and/or
- (iii) all other circumstances that could adversely affect the rights of Newgen or of its Alliances and/or card scheme associations or that could constitute grounds for immediate termination.

4.3 The Client undertakes to enable Newgen, by providing the relevant accurate and correct information, to deal with any retrieval request, pre-arbitration or chargeback.

5. Representations and Warranties

5.1 In addition to clause 9.2 of Appendix A, specifically for the Services set forth in this Appendix, the Client represents and warrants that, as at the date of and throughout the term of this Agreement:

- a. it uses and shall use the Services of Newgen solely and strictly in relation to payment of its own goods and/or services;
- b. it will perform its obligations towards customers relating to the provision of goods and/or services including but not limited to accepting responsibility for the acceptance of a customer order and its fulfilment in accordance with the Client's terms and conditions, agreement with its customers and applicable laws;

c. it will only accept payment in respect of goods and services which commonly fall within the Client's business (as notified to and accepted by Newgen) and in no event shall the Client submit transactions for any activity, product or entity not approved by Newgen; and

d. it is and will remain compliant with the card scheme association rules for the term of the Agreement and will not cause Newgen to be in breach with said rules.

6. Rights and Obligations of Newgen

6.1 Upon the occurrence of (a) excessive chargeback, sales and/or refund activity outside the normal parameters of the Client, (b) a breach of this Agreement, (c) dishonesty or fraud by the Client, or (d) a change in the financial condition of the Client, Newgen is authorised to take any action it deems necessary including but not limited to suspension of the Services (including Newgen requesting the withholding of settlement of funds by Alliances)). The period for such suspension of the Services or withholding of settlement funds is to be determined by Newgen and its Alliances in their sole discretion.

6.2 The Client shall immediately be notified of a modification and/or suspension pursuant to clause 6.1. Should any ground specified in the preceding clause subsists for more than ten (10) business days after the modification and/or suspension, Newgen shall have the right to terminate some or all of the modified and/or suspended Services, or this Agreement. Newgen will have no liability for any losses the Client may attribute to any modification, suspension and/or termination of the Services as set forth herein.

6.3 Upon Newgen's request the Client shall permit Newgen, its Alliances, card scheme associations or any third parties commissioned by Newgen to inspect the Client's business premises to audit compliance of the Client with this Agreement, in particular if and to what extent the organizational and security measures taken by the Client are suitable in the light of industry standards to prevent any abuse and/or any other manipulation of any kind of the Client's IT and financial systems. The Client shall assist in, facilitate and shall not impede such audits without limitation, at its own cost, and shall procure that any such audits can also be conducted directly in relation to (and at the premises of) any technical service providers and any other sub-contractors engaged by the Client in connection with the submission and processing of transactions.

6.4 Newgen may upon fourteen (14) days' notice change or alter the networks to which it connects for the payment processing. The Client acknowledges that this notice period shall not apply to

(i) any change or alteration as required by its Alliances and/or card scheme associations and/or

(ii) any other fundamental circumstances to be determined in Newgen's sole discretion.

6.5 Newgen will notify the Client – as soon as possible prior to the execution of the adjustment - in the event of any necessary change in software, interfaces or operating procedures at the Client's end. The Client shall be solely responsible for all telephone, computer, hardware and software equipment and other services (and the related costs) necessary to access and utilize the Services.

6.6 Newgen is entitled to guide and instruct the Client when provided with the Services and the Client shall comply with any such guidance and instructions reasonably given.

7. Service Levels

7.1 Newgen does not warrant that the Services and/or software are error free or operate without interruption or are compatible with all equipment and software configurations in use by the Client.

7.2 Newgen guarantees an average up time of ninety-nine point five per cent (99.5%) per month of the Newgen platform on the condition of full availability of the services of its internet providers.

7.3 Newgen is not responsible for any availability of the services and response times of its Alliances.

8. Data Protection

8.1 Parties warrant and undertake that (i) they will duly observe their respective obligations under General Data Protection Regulation (Regulation (EU) 2016/679), the Dutch Data Protection Act (Wet bescherming persoonsgegevens)

and the Dutch Telecommunications Act (Telecommunicatiewet) and other Data Protection Rules applicable (ii) personal data will be handled with care, in a confidential manner and in accordance with applicable data protection laws and Newgen's privacy statement (<http://www.newgenpayments.com/privacy-policy/>) as agreed and acknowledged by Client. Newgen shall have proper organizational and technical security measures in order to prevent loss, theft and/or misuse of personal data.

8.2 Client represents and warrants that it has the authority to disclose any personal data, within the meaning of the data protection laws. Client assumes full and sole responsibility for the lawful collection, delivery and use of all cardholder data and for obtaining required consents.

8.3 Personal data may be used, processed or disclosed (including, without limitation, to and by any affiliate of Newgen, Alliances and/or any third party service provider) for such purposes as may reasonably be required in connection with performance of the Agreement and for the purpose of enabling Newgen to fulfil its duties and obligations pursuant to the Agreement.

8.4 The Client will promptly notify Newgen if it becomes aware of or suspects any security breach relating to transaction data and to, as soon as reasonably practicable, and without prejudice to any other remedy Newgen (as the case may be) has in respect thereof immediately identify and remediate the source of such security breach and take any steps that Newgen or its Alliances require.

9. PCI-DSS Compliance

9.1 Client must comply – at its own cost - with the requirements of the PCI-DSS as applicable to Client's business, and any modifications that may occur from time to time. In the event that the Client makes use of Newgen's hosted solution, Client shall not capture, intercept or have access to any transaction details (including credit card data) other than made available to the Client through Newgen's reporting tools and console. In such case, the Client shall fill-in the PCI-DSS self-assessment questionnaire to ensure compliance with aforesaid rules.

9.2 Client is solely responsible for any penalties, associated costs or charges arising from being noncompliant or arising from data held by it being used for fraudulent or unauthorized purposes, including any investigation of the same.

10. Termination

10.1 In addition to clause 10 of Appendix A, Newgen reserves the right to immediately terminate this Agreement, whether in relation to all or part of the Services (or services from Alliances) in the event that:

- (i) there is a change in applicable laws and/or card scheme association rules that affect the ability of Newgen or Alliance to provide its services or
- (ii) Newgen is required or requested to do so by any Alliance, card scheme association or any regulatory authority or by reason of any laws applicable to either Newgen or Merchant.

10.2 Termination of this Agreement will not affect both Party's respective rights and obligations under this Agreement as to transactions submitted before termination. If this Agreement ends, the Client must pay Newgen immediately all and any amounts due under this Agreement.

Appendix C – Terms and Conditions Alliance



A. GENERAL

1 Definitions and Interpretation:

1.1 The following terms shall have the meaning set forth below:

- (a) Acapture Foundation: Stichting Trusted Third Party Acapture, a foundation (*stichting*) organised under the laws of The Netherlands, registered under number 59614706 in the Chamber of Commerce and having an office address at Molenpad 2, 1016 GM Amsterdam, The Netherlands;
- (b) Acapture Payment Server: the payment server as described in Article 11 (*Service Level*);
- (c) Acapture Services: the Gateway Services and/or Collecting Services and/or any Related Services provided by Acapture from time to time (or any of them, as the context shall permit or require);
- (d) Acapture Systems: shall have the meaning given to it in Article 14.6;
- (e) Acapture Terms and Conditions: this set of terms and conditions which shall apply to the Agreement;
- (f) Account: has the meaning given to it in Article 10.1;
- (g) Agreement: the Agreement between Acapture and the Merchant for the Acapture Services of which the Acapture terms and conditions form an integral part, together with the Appendices and any policy documents issued and updated by Acapture from time to time;
- (h) Alternative Payment Methods: all other Payment Methods than Cards;
- (i) Anticipated Monthly Transaction Volume: the monthly Transaction volume as anticipated by the Merchant and indicated in application or the Agreement;
- (j) Applicable Laws: all applicable laws or regulations (including the requirements of any regulatory authority) applicable to the Parties and/or to any Transaction;
- (k) Appendix: any Appendix, Schedule, Addendum or other document supplementing the Agreement, as amended from time to time;
- (l) Average Transaction Value: the average transaction amount determined by the Merchant and indicated in the Agreement;
- (m) Cards: the different types of credit and debit cards which their registered card holders can use for making Card Payments such as VISA, MasterCard, JCB, American Express, China Union Pay and any other Card types as Acapture may notify to the Merchant and for which Acapture provides the Acapture Services as agreed in the Agreement;
- (n) Business Day: a day other than a Saturday, Sunday or public holiday in The Netherlands
- (o) Card Association: individually MasterCard, VISA and such other card associations as specified by Acapture from time to time;
- (p) Card Payment: the Payment Method chosen by a Customer using a Card for making the payment of the Purchase Price;
- (q) Chargeback: shall have the meaning given to it in Article 4.1;
- (r) Collateral: the rolling reserve, fixed deposit, Reserve Account and/or guarantee as set forth in Article 23.1 (a) - (d), their replacement in accordance with Article 23.1(e) and the Pledged Rights;
- (s) Collecting Services: the Acapture Services which entail the activities described in Article 2.2.1, 2.2.2, 2.2.3 and 2.2.4;
- (t) Confidential Information: all information which prior or upon its disclosure is designated as such by the party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**"), or which should reasonably be considered as information of a confidential nature by the Receiving Party, including, for the avoidance of doubt any and all Log-in Details;
- (u) Contract Term: means the period for which the Agreement shall initially be in force as agreed and specified in the Agreement;
- (v) Country of Origin: shall have the meaning given to it in Directive 2000/31/EC (the Electronic Commerce Directive, as the same may be amended, restated or supplemented from time to time);
- (w) Customer: the natural person or legal entity who or which has ordered goods and/or services from the Merchant and who or which is formally and officially registered with a Payment Organisation as the holder of a particular bank account number or the authorised user of a Payment Instrument;
- (x) Data Controller, Data Processor, Personal Data, Processing and Process: have the meaning given to them in the Data Protection Legislation;
- (y) Data Protection Legislation: prior to 25 May 2018, the EU Data Protection Directive 95/46/EC and, on and from 25 May 2018, the General Data Protection Regulation (EU) 2016/679 ("**GDPR**") (as the same may be amended, modified or replaced from time to time);
- (z) Effective Date: the date on which the Agreement shall be deemed to come into effect (prior to which Acapture shall have no obligation to provide the services) and which shall be the date of the last signature by the legal representatives of the Parties placed on this Agreement, unless, by that date, Acapture has still not confirmed by written notice to the Merchant that it has been accepted as a client (in which case, this Agreement shall not be deemed to have come into effect until (and the "Effective Date" shall be) the date on which such confirmation is given by Acapture to the Merchant or (if any) the date which is stated in the confirmation);
- (aa) Equipment: any equipment provided by Acapture, including but not limited to equipment the Merchant needs to process

