



Commercial in Confidence Standard Terms & Conditions

Identity via a Payment Service

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STANDARD TERMS AND CONDITIONS

Payment Processing, Evidence of Identity, Strong Customer Authentication and Payment Instrument Verification

These Standard Terms, together with the Service Terms entered into between the Parties, form the Agreement between the ISX company listed in the relevant Service Terms and the Company identified in the Service Terms for the provision by ISX of the ISX Services to the Company. These terms are not intended to cover Acquiring Institution Services which are covered under separate terms.

It is agreed

1 Definitions

1.1 In this Agreement the following words and expressions have the meaning set out hereunder unless the context otherwise provides:

- (a) **2FA** means two-factor authentication consisting of at least 'something the user knows' such as an End User selected passcode and any independent second factor authentication technology as agreed between the Parties. The second factor may include a mobile phone SMS-based one-time password or passcode, hard token code generators, soft token code generators, email or other means, provided that they are linked to the Payment Instrument and a mobile phone during the term of the SCA Service.
- (b) **Acquiring Institution** means an entity that processes, settles and clears card payments on behalf of merchants and holds relevant licenses, and is recognised as an Acquiring Institution by a Card Scheme.
- (c) **Ad Valorem Taxes** means any Tax payable on the sale or supply of goods, services or other things and includes goods and services tax, value added tax, sales tax, consumption tax or any similar impost.
- (d) **Agreement** means these Standard Terms (including any Schedules attached), together with the Service Terms entered into by the Parties for provision of the ISX Services to the Company.
- (e) **Anti-Money Laundering or AML** means any anti-money laundering and/or counter terrorism funding Laws in any jurisdiction where ISX, the Company, its Clients or its End Users are located or do business in, including any such Law that is consistent with the FATF 2012 recommendations (available at: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf) or equivalent standards.
- (f) **Attestation of Compliance** means the document produced by a PCI qualified security auditor, that certifies that the Company is PCI DSS compliant.
- (g) **Authentication** means a procedure that allows a payment service provider to verify the validity of the use of a specific payment instrument, including:
 - (i) the use of the End User's personalised security credentials;
 - (ii) the checking of the End User's personalised identity documents; or
 - (iii) the End User providing to ISX a Secret or other specific item of information or response to a question which is only known to the End User and ISX.
- (h) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.
- (i) **Card Scheme** shall include Visa Inc, Visa Europe, Mastercard Worldwide, American Express, JCB, Diners Club, Discover Card, China Union Pay or similar card payment network operating in a substantially similar way to the foregoing.
- (j) **Change of Control Event** means, in relation to an entity, an event the occurrence of which has the effect that:
 - (i) if a person Controlled the entity prior to the time the event occurred, the person ceased to Control the entity or another person obtained Control of the entity;
 - (ii) if no person Controlled the entity prior to the time the event occurred, a person obtained Control of the entity; or
 - (iii) if the entity is owned or Controlled by a group or consortium of persons, or if the group or consortium could Control the entity were they to act collectively, there is any material change in the

- composition of the group or consortium.
- (k) **Channel Partner** means the Company, but only if the Company has been appointed as a channel partner by ISX to re-sell or distribute the ISX Services to the Company's own Clients under the terms set out in the relevant Service Terms or an attachment to it.
- (l) **Charges** means a fee payable by the Company (in the currency specified in the relevant Service Terms) to ISX for the provision of the ISX Services as set out in that Service Terms. During any Further Term, the Charges may be indexed to reflect inflation and reasonable cost increases.
- (m) **Claim** includes any claim, proceeding, cause of action, action, demand or suit (including by way of contribution or indemnity):
- (i) under, arising out of, or in connection with this Agreement;
 - (ii) arising out of, or in connection with, the ISX Services; or
 - (iii) otherwise at Law or equity, including by statute, in tort or otherwise, including negligence and negligent misrepresentation or for quantum meruit or restitution, including restitution based on unjust enrichment.
- (n) **Clients** means those entities with which the Company has a commercial relationship, including Merchants to whom it resells the ISX Services (but only if the Company has been appointed as a Channel Partner).
- (o) **Commencement Date** means, in relation to an ISX Service, the date specified as the commencement date for those ISX Services in the relevant Service Terms.
- (p) **Company** means the person or entity specified as such in the relevant Service Terms.
- (q) **Confidential Information** means any information including all know-how, financial information and other valuable or sensitive information of any nature, trade secrets, formulae, graphs, drawings, designs, samples, devices, functional specifications and other material of whatever description provided to the receiving Party by the disclosing Party for the purposes of this Agreement, in any form whatsoever (including oral, written, and electronic information) of a technical, business, corporate, commercial or financial nature of or in relation to the disclosing Party, its Related Parties, associated entities and its business, shareholders or unitholders, or which the disclosing Party makes the receiving Party or its agents aware is considered by it to be confidential and / or proprietary, or which is evident on its face as being confidential and / or proprietary, and includes:
- (i) any information or documents indicated to be confidential by the disclosing Party;
 - (ii) where the Company is the disclosing Party, any information relating directly or indirectly to the business of the Company, including the Company's Clients, End Users or suppliers, details of trade secrets, know-how, strategies, ideas, operations, compliance, information processes, methodologies and practices, business or marketing plans and the Company's own services;
 - (iii) where ISX is the disclosing Party, any information relating directly or indirectly to the business of ISX or its Related Parties, including the ISX's own customers, suppliers or contractors, details of trade secrets, know-how, strategies, ideas, operations, compliance, information processes, methodologies and practices, business or marketing plans and the ISX Services; and
 - (iv) any information resulting directly or indirectly from the discussions or negotiations relating to this Agreement, and all copies, notes, records and all related information (in any form) generated by the Company based on or arising from any disclosures for this Agreement,
- but excludes information that is publicly available other than as a result of a breach by a Party of its confidentiality obligations, or as required to be disclosed under regulation or by Law.
- (r) **Control** means any one or more of the following:
- (i) in respect of a corporation or other body corporate:
 - (1) the ability to exercise the right to vote in respect of more than 50% of the voting shares or other form of voting equity in a corporation;
 - (2) the ability to dispose of more than 50% of the shares or other form of equity in a corporation;

- (3) the ability to appoint or remove all or a majority of the directors of a corporation; or
- (4) the ability to exercise the casting of a majority of the votes cast at the meetings of the board of directors of a corporation; or
- (ii) the ability of any person directly or indirectly to exercise effective control over the entity or person (including the ability to determine the outcome of decisions about the financial and operating and other policies of that entity or person) by virtue of the holding of voting shares, units or other interests in that entity or by any other means.
- (s) **Data** includes:
 - (i) any payment related data;
 - (ii) any data that is personally identifiable as belonging to any End User;
 - (iii) de-personalised End User data or metadata;
 - (iv) ISX Service metadata;
 - (v) aggregated statistical data; and
 - (vi) any other data received, generated or transmitted by the ISX Service.
- (t) **End Users** means the natural persons eligible and capable of being verified and/or identified (whether as part of a KYC process or otherwise) using the ISX Services provided and in relation to whom the Company is applying the ISX Service.
- (u) **Evidence of Identity Profile or EOI Profile** means the profile of an End User created by means of a completed EOI Service.
- (v) **Evidence of Identity Service or EOI Service** means the service provided by ISX that:
 - (i) authenticates whether an End User has ownership of a Payment Instrument via the PIV Service utilising the ISX IPR; and
 - (ii) creates a EOI Profile by augmenting the PIV Profile with the KYC Data disclosed by the End User, together with such Data and metadata as may be collected, analysed, verified and cross referenced to itself and/or to negative watch lists (including official sanction lists, law enforcement lists and politically exposed person lists). The data may include some or more of: a person's name, mobile phone number, address, date of birth, citizenship; email addresses, alternative phone numbers, Facebook, LinkedIn and Twitter accounts, instant message addresses, device and fingerprint characteristics (whether collected using internal or third party applications) and any other details as agreed from time to time.
- (w) **Financial Action Taskforce or FATF** means the inter-governmental body established in 1989 by the Ministers of its member jurisdictions as listed at www.fatf-gafi.org/countries/.
- (x) **Force Majeure** means a circumstance beyond the reasonable control of the Parties which results in a Party being unable to observe or perform on time an obligation under this Agreement. Such circumstances may include but are not limited to:
 - (i) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;
 - (ii) acts of war, acts of public enemies, terrorism, riots, strikes, civil commotion, malicious damage, sabotage and revolution; or
 - (iii) failure or fault in the equipment, machinery or software of internet service providers or telecommunication service or data centre hosting providers.
- (y) **Further Term** means:
 - (i) if a further term or renewal term is specified in the relevant Service Terms, the period commencing on the day after the expiry of the Initial Term or previous Further Term (as applicable) and continuing for the period of the further term or renewal term listed in the relevant Service Terms; or
 - (ii) if no such term is specified, the period commencing on the day after the expiry of the Initial Term or previous Further Term (as applicable) and continuing for 12 months.
- (z) **Indirect Loss** means an indirect or consequential loss (not being a loss which arises naturally as a result of a breach of this Agreement or other event the subject of the relevant claim), subject to the following:
 - (i) the following will be considered indirect or consequential losses within the meaning of this definition:
 - (1) a loss of profits or revenue;