- point of sale Transactions under the Agreement;
- (bb) Excessive Activity: any activity in excess of an established Card Association program and/or the Agreement during any monthly period and shall include where:
- (i) the count or amount of chargebacks and/or retrieval requests exceeds one per cent (1%) of the sales Transactions (captures and payments) that have been processed by Acapture for the account of the Merchant in the same monthly period;
- (ii) gross sales activity that: (a) deviates by fifteen per cent (15%) or more from the average growth or decline rate in processing volume over the preceding six (6) months without prior notice; (b) exceeds, by ten per cent (10%) or more, the approved monthly processing volume for a second consecutive month without prior notice; (c) exceeds by ten per cent (10%) or more, the average ticket amount without prior notice; or (d) exceeds the average gross sales volume over the preceding six (6) months by twenty per cent (20%) or more without prior notice;
- (iii) the combined count or amount of credits and refunds exceeds fifteen per cent (15%) of the sales Transactions (captures and payments) processed by Acapture for the account of the Merchant in the same monthly period; and/or
- (iv) the count or amount of reported fraud (transactions reported to any fraudulent transaction database maintained by the Card Associations) exceeds one per cent (1%) of the sales transactions (captures and payments) processed by Acapture for the account of the Merchant in the same monthly period. The Merchant agrees and acknowledges that the Card Associations from time to time may change the parameters for calculations of ratios relating to chargebacks and fraud;
- (cc) Fines: the fines, penalties, levies, costs, expenses, charges or assessments (named differently by the different Payment Organisations and in name potentially deviating from the terms used in the Agreement) levied by the Payment Organisations or Acapture for violations by the Merchant of certain requirements under the Rules or the Agreement by Merchants;
- (dd) Gateway Services: the services which entail the activities described in Article 2.2.1, 2.2.2 and 2.2.4;
- (ee) Information: means any and all data and details the Merchant is required to provide to Acapture and/or the Payment Organisation either prior to the Effective Date or during the Term of the Agreement;
- (ff) Know-how: such skills, knowledge, experience, technical information or techniques whatsoever nature utilised by Acapture in the performance of the Agreement;
- (gg) Log-in Details: means the user name, passwords and any other numbers or codes given by Acapture to the Merchant to enable use of the Acapture Services and/or access to the Reporting Tool;
- (hh) Losses: all losses, costs, claims, demands, actions, proceedings, fines (including "Fines" as defined), penalties, awards, liabilities, damages, compensation, settlements, expenses and/or professional costs and/or charges;
- (ii) Marks: shall have the meaning given to it in Article 15.1;
- (jj) MCC: Merchant Category Code as reflected in the Rules;
- (kk) Merchant Agreement: the Agreement between Acapture and the Merchant for the Acapture Services;
- (ll) Merchant Credit Card: has the meaning given to it in Article 10.1;
- (mm) Non-Compliance Fee: the fee of at least EUR fifty (€50) for every calendar month, which is immediately payable to Acapture shall charge in the event described in Article 13.2;
- (nn) Parties: the parties to the Agreement, and "Party" shall mean each of them;
- (oo) Payment: payment of the Purchase Price by a Customer for goods and/or services purchased from the Merchant using a certain Payment Method as provided through the Acapture Services;
- (pp) Payment Instrument: the personalised device(s) and/or set of procedures as meant in the Payment Services Directive;
- (qq) Payment Methods: the methods of payment Customers can choose when paying for goods and/or services purchased from the Merchant such as online and offline bank transfers, direct debits, Cards or other Payment Instruments offered by Payment Scheme Owners;
- (rr) Payment Organisation: a Payment Scheme Owner with which Acapture has concluded an agreement in order to transmit through a network of connected or integrated platforms, systems and gateways the relevant data for providing Merchant with the Acapture Services;
- (ss) Payment Organisation Service costs: the charges, fees, prices (however named) which the Payment Organisations charge – either directly, in the case of the Gateway Services or through Acapture, in the case of the Collecting Services – for enabling the acceptance of Payments;
- (tt) Payment Scheme Owner: the whole range of companies and organisations such as banks, payment institutions, scheme owners,

- acquirers, issuers, financial or other type of organisations involved in operating, marketing or exploiting one or more Payment Methods;
- (uu) Payment Services Directive: the European Directive 2007/64/EC on payment services in the internal market (as the same may be amended, restated or supplemented from time to time);
 - (vv) PCI DSS or PCI Data Security Standards: means the payment card industry data security standards (as updated from time to time);
 - (ww) PCI Compliance Services: the Related Services as described in Article 13;
 - (xx) Pledged Rights: shall have the meaning given to it in Article 23.2;
 - (yy) Pre-Arbitration Fee: the situation wherein, following a Retrieval Request, the Card Payment is subject to further dispute but not (yet) subject to Chargeback;
 - (zz) Purchase Price: the price payable by Customer(s) to the Merchant for the good(s) and/or service(s) ordered by Customer(s) from the Merchant;
 - (aaa) Refund: the return of an amount to a Customer in relation to an original Payment pursuant to a request or instruction of the Merchant to Acapture;
 - (bbb) Related Services: those services which are supplementary to the Collecting Services and/or Gateway Services and which Acapture provides if so agreed in the Agreement;
 - (ccc) Remittance: the amount due and payable from Acapture to the Merchant as calculated in accordance with Article 34.8 of the Agreement;
 - (ddd) Remittance Delay: the delay as specified in the Agreement, which Acapture, in its sole discretion, shall apply when transferring the Remittance pursuant to Article 34.8;
 - (eee) Renewal Period: has the meaning given to it in Article 21;
 - (fff) Reporting Tool: either a reporter tool and/or a website as designated by Acapture;
 - (ggg) Reserve: the reserves as described and with the purpose of Article 23;
 - (hhh) Reserve Account: a non-interest bearing deposit account maintained with a reputable financial institution approved by Acapture as requested by Acapture to be provided for a specific Payment Method, in accordance with Article 8.2 or Article 23.1;
 - (iii) Retrieval Fee: the fee Acapture charges following each Retrieval Request;
 - (jjj) Retrieval Request: the situation wherein a Customer - directly or indirectly - requests an electronic copy of the sale/purchase confirmation in order to substantiate a Payment;
 - (kkk) Risk Management Services: the Related Services as described in Article 5;
 - (lll) Rules: any and all policies and procedures provided by Acapture or the Payment Organisations;
 - (mmm) Service Fee: all fees charged for the Acapture Services as further specified and agreed in the Agreement;
 - (nnn) Settlement: the amount due and payable from the Payment Organisation to either, in the case of the Gateway Services, the Merchant pursuant to Section A of the Agreement or, in the case of the Collecting Services, to Acapture – in the account held in the name of Acapture Foundation – pursuant to Section B of the Agreement;
 - (ooo) Standard Fee Schedule: the schedule containing the standard Service Fees Acapture charges in relation to each Transaction for provision of the Acapture Services per Payment Method and which Service Fees shall apply to the extent Acapture and the Merchant did not agree otherwise;
 - (ppp) Term: means the Contract Term and any Renewal Periods;
 - (qqq) Trademarks: all trademarks and logos of Acapture that exist now or in the future, both registered and non-registered, all as may be specified by Acapture from time to time;
 - (rrr) Transaction: a Payment requested to be effectuated via the Acapture Services; and
 - (sss) Transaction Data: the data of a Transaction, such as the Customer's bank account number or the details of the Payment Instrument used and the Purchase Price.
- 1.2 Notwithstanding anything to the contrary contained in the Agreement and/or the Rules, should there be any inconsistency or conflict with respect to (a) any provision of the Agreement and (b) any Rule, for the purpose of the Agreement, (b) shall prevail over (a).
- 2 **Subject of the Agreement**
- 2.1 The Merchant offers goods and/or services to the public by means of a website connected to the internet, a call center or another type of sales channel (including but not limited to CNP (card not present), and wishes to offer the Customers the possibility to effectuate payment by means of a range of Payment Methods.
 - 2.2 Acapture will provide the Merchant with the Acapture Services, subject to the terms and conditions of the Agreement which entail that Acapture may:
 - 2.2.1 operate and maintain a gateway and give Merchant access to it; and
 - 2.2.2 transmit data from the Merchant to the Payment Organisations; and
 - 2.2.3 collect or receive the Settlement and transfer the Remittance, if so agreed between the Parties; and
 - 2.2.4 provide reporting and reconciliation about Transactions; and
 - 2.2.5 provide Related Services in connection therewith.
 - 2.3 The Acapture Services can be set-up as Collecting Services and/or as Gateway Services.
 - 2.4 The Collecting Services shall be provided in respect of the Payment Methods requested by the Merchant and agreed to be provided by Acapture, as identified

- in the Agreement. For certain Payment Methods and under certain circumstances as described in Article 19.1, provision of the Collecting Services by Acapture demands conclusion of a separate agreement or establishment of a direct contractual relationship with a Payment Organisation (to, amongst others, obtain explicit confirmation of the Merchant allowing the Payment Organisation to transfer the Settlement to Acapture for further Remittance to the Merchant by Acapture).
- 2.5 For Settlement in the case of the Gateway Services, the Merchant shall conclude a direct and separate agreement with the relevant Payment Organisation, which is a condition to Acapture's obligation to provide the Gateway Services.
- 2.6 The Merchant acknowledges and accepts that it cannot hold Acapture liable for any decision of a Payment Organisation to not accept to provide the Payment Organisation's services in regards of the Merchant's Transactions.
- 2.7 Acapture shall in principle serve as the contact between Merchant and the Payment Organisation in regard to the Acapture Services, but the Payment Organisation may always opt to contact Merchants directly if it deems that necessary or desirable from an operational, legal or contractual perspective. Acapture shall ensure that it shall promptly and adequately deal with any communications from the Payment Organisation in regard to the Acapture Services.
- 2.8 Under no circumstances shall Acapture be obliged to receive or collect any Settlements nor to transfer any Remittances as part of the Gateway Services.
- 2.9 The Merchant acknowledges that an authorisation for a Transaction is not a guarantee of acceptance or payment of the Transaction. Authorisations do not waive any provisions of the Agreement or otherwise validate a fraudulent Transaction or a Transaction involving the use of an expired or insufficiently funded Payment Instrument or the unauthorised use of a Payment Instrument. The Merchant agrees to not hold Acapture liable for and Acapture does not accept any liability in respect of processing any Transaction which, upon authorisation, does not result in Settlement or Remittance.
- 2.10 Transaction Data that the Merchant has received through its system or the system of a (PCI Data Security Standard compliant) payment service provider will be sent directly to Acapture, and Acapture shall transmit such data accordingly to the relevant Payment Organisation. Acapture provides the Merchant with Transaction Data via the Reporting Tool.
- 2.11 The Merchant agrees to allow Acapture to act as a payment intermediary on behalf of such Merchant for the purpose of processing Transactions. For being provided with the Collecting Services by Acapture, the Merchant, by signing the Agreement, explicitly agrees to appoint Acapture as its agent for the purpose of receiving Settlements from the Payment Organisations on behalf of the Merchant and instructs Acapture to, upon reconciliation and subject to the terms and conditions of the Agreement, transfer the Remittance to the Merchant.
- 2.12 All disputes between the Merchant and any Customer relating to any Payment will be resolved solely between the Merchant and such Customer. Acapture does not bear any responsibility for such resolutions. In particular, Acapture is under no obligation to procure payment from a Customer or to assist the Merchant in procuring such payment in case it has been made subject to Chargeback.
- 3 Payment Methods**
- 3.1 The Payment Methods and the Acapture Services are subject to a wide range of applicable laws, Rules and regulations. Compliance or commercial requirements may cause Acapture to not being able to continue a certain Payment Method as a part of the Acapture Services. Acapture may stop enabling Merchants to accept Payments paid by a certain Payment Method as a part of the Acapture Services giving Merchant one (1) month prior notice, if reasonably possible.
- 3.2 Acapture will under no circumstances be obliged to compensate the Merchant in satisfaction of a loss the Merchant may incur as a result of a Payment Organisation failing to transfer the Settlement(s) or delaying the transfer of Settlement(s) either due to non-performance, bankruptcy or insolvency of a Payment Organisation.
- 3.3 Acapture reserves the right to refuse to provide any Payment Method requested by the Merchant.
- 4 Payment Methods subject to Chargeback**
- 4.1 The Rules applicable to certain Payment Methods may subject a Payment to Chargeback. This means that, under the circumstances described in the Rules, the authorised user of a Payment Instrument or the Payment Organisation may, without the consent of the Merchant, charge back a Payment previously made ("**Chargeback**"). As a consequence, the Settlement or Remittance of Payments made by Payment Methods which may be subject to Chargeback is not unconditional at the moment of occurrence of such Settlement or Remittance. The Payment Organisations will be entitled to deduct any Chargebacks from the Settlement. Depending on the Payment Methods whereby the Merchant chooses to accept Payments, the Payment Organisations and Acapture may require to take measures to protect themselves from their exposure for the Merchant's Chargebacks or financial or security risk otherwise presented. The Merchant acknowledges that under the Agreement, Acapture cannot be held responsible for the ways in which the Payment Organisations wish to limit their exposure as described in the previous sentence.
- 4.2 Acapture is under no obligation to investigate the validity of any Chargeback by any Payment Organisation, whose decision shall be final and binding in respect of any Chargeback. In addition, Acapture is under no obligation to procure payment from a Customer or other third party or to assist the

Merchant in procuring such payment where the relevant Payment has been made subject of a Chargeback.

- 4.3 It is prohibited for Merchant to re-enter or reprocess any Transaction in relation to a Payment which has been previously subject to Chargeback, even when a Customer authorised or requested Merchant to do so.
- 4.4 The Merchant shall bear any additional costs, losses or benefits incurred as a result of fluctuations in the exchange rate of an approved foreign currency between the time of the Transaction and the time of the Refund or Chargeback.

5 Chargebacks and Risk Management

- 5.1 At all times the Merchant bears the ultimate responsibility for mitigating the risk of Chargebacks and fraud.
- 5.2 Acapture may, as agreed in the Agreement, provide the Merchant with Risk Management Services enabling a Merchant to analyse the risks it may be subject to in relation to a Transaction.
- 5.3 The Risk Management Services serve as an indicative tool. Acapture cannot and does not warrant that declined Transactions were in fact fraudulent nor can and does Acapture warrant that the Risk Management Services prevents Transactions to become subject of a Chargeback or fraud.

6 Information Obligation

- 6.1 The Merchant at its own costs shall supply relevant Information and documents which may be requested for the purpose of such assessments, controls or audits, and take all suitable measures to facilitate the work of persons instructed to carry them out. The Merchant shall give to the persons referred to in Article 8.4 (or to procure the giving to such persons of) access to sites and premises where the relevant Information and documents are being kept.
- 6.2 The Merchant is obligated to promptly notify Acapture in writing of any changes in ownership, financial conditions and business products or services the Merchant provides or of any regulatory actions the Merchant has become subject to and all other circumstances that could adversely affect the rights of Acapture under the Agreement.
- 6.3 The Merchant is obligated to provide Acapture with any other written or oral Information, including but not limited to URLs, credit-worthiness, financials and corporate information, which Information needs to be true, up-to-date, correct information and in full force and effect in all respects at all times.
- 6.4 The Merchant warrants and, represents for the entire term of the Agreement:
- (a) that no event or circumstance has occurred or arisen and no Information has been omitted and no Information has been given or withheld that results in the Information provided prior to the Effective Date of the Agreement being untrue or misleading or other than fair and reasonable.

- (b) to not be or become involved – directly or indirectly – in, inter alia, withholding Information or providing misleading or incorrect or other than fair Information;
- (c) the accuracy of the Information provided by it to Acapture, whether given prior to the execution of the Agreement, at the beginning or during the term of the Agreement;
- (d) to immediately notify Acapture of any changes in ownership of shares in the capital of the company of the Merchant, any regulatory actions the Merchant becomes or has become subject to, a change in financial conditions or of the business products or services it provides;
- (e) to immediately inform Acapture of any changes, in particular of the occurrence, or likely occurrence, of any circumstances which might constitute grounds for immediate termination; and
- (f) to enable Acapture, by timely providing the relevant accurate and correct Information to deal with any Retrieval Request, Pre-Arbitration or Chargeback.

- 6.5 The Merchant agrees and acknowledges that if it breaches its obligations under this Article 6 (*Information Obligation*) such may cause a new underwriting review and approval of terms and Acapture may retrospectively from the Effective Date charge the Service Fees that would apply for the Acapture Services if the Merchant initially provided correct and fair Information. An increase between two per cent (2%) and six per cent (6%) of the Service Fees will apply in any case incorrect or unfair Information was provided or Information was omitted or withheld.

7 Merchant Undertaking, Representations and Warranty

- 7.1 The Merchant undertakes, represents and warrants that, while using the Acapture Services:
- (g) it provides and will provide such information to the Customers on its website and in other commercial communications to Customers as is required pursuant to the laws of the Country of Origin and / or of those countries in which it offers its goods and/or services;
- (h) it notifies the Customer that a Transaction is processed via Acapture if such Transaction is effectuated by the use of (i) an online bank transfer, (ii) offline bank transfer or (iii) direct debit, where Acapture bank accounts are used for such Transaction and as such are visible on the Customer's statement;
- (i) it discloses and will disclose to the Customer, at the time of the Transaction any limitation it has on accepting returned merchandise or services;
- (j) It will document each Transaction using the format and content as prescribed and provided in the technical integration documentation, stating (i) the Merchant's name and location (ii) the information embossed on the Card by the Customer (either electronically or manually) or

- details of the bank account or Payment Instrument connected to the Payment Method, (iii) the date of the Transaction, (iv) a brief description of the goods and/or services involved, (v) the transaction authorisation number, (vi) the total amount of the sale including any applicable taxes, or credit Transaction, (vii) if applicable, a notation that all sales are final and all other relevant details;
- (k) It complies and will comply with Applicable Laws;
 - (l) it complies and will comply with its obligations under Applicable Laws based on EU Directive 2011/83/EC on the protection of consumers in respect of distance contracts (as the same may be amended, restated, supplemented and/or substituted from time to time);
 - (m) it uses and shall use the Acapture Services solely and strictly in relation to payment of its own goods and/or services;
 - (n) where Applicable Laws allow surcharging or Card Payments, it does not and will not add any amount or surcharge to the Purchase Price with respect to the Payment Methods, in excess of the reasonable costs of such Payments;
 - (o) it respects and will respect the Intellectual Property rights of third parties with regards to the goods and/or services provided to its Customers using (or in relation to) the Acapture Services and does not and will not infringe such rights in any way and upon becoming aware of any infringement of such rights will immediately terminate such infringement;
 - (p) it does not and will not sell any goods or services the sale of which is prohibited under the laws of the Country of Origin and and/or of those countries in which it offers its goods and/or services under the Rules;
 - (q) it will perform its obligations towards Customers relating to the provision of goods and/or services including but not limited to accepting responsibility for the acceptance of a customer order and its fulfilment in accordance with the Merchant's terms and conditions, the agreement with its Customer and Applicable laws;
 - (r) it will only accept payment in respect of goods and services which commonly fall within the Merchant's business (as notified to Acapture prior to the Effective Date and from time to time, should the Merchant's business change);
 - (s) it will adhere to the MCC(s) assigned to the Merchant's Transactions with respect to each Transaction;
 - (t) it will, notwithstanding any authorisation or request of a Customer, not re-enter or reprocess any Transaction which has been charged back;
 - (u) it shall immediately notify Acapture in writing of any other agreement that the Merchant enters into concerning its acceptance of payments;
 - (v) it is and will remain compliant with the Rules for the term of the Agreement (The Rules shall be deemed to be incorporated into this Agreement);
 - (w) it will not use the Acapture Services in any manner whatsoever which may constitute or constitutes a violation of any law, governmental regulation or regulation of the Card Association and/or which may cause Acapture to be subject to any investigation, prosecution or legal action); and
 - (x) it shall provide Acapture with immediate notice of its intent to alter in any way its Anticipated Monthly Transaction Volume, Average Transaction Value and/or highest transaction amount;
 - (y) it is authorised to make the pledge as set forth in Article 23.2 and that the Collateral is and will be free of rights and claims of third parties (other than Chargebacks;
 - (z) It will provide Acapture with such reasonable information, assistance and support as Acapture may require to resolve and/or manage any chargeback, dispute, or fraud report;
 - (aa) it will not submit any Card Payments under the Agreement in breach of the relevant Rules, nor submit a card payment or transaction other than a Card Payment authorised by the relevant Customer;
 - (bb) it will have taken and shall continue to take all organisational and security measures, suitable in the light of industry standards (and otherwise necessary) to prevent any abuse and/or any other manipulation of any kind of the Merchant's IT systems; and
 - (cc) it shall only accept payments and submit data to Acapture in respect of Transactions which a Customer has authorised in accordance with Applicable Laws, the Agreement, the Rules, and other relevant laws, and any other information or instructions provided by Acapture to the Merchant from time to time.
 - (dd) The Merchant acknowledges that each chargeback is a debt immediately due and payable by the Merchant to Acapture and agrees that it shall be required to pay the amount of any such chargeback despite any prior authorisation being given for the corresponding Transaction. Subject to the Rules, The Merchant agrees that Acapture is not obliged to investigate the validity of any chargeback which shall be determined by the Card Scheme. Notwithstanding termination of this Agreement, Acapture shall be entitled to recover the amount of any chargeback in respect of any Transaction effected during the term of this Agreement.
- 8 Acapture's Rights and Obligations**
- 8.1 Acapture shall provide the Acapture Services in accordance with the Agreement, the Rules and any applicable laws.
 - 8.2 Upon the occurrence of (a) Excessive Activity, (b) a