- (2) a loss of anticipated savings,
 - (3) a loss of opportunity or business;
 - (4) a loss of goodwill;
 - (5) a loss or corruption of Data; or
 - (6) a loss of anticipated savings; and
- (ii) the following will not be considered indirect or consequential losses within the meaning of this definition:
- (1) costs of remedial measures including engaging additional personnel or procuring additional equipment;
 - (2) costs of procuring replacement goods or services;
 - (3) costs “thrown away” including transition costs; and
 - (4) payments made to ISX for goods or services that were not supplied in accordance with this Agreement.
- (aa) **Initial Term** means, in relation to the Service Terms or a specific ISX Service listed in the Service Terms, the initial period commencing on the relevant Commencement Date and continuing for the period listed in the Service Terms for which the relevant ISX Services are to be provided.
- (bb) **Insolvent** means where a Party:
- (i) suspends payment of its debts;
 - (ii) is unable to pay its debts as and when they become due and payable;
 - (iii) has a receiver, manager, liquidator, administrator, or controller appointed by a third party in relation to any of its assets; or
 - (iv) commits an act of bankruptcy, insolvency or similar default under the laws of the jurisdiction in which it is incorporated or domiciled.
- (cc) **Intellectual Property Rights** or **IPR** means all current and future copyright, patent (whether or not as yet granted), trademarks or rights in databases, inventions or trade secrets, know-how, rights in designs, topographies, trade and business names, domain names, marks and devices (whether or not registered) and all other intellectual property rights and applications for any of those rights (where such applications can be made) capable of protection in any relevant country of the world.
- (dd) **ISX** means the ISX company identified in the relevant Service Terms, and may include iSignthis Ltd, Authenticate BV or Authenticate Pty Ltd or any of their Related Parties from time to time.
- (ee) **ISX IPR** means any Intellectual Property Rights owned or licensed by ISX or its Related Parties from time to time, including the patent family associated with Patent Convention Treaty application PCT/AU2011/000377 (WIPO PCT/AU2011/000377) and US Patent 8,620,810.
- (ff) **ISX Service** means the services set out in the relevant Service Terms, which may include the PIV Service, the EOI Service, the SCA Service, payment gateway, payment processing and/or any other optional services described in the relevant Service Terms or any attachment.
- (gg) **ISX Website** means ISX’s website located at www.isignthis.com or such other uniform resource locator that ISX may notify the Company of from time to time.
- (hh) **Know Your Customer** or **KYC** means a process whereby a customer is identified to the standard required by the applicable AML Law via a customer due diligence program, usually with specific requirements for each jurisdiction, which may be satisfied in part or whole by the ISX Service.
- (ii) **Know Your Customer Data** or **KYC Data** means customer identification data which AML Law requires an Obligated Entity to collect, validate or verify for the purpose of meeting the customer due diligence requirements of AML Law, which data shall be the property of both parties severally.
- (jj) **Law** includes relevant AML, banking, data privacy, data security and payments legislation, statutes, regulations and other rules or guidelines having the force of law, and all industry codes or guidelines, including card scheme rules, which apply from time to time to the provision of the ISX Service and otherwise to the performance of the obligations and exercise of the rights under this Agreement.
- (kk) **Liability** means any actions, suits, demands, claims, judgments, orders, costs, expenses (including legal costs on a full indemnity basis), losses, damages, compensation, amounts paid on advice of legal advisers to compromise or settle a claim, taxes, outgoings or other payments.
- (ll) **Malicious Code** has the meaning given to that term in clause 7.2(j).

- (mm) **Materials** has the meaning given to that term in clause 16.2;
- (nn) **Merchant** means any entity that has been issued a merchant account by a licensed acquiring institution to accept Payment Instruments in a remote, mobile or online environment, which may include the Company.
- (oo) **Merchant Account** means an electronic facility issued by an Acquiring Institution, financial institution or bank, whereby the Company or its Clients may remotely accept and process payments on Payment Instruments including debit and credit card transactions and which may include the means to direct debit End User's bank accounts.
- (pp) **MID** means the Merchant Account identifier issued to the Merchant by an Acquiring Institution.
- (qq) **Obligated Entity** means any person that is obligated or regulated under any AML Law, the USA Patriot Act or Bank Secrecy Act or similar Law and which must conduct customer due diligence at the commencement of a business relationship or at times otherwise required under applicable AML Law.
- (rr) **Parties** means the parties to this Agreement, as listed in the Service Terms, and where SEPA/EU payment services are provided, includes iSignthis eMoney Ltd (Company HE 348009), Athalassas 26, Strovolos, 2018, Nicosia, Cyprus, as the service provider, which acts as a data controller and/or data processor, for the purpose of the EU's Directive on Data Protection 95/46/EC
- (ss) **Payment Instrument** means any type of regulated payment account including bank accounts with direct debit access and or transfer facilities, cards including debit, credit, stored value, virtual, or services such as e-money, e-mandates or other electronic means of payment issued by a regulated financial or e-money institution which is licensed within the jurisdiction(s) in which it operates. Payment to a Merchant is usually processed through a payment gateway or payment service provider.
- (tt) **Payment Processing** means the provision of services by ISX that allow for acceptance of by the Company of End User debit or credit cards, as part of which the payment data is processed by ISX and provided to one or more Acquiring Institutions nominated by the Company in the primary provision of any ISX Service including PIV Services, EOI Services and/or SCA Services.
- (uu) **PCI Council** mean the Payment Card Industry Security Standards Council as described at www.pcisecuritystandards.org.
- (vv) **PCI DSS** means the current version of the Payment Card Industry Data Security Standard as determined by the PCI Council.
- (ww) **Personal Data** means any information about or relating to an identified or reasonably identifiable natural person, and includes any information that falls within the meaning of "personal information" or "personal data" in any applicable Privacy Law.
- (xx) **Personnel** means, in relation to an entity or person, the directors, officers, agents, employees and sub-contractors of that entity or person.
- (yy) **PIV Profile** means the profile of an End User created by means of a completed authentication via use of the PIV Service and includes data collected by ISX or the Company in relation to the End User. Such data may be collected by the Company and passed to ISX or may be collected by ISX as part of providing the ISX Service. The data may include some or more of: a person's name, mobile phone number, address, date of birth, citizenship; email addresses, alternative phone numbers, Facebook, LinkedIn and Twitter accounts, instant message addresses, device and fingerprint characteristics (whether collected using internal or third party applications) and any other details as agreed from time to time.
- (zz) **PIV Service** means the Payment Instrument Verification service that utilises the ISX IPR to verify that an End User has ownership of a Payment Instrument.
- (aaa) **Privacy Laws** means any Laws relating to Personal Data in force from time to time in any jurisdiction in which a Party is incorporated, operates or collects or holds Personal Data.
- (bbb) **Registration** shall mean, in context of an **End User**, whenever a PIV Profile, SCA Profile or EOI Profile is successfully created.
- (ccc) **Regulatory Authority** means in relation to the Company, anybody (including any central bank, government department or agency, or other authority in any part of the world) which has the responsibility of supervising and/or regulating banks and/or other entities regulated under AML Law generally, including the Company.