- breach of the Agreement, (c) actual (or reasonably suspected) dishonesty or fraud (or criminal activity) by the Merchant (d) a change in the financial condition of the Merchant and/or (e) under the circumstances as described in Article 23.1, Acapture is authorised to take any action it deems necessary including but not limited to (i) suspension of the Acapture Services, (ii) in the case of the Gateway Services, request the Payment Organisation to withhold the Settlement, and, in case of the Collecting Services, (iii) withhold the Remittance, (iv) request creation or maintenance of a Reserve Account and/or (v) charge the applicable higher Service Fee. The period for such suspension of the Acapture Services or withholding of Settlement or Remittance is to be determined by Acapture in its sole discretion. The higher Service Fee shall be proportionate to the Merchant's Excessive Activity first occurred until the Merchant's activities cease to exceed the threshold of Article 1.1(bb). The Merchant agrees and acknowledges that in case the limit is exceeded, such may cause a new underwriting review of the approved terms. The Merchant agrees and accepts herein not to hold Acapture liable for any loss or damage arising in respect of the foregoing.
- 8.3 Based on the Information provided by the Merchant to Acapture about its business, Acapture will assign one (1) or more MCCs to the Merchant. The assignment of the respective MCC to the Merchant shall be at Acapture's reasonable and sole discretion, having regard to the content of the Rules. Acapture may change the MCCs at any time if and to the extent Acapture deems necessary after a reassessment of the Merchant, taking into account the Merchant's reasonable interests. Notwithstanding the foregoing, the Merchant shall promptly notify Acapture of any change in its business at any time to enable Acapture to adjust the MCC, as appropriate.
- 8.4 Upon Acapture's request the Merchant shall permit Acapture or any third parties commissioned by Acapture to inspect the Merchant's business premises to audit compliance of the Merchant with the Agreement, in particular if and to what extent the organisational and security measures taken by the Merchant are suitable in the light of industry standards to prevent any abuse and/or any other manipulation of any kind of the Merchant's IT and financial systems. The Merchant shall assist in, facilitate and shall not impede such audits without limitation, at its own cost, and shall procure that any such audits can also be conducted directly in relation to (and at the premises of) any technical service providers and any other sub-contractors engaged by the Merchant in connection with the submission and processing of Transactions.
- 8.5 Acapture may impose a (a) the amount of each Transaction and/or (b) monthly sales processing volume. These limits may be changed by Acapture at any time at Acapture's sole reasonable discretion giving the Merchant five (5) business days' prior written notice. If the limit is exceeded, Acapture in its sole reasonable discretion, without limitation to its other rights, may: (a) charge a higher Merchant Service Fee or (b) divert all funds from the over-limit processed Transactions into the Reserve Account. The Merchant acknowledges and agrees that in case the limit is exceeded, such may also cause a new underwriting review of the approved terms.
- 8.6 If the Merchant has not submitted any Transaction to Acapture for any period of three (3) months, Acapture shall be entitled to charge a fee for such inactive account. The fee will continue to be charged until the account balance has been reduced to zero.
- 8.7 If any funds in the account remain unclaimed for after the account is deemed inactive in accordance with Article 8.6 the Merchant's claim to the funds expires and is forfeited for the benefit of Acapture.
- 8.8 Acapture may upon fourteen (14) days' notice change all or alter the networks to which it connects for the payment processing. The Merchant acknowledges that this notice period shall not apply to (i) any change or alteration resulting from the Rules and/or (ii) any other fundamental circumstances to be determined in Acapture's sole discretion.
- 8.9 Since the Acapture Services are kept up to date with going market requirements, from time to time Acapture may adjust the content and interfaces of the Acapture Services, including but not limited to changes in interfaces or products imposed on Acapture by the Payment Organisations or changes in the regulatory environment. If such adjustments lead to a necessary change in software, interfaces or operating procedures at the Merchant's end, Acapture will notify the Merchant as soon as possible prior to the execution of such adjustments. The Merchant shall be solely responsible for all telephone, computer, hardware and software equipment and other services (and the related costs) necessary to access and utilise the Acapture Services.
- 8.10 Acapture is entitled to guide and instruct the Merchant when provided with the Acapture Services and the Merchant shall comply with any such guidance and instructions reasonably given.
- 8.11 Any failure to satisfy the Merchant's obligations when due shall constitute a default (*verzuim*) in the performance of the Merchant's obligations, without any reminder letter (*sommatie*) or notice of default (*ingebrekestelling*) being required.
- 8.12 Acapture shall maintain on its books an account or accounts in which shall be recorded (a) the amounts of any Service Fees, Settlement and/or Remittance and (b) the amount of all principal, interest and other sums due or to become due from the Merchant.
- 8.13 In any legal action or proceeding arising out of or in connection with this Agreement, the entries made in the accounts maintained pursuant to Article 8.12 shall, in the absence of manifest error, be prima facie evidence of the existence and amounts of the specified obligations recorded therein.

9 Payment Obligations of the Merchant to Acapture

- 9.1 In return for Acapture providing the Merchant with the Acapture Services, the Merchant shall pay the Service Fees as agreed in the Agreement. The Merchant shall comply with its payment obligations under the Agreement in accordance with Article 9.3 or in accordance with Article 35 (*Payment Obligations of the Merchant to Acapture*), as applicable.
- 9.2 Acapture will send the Merchant a monthly invoice for the Service Fees due to Acapture by the Merchant under the Agreement for Transactions Acapture processed in the preceding month and all other sums payable by Merchant to Acapture in accordance with the Agreement.
- 9.3 The payment of the invoice must be received by Acapture within thirty (30) days from the date of such invoice.
- 9.4 The Merchant has no right to set-off or to withhold or suspend payments to Acapture in connection with any amounts due to the Merchant by Acapture.
- 9.5 The Service Fee will be due in the currency as agreed and specified in the Agreement. To the extent any Acapture Service requires a currency conversion, such conversion shall be done at Acapture's then current exchange rates in respect of such currency and may be subject to a third party fee. Changes in exchange rates will take effect as soon as determined by Acapture and without notification to the Merchant. Acapture is not liable for any loss or damage arising as a result of the currency conversion referred to in this Article 9.
- 9.6 Unless stated otherwise, all Service Fees, charges and other payments to be made by the Merchant under the Agreement are exclusive of VAT and any other relevant taxes and in addition to paying such Service Fees, charges or other payments the Merchant shall also pay any such taxes.
- 9.7 Acapture is not required to refund in part or in whole to the Merchant any Service Fee charged for executing the original Transaction, if such Transaction is Refunded or made subject to a Chargeback.
- 9.8 If Acapture is forced to take action against the Merchant to recover overdue payments, the Merchant shall be responsible for all costs and disbursements incurred by Acapture on a full indemnity basis.
- 9.9 Acapture is entitled to revise the Service Fees at any time taking into account a notice period of one (1) month. If the Service Fees are revised, the Merchant is entitled to terminate the Agreement per the effective date of the amendment by sending Acapture a written notice within ten (10) days from receipt of Acapture's notification of the Service Fees change. The Merchant agrees and acknowledges that the one (1) months' notice period shall not apply nor shall the Merchant be entitled to terminate the Agreement in case of (i) any increase of or introduction of new Payment Organisation costs or (ii) changes to any and all country and (bank)

payment rates.

10 Pre-Authorised Debits Agreement

- 10.1 The Merchant hereby authorises Acapture to draw on (i) the account (the "**Account**") maintained by and/or (ii) the credit card of the Merchant (the "**Merchant Credit Card**"), the details of which Merchant shall provide as requested by Acapture for the purpose of, in respect of the Account only, paying all amounts owing by the Merchant to Acapture under the Agreement, including, without limitation any Fees, Fines and all other amounts owing by the Merchant to Acapture under the Agreement as reported through the Reporting Tool.
- 10.2 If payment (in full) has not yet been received by Acapture on the due date, the Merchant will be in default without prior demand or notice of default being required. As from the date of default the Merchant will be liable for an interest of one per cent (1%) per month (accruing daily).
- 10.3 The Merchant agrees that if any debits drawn under this pre-authorised debits agreement are dishonoured, and Acapture is not able to otherwise effectuate the debit under the Agreement for any reason, then Acapture may hand over the claim for collection. In that event all costs incurred by Acapture, in connection with overdue payments, such as legal costs and extra-judicial and judicial costs, including the costs of legal assistance, bailiffs and collection agencies, will be payable by the Merchant. The extra-judicial costs are fixed at no less than fifteen per cent (15%) of the invoiced amount subject to a minimum of EUR two hundred fifty (€ 250.00) or the equivalent in the agreed currency (excluding VAT).
- 10.4 Subject to provisions of mandatory law, the Merchant agrees that no prior written notice to the Merchant of the amount of any debit or the date of any debiting is required from Acapture.
- 10.5 This authorisation is to remain in effect until Acapture has received written notification from the Merchant of any changes in banking or credit card information, including change of expiry date.
- 10.6 In the case of a change in the Account or Merchant Credit Card, a new bank account statement or credit card details are required. This notification must be received at the address of Acapture at least twenty (20) business days before the change or expiry date becomes effective.

11 Service Level

- 11.1 Acapture does not warrant that the Acapture Services and/or software are error free or operate without interruption or are compatible with all equipment and software configurations in use by the Merchant.
- 11.2 Acapture offers an average up time of ninety-nine point five per cent (99.5%) per month of the Acapture Payment Server on the condition of full availability of the services of its internet providers.
- 11.3 In the event Acapture fails to meet the guaranteed up time during two (2) or more subsequent months, Acapture will grant the Merchant a discount as

follows:

- (a) ten per cent (10%) over the Service Fee for the first (1st) month;
 - (b) twenty per cent (20%) over the Service Fee for the second (2nd) month;
 - (c) forty per cent (40%) over the Service Fee for the third (3rd) and any subsequent months.
- 11.4 The discount granted in accordance with Article 11.3 is Acapture's sole liability with respect to the availability of the Acapture Services.
- 11.5 Acapture does not guarantee and is not responsible for any minimum response time in connection with on-line authorisation of Transactions from the Payment Organisations or availability of the Payment Methods.
- 11.6 The Acapture Payment Server is located in a secure environment.
- 11.7 Access to the Acapture Payment Server and to the data thereon is permitted to authorised personnel of Acapture only. The data on the Acapture Payment Server are protected by a firewall. The Acapture Payment Server supports robust encryption technologies.
- 12 Privacy**
- 12.1 In this Article 12, the terms "**process/processing/processed**", "**Data Subject**", "**Personal Data Breach**", and "**Special Categories of Personal Data**" shall have the same meaning as in the Data Protection Legislation. "**Personal Data**" shall have the same meaning as in the Data Protection Legislation, and shall refer to the personal data of Customers or any other personal data in Card data or Transaction data, in each case processed by Acapture as part of the Acapture Services.
- 12.2 In processing the Personal Data, the Parties acknowledge that Acapture acts as Data Processor and Merchant as the Data Controller of such personal data.
- 12.3 To the extent Acapture is the Data Processor, Acapture shall process the Personal Data only for the purposes of providing the Acapture Services and otherwise in accordance with the Merchant's lawful, reasonable and documented instructions, unless processing is required by EU or Member State law to which Acapture is subject, in which case Acapture shall, to the extent permitted by such law, inform the Merchant of that legal requirement before Processing that Personal Data.
- 12.4 To the extent Acapture is the Data Processor, Acapture shall take reasonable steps to ensure that persons authorised to process Personal Data are under a contractual, professional or statutory obligation of confidentiality.
- 12.5 The Merchant generally authorises Acapture to appoint any third party to process the Personal Data on its behalf ("**Subprocessor**"), subject to:
- (ee) Acapture ensuring that it has a contract with any Subprocessor which contains terms which provide substantially the same level of protection as those set out in this Article 12;
- and
- (ff) Acapture remaining liable to the Merchant for the performance of any processing operations transferred to the Subprocessor;
 - (gg) promptly notify Acapture if it becomes aware of or suspects any security breach relating to Transaction Data (whether or not the Merchant has complied with its obligations in regards of PCI DSS).
 - (hh) As soon as reasonably practicable, the Merchant shall also (and without prejudice to any other remedy which Acapture has in respect thereof) immediately identify and remediate the source of such security breach and take any steps that Acapture and/or the Card Association require of the Merchant including but not limited to the procurement (at the Merchant's cost) of forensic reports from third parties recommended by Acapture.
- 12.6 Parties also acknowledge that Acapture will be a Data Controller in relation to Personal Data where Acapture in its sole discretion determines the purposes and manner of the processing of Personal Data, including but not limited to the purposes of:
- (a) complying with Applicable Laws;
 - (b) conducting fraud monitoring, prevention, detection and prosecution;
 - (c) conducting anti-money laundering, financial crime and other screening checks;
 - (d) anonymising or encrypting Personal Data, including in aggregated format to facilitate analysis and our comparisons;
 - (e) to manage our relationship with you, and related obligations under this Agreement, including the recovery of debt or in relation to your insolvency; and
 - (f) to assess and/or mitigate financial, information security, sector, credit and insurance risks arising in connection with this Agreement.
- 12.7 To the extent Acapture is the Data Processor, Acapture shall implement appropriate technical and organisational measures in respect of the processing of the Personal Data to ensure a level of security appropriate to the risk of that processing.
- 12.8 The sale or disclosure of cardholder data is strictly prohibited by the Rules, any may also be prohibited by Applicable Laws. Unless the Merchant obtains written consent from each applicable Card Association, the Acquirer and the cardholder, the Merchant must not use, disclose, sell, or otherwise disseminate any cardholder data to any third parties except:
- as necessary to use the Acapture Services;
 - (i) resolve chargebacks;
 - (ii) complete retrieval requests; or
 - (iii) as required by subpoena; or
 - (iv) order by a court or other governmental agency.
- 12.9 In addition to its obligation under article 12.6 the Merchant shall use proper technical and organisational controls to restrict access to all

- records containing Card data. The Merchant may not retain or store magnetic stripe data after a Transaction has been authorised. In addition to the foregoing, the Merchant shall comply with the applicable requirements of the MasterCard Cardholder Information Security Program and the Visa Account Information Security Program from time to time, including but not limited to informing Acapture of any third party involved in the processing of Transaction data on the Merchant's behalf and procuring that such party is registered under the applicable program with the Card Association(s).
- 12.10 Acapture shall promptly (after becoming aware of the same) notify the Merchant if a Data Subject makes a written request to Acapture to exercise any right under the Data Protection Legislation or makes a written complaint to Acapture relating to the Merchant's obligations under the Data Protection Legislation. In respect of any Data Subject rights, Acapture shall further, (in so far as is possible) seek to assist the Merchant throughout the implementation of appropriate technical and organisational measures required for responding to such rights.
- 12.11 Acapture shall promptly notify the Merchant upon becoming aware of any Personal Data Breach in respect of the Personal Data held by Acapture, and will, upon request, take reasonable commercial steps to assist the Merchant in complying with its obligations in respect of such a Personal Data Breach.
- 12.12 Both Parties shall comply with the Data Protection Legislation and personal data protection laws of the Country of Origin and also of those countries in which it offers its goods and/or services.
- 12.13 The Merchant warrants that it has obtained and provided, and will on an on going basis obtain and provide, all necessary consents / authorisations and notices, as are respectively required to disclose any Personal Data to Acapture and to enable Acapture to perform the Acapture Services and otherwise process the Personal Data in accordance with the terms of the Agreement.
- 12.14 The Merchant shall, on demand, indemnify Acapture (and hold it harmless) from and against:
- (a) all fines/ and/or penalties brought, imposed, or made against any of Acapture by supervisory data protection authorities; (where and to the extent that they result from any act, omission, breach or default by the Merchant or anyone acting on its behalf); and
 - (b) all costs (including reasonable legal fees), damages and other Losses suffered or incurred by Acapture and which arise (whether directly or indirectly) as a result of or in connection with any claim by a Customer or any other third party which is made against Acapture in connection with any actual (or alleged) breach by the Merchant of the terms of this Article 11.
- 12.15 Acapture will keep the Transaction Data for as long as required in order to perform its obligations under this Agreement. The period in which the Transaction Data will be stored will as a minimum equal the period granted to Customers by Acapture for the making of chargebacks.
- 12.16 Acapture accepts no responsibility for the privacy policies of the Merchant or the provision of appropriate fair processing information to Customers. Acapture accepts no responsibility for the processing of personal data of Customers by the provider of the Gateway Services.
- 12.17 Except in relation to Subprocessors appointed under Article 12.5. or where it is required to do so by law or pursuant to an order from a court, government authority or regulator, or where it is necessary to process payment instructions from the Customer, Acapture will not provide any Personal Data to third parties.
- Following termination or expiry of the Agreement, Acapture shall delete all Personal Data held by it in relation to the Acapture Services provided to the Merchant, unless the Merchant notifies Acapture in writing of a request for the Personal Data to be returned to it within thirty (30) days of the date expiry or termination of the Agreement. Any costs of returning the Personal Data to the Merchant shall be borne by the Merchant.
- 13 PCI Compliance and PCI Compliance Services**
- 13.1 The Payment Methods the Merchant chooses to accept and Acapture agrees to provide the Acapture Services for may include Cards. If it is agreed in the Agreement that the Acapture Services will include Card Payments as a Payment Method, this Article 13 relating to PCI Compliance shall apply.
- 13.2 The Merchant undertakes, warrants and represents to Acapture, that, while using the Acapture Services the Merchant shall be and will remain compliant with PCIDSS for the term of the Agreement. The Merchant agrees and acknowledges that it shall be required to pay a monthly Non-Compliance Fee as further specified and agreed in this Agreement for every calendar month in which the Merchant is not PCI-compliant.
- 13.3 In order to support the Merchant in obtaining the PCI DSS certificate required to proof compliance with the undertaking, warranty and representation of Article 13.2, Acapture provides, as a mandatory service, the PCI Compliance Services free of charge. However, Acapture shall charge, without prejudice to other rights and remedies of Acapture under the Agreement, the monthly Non-Compliance Fee until the Merchant has obtained and is able to present its PCI DSS certificate. The Non-Compliance Fee and Fines shall be immediately due and payable to Acapture without any damage or losses being required to be proven by Acapture and without prejudice to any other rights of Acapture under applicable law.

14 Intellectual Property rights

- 14.1 Acapture hereby grants the Merchant a royalty-free, non-transferable and non-exclusive right for the term of the Agreement to use the Trademarks on its website(s) and in any off-line promotional materials solely in order to indicate that it makes use of the Acapture Services. The Merchant shall use such Trademarks in accordance with Acapture’s directions for the use of such Trademarks. The Merchant does not have a right of sub-licence. Acapture may apply limitations to the right granted to the Merchant under this paragraph at any time and at its sole discretion.
- 14.2 The Merchant hereby grants Acapture and its affiliated companies an irrevocable, royalty free and non-exclusive right for the term of the Agreement to use its trademark and logos on their websites and in off-line publications (which includes screenshots of the Merchant Websites and similar Intellectual Property rights) for promotional purposes.
- 14.3 When using the Trademarks, the Merchant will ensure that no composite marks are created with its own trademarks and/or logos. The Merchant acknowledges that its use of the Trademarks does not create for itself any rights in the Trademarks other than those explicitly granted in the Agreement.
- 14.4 The Merchant acknowledges and agrees that all intellectual property, including but not limited to, in and relating to the Trademarks and Know-how are owned by or licensed to Acapture or its affiliates.
- 14.5 All Know-how and proprietary rights in the equipment (such as interfaces) and other materials used or made available by Acapture in the performance of the Agreement (the “**Acapture Systems**”), whether or not supplied to the Merchant, shall remain with Acapture or its licensors. The Merchant shall only acquire such right of use as is explicitly granted hereunder or otherwise.
- 14.6 Acapture grants to the Merchant a non-exclusive, royalty free licence to use the Acapture Systems for the duration of the Agreement.

15 Payment Organisation Marks

- 15.1 The Merchant shall display any of the logos or trademarks of the Payment Organisations (the “**Marks**”) only on the Merchant’s promotional materials and website, strictly in conformity with Acapture’s instructions to indicate that it can accept the related Payment Method for the sale of its goods and/or services. The use of the Marks shall not imply that any of the Payment Organisations endorses or confirms eligibility requirements of the Merchant or its goods and/or services.
- 15.2 Any use of Marks shall comply with the standards and other requirements of the Payment Organisations as may be in effect from time to time and the Merchant shall respect and uphold the Intellectual Property rights of the Payment Organisations and shall protect, and must not infringe or cause a third party to infringe, such rights. The Merchant shall discontinue the display of the Marks immediately upon the termination of the

Merchant Agreement or termination of the provision of the Acapture Services in relation to a certain Payment Method.

16 Non-solicitation

- 16.1 The Merchant shall not solicit – directly or through a third party – the business of any party that is introduced to the Merchant by Acapture, this includes, but is not limited to, any acquiring bank institutions, Payment Organisations, member institutions and merchant aggregation service providers (including Payment Service Providers and Payment Facilitators as defined by the applicable Rules of the Card Association or Payment Organisation). The non-solicitation obligation of the Merchant pursuant this Article 16 shall lapse one (1) year after the last date Acapture has worked with such party for the Merchant.
- 16.2 In the event that the Merchant breaches the non-solicitation obligations set out in this Article 16, the Merchant shall compensate Acapture for the lost contractual revenue for the Transactions that have been shifted from being processed through Acapture to being processed directly by such other third party.
- 16.3 The Merchant acknowledges and agrees that the covenant provided in this Article 16 shall extend to and include, without limitation, the Merchant’s affiliates (including subsidiaries) as well as the principal owners and/or operators thereof.

17 Confidentiality

- 17.1 During the term of the Agreement, the Parties may exchange Confidential Information.
- 17.2 During the term of the Agreement and after termination or expiration of the Agreement for any reason whatsoever, the Receiving Party shall:
 - a) keep Confidential Information confidential;
 - b) not disclose Confidential Information to any person other than with the prior written consent of the Disclosing Party or in accordance with Article 17;
 - c) not use the Confidential Information for any purpose other than the performance of its obligations under the Agreement; and
 - d) immediately notify the other Party if any Confidential Information has been subject to unauthorised disclosure and in particular the Merchant shall notify Acapture if the Merchant believes that its Log-in Details have been compromised or has otherwise determined that an unauthorised party has been able to access the Reporting Tool or otherwise use the Acapture Services on behalf of the Merchant.
- 17.3 During the term of the Agreement, Acapture may disclose the Confidential Information to its employees and to the Payment Organisations and fraud prevention agencies as the case may be to the extent reasonably necessary for the purposes of the Agreement.
- 17.4 The Receiving Party shall procure that each recipient is made aware of and complies with all the Receiving Party’s obligations of confidentiality under this Agreement as if the recipient were a party to this Agreement. The Merchant agrees and

acknowledges that the foregoing does not apply to any recipient being a Payment Organisation as set forth in Article 17.3.

17.5 The obligations contained in Article 17.2 shall not apply to any Confidential Information which:

- (a) is in the public domain at the date of the Agreement, or at any time after the date of the Agreement comes into the public domain other than through breach of the Agreement by the Receiving Party;
- (b) is known by the Receiving Party prior to disclosure by the Disclosing Party to the Receiving Party without any obligation to hold it in confidence;
- (c) subsequently comes lawfully into the possession of the Receiving Party from a third party free to disclose such information without any restriction;
- (d) is approved for release by written authorisation of the Disclosing Party but only to the extent of such authorisation; or
- (e) is disclosed by the Receiving Party pursuant to and in accordance with a relevant statutory obligation, an order of a court of competent jurisdiction or an order of a competent regulatory body, but only (i) to the extent and for the purposes of such required disclosure and (ii) if the Receiving Party first notifies the Disclosing Party of the requirement for disclosure and permits the Disclosing Party to seek an appropriate protective requirement.

17.6 The exceptions detailed in Article 17.5 shall not apply to Confidential Information that is sufficiently unique or detailed to distinguish it from more general information that is already in the public domain or in the possession of the Receiving Party. Additionally, the above exceptions shall not apply to Confidential Information that is made up of several elements merely because the individual elements are in the public domain or in the possession of the Receiving Party. Furthermore, although the Agreement does not restrict the Receiving Party from working with a person or entity which has independently developed information or materials similar to the Confidential Information in such circumstance, either (i) the Receiving Party agrees not to disclose to third parties the fact that any similarity exists between the Confidential Information and the independently developed information and materials, and the Receiving Party understands that such similarity does not excuse the Receiving Party from the non-disclosure and other obligations in the Agreement; or (ii) any written exclusivity arrangement entered into between the Disclosing Party and the Receiving Party either prior or subsequent to the Agreement shall prevail according to its terms. Finally, it is nevertheless specified that Acapture is authorised, due to its capacity as a certified payment institution, to communicate to the supervisory authorities, and in particular the competent judicial, administrative or fiscal authorities, any necessary information attesting to its compliance with regulations or which

might be required by these authorities.