- (ddd) **Related Parties** means, with respect to any Party, any other person or group of persons that:
- (i) Controls that Party;
 - (ii) is Controlled by that Party; or
 - (iii) is Controlled by the same third person as, or under common Control with, that Party.
- (eee) **Report** has the meaning given to the term in clause 10.
- (fff) **SAD** means Sensitive Account Data as defined in PCI DSS.
- (ggg) **SCA Profile** means the profile created by incorporating the PIV Profile to link the details of one or more verified Payment Instruments to:
- (i) an End User selected passcode; and
 - (ii) a mobile phone number and/or an email address.
 - (iii) or another mutually agreed 2FA technology;
- (hhh) **SCA Service** means the SCA service provided by ISX that:
- (i) During the first transaction verifies whether an End User has ownership of a Payment Instrument via the PIV Service and by utilising the ISX IPR;
 - (ii) creates an SCA Profile linking the Payment Instrument to a 2FA technology and an End User's mobile phone and/or email account; and
 - (iii) for subsequent transactions, triggers a SCA challenge using 2FA for a response by the End User prior to processing of any payment instruction by the Company.
- (iii) **Secret** means one or more attributes of a Payment Instrument known only to the owner of that Payment Instrument in order to authenticate ownership of, or a transaction against, that Payment Instrument. The numeric values associated with the sub-transaction(s) that ISX creates by dividing the original transaction amount constitute a Secret.
- (jjj) **SEPA** means the 'Single Euro Payment Area' created in accordance with Regulation EC 260/2012.
- (kkk) **Service Terms** means a document that is signed by ISX and the Company that sets out, amongst other things, the ISX Services that ISX will provide to the Company and the Charges that the Company will pay.
- (lll) **Standard Terms** means this document, including any schedules and annexures to it.
- (mmm) **Strong Customer Authentication or SCA** means a procedure to verify the validity of a Payment Instrument based on the use of two or more elements categorised as knowledge (something the user knows), possession (something the user possesses) and inherence (something the user is) that are independent in that the breach of one does not compromise the reliability of the others and is designed in such a way as to protect the confidentiality of the authentication data.
- (nnn) **System Integrator** means any third party who provides turnkey solutions (including development, testing, commissioning and/or maintenance of hardware and/or software) and/or infrastructure maintenance through which the Company is able to access the ISX Services and/or the Company's ability to access the ISX Services is maintained.
- (ooo) **System Live Date** means the start date for provision of the ISX Services with End Users. Where the ISX Service is being re-sold by the Company as a Channel Partner, there may be multiple System Live Dates corresponding to individual Clients of the Company. Where the Company is not a Channel Partner, the System Live Date and Commencement Date are the same.
- (ppp) **Taxation or Tax** means:
- (i) any impost, tax, levy, charge, deduction, fee, withholding or duty by whatever name called levied, imposed, assessed or collected by any taxation authority (including Ad Valorem Taxes, withholding tax, employment taxes, land tax, property tax, excise duties, customs duties, stamp duty and transaction duties or any similar impost imposed or levied); and
 - (ii) any interest, penalty, charge, fine or fee or other amount of any kind assessed, charged or imposed on or in respect of the above,
- but does not include any income tax on profits.
- (qqq) **Technical Requirements** means such requirements set out in the ISX API documents specifying, without limitation, the equipment and software, the network connections and all other relevant technical requirements which are to be met by the Company at all times in order to access and/or use the Services.

(rrr) **Term** means the Initial Term and any Further Term.

(sss) **User Guidance** means the guidelines issued by ISX in connection with the ISX Services as notified to the Company from time to time.

1.2 **In this Agreement**, (a) references to clauses will be deemed to be references to the clauses of these Standard Terms, unless otherwise expressly provided; (b) clause headings are inserted for convenience only and will not affect the interpretation of this Agreement; (c) words importing the singular only will also include the plural and vice versa where the context requires; (d) whenever the words *include, includes or including* are used in this Agreement, they will be deemed to be followed by the words "*without limitation*"; (e) unless otherwise provided, any reference to any statute or legislation will be deemed a reference to such statute or legislation as amended from time to time or to a newly adopted statute or legislation replacing a repealed statute or legislation and be deemed to include any subsidiary legislation made thereunder; (f) a reference to a person will include a corporate entity or other legal entity; (g) where the Company is appointed as a Channel Partner, references to "Company" must be read as meaning the "Company and its Clients"; and (h) where a word or expression is given a particular meaning in clause 1.1, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

2 Duration of Agreement

2.1 This Agreement commences on the Commencement Date and continues for the Initial Term of the Service Terms unless terminated earlier in accordance with clause 23.

2.2 This Agreement will be automatically renewed for a Further Term at the end of the Initial Term or the then-current Further Term (as applicable), unless either Party gives the other Party a notice in writing at least 90 days before the Agreement is due to expire stating that the Agreement will not be renewed.

3 Provision of Services

3.1 ISX will, subject to the terms and conditions of this Agreement:

- (a) provide the ISX Services to the Company to enable the Company to confirm that the remote originator of a transaction on a Payment Instrument has access to the statement of account of the Payment Instrument, by means of the End User confirming a Secret;
- (b) where requested by the Company and the Company can produce a current Attestation of Compliance, provide the Company with

the relevant API or software development kit to enable the Company or its Client to set up their systems and equipment as set out more particularly in clause 5; and

- (c) where requested by the Company and the Company cannot produce a current Attestation of Compliance, provide the Company with the hosted services to enable the Company or its Client to set up their systems and equipment as set out more particularly in clause 5; and
- (d) provide technical support to the Company as set out in clause 8.

3.2 The Company may use the ISX Service:

- (a) to attempt to identify and Register all new End Users and to re-validate existing active End Users (where such End Users have not been identified by use of the ISX Services);
- (b) to re-validate End Users on an annualised basis, or more frequently as determined by the Company applying a risk-based approach;
- (c) for all outgoing payments originating from End Users;
- (d) as an authentication tool in lieu of 3-D Secure (at the Company's sole discretion and risk); and
- (e) for other services as nominated in the relevant Service Terms at the Company's option, which the Company will pay Charges for on an as-used basis.

3.3 The ISX Services must be used solely to authenticate (via a digital confirmation response) that the originator of a transaction on a Payment Instrument has accessed the statement of account linked to the Payment Instrument. Upon successful confirmation and End User Registration, PIV Profile data collected by the Company, its Clients or ISX will be stored in a secure database together with the Authentication Data and other network and device related Data collected in relation to the transaction on that Payment Instrument. PIV Profiles, EOI Profiles and SCA Profiles will have a maximum validity period of 12 months from their date of creation, with validity expiring with Payment Instrument expiry or revocation by the issuer. PIV Profiles and SCA Profiles may be used to satisfy KYC or evidence of identity requirements under AML Laws.

3.4 The Company acknowledges and agrees that:

- (a) ISX provides the ISX Services solely on the basis of the information transmitted to ISX by the Company and/or End User;
- (b) ISX is entitled to rely on any such transmitted information as being correct and accurate, provided that such information is not obtained as a result of any fraud,

- dishonesty or misconduct (criminal or otherwise) perpetrated by a third party as a result of the negligence of ISX or its Personnel; and
- (c) the ISX Service is supplied subject to any limitations of the Card Scheme operating rules, process or other requirements imposed by the Card Schemes.
- 3.5 The Company acknowledges and agrees that the ISX is entitled to treat any ISX Service request from the Company as being authorised by, and originating from, the Company and its End Users in relation to any given transaction.
- 3.6 The Company will be liable for all third party costs, fees, and expenses (in addition to those listed in the relevant Service Terms) arising from or in relation to any communication, processing, merchant account or related activity conducted by it in relation to processing of payment transactions.
- 3.7 The Company has reviewed the technical specifications and security procedures relating to the ISX Services and agrees, after taking into account all relevant factors, that the security procedures adopted by ISX for the access and use of the ISX Services constitutes a commercially reasonable security procedure.
- 3.8 The Company authorises ISX to deal with any information transmitted to or through the ISX Services in a manner as ISX in its discretion deems reasonably necessary to carry out the ISX Services, including appointing ISX to assist the Company to meet its AML obligations by way of calculating, collecting, collating, verifying and storing Personal Data related to End Users.
- 3.9 In providing the ISX Services, ISX may at any time, in its absolute discretion:
- (a) issue any written notices, guidelines and other instructions (such as operating rules and policies) relating to the access and use of the ISX Services to the Company, which must then promptly comply with those requirements; or
- (b) modify, enhance, or suspend the ISX Services to the Company or any part thereof at any time without giving notice to the Company where:
- (i) a threat, identified or isolated as coming from the Company, is posed or is likely to be posed to compromise the security and integrity of ISX's authentication system and applications used for and/or any part of the ISX Services;
- (ii) such modification and/or enhancement of the ISX Services has or is likely to have no material adverse impact or effect on the business of the Company; or
- (iii) the business practices of the Company do not comply with Laws applicable within the FATF Member countries,
- and ISX will promptly notify the Company of the commencement of any modification, enhancement or suspension of the ISX Services undertaken under this clause 3.9.
- 3.10 Where ISX suspends the ISX Services under clause 3.9(b)(i) or clause 3.9(b)(iii), ISX may (but is not obliged to) issue a notice to the Company requiring the Company to remedy any such threat and/or compromise to the security and integrity of ISX's authentication system and applications used for and/or any part of the ISX Services. If ISX issues such a notice, the Company must remedy such threat or compromise before ISX will be obliged to resume the suspended ISX Services.
- 3.11 In addition to clause 3.9(a), ISX will be entitled, with 24 hours written notice, to upgrade, modify, and/or alter, whether in whole or in part, the ISX Services and/or any information, services or products provided as part of those ISX Services, where such upgrade, modification and/or alteration would not prevent the Company from accessing the ISX Services. Where any such upgrade, modification, and/or alteration, whether in whole or in part, would prevent the Company from accessing the ISX Services, ISX will give 14 days' written notice to the Company before any such upgrade, modification, and/or alteration is performed.
- 3.12 If specified in the Service Terms and subject to the payment of applicable Charges, ISX will notify the Company (or its Clients, if applicable) if any new or renewing End User matches (in whole or in a substantial part) any person listed on any of the lists specified in clause 3.13. Where available or calculable, ISX will provide a Jiro Winkler or Soundly score for the match.
- 3.13 For the purpose of clause 3.12, the latest available versions of the following lists will be used for screening by ISX:
- (a) the US Treasury Specially Designated Nationals List;
- (b) HM Treasury Consolidated List of Targets;
- (c) Australian Department of Foreign Affairs Sanctioned persons lists;
- (d) the consolidated list of persons, groups and entities subject to EU financial sanctions;
- (e) applicable UN financial sanctions lists including the United Nations Security Council approved sanctions lists, with a politically exposed persons list encompassing as a minimum the