17.7 In the event that a Party breaches any of the above confidentiality provisions in any way, it shall be liable to the other Party for the damages caused thereby. The Merchant shall jointly and severally be responsible for any improper disclosure or use by its recipients of Confidential Information to the same extent as if the Merchant had received such Confidential Information directly and made the same disclosure or use of such Confidential Information as did its recipients. The Parties agree that an impending or existing violation of any provision of the Agreement would cause the Disclosing Party irreparable injury for which it would have no adequate remedy at law, and agree that the Disclosing Party shall be entitled to seek immediate injunctive relief prohibiting such violation, in addition to any other rights and remedies available to it.

18 Amendment

18.1 Notwithstanding the contents of Article 9.9, amendment of the Agreement shall only be valid (a) if it is in writing and acknowledged by the other Party or (b) by written notice from Acapture in the events referred to in Article 18.2.

18.2 The Acapture Services are developing, and may be subject to changes and improvements. In some cases these changes and improvements may require changes to the Agreement. Therefore, Acapture reserves the right to amend the Agreement by modifying or rescinding any of its existing provisions or by adding new provisions at any time and publishing the amended Agreement on its website and/or in its portal. In the event Acapture amends the Agreement, Acapture will send a notice to the Merchant identifying material changes. If the Merchant is of the reasonable opinion that any such amendment negatively affects its rights in a material way and wishes to reject the amendment, the Merchant is entitled to terminate the Agreement within thirty (30) days after the date of such notice. If Merchant does not terminate the Agreement in a timely manner, any such amendment will be deemed accepted and will be effective thirty (30) days after the date of such notice.

19 Power of Attorney

19.1 For certain Payment Methods or under certain circumstances, the Payment Organisations, including but not limited to the Merchant's processing volume exceeding thresholds set by such Payment Organisation, may require that a direct contractual relationship between such Payment Organisation and the Merchant shall be established, provided that the Merchant meets such Payment Organisation's then-current merchant acceptance criteria, in order to continue submitting transactions for processing. The Merchant agrees and acknowledges that Acapture shall, in accordance with the power of attorney given by the Merchant in 19.4, be entitled to establish any such required contractual relationship, by entering or concluding the relevant agreements with each or any of the Payment Organisations - as Acapture shall notify the

Merchant of in advance, including the relevant contents of the relevant agreements – on the Merchant’s behalf and to prepare, execute endorse and deliver in the Merchant’s name all instruments or other documents that Acapture considers necessary in order to provide the Acapture Services as requested by the Merchant.

19.2 The Merchant agrees and acknowledges that Acapture shall be entitled to, in the events described in 19.1 (partially) terminate or suspend the provision of the Acapture Services under the Agreement to the extent they are replaced by such direct contractual relationship with a Payment Organisation.

19.3 Acapture agrees that, in doing so it will at all times act in the best interests of the Merchant and that it will not perform any action or deed that would commercially or otherwise harm the Merchant. Acapture shall, each time notify the Merchant of the fact that such relationship shall be established prior to utilising the power of attorney, and Acapture shall be deemed to have obtained Merchant’s consent absent Merchant’s objection within 5 (five) business days.

19.4 To facilitate the establishment of the direct contractual relationship between the Merchant and a Payment Organisation strictly in relation to provision of the Acapture Services to the Merchant, the Merchant hereby authorises Acapture, individually, to be the true and lawful attorney of the Merchant to take all necessary acts including without limitation:

- (a) the entering, execution and deliverance of a merchant agreement with such Payment Organisation on the Merchant’s behalf;
- (b) registering with such Payment Organisation on the Merchant’s behalf; and
- (c) doing all such other acts and things that may be necessary or useful in connection with aforesaid or any other acts necessary for the purpose of the Merchant becoming compliant with the Rules.

19.5 Furthermore, the Merchant agrees to provide any additional Information a Payment Organisation may require, upon Acapture’s request. The Merchant acknowledges that failure by the Merchant to provide additional or up-to-date Information shall allow Acapture to suspend provision of the related Acapture Services.

19.6 The Merchant hereby covenants and agrees to indemnify and hold harmless Acapture and any of its affiliates from and against any liability Acapture and any of its affiliates might incur for any steps taken by them or any one of them in connection with this Article 19 (*Power of Attorney*).

19.7 The Merchant will ratify and confirm whatever Acapture shall lawfully do or cause to be done pursuant to the powers conferred to Acapture in this Article 19 (*Power of Attorney*).

19.8 The power of attorney is irrevocable and shall expire upon termination of the Agreement.

20 Force Majeure

20.1 Neither Party shall be liable for any delay in failure to

perform its obligations under the Agreement if that delay or failure arises directly or indirectly through force majeure, which is deemed to include an act of God or (without limitation), civil disturbance, embargos, equipment failure, fires, flood, inability to obtain supplies, industrial dispute (whether or not involving the employees of the Parties), insurrections, network breach, breakdown in any third party equipment including third party computer hardware or third party software, refusal, or revocation of licence or regulations of any civil authority, riots, strikes, war or any other circumstances that can reasonably be deemed beyond the control of the Parties.

20.2 If Acapture cannot perform its obligations under the Agreement as a result of force majeure for a period of more than four (4) weeks, the Merchant shall have the right to terminate the Agreement with immediate effect without Acapture limiting its other rights or remedies or incurring any liability towards the Merchant in respect of such termination.

21 Duration and Termination

21.1 The Agreement enters into force per the Effective Date for the Contract Term as agreed and identified in the Agreement. Subject to the remainder of this Article 21 and except in the event either Party notifies the other Party two (2) months prior to expiry of the Contract Term or a Renewal Period (as the case may be) that it does not wish to further extend the Term, the Term will automatically be renewed for a period of one (1) year (the “**Renewal Period**”).

21.2 Each Party has the right to terminate the Agreement with immediate effect, if the other Party:

- (a) materially breaches the Agreement and, if such breach can be remedied, fails to remedy the breach within thirty (30) days after having been given notice of such breach by a non-breaching Party;
- (b) is declared bankrupt or is granted a suspension of payment; or
- (c) suspends or ceases its business.

21.3 Acapture has the right to suspend or terminate the Agreement, in part or in whole, with immediate effect, if the Merchant:

- (a) becomes involved in the sale of goods and/or services the sale of which is unlawful in the Country of Origin;
- (b) becomes subject to any sanction imposed or an investigation launched by a regulatory body, a Payment Organisation or any other third party involving possible unlawful business practices;
- (c) has Excessive Activity, irregular Transactions or is subject to any other circumstances which, in Acapture’s sole discretion, may increase Acapture’s exposure for the Merchant’s Chargebacks or otherwise present a financial or security risk to Acapture;
- (d) runs an account which remains dormant for more than six (6) consecutive months;

- (e) changes the nature of its business, operations or ownership without prior approval from Acapture;
 - (f) is no longer PCI Compliant;
 - (g) is not or no longer accepted by the Payment Organisations, in which case the Agreement shall be terminated for the Acapture Services in respect of the relevant Payment Method, notwithstanding Acapture's right to re-assess the Merchant's business for all Payment Methods; or
 - (h) breaches any provision of this Agreement. Any suspension of the Agreement by Acapture under this Article 21.3 may be lifted by Acapture giving reasonable notice to the Merchant, when Acapture believes that the risk of any adverse impact on Acapture has abated and resumption of the Agreement is prudent, in the best interests of Acapture and commercially reasonable.
- 21.4 Upon receipt of Acapture's notification, the Merchant agrees to immediately cease any non-compliant activity pending an investigation referred to in Article 21.3 (b).
- 21.5 The Merchant acknowledges and agrees that any breach, act or other omission of this Agreement and/or the Rules has an adverse effect and could result in, *inter alia*, brand and/or reputational damage for the Card Associations and Acapture. Taking into account the foregoing, the Merchant agrees and acknowledges that Acapture is entitled to impose any Fines on the Merchant for any breach, act or other omission of the Agreement and/or the Rules in line with the Fines as would be imposed by the Card Associations for such breach, act or other omission.
- 21.6 The Merchant acknowledges that Acapture may be obliged to report Merchant's business name and the name of Merchant's principals to the Payment Organisations when the Agreement is terminated due to any reasons listed in the Rules for the applicable Payment Method. The Merchant shall have no claim against Acapture in respect of such reporting.
- 21.7 Upon termination of the Agreement, the Merchant shall be and remain liable for any Service Fees, and/or Acquiring Fees (as the case may be) which are outstanding.
- 21.8 The obligations of the Merchant towards its Customers in respect of any Transactions that have been accepted by Acapture prior to the date of termination, will survive termination. The Merchant must maintain in the Reserve Account enough funds to cover all chargebacks, deposit charges, refunds Service Fees and Acquiring Fees incurred for a reasonable time but in any event not less than the time specified in this Agreement following the termination or expiry of the Agreement.
- 21.9 The Merchant authorises Acapture to charge the Reserve Account, or any other account maintained under the Agreement, for any and all such amounts due under the Agreement. If the amount in the Reserve Account is not adequate to cover such amounts, the Merchant will pay the amount due upon Acapture's first demand, together with all costs and expenses incurred to collect that amount, including reasonable attorneys' fees.
- 21.10 Within fifteen (15) business days of the date of termination, the Merchant shall (i) return all Equipment owned by Acapture, (ii) return or destroy any Confidential Information of Acapture and (iii) immediately pay Acapture, any amounts payable for Equipment costs.
- 21.11 Upon termination of the Agreement or upon Acapture's notification, the Merchant shall cease to use and shall procure all relevant persons to cease to use any Trademarks and Marks.
- 22 Merchant Indemnities**
- 22.1 The Merchant shall pay to Acapture the amount of all costs and expenses (including legal fees) incurred by Acapture in connection with the enforcement or preservation of any rights under the Agreement, on an indemnity basis.
- 22.2 The Merchant will, on demand, indemnify Acapture and hold Acapture harmless, in full from and against any and all Losses (including legal fees) which may be suffered or incurred by Acapture and which arise (whether directly or indirectly) as a result of (i) any claim by a Customer or any other third party which is made against Acapture in connection with any actual (or alleged) breach by the Merchant of the undertakings, representations and warranty contained in this Agreement (including but not limited to Article 6 (*Information Obligation*), Article 7.1 and Article 12.8 and/or ((ii) any claim by a Payment Organisation or any third party on the basis of any other (alleged) fault, act or omission by the Merchant or its affiliated companies, provided that Acapture as soon as practically possible notifies the Merchant of any such claims.
- 22.3 Subject to the remainder of this Article 22.3 the Merchant shall, upon giving not less than 10 (ten) Business Days' notice to Acapture, have the right to defend claims, for which it gives an indemnity under Article 22.2, at its own expense. Where it exercises this option, the Merchant shall have control of the defence, and of negotiations for settlement of, the relevant claim or suit. Acapture shall, at its reasonable discretion, provide (at the Merchant's expense) such assistance in investigating and defending such claims as the Merchant may reasonably request. The Merchant may not, without the express prior written consent of Acapture, enter into any settlement of, or compromise, any relevant claim where and to the extent that such action can reasonably be expected to require or create a material affirmative obligation of (or restriction upon), result in any ongoing material liability to, or otherwise materially prejudice Acapture in any way. Notwithstanding the foregoing, Acapture may at any time (and at its option) take back control of and/or settle or otherwise deal with any such claim at its discretion.
- 22.4 Article 22.2 and article 22.3 will survive termination

of the Agreement.

- 22.5 In addition to any Fine which the Merchant has to pay, the Merchant shall reimburse Acapture for any costs Acapture has incurred challenging to such Fine (irrespective of the outcome).

23 Collateral

23.1 Based upon the individual circumstances with respect to the credit-worthiness of the Merchant, the Services provided, the Payment Methods the Merchant wishes to accept payments with and in order to reserve for, among other things, cover of any Service Fee due, indemnification obligations due or becoming due by the Merchant to Acapture and, as the case may be, the relevant Payment Organisation from Chargebacks and claims lodged against the Merchant due to claims for non-delivery of goods and/or services, against warranties, and/or pre-paid yearly fees, due to the Merchant going out of business or being deemed insolvent, Acapture shall have the right to either:

- (a) retain or withhold a percentage of the Remittance as a rolling reserve as Acapture may advise the Merchant and/or the Payment Organisation, as the case may be. Such percentage, as may be amended from time to time with notice to the Merchant, shall be based on the Merchant's Transactions on any particular day. Acapture (or the Payment Organisation) shall retain this amount for a period as determined by Acapture in its sole discretion at the end of which period the period may, seen the circumstances be extended, of which extension Acapture shall notify the Merchant or the funds retained or withheld may be released to the Merchant;
- (b) request the Merchant to place a fixed deposit, as reserve and security for any and all of the Merchant's obligations under the Agreement and any other agreements now existing or later entered into between the Merchant and Acapture, an amount equal to a percentage of the Anticipated Monthly Transaction Volume, such amount and period of deposit shall be determined by Acapture in its sole discretion;
- (c) request the Merchant to create or maintain a Reserve Account;
- (d) procure an independent guarantee in a form satisfactory to Acapture; or
- (e) require the replacement of a previous form of collateral which has been withdrawn or which is required to be replaced for any reason.

23.2 To secure the Merchant's obligations to Acapture under the Agreement at any time, the Merchant hereby grants to Acapture a disclosed first-ranking right of pledge (*openbaar eersterangs pandrecht*) over all present and future (i) claims and (cash) receivables (*vorderingen*) of the Merchant against Acapture on any account whatsoever, (ii) Collateral or (iii) any other funds pertaining to the provision of the Acapture Services under the Agreement (whether or not in the form of Settlement) at any time in the possession of Acapture (the "**Pledged**

Rights") to Acapture. The Merchant represents and warrants that such Pledged Rights are not, and shall not be, subject to first priority and senior security interests and lienholders of the Merchant or its shareholder(s) in the assets of the Merchant or its shareholder(s) (inclusive of the below listed assets in this paragraph with the exception of the Reserve Account wherein Acapture must retain primary security interest) which security interest and/or lien was in place prior to the date of this Agreement as evidenced by appropriate documentation, encumbered by any other security interests or limited rights (*beperkte rechten*) or otherwise, no attachment (*beslag*) on the Pledged Rights has been made and the Pledged rights have not been transferred, encumbered or attached in advance nor has the Merchant agreed to such transfer or encumbrance in advance. The Merchant is authorised to grant Acapture the irrevocable authorisation, with the right of substitution to pledge the Pledged Rights to Acapture in the name of the Merchant, if necessary repetitively, and to do everything that serves the pledge, which rights are hereby accepted by Acapture.

23.3 Acapture is entitled to enforce any form of Collateral without prior notification. This right relates to all amounts that the Merchant owes or shall owe to Acapture under the Agreement.

23.4 Acapture reserves the right to only provide the Acapture Services after it has received the requested Collateral.

23.5 The Collateral shall continue to apply for a period as determined by Acapture in its sole discretion (the "**Collateral Period**") until the date the provision of the Acapture Services cease, however, that the Merchant will remain liable to Acapture for all liabilities occurring beyond such period.

23.6 If the Merchant causes the Card Associations to request additional collateral or deposits from Acapture, Acapture is entitled to fulfil such additional collateral requirements by transferring the required amount(s) from the Merchant's account at the Acapture Foundation to the dedicated account at the Payment Organisation. The Merchant agrees and acknowledges that the Payment Organisation shall retain this amount for a period as determined by the Payment Organisation in their sole discretion and shall not hold Acapture liable for any loss or damage arising in respect of the foregoing.

23.7 If the Collateral is insufficient to satisfy any Chargeback, Refund, Fines or other financial adjustment, then Acapture will so notify the Merchant and permit the Merchant an opportunity to satisfy or otherwise provide an amount of money sufficient to cover for such Chargeback or financial adjustment within three (3) banking days of the Merchant's receipt of such notice. If the Merchant fails to satisfy or otherwise provide an amount of money sufficient to cover for such Chargeback or financial adjustment within the allotted time, then Acapture shall, without limiting in any way any other rights Acapture may have under the Agreement, be entitled to debit the

- amount in accordance with Article 10 or from any other accounts maintained by the Merchant with Acapture.
- 23.8 In addition to any first ranking right of pledge, security interest or right Acapture may have pursuant to applicable law and/or the Agreement, Acapture shall, at any time without notice or demand to the Merchant be entitled to set-off by whatever means any liabilities (whether such liabilities are present, future, actual, contingent, potential) the Merchant may incur towards Acapture under the Agreement against the Collateral including, for the avoidance of doubt, the withholding of additional amounts from the Settlement following set-off as indicated in Article 34.8 (4). At the end of the Collateral Period, Acapture shall release to the Merchant the balance of the Collateral.
- 23.9 Acapture will maintain any Collateral, for nine (9) months following the later of termination of the Agreement or the last activity in the Merchant's account, provided, however, that the Merchant will remain liable to Acapture for all liabilities occurring beyond such period. After the expiration of the nine (9) months period, Acapture will provide the Merchant with a written notification advising that (i) the nine (9) months period has expired and (ii) requesting the Merchant to provide Acapture with the details as to where any positive balance shall be delivered.
- 23.10 Without limiting in any way any other right Acapture has under the Agreement, the Parties agree that Acapture may terminate the Agreement immediately if the Merchant fails to replenish any Collateral required under Article 23.6.
- 23.11 Unless terminated by operation of law, the right of pledge shall be in full force and effect until Acapture has certified in writing that all of the Merchant's liabilities under the Agreement have been fully, irrevocably and unconditionally repaid or discharged to Acapture's satisfaction and all obligations of the Merchant with respect thereto have been irrevocably terminated.
- 23.12 The Merchant is free to request Acapture to release the Pledged Rights in whole or in part. However, Acapture has the right to refuse to release any of the Pledged Rights if the remaining Pledged Rights would not be providing sufficient cover for any of the Merchant's obligations and liabilities under the Agreement.
- 23.13 The Merchant's account may not have a negative balance. As soon as the account has a negative balance, the Merchant is obliged to transfer funds into the Merchant's account to ensure that the balance is no longer negative and/or, if Acapture has stipulated a Reserve, the Merchant shall transfer funds into the Reserve Account to ensure that the balance is equal to the amount of the Reserve. For the amount of the negative balance Acapture shall in any event acquire a claim which is due and payable (*onmiddellijk opeisbare vordering*) against the Merchant.
- 23.14 No interest is payable in respect of any collateral arrangements entered into in connection with the Agreement.
- 24 Limitation of Liability**
- 24.1 The liability of Acapture, either on the basis of breach or wrongful act, in relation to the Agreement is limited in aggregate to the amount of Service Fees paid or payable to Acapture by the Merchant in the six (6) months prior to the act or omission on which such liability is predominantly vested.
- 24.2 Under no circumstances shall Acapture be liable (a) for any failure of any Payment Organisation to effectuate payment of the Purchase Price and/or payment of (any part of) the Settlement or (b) for any other act or omission by such Payment Organisation.
- 24.3 Acapture shall not bear any liability in relation to any decision of any regulator or Payment Organisation.
- 24.4 The Parties agree and acknowledge that nothing shall restrict or limit the Merchant's liability with regards to Chargebacks and Fines in its relationship with Acapture for the provision of the Collecting Services. In respect of the Gateway Services the Parties agree and acknowledge that any such liabilities are dealt with directly by and between the Merchant and the relevant Payment Organisation.
- 24.5 Acapture Foundation is strictly only involved to (i) receive the Settlements from the Payment Organisations, to (ii) keep them separate from Acapture's assets and estate and to (iii) transfer, upon Acapture's instructions in accordance with the Agreement, the Remittance to the Merchant. Acapture Foundation shall, under no circumstances, be liable towards Merchant for provision of the Services by Acapture.
- 24.6 Acapture shall not be liable for any loss of profits, loss of reputation, loss of business opportunity, loss of turnover, loss of goodwill, loss of data or for any special, punitive, indirect or consequential damages.
- 24.7 Neither Party shall be liable for any delay in or failure to perform its obligations if that delay or failure is caused by circumstances beyond its reasonable control, including without limitation fires, strikes, insurrections, riots, embargos, inability to obtain supplies, refusal, or revocation of licence or regulations of any civil authority, fire, act of god, flood or any network breach, breakdown in any third party equipment including third party computer hardware or third party software.
- 24.8 The limitations of liability set forth in the Agreement shall not apply in the event of gross negligence or wilful misconduct by either Party.
- 25 Assignment and Subcontracting**
- 25.1 The Agreement is entered into with the Merchant as the sole counterparty towards Acapture. The Merchant is not allowed to assign it or to transfer it or any of its rights and obligations under it without Acapture's prior written consent.
- 25.2 The Merchant will not appoint any agent, subcontractor, supplier or any other third party to

process Transactions effected under the Agreement on its behalf, without the prior written approval of Acapture.

28.2 Communication: All notices shall be in writing, which, if not otherwise agreed explicitly, may include e-mail. In the event notices are given by e-mail, each notice and other communications shall be deemed duly given on the date sent if sent during normal business hours of the recipient and otherwise on the following business day, provided that each receipt of a notice shall be confirmed by Acapture. The Merchant shall keep its e-mail address up to date so that Acapture and the Merchant can depend on electronic communication. Any notices and/or other communication which the Merchant may not receive because the e-mail address so filed by Acapture no longer is correct or does no longer work will be deemed to have been properly given.

26 Language

- 26.1 All notices and documents delivered under the Agreement shall be in English and the Party to whom any such communication is addressed shall be entitled to rely on the English version as being true and correct.
- 26.2 The Agreement is in the English language, which language shall be controlling in all respects. If the Agreement is for any purpose whatsoever (whether before or after execution) translated into a language other than English, (i) such translation (a) is provided for convenience only and (b) shall not be binding upon the Parties and (ii) the English language text (a) shall nonetheless constitute the agreement between the Parties and (b) shall at all times prevail, irrespective of whether the translation has been signed or initialled by any of the Parties to the Agreement.

28.3 Entire Agreement: the Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Agreement and supersedes all such previous agreements. Any applicability of any terms and conditions of the Merchant is explicitly rejected.