- heads of government or state as recognised by the US Government or its agencies; and
- (f) any other relevant sanctions agreed between the parties.
- 3.14 As part of the ISX Services, End User profiles will be designated as being in one of the following states:
- (a) **active** if the person has authenticated at least one Payment Instrument and Registered within the last twelve months and has met the further identity requirements set out in these Standard Terms;
 - (b) **pending** for a period not exceeding 28 days from the initial PIV Service request being initiated;
 - (c) **revoked or blocked** if the Payment Instrument appears on any list subscribed to by ISX (including TC-40, SAFE or similar alert list) or if the Payment Instrument, account and/or End User appears on a United Nations Sanction list;
 - (d) **suspended** at the earlier of each anniversary of creation or revalidation, or upon expiry of the Payment Instrument (such as a credit card expiry date);
 - (e) **sanctioned and notified** if the End User or the Payment Instrument is included in the sanction list of either the US Treasury, Her Majesty's Treasury, the European Common Security & Defence Policy, the Australian Department of Foreign Affairs or any other sanction list issued by any other jurisdiction and specified in the relevant Service Terms;
 - (f) **failed or rejected** if there is a failure in the authentication process; or
 - (g) **error** if there has been an error in the authentication process (and for which an error code will be provided).
- 3.15 ISX may subcontract part or all of the ISX Services (including payment processing services) to a third party service provider any without needing to first obtain the consent of the Company to any such subcontracting, provided that
- (a) all costs and expenses in relation to such third party service providers are the sole responsibility of ISX; and
 - (b) ISX will be liable to the Company for the acts, omissions, obligations and breaches of the third party service provider under this Agreement as if such acts, omissions, obligations or breaches were that of ISX.
- 3.16 Where specified in the Service Terms, the Company is responsible for procuring, subscribing and/or obtaining services from third party providers necessary to receive, access or use the ISX
- Services, provided always that such services are required to enable the Company to connect to ISX's application servers for the purposes of accessing and use of the ISX Services.
- #### 4 ISX Service Data
- 4.1 PIV Profiles, EOI Profiles and SCA Profiles created by ISX are created for each End User on an individual basis for each Obligated Entity and are assigned for lawful use by the Company and/or ISX. The Company must:
- (a) initiate the ISX Service for each End User as required; and
 - (b) collect (or facilitate the collection by ISX of) all Data necessary to create the End User's SCA Profile, PIV Profile and/or EOI Profile.
- 4.2 The Company acknowledges and agrees that ISX may collect End User data on behalf of the Company in order to perform and provide the ISX Services. If required under applicable Law or any other binding or mandatory requirements applicable to an Obligated Entity, the Company will appoint ISX as its agent to collect such End User Data on behalf of the Company, with the form of the agency appointment to be in accordance with the requirements of applicable Law or of the Obligated Entity (as applicable).
- 4.3 The Company must:
- (a) comply with the requirements of all Privacy Laws; and
 - (b) take all steps required by ISX (including passing on or including any privacy notices, collection notices or similar privacy statements to End Users) to ensure that the collection of Personal Data by ISX is notified to End Users,
- in conjunction with the collection of Payment Instrument Data from End Users.
- 4.4 The Company must advise or notify its End Users that:
- (a) the ISX Service utilises cookies and location services on a mandatory basis;
 - (b) the Company and ISX may also collect network and device Data associated with the End User for the purpose of establishing an evidentiary trail; and
 - (c) ISX may collect, use, process, hold and disclose such Data (including Personal Data) in accordance with applicable Privacy Laws and any ISX's privacy documentation as published on the ISX Website from time to time.
- 4.5 PIV Profile and EOI Profiles are not transferable between separate legal entities, including between Related Parties, except as specifically agreed between the Parties. The Company acknowledges

- that each legal entity will be required to collect End User Data to satisfy their own legal requirements, and shall make arrangements for collection of said data either via ISX or directly. Such Data shall be passed to ISX (if not directly collected by ISX) and may be linked to a successful authentication of a Payment Instrument by the PIV Service in order to create a PIV Profile and or EOI Profile. Each PIV Profile and/or EOI Profile created is allocated solely to the legal entity that collected the End User Data, including details of the Payment Instrument that was authenticated as part of the ISX Service. However, an SCA Profile is transferable (including between unrelated legal entities), provided that the End User explicitly consents to such.
- 4.6 The Company will require its Merchants and/or Clients to capture and pass the IP address of each End User to ISX. ISX may perform checks via cookies and other technology to establish whether End User responses forming SCA Profiles have been created where any part of the End User's network is intentionally shielded or is accessed via a TOR or similar network or other virtual private network with the intention of deliberately shielding the End User's point of origin or location. ISX may (but is not obliged to) reject authentication requests or responses from such networks.
- 4.7 Personal Data relating to End Users will be owned jointly by the Company and ISX, and may be collected, used, processed, held and disclosed by the Company or ISX to perform the ISX Service, Payment Processing, card acquiring, card issuing, e-money or e-wallets services and otherwise only in accordance with applicable Privacy Laws and its Central Bank of Cyprus EMI license 115.3.1.17.
- 4.8 ISX may create aggregated or de-identified sets of Data relating to End Users. Any such Data, together with any ISX Service Data, will be owned by ISX.
- 5 Technical Requirements**
- 5.1 Prior to commencement of the provision of ISX Services to the Company, the Company must ensure that all Technical Requirements have been met and/or fully complied with.
- 5.2 The Company must at all times during the Term comply with the latest version of the Technical Requirements, which are published on the ISX Website as part of the API specification for the ISX Services and which may be updated by ISX from time to time.
- 5.3 The Company must (at its own cost) procure, install and maintain suitable equipment and services (including application servers, software and telecommunication services) required to enable the Company to connect to and interface with ISX's application servers for the purposes of accessing and using the ISX Services. If applicable to the Company, the Company is responsible for ensuring that such equipment and services (when operating as a system) meet the requirements of PCI DSS.
- 5.4 The Company must (at its own cost) obtain, install, implement and maintain suitable equipment, software, security, protocols, procedures and telecommunication services to ensure that the integrity and security of the Company's own services to End Users and Clients are not in any way compromised in such a way that might result in a compromise of, or any adverse impact on, the ISX Services.
- 5.5 The Company must operate a Merchant Account (either via a payment gateway or payment service provider) that allows the End User to be remotely charged a fee against a Payment Instrument. The Company must create or provide, integrate, implement and maintain an interface between the Merchant Account processing method and the ISX Services. Where specified in the Service Terms (and subject to any additional terms specified in those Service Terms), ISX may operate the Merchant Account, and process payments on behalf of the Company.
- 5.6 In using the ISX Services, the Company must ensure that all information related to any End User is transferred, submitted and/or uploaded in accordance with the API specifications set out in the Technical Requirements in order to create a PIV Profile.
- 6 Audit and Data Security Requirements**
- 6.1 ISX will deliver the ISX Services in a manner that meet the applicable compliance requirements of the latest version of the PCI DSS. ISX will deliver ISX Services as either embedded mode or API mode. Embedded Mode does not require the Company to hold PCI certification, and shall be the default means of delivery. Where API mode is requested by the Company Clauses 6.2 and 6.5 shall be applicable.
- 6.2 Where API mode is nominated, the Company shall modify its PCI DSS procedures to either acknowledge or incorporate the ISX Service and must make its Attestation of Compliance available to ISX for ISX to incorporate by reference into the ISX Service as appropriate.
- 6.3 ISX and the Company (or its payment processing partners) must third party certify, maintain and keep current to an appropriate level PCI DSS accreditation and produce its Attestation of Compliance within 14 days of request by the other Party.
- 6.4 Whilst ISX will ensure that reasonable security measures are put in place, ISX does not warrant the security of any information transmitted through the use of the ISX Services. The Company acknowledges and accepts the risk that any information transmitted or received from the ISX Services may be accessed by unauthorised third

parties through no fault of ISX. Data will be stored in accordance with either PCI DSS standards for payment related Data or ISO27001 standard for all other Data. Personal Data will also be held and managed in accordance with applicable Privacy Laws.

6.5 Where API mode is nominated by the Company, the Parties must ensure that their respective PCI DSS and/or ISO27001 procedures, as applicable, include a means to:

- (a) notify the other Party in case of any suspected Data loss or breach affecting that other Party in circumstances where Data may have been accessed or modified by an unauthorised third party; and
- (b) respond to notifications received from the other Party under this clause (including for the escalation of such notifications to appropriate officers of the receiving Party),

and the Parties must provide each other with the contact details of their respective Personnel for the purpose of this clause and notify the other Party of any changes or updates to those contact details from time to time as required.

7 Obligations of the Parties

7.1 In consultation with ISX, the Company must establish a procedure to respond to and satisfy Lawful requests from law enforcement agencies or the courts to access PIV Profiles and/or EOI Profiles of End Users, where such Lawful requests are made in accordance with the legal requirements of the jurisdictions in which the Company operates.

7.2 For the duration of the Term, the Company must at all times:

- (a) treat the numeric values of the two (or more) sub-transactions that constitute the Secret created by ISX, as part of the identification process, as Sensitive Account Data (**SAD**). The SAD must not be transmitted, displayed or made available to any third party unless the third party is:
 - (i) secured and certified under PCI DSS; and
 - (ii) a party that is part of the payment processing chain including a processor, Acquiring Institution, issuer and/or debtor institution;
- (b) ensure that the Personnel of a Merchant or the Company are only given access to the SAD upon the earlier of either:
 - (i) a successful End User PIV Profile, EOI Profile or SCA Profile Registration; or
 - (ii) rejection or failure of an End User Registration,.

- (c) provide to ISX such Data or information as may be reasonably necessary for the integration of the ISX Services, provided that such Data or information will at all times be governed by clause 17 of this Agreement to the extent that such Data or information constitutes Confidential Information of the Company;
- (d) be responsible for configuration of the ISX Services to the requirements of the Company and/or Obligated Entity, which can be performed using the ISX dashboard provided as part of the ISX Services;
- (e) ensure that all undertakings, representations and warranties given by the Company under this Agreement are, and will remain for the Term, true and accurate;
- (f) fully comply with the User Guidance and only use the API, the User Guidance and such other documents provided by ISX in connection with the Company's use of the ISX Services;
- (g) in accessing and using the ISX Services, comply with all applicable Laws, rules, regulations, guidelines, circulars, code of practice or conduct and prevailing market practices, as may be amended from time to time, that are directly relevant to operations that include AML, payment processing, PCI and data privacy/security;
- (h) notify ISX in writing immediately in the event of any change in any of the Company's services that might affect ISX's ability to provide the ISX Services in accordance with the requirements of this Agreement;
- (i) ensure that the Company's own services and computer systems are configured to:
 - (i) provide the End User information relevant to the ISX Service to ISX as part of the checkout process; and
 - (ii) interface with the ISX Service in accordance with the ISX API documentation forming part of the Technical Specifications;
- (j) take reasonably practicable measures at its own cost to ensure that the Company's computer systems (including application servers, computer terminals, modem, software, hardware, subscriptions to any relevant certification authorities, network connectivity and telecommunications facilities) for accessing and using the ISX Services:
 - (i) are installed appropriately and with adequate security designs;
 - (ii) are free of any malicious code or software including viruses, software

- bombs, Trojan horses and worms (collectively, **Malicious Code**); and
 - (iii) are fully compatible with ISX's software development kit;
 - (k) at its own cost, control and manage the risks in operating the Company's computer systems;
 - (l) do all things reasonably within the Company's power or control to preserve and maintain the integrity and security of the ISX Services, including preventing unauthorised access and/or use of the ISX Services through the Company's computer systems and networks;
 - (m) ensure that the Company and its Personnel do not:
 - (i) monitor, interfere with or reverse engineer the technical implementation of the ISX Services, except as permitted by non-excludable Law; or
 - (ii) otherwise do any act, intentionally or otherwise, which may compromise the security of any part of the ISX Services or the security of End Users' authentication credentials;
 - (n) ensure it complies with all applicable parts of the Technical Requirements;
 - (o) operate its Merchant Accounts and provide Merchant Identifiers (MID) to ISX in each acquiring jurisdiction as necessary to facilitate the proper functioning of the ISX Service; and
 - (p) provide at its own cost all other reasonable assistance to ISX in connection with the ISX Services that ISX may request from time to time.
- 7.3 For the duration of the Term, ISX must at all times:
 - (a) take all reasonably practicable measures at its own costs, to ensure that ISX's computer systems (including application servers, computer terminals, modem, software, hardware, subscriptions to any relevant certification authorities, network connectivity and telecommunications facilities) used in the provision of the ISX Services are installed appropriately, in proper working condition, with adequate security designs, and are free of any Malicious Code; and
 - (b) at its own cost, control and manage the risks in operating ISX's computer systems.
- 8 System Integrators**
- 8.1 The Company or its Clients may, at their respective discretion and cost, appoint and/or utilise a System Integrator in connection with the ISX Services. For the avoidance of doubt, a System Integrator may provide the hardware, systems, software and/or services (including data hosting services, payment processing services or software engineering services) relating to the Company's use of the ISX Services.
- 8.2 Where the Company appoints and/or utilises a System Integrator, the Company will ensure the performance and observance by the System Integrator of all the obligations imposed on the Company under this Agreement, including adherence to PCI DSS, confidentiality and data protection requirements.
- 8.3 The Company will be responsible for, and the Company will be deemed to be liable for, all acts and omissions of the System Integrator and its Personnel as if those acts and omissions were those of the Company. An obligation on the Company to do, or to refrain from doing, any act or thing will include an obligation upon the Company to ensure that its Personnel agents and/or System Integrator's Personnel also do, or refrain from doing, such act or thing.
- 8.4 ISX will be entitled to treat all communications, transmissions and/or connections, aggregated or otherwise, from the System Integrator as being authorised by and originating from the Company.
- 9 Support**
- 9.1 The Company will be responsible for providing its End Users with first level technical and customer support, including general help and assistance with on-boarding, Registration, general use requirements, network status and any general enquiries.
- 9.2 ISX will provide second level technical support to the Company in relation to issues that cannot be resolved by the Company's first level support Personnel. Second level support includes:
 - (a) analysis of faults and issues that cannot be resolved by the Company's first level support Personnel;
 - (b) non-standard Personal Data requests; and
 - (c) requests for evidentiary trails.
- 9.3 The Company will be able to obtain second level support from ISX using ISX's nominated support system, which will be set out below.
- 9.4 ISX will use commercially reasonable endeavours to provide second level support for the ISX Services in accordance with:
 - (a) the support details, if any, attached to the Service Terms; or
 - (b) if no support details are attached to the Service Terms, the service levels and response times set out in Schedule A.
- 9.5 For the avoidance of doubt, a failure by ISX to provide the ISX Services in accordance with the service levels referred to in clause 9.4 will not be a

breach of this Agreement, unless such failure is significant and persistent for more than 4 weeks.

- 9.6 ISX may, from time to time, need to perform maintenance work in relation to the ISX Services. In performing any such maintenance work, ISX will use its best endeavours to avoid any interruption to the provision or availability of the ISX Services, including by undertaking maintenance work outside of normal business hours in the jurisdiction in which the Company is domiciled or incorporated. ISX will use its best endeavours to give the Company as much notice as possible of any timing of any maintenance work (including any interruptions to, impairments to the performance of, or other outages of, the ISX Service). However, the Company acknowledges that ISX may not be able to give substantial, or any, prior notice if maintenance work on the ISX Services is required on an urgent or emergency basis.

10 Transaction Reports

- 10.1 Each calendar month during the Term, ISX will make available to the Company an auto-generated electronic report setting out:

- (a) the Company's usage of the ISX Services; and
- (b) identity confirmations by End User name, broken down by each of the integrated Merchant Accounts and including the aggregate number of confirmations and the number of confirmations per Merchant Account,

for the previous calendar month (**Report**).

- 10.2 The Company acknowledges and agrees that the transactions recorded in the Report will be deemed to be an accurate record of the type, number and nature of usage and confirmations provided by ISX under this Agreement as part of the ISX Services. In the absence of demonstrated error, the Report will be final and conclusive and will form the basis for the calculation of the Charges payable by the Company.