27 Exclusion of the applicability of statutory provisions

- 27.1 The following provisions from the Dutch Civil Code (*Burgerlijk Wetboek*) and all secondary regulations related to these do not apply in the relationship between Acapture and the Merchant under the Agreement and the Terms & Conditions: Articles 3:306, 6:82, 6:83, Articles 7:516 to 7:519, inclusive, Article 7:520 (1), Article 7:522 (3), Article 7:527, Articles 7:529 to 7:531, inclusive, Article 7:534 and Articles 7:543 to 7:545, inclusive, of the Dutch Civil Code (*Burgerlijk Wetboek*).
- 27.2 The Merchant agrees in derogation from Article 3:306 of the Dutch Civil code that all its actions against Acapture and/or Acapture Foundation are prescribed by one year.
- 27.3 The Merchant agrees in derogation from Article 6:82 and 6:83 of the Dutch Civil Code that any failure to satisfy current or future obligations to which the Merchant is subject under or in connection with the Agreement, shall constitute immediately a default (*verzuim*) in the performance of its current or future obligations, without any reminder letter (*sommatie*) or notice of default (*ingebrekestelling*) being required.
- 27.4 To the extent not already excluded in Article 27.1 the Merchant agrees and acknowledges that all rules (including those contained in the Market Conduct Supervision (Financial Institutions) Decree (*Besluit Gedragstoezicht financiële ondernemingen Wft*)) relating to the content and provision of the information required by Title III of the Payment Services Directive are not applicable.

28.4 Waiver: the failure of Acapture to enforce the provisions of the Agreement at any time, or the failure to require at any time performance by the Merchant of any of the provisions of the Agreement, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the validity of Acapture to enforce each and every such provision.

28.5 Remedies Cumulative: except as otherwise expressly provided by the Agreement, all rights and remedies available to Acapture are cumulative and may be exercised concurrently or separately and in the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

28.6 Severability: if any provision of the Agreement shall be held illegal, invalid or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it legal, valid and enforceable, and the legality, validity and enforceability of all other provisions of the Agreement shall not be affected thereby.

28.7 Survival: Termination or expiry of the Agreement, howsoever caused, shall not prejudice any obligations or rights or remedies of either of the Parties which have accrued before termination or expiry, and shall not affect any provision of the Agreement which is expressly, or by implication, intended to come into effect on, or to continue in effect after, such termination or expiry (including the provisions of Article 8.2, 12.7, 17 (*Confidentiality*), Article 22 (*Merchant's Indemnities*) of the Agreement which shall survive the termination of the Agreement for whatever reason). In addition, the obligations of the Parties under the Agreement that by their nature continue beyond the expiration of the Agreement shall survive any termination or cancellation of the Agreement.

28 General provisions

- 28.1 Independent contractor: The Agreement is not intended to and shall not be interpreted to create a joint venture or partnership or formal business entity of any kind between or among Acapture and the Merchant. Each Party shall act as an independent contractor and neither Party shall have any authority to bind the other Party.

28.8 Counterparts: the Agreement may be executed in any number of counterparts, all of which taken

together (when at least one (1) is executed by each Party) shall constitute one and the same agreement.

29 Governing Law and Jurisdiction

The Agreement and/or any non-contractual obligations arising from or in connection with it are subject to the laws of The Netherlands and any dispute arising thereof that cannot be solved amicably shall be settled before the competent court of Amsterdam, The Netherlands.

B. GATEWAY SERVICES

30 Set-up of the Gateway Services

- 30.1 If so agreed and identified in the Agreement and its Appendices, Acapture shall provide the Acapture Services (partially) as Gateway Services, to which services the terms and conditions of this Section B shall apply in addition to those of Section A.
- 30.2 When providing the Gateway Services to the Merchant, Acapture shall act and provide the services as described in Articles 2.2.1, 2.2.2 and 2.2.4. Acapture will not collect or receive the Settlement and transfer the Remittance, as the related Payment Organisation shall transfer the Settlement directly to the Merchant, based on the agreement referred to in Article 30.3.
- 30.3 The Gateway Services, demand that the Merchant concludes its own separate agreement with the Payment Organisation for Settlement of Payments from the Payment Organisation directly to Merchant, which Settlement and other conditions (including but not limited to expiry and termination) shall strictly apply to the agreement between the Payment Organisation and the Merchant.
- 30.4 The Merchant herein instructs Acapture, when providing the Gateway Services to the Merchant, to act as a facilitator on behalf of a Merchant enabling the Merchant to accept payments from its Customers by processing authorisation requests for the purpose of receiving Payments.
- 30.5 The Merchant acknowledges and agrees that, when Acapture does not provide the Collecting Services under the Agreement:
 - (a) the relevant Payment Organisation shall be solely responsible to transfer the Settlement by direct bank transfer to the Merchant's bank account pursuant to the terms of the separate agreement concluded directly between the relevant Payment Organisation and the Merchant; and
 - (b) under no circumstances Acapture shall have any obligation to make Remittances to Merchant in respect of the Transactions for which Acapture only provided the Gateway Services; and
 - (c) Acapture cannot pro-actively ascertain whether there are any errors in the Settlements made by the relevant Payment Organisation. Therefore the Merchant shall notify Acapture, within five (5) business days following the date of such Transactions, if there is any discrepancy between the

Settlements the Merchant actually received and those, which Merchant expected to receive. Acapture cannot be held responsible to repair nor does it accept to be liable for any loss or damage relating to any of these discrepancies, whether or not such notice was timely given.

31 Payment Obligations of the Merchant to Acapture

- 31.1 In case Acapture does not provide the Collecting Services to the Merchant under the Agreement, payment of the invoice sent as described in Article 9.2 must be received by Acapture within thirty (30) days from the date of such invoice.
- 31.2 In case of the Gateway Services, the Service Fee will be payable in respect of each Chargeback as if it were a Transaction.

C. COLLECTING SERVICES

32 Set-up of the Collecting Services

- 32.1 If so agreed and identified in the Agreement and its Appendices to the Agreement, Acapture shall provide the Acapture Services as Collecting Services, to which services the terms and conditions of this Section B shall apply in addition to those of Section A.
- 32.2 When providing the Collecting Services to the Merchant, Acapture shall act and provide all the services as described in Article 2.2 of the Agreement.

33 Guaranteed Payment Methods

- 33.1 Without prejudice to Article 2.9 Payment Methods which are not potentially subject to Chargeback are considered guaranteed Payment Methods.
- 33.2 Acapture's liability in respect of the Remittance is subject to the terms and conditions of the Agreement.
- 33.3 The Merchant agrees and acknowledges that under no circumstances it shall have a direct claim towards the Payment Organisation in case Acapture fails to transfer the Remittance in breach of its obligations under the terms and conditions of the Agreement following Settlement to Acapture by the Payment Organisation.

34 Payment Obligations of Acapture to the Merchant

- 34.1 It is an obligation of Acapture as a licensed payment institution under the Dutch Financial Supervision Act ("FSA") to separate, to the benefit of the Merchant, the Settlements received by Acapture from the estate of Acapture, so that in case of a bankruptcy of Acapture it is ensured that such bankruptcy will not affect Acapture's obligations in respect of its Payment obligations to the Merchant. For this purpose, the Payment Organisations will transfer their Settlements into the bank accounts held in the name of Acapture Foundation as instructed between Acapture and such Payment Organisation.
- 34.2 The Merchant agrees and acknowledges that it does not have a contractual relationship with the Acapture Foundation. The involvement of the Acapture Foundation does not alter and/or limit any right or

- obligation of Acapture under the Agreement, except for Article 34.3 and 34.4.
- 34.3 Each payment made by the Acapture Foundation reduces Acapture's debt to Merchant by an equivalent amount under the Agreement.
- 34.4 So far as required by law, the Merchants irrevocably authorises and grant permission to the Acapture Foundation to debit its account in order to pay to Acapture any amount, the Merchant owed to Acapture under the Agreement (including any fees due).
- 34.5 Acapture for and on behalf of the Acapture Foundation excludes any liability for any failures on the part of the Acapture Foundation. This clause is a third-party clause (*derdenbeding*). The Merchant expressly agrees to this third-party clause (*derdenbeding*).
- 34.6 The Settlements which Acapture shall receive from the Payment Organisations shall consist out of **the total amount of the Purchase Price** for Transactions for which Acapture provided the Acapture Services pursuant to the Agreement, **minus**:
- (a) any amounts involved in Refunds;
 - (b) any amounts involved in Chargebacks;
 - (c) any Fines;
 - (d) the Payment Organisation Service costs; and minus
 - (e) any other liability of the Merchant in accordance with the Agreement.
- 34.7 Acapture shall, upon receipt of Settlements, instruct the Acapture Foundation to transfer the Remittance by direct bank transfer to the Merchant's bank account in accordance with the agreed Remittance Delay and Remittance Frequency.
- 34.8 Unless otherwise agreed, the Remittance shall, subject to application of any Reserve, the Remittance Delay and Article 35.3 consist out of **the Settlement, minus**:
- (a) to the extent applicable, the amount required to form the rolling reserve pursuant to Article 3.1(a), 23.1(a) or the deposit and pledge pursuant to Article 23.1(b);
 - (b) the costs charged for conversion of the currency of a Transaction in case the Settlement is made in another currency than the currency in which the Remittance shall be transferred; and **minus**
 - (c) any other liability or indebtedness of the Merchant towards Acapture in accordance with the Agreement.
- 34.9 The Service Fees due to Acapture shall be directly debited by Acapture from the Account of the Merchant at the end of each month. Acapture shall supplement these Settlements with the amount withheld by Payment Organizations pursuant to Article 34.6(c), 34.6(d) and 34.6(e)
- 34.10 During the term of the Agreement Acapture shall be entitled to defer the transfer of any relevant Remittance in respect of the Transactions to the next date of Remittance if the amount of such Remittance falls below any minimum threshold for Remittance as notified by Acapture in writing from time to time.
- 34.11 The Merchant shall, as soon as practicable, verify the correctness and completeness of the Remittances made by Acapture and each reconciliation report related to such Remittance. Complaints and objections about Remittances and/or any information provided through the Reporting Tool may only be made in writing within a strict time limit of four (4) weeks after receipt of the Remittance and each reconciliation report. After such period, any undisputed Remittance respectively reconciliation report shall be deemed correct.
- 34.12 The Merchant is not entitled to receive interest, if any, paid by Acapture's banking services provider in connection with funds held in the Acapture Foundation bank account and any such interest may be retained by Acapture and/or the Acapture Foundation.
- 34.13 Notwithstanding Article 34.13, the Parties agree that only amounts held by Acapture or the Acapture Foundation that are due and payable and for which payment is delayed for more than thirty (30) calendar days due to the gross negligence or wilful misconduct of Acapture, will be increased with an interest rate of the lower of (i) one per cent (1%) per month or (ii) amount at the rate of the one (1) month EURIBOR rate + 1.5%.
- 35 Payment Obligations of Merchant to Acapture**
- 35.1 In case Acapture provides Merchant with the Collecting Services, either or not in combination with the Gateway Services, Acapture shall be entitled to recoup/deduct/set-off ("*verrekenen*") the Service Fees relating to any and all Acapture Services (including those for the Gateway Services) and any other liabilities and indebtedness of the Merchant towards Acapture under the Agreement as indicated in the Reporting Tool and/or the invoice as mentioned in Article 9.2 from the Remittance without any prior notice being required. Such recoup/deduct/set-off can be effectuated due to the fact that the Acapture Foundation is regarded as the joint and several creditor together with Acapture in respect of any indebtedness of the Merchant to Acapture.
- 35.2 Acapture shall calculate the currency conversion costs referred to in Article 34.8 on the basis of the exchange rate of trusted sources for currency data, applicable at the date on which the Transaction is processed by the Acapture System.
- 35.3 Acapture shall under no circumstances be obliged to transfer any Remittance to the Merchant in excess of the actual Settlement to it by the Payment Organisations.