- 10.3 Without prejudice to the generality of clauses 10.1 and 10.2, the Company must notify ISX of any discrepancy and/or inconsistencies in the Report and the Company's internal records within 30 days of the Report being made available to the Company. Upon any such notifications by the Company, the Parties will endeavour to resolve and settle such discrepancies and/or inconsistencies within a further 30 day period. In the event that the Parties are unable to resolve such discrepancies and/or inconsistencies, either Party may refer the matter to dispute resolution in accordance with the dispute resolution procedure set out in clause 24.

11 Access Rights and Restrictions

- 11.1 The Company must not, and must ensure that its Personnel, its Merchants and its Clients do not:
- (a) modify, adapt, develop, translate, reverse compile, reverse engineer, reproduce, decompile, disassemble, create derivative works from, otherwise create or attempt to create the source code from the object code, lease, rent, attempt to do any of those things or permit a third party to or to attempt to do any of those things to all or any part of the ISX Service, except to the extent permitted by non-excludable Law;
 - (b) attempt to circumvent or actually override any technological protection measures that control access to or use of the ISX Services;
 - (c) use any of the ISX Services for any unlawful purpose or in any manner that is contrary to Law
 - (d) Contravene Card Scheme operating rules;
 - (e) permit any person to access the ISX Service other than their respective Personnel who reasonably require such access; or
 - (f) access or permit access to the ISX Service other than for the use of the ISX Service by the Company or its Clients.

12 Backups

- 12.1 At its own cost, the Company may (but is not obliged to) establish backup data facilities with suitable storage capacity and security to host its own data. Data shall be transferred via the API or via other means agreed with ISX. Where payment related data within the scope of PCI DSS is requested to be transferred, a certified PCI DSS and ISO 27001 hosting service shall be nominated by the Company for use in connection with the ISX Services. For payment related data, if the Company wishes to establish such backup data facilities, then the Company will seek ISX's approval in respect of the provider of those facilities, and ISX shall not unreasonably withhold its approval.

- 12.2 If the Company acquires a backup data facility, then the Company will at its own cost procure for ISX the right and ability to:
- (a) access that backup data facility; and
 - (b) configure, manage, update and administer that backup data facility,

in which case, if specified in the Service Terms, ISX will then backup and update EOI Profile data directly related to the Company's End Users on that backup data facility.

- 12.3 The Company acknowledges that ISX is not responsible for any data loss or security under any circumstances during backup to third party

facilities, but will take reasonable endeavours to back up transactional and End Users' EOI Profile Data.

13 Business Continuity Management

13.1 ISX will maintain adequate contingency, disaster recovery and back-up procedures and business continuity plans to ensure that ISX is able to reasonably provide the ISX Services in accordance with the relevant Service Terms and to perform this Agreement otherwise without unreasonable interruption.

13.2 In the event of any disruption to ISX's provision of the ISX Services (regardless of whether such disruption is caused by ISX), ISX will promptly implement the contingency, disaster recovery and back-up procedures and business contingency plans referred to in clause 13.1 to ensure ISX's business continuity and that ISX is able to perform this Agreement without interruption.

13.3 ISX must test ISX's contingency, disaster recovery and back-up procedures and business contingency plans referred to in clause 13.1 to verify that those plans serve the purpose described in clause 13.1. Such tests will be carried out annually by ISX, or more frequently if agreed by the Parties in the Service Terms. If requested by the Company, ISX will also permit the Company to inspect the results of ISX's own tests. If specified in the Service Terms, ISX will also permit the Company to carry out its own tests, with the type, frequency and manner of such tests to be set out in the Service Terms.

13.4 The Company will be permitted to carry out business continuity management planning, testing and exercises as the Company deems necessary from time to time. If such exercises, planning or testing affects the ISX Services in any way (including penetration testing), the Company must give ISX at least 30 days' prior notice in writing of its intention to conduct such exercises, planning or testing.

13.5 ISX will notify the Company of any intention to make any changes or modifications to the contingency, disaster recovery and back-up procedures and business contingency plans referred to in clause 13.1, but ISX will not be required to obtain the Company's approval and consent before effecting such change or modifications.

13.6 Without prejudice to any of the foregoing, the Company may suspend or discontinue the usage of the ISX Services, without liability, in the event that the Company determines, in its sole discretion, that the integrity or security of any part of the ISX Services has been compromised.

14 Charges

14.1 The Charges payable by the Company to ISX for the provision of the ISX Services:

- (a) will be set out in the relevant Service Terms;
- (b) will be payable in response to invoices issued at the times specified in clause 14.2;
- (c) must be paid in the currency or currencies specified in the relevant Service Terms; and
- (d) must be paid in the manner specified in the relevant Service Terms (or, if no manner for payment is so specified, by electronic funds transfer to ISX's nominated bank account).

14.2 ISX will issue invoices to the Company at the times specified in the relevant Service Terms. If no time for invoicing is specified in the relevant Service Terms, ISX will be entitled to issue invoices for all ISX Services provided in a calendar month on a monthly in arrears basis.

14.3 The Charges do not include any Tax or Ad Valorem Tax, which will be payable by the Company in accordance with clause 15 at the prevailing rate at the time and in the same manner that the Charges are payable.

14.4 The amount of Charges in each invoice issued by ISX under this Agreement must be paid in full by the Company within 30 days from date of invoice. All payments by the Company to ISX must be the for full amount invoiced, free of any deduction of any nature whatsoever, including deductions for bank charges, official fees, Taxes or any other expense or charge incurred by the Company.

14.5 If collection of payment through direct debit is unsuccessful or if payment is not received by ISX (whichever is the case), then without limiting any other rights that ISX may have, ISX will be entitled to charge interest at a monthly rate of 1% above that month's (or part thereof) average prevailing LIBOR on all outstanding amounts of Charges, calculating and accruing daily from the due date for payment until actual collection/payment date.

14.6 In addition to any terms specified in the Service Terms relating to changes to the Charges, ISX may adjust the Charges as follows:

- (a) at any time during the Term in accordance with the following procedure:
 - (i) ISX may vary the Charges by giving at least 60 days prior notice in writing to the Company (**Charges Variation Notice**);
 - (ii) within 90 days of the date of issue of the Charges Variation Notice, the Company may by notice in writing to ISX terminate this Agreement; and
 - (iii) unless this Agreement is terminated in accordance with clause 14.6(a)(ii), the variation to the Charges will take effect on the date specified in the Charges Variation Notice; or

- (b) with effect from each anniversary of the Commencement Date during the Term (**Adjustment Date**), by giving 3 month written notice to the Company of the increased Charges, provided that ISX may only adjust the Charges up to the maximum amount calculated in accordance with the formula below:

$$A = B \times \frac{C}{D}$$

Where:

- (1) A is the maximum adjusted amount of the Charges;
- (2) B is the amount of Charges applicable immediately after the date of the last adjustment or, in the case of the first adjustment, the original amount;
- (3) C is the most recent quarterly Consumer Price Index (or equivalent index specified in the Service Terms or, if no such Index is specified, as published in the jurisdiction in which the Company is domiciled) at the Adjustment Date; and
- (4) D is the most recent quarterly Index published at the previous Adjustment Date or, in the case of the first adjustment, the Commencement Date.

15 Taxes

- 15.1 Unless otherwise expressly stated, all monetary consideration to be provided under or in accordance with this Agreement is exclusive of Ad Valorum Taxes.
- 15.2 For any the consideration to be provided for any sale or supply (of goods, services or other things) made under or in accordance with this Agreement that is exclusive of Ad Valorum Taxes, the recipient must pay to the supplier (at the same time as payment is required to be made in accordance with this Agreement) an additional amount equal to the Ad Valorum Taxes payable.
- 15.3 The recipient's obligation to pay the Ad Valorum Taxes component of any consideration under this Agreement is subject to the recipient receiving a valid invoice or other documents required by Law in respect of the Supply at or before the time of payment.
- 15.4 For the avoidance of doubt, each Party is responsible for Taxes imposed in respect of its income in connection with this Agreement. In the event that local Laws require taxes to be withheld by the paying Party on payments made to the

other Party, such Taxes will be withheld and remitted to the local tax authorities by the paying Party unless the other Party provides the paying Party with an applicable exemption certificate.

16 Intellectual Property Rights

- 16.1 Nothing in this Agreement will affect the ownership of any IPR of either Party existing before the Commencement Date or developed outside the scope of the ISX Services.
- 16.2 All ISX IPR, together with all IPR contained in, relating to or in connection with the provision of the ISX Services (including the patent, divisional patent, continuation patent and or continuation in part patent rights and/or applications, granted or not, associated with WIPO Patent Application No: PCT/AU2011/000377 and others as filed from time to time), text, graphic, logos, know-how and icons of the software development kit, User Guidance and any other device, document or material provided to the Company to access the ISX Services (referred to collectively as **Materials**) are owned by ISX or its Related Parties or licensees. ISX reserves all rights in respect of the ISX IPR and the Materials other than those expressly granted under this Agreement. The Company must not infringe or permit or authorise the infringement of by any person of the ISX IPR or the IPR in the Materials.
- 16.3 The Company must not disclose, use, reproduce, make copies, modify, distribute, publish, display, upload, broadcast, post, transmit, hyperlink, sell, assign, commercially rent, sub-license, decompile, reverse engineer, input, compile or otherwise transfer any of the Materials to any third party (including the text, graphics, compilations, computer programs, code and/or software) except:
 - (a) as expressly permitted under this Agreement or under non-excludable Law; or
 - (b) otherwise without the express, prior written consent of ISX or the owner of the relevant IPR.
- 16.4 Ownership of all IPR in any Data and profiles created as part of the ISX Service will reside with ISX. The Company will be granted access by ISX to the PIV Profile and EOI Profile in accordance with the access requirements permitted by law in each separate jurisdiction. The Company may interrogate the ISX database to determine if an End User profile is active, pending, revoked, suspended, rejected or sanctioned and other such data accessible via the ISX Service API.
- 16.5 "iSignthis", "Merchant Protect" "ISXPay" and "Paydentity" are registered trademarks in multiple jurisdictions. Royalty free use of these trademarks is only approved by ISX in connection with the ISX Service in order to allow the Company to utilise, promote, support, or publicly display the ISX Service.

- 16.6 The Company grants to ISX a limited, royalty-free, non-exclusive, worldwide, non-transferrable, revocable, licence for the duration of the Term only to access, use, execute and reproduce any trade mark owned or licensed by the Company to the extent necessary for ISX to provide the ISX Services to the Company. This licence includes the right to grant sub-licences of these rights to the Related Bodies Corporate of ISX and any subcontractor engaged by ISX to provide part or all of the ISX Services to the Company.
- 16.7 The Company represents and warrants that the use by ISX of the Company's Intellectual Property Rights and documents provided or made available to ISX for the purposes of this Agreement will not infringe the Intellectual Property Rights of any person.
- 16.8 The Company indemnifies ISX against all Claims and Liabilities arising and occurring as a direct or indirect result of a Claim that the use by ISX of the Company's Intellectual Property Rights or documents has infringed the Intellectual Property Rights of any person.
- 16.9 Subject to clause 16.9, ISX indemnifies the Company against all Claims and Liabilities arising and occurring as a direct or indirect result of a Claim that the performance of the ISX Service (other than the use by ISX of the Company's Intellectual Property Rights or documents in the performance of the PIV Service) has infringed the Intellectual Property Rights of any person.
- 16.10 The indemnity given by ISX in clause 16.9:
- (a) is only payable, and may only be claimed, in respect of any Liability that is finally awarded by a court or in any final settlement agreed to by ISX in respect of that Claim of IPR infringement (**IP Claim**);
- (b) is subject to:
- (i) the Company promptly (and in any event within 10 days) notifying ISX in writing that the Company has received an IP Claim from a third party alleging infringement of Intellectual Property Rights that would be covered by the indemnity in clause 16.9;
- (ii) the Company not making any statements or admissions that would be prejudicial to ISX's ability to defend the IP Claim;
- (iii) the Company giving ISX, at ISX's cost, the sole control of the defence and any settlement negotiations relating to the IP Claim; and
- (iv) the Company giving ISX reasonable assistance, at ISX's request and cost, in relation to the defence of the IP
- Claim and any settlement negotiations; and
- (c) does not cover (and ISX excludes any Liability to the Company for) any Liability for the infringement of Intellectual Property Rights where (and to the extent that):
- (i) the Company alters the ISX Services or ISX's Materials;
- (ii) the Company uses the ISX Services or ISX's Materials outside the scope of use identified in this Agreement or the User Guidance;
- (iii) the IP Claim is based upon any information, design, specification, instruction, software, data or material not furnished by ISX;
- (iv) the IP Claim is based upon the combination of the ISX Services with any products, services or data not provided by ISX (except where such combinations are recommended by ISX in the User Guidance);
- (v) that Liability arose through an act or omission of the Company or its Personnel;
- (vi) the ISX Services as provided to the Company and used in accordance with the terms of this Agreement and the User Guidance would not otherwise infringe any third party's Intellectual Property Rights; or
- (vii) upon becoming aware of the IP Claim, the Company failed to mitigate against that Liability.

17 Confidentiality

- 17.1 Subject to the provisions of this clause 17, each Party agrees not to disclose any Confidential Information obtained by it (**Receiving Party**) from the disclosing Party (**Disclosing Party**) to any third party without the prior written consent of the Disclosing Party. The Disclosing Party agrees that the Receiving Party may:
- (a) disclose Confidential Information to its Personnel and its professional advisers (which will include lawyers, accountants and auditors) who need to know or receive such Confidential Information for the proper performance of their duties, provided that the Receiving Party complies with clause 17.8;
- (b) disclose such Confidential Information if required by applicable Laws or court order, provided that the Receiving Party, where legally permissible, has promptly notified the Disclosing Party in writing of such requirement and allowed the Disclosing Party a reasonable time to oppose such

- requirement or apply for legal protection;
and
- (c) use Confidential Information for the exercise of its rights and the performance of its obligations under this Agreement.
- 17.2 Neither Party may use any Confidential Information received or obtained from the other Party to devise another competitive solution to compete in any tender or business opportunity without obtaining the prior written consent of the Disclosing Party. The Receiving Party must keep all documents and materials representing or containing Confidential Information of the Disclosing Party separate from all other documents and materials. Each Party agrees that it will prevent unauthorised disclosure or use of any Confidential Information by its Personnel and immediately advise the other Party in writing of the full extent and nature of any unauthorised disclosure, misuse or misappropriation of the Confidential Information.
- 17.3 Confidential Information will be subject to the obligations of confidence in this clause 17 irrespective of whether communicated orally or in writing by the Disclosing Party or its representatives or obtained through observations made by the Personnel of the Receiving Party at the premises of the Disclosing Party.
- 17.4 Each Party, when acting as the Receiving Party, must protect the Confidential Information of the Disclosing Party to the same extent and by the same means that the Receiving Party uses to protect the confidentiality of its own confidential or proprietary information, and in any event using no less than a reasonable degree of care, to prevent the unauthorised use, dissemination, or publication of the Confidential Information. This obligation of confidentiality will continue until the earlier of:
- (a) the return or destruction of such Confidential Information by the Receiving Party in accordance with clause 17.9; or
- (b) the Confidential Information becoming public knowledge other than by breach by the Receiving Party of the obligations of confidentiality contained within this Agreement.
- 17.5 The restrictions on the use and disclosure of Confidential Information under clause 17 will not apply to Confidential Information that:
- (a) the Receiving Party can prove is received lawfully from a third party without similar restriction of confidentiality;
- (b) is or becomes publicly available other than by reason of unauthorised disclosure hereunder or any obligations of confidence owed by the Receiving Party to the Disclosing Party;
- (c) is independently developed by the Receiving Party without the use of the other Party's Confidential Information;
- (d) is approved for release by written authorisation of the Disclosing Party to the Receiving Party; or
- (e) the Receiving Party (to the extent permitted by Law) is compelled to disclose pursuant to Law, any court order, or by any act of government or other competent or regulatory authority provided that the Receiving Party must advise the Disclosing Party of such request in time for the Disclosing Party to apply for legal protection or seek an appropriate remedy to prevent such disclosure or waive compliance with the provisions of this Agreement, and the Receiving Party must take any and all such steps as the Disclosing Party may reasonably require for such purpose.
- 17.6 The Company acknowledges that ISX may use any information relating to the Company which is provided by the Company to ISX for the purpose of providing the ISX Services, including updating and maintaining ISX's record of service providers subscribing to the ISX Services. ISX will be entitled to disclose the Company's information to the regulators, professional advisers, third party service providers and any Personnel acting on behalf of ISX. This clause 17.6 is subject always to ISX's compliance with all applicable Laws and the terms of this clause 17.
- 17.7 The Receiving Party must, before any permitted disclosures are made:
- (a) give prior written instructions concerning the restrictions on use and disclosure contained in this Agreement to its Personnel and its professional advisers to whom any Confidential Information of the Disclosing Party is to be disclosed or who may in any way obtain access to any such Confidential Information; and
- (b) ensure that such Personnel and professional advisers are subject to confidentiality obligations at least as binding upon those persons as the Receiving Party is subject to under terms of this clause 17.
- 17.8 The Receiving Party will be responsible for procuring the compliance of its Personnel and professional advisers with the terms of this clause 17 and will be responsible for any breach by its Personnel or professional advisers of this clause 17.

- 17.9 Unless otherwise agreed in writing between the Parties, in the event of termination or expiry of this Agreement, the Receiving Party will at the Disclosing Party's option:
- (a) destroy the relevant Confidential Information and all copies thereof by shredding or incineration of all documents and other materials in its possession, custody or control and/or irretrievably delete the same if stored on electronic or magnetic media and certify to the Disclosing Party that this has been done;
 - (b) return such Confidential Information and any copy thereof if so requested by the Disclosing Party; or
 - (c) keep such Confidential Information as may be required by applicable Laws in which case provisions of this clause 17 will continue to apply in relation to such Confidential Information indefinitely until returned in accordance with clause 17.9(b).
- 17.10 The Parties acknowledge that:
- (a) the Confidential Information is at all times the property of the Disclosing Party;
 - (b) a breach of this clause 17 would be harmful to the business interests of Disclosing Party;
 - (c) monetary damages alone would not be a sufficient remedy for a breach of this clause 17; and
 - (d) in addition to any other remedy which may be available in Law or equity, the Disclosing Party is entitled to interim, interlocutory and permanent injunctions or any of them to prevent breach of this clause 17 and to compel specific performance of it.
- 18 Publicity And News Release**
- 18.1 Any news release, public announcement, advertisement or publicity proposed to be released by either Party relating to or in connection with the ISX Services or the subject matter of this Agreement will be subject to the prior express written approval of the other Party.
- 18.2 The Parties will release a joint media release within three days of execution of this Agreement and a second release within seven days of the System Live Date for the Company and each substantial Client.
- 18.3 In the event that a joint media release is postponed for any reason beyond the period set out in this clause, a Party may release to a securities exchange on which that party is listed a notification under the exchange's continuous disclosure requirements that includes in outline form the following:
- (a) that an agreement has been executed with the Company; and
 - (b) the services to be provided by ISX;
 - (c) the term of the agreement; and
 - (d) publicly available details related to the Company and its services; and
 - (e) any statement the other Party may request to be included, but only if such a statement is provided promptly for inclusion.
- 19 Compliance with Applicable Laws**
- 19.1 Each Party must comply with (and ensure that its Personnel comply with) all applicable Privacy Laws in relation to any Personal Data that is collected, held, processed or disclosed under or in connection with this Agreement.
- 19.2 The Company acknowledges that ISX may collect, use, process, hold and disclose Personal Data outside of the jurisdiction in which the Company is domiciled. If ISX discloses Personal Data outside of the jurisdiction in which that Personal Data was originally collected by ISX, then ISX will do so only in accordance the requirements of applicable Privacy Laws.
- 19.3 **(For Service Terms where Company is domiciled in the European Union)** Except as required by law, ISX warrants that it will not disclose personal information (including sensitive information and credit information) obtained from any third party (including Related Bodies Corporate of the Obligated Entity) domiciled in a foreign jurisdiction unless that jurisdiction complies with the European Unions' Directive on Data Protection 95/46/EC and the third party is subject to a contract with the Client which effectively upholds principles of fair handling of personal information that are substantially similar to the Privacy Principles set out in the European Unions' Directive on Data Protection. ISX shall be registered at all times with a relevant EU member state data protection agency.
- 19.4 Where the Company operates within the European Union, it shall maintain registration as a data controller with the data protection agency of the jurisdiction in which it is either incorporated or regulated.
- 19.5 The Company acknowledges that while the ISX Services provided by ISX under this Agreement may assist the Company as an Obligated Entity to comply with the KYC and AML Laws of various jurisdictions, the obligation to assess fitness for purpose, monitoring, functionality and reporting, and ensure that it complies with the applicable AML Laws, remains with the Company and/or the Obligated Entity.
- 20 Warranties**
- 20.1 In addition to any warranties given by the Company elsewhere in this Agreement, the Company represents and warrants that:

- (a) it has all right, power and authority to enter into this Agreement and fully perform its obligations under this Agreement;
- (b) the execution of this Agreement by the Company does not violate any agreement existing between the Company and any third party;
- (c) its operations and proceedings in connection with this Agreement will at all times during the Term be conducted in conformity with all of the Laws of any jurisdiction which may govern or regulate the performance of the Company's obligations under this Agreement; and
- (d) the Company's computer systems (including application servers, computer terminals, modem, software, hardware, subscriptions to any relevant certification authorities, network connectivity and telecommunications facilities) for accessing and using the ISX Services complies with the Technical Requirements.

Company of any identities created using any compromised cards that are used, or attempted to be used, in connection with the ISX Service.

21 Limitation of Liability

21.1 To the maximum extent permitted by Law, and except as specified in clause 21.2:

- (a) the aggregate liability of one Party to the other Party for any Liabilities suffered or incurred by the other Party under or in connection with this Agreement (whether in contract, tort, or by statute where this is not prohibited, or otherwise) is limited to the amount equal to the total amount of Charges actually paid by the Company to ISX in the three month period immediately prior to the event that gave rise to the relevant Liability;
- (b) each Party will be not liable to the other Party for any Indirect Losses; and
- (c) without limiting clause 21.1(b), neither Party will be liable to the other Party for any Liability arising out of or in connection with:

20.2 ISX represents and warrants that:

- (a) it has all right, power and authority to enter into this Agreement and fully perform its obligations under this Agreement;
- (b) the execution of this Agreement by ISX does not violate any agreement existing between ISX and any third party; and
- (c) its operations and proceedings in connection with this Agreement will at all times during the Term of this Agreement be conducted in conformity with all the Laws of any jurisdiction which may govern or regulate the performance of ISX's obligations under this Agreement.

ISX does not warrant that the ISX Service is fit for any purpose other than the creation of an End User PIV Profile. The Service is offered "as is", without Warranty of any kind, either express or implied, including but not limited to the warranties of merchantability, fitness for a particular purpose, and non-infringement.

20.3 . The Company acknowledges and agrees that it is the Company's sole responsibility as an Obligated Entity to satisfy itself as to its legal and regulatory obligations under applicable Laws and whether the ISX Services satisfy, in whole or in part, any of those requirements.

20.4 ISX does not warrant that the Payment Instrument and/or account used as a basis for the ISX Service has not been compromised, whether as a result of account takeover or identity theft of the End User, as a result of breach or hacking of the financial institution or payment network or due to other such criminal acts. To the extent it is able to do so, ISX will monitor alert lists from Card Schemes for compromised cards and suspend and advise the

- (i) any machine, system or communication breakdown, interruption, malfunction or failure, industrial dispute, failure or fault of any network service providers, third party service providers, telecommunications or short-message service (SMS) service providers or operators, or their respective agents and subcontractors or other circumstances beyond ISX's control that leads to either the ISX Services being totally or partially unavailable or delayed, or to the non-receipt, interception of or unauthorised access to or use of information provided by an End User or to instructions given via the ISX Services not being received, authenticated, accurate, correct or acted upon promptly or at all;
- (ii) any cessation, interruption or delay in transmission or any wrongful interception of any data, information or content through any telecommunications, computer or other electronic equipment or system whether or not owned, operated or maintained by ISX or by any other person and whether or not used in the provision and/or operation of the ISX Services);
- (iii) the Company's reliance on any information provided as part of, or by means of, the ISX Services;

- (iv) any misuse of or failure by the Company, End Users or any other party to correctly use, transmit or process the ISX Services;
 - (v) any theft, unauthorised use of and/or access to data, information or content relating to the Company's use of the ISX Services; or
 - (vi) any disclosure of data or information to third parties as a result of the Company's negligence or failure to keep any security codes or Authentication details confidential and safe from compromise.
- 21.2 The limits on and exclusions of liability in clause 21.1 will not apply to an indemnity given by either Party under this Agreement.
- (a) Limitations of Liability do not apply to any fines or charges imposed by any of the Card Schemes on the Company, irrespective of the underlying reason for the fine or charge.
- 21.3 Except for any express warranties given in this Agreement, to the maximum extent permitted by applicable Law ISX disclaims all implied warranties, guarantees or conditions of any kind, including any implied warranties of merchantability or fitness or quality of the ISX Services provided under this Agreement. The ISX Services are provided on an "as is" and "where available" basis. For the avoidance of doubt, ISX does not warrant that the ISX Service is fit for any purpose other than the creation of an End User PIV Profile.
- 21.4 ISX will not be responsible for, and excludes any Liability to the Company for, any Claims arising from or in connection with any dealings between the Company and/or End Users or any third parties, whether or not such dealings are facilitated through the use of the ISX Services.
- 21.5 The Company understands and agrees that any material and/or data downloaded or otherwise obtained through the use of the ISX Services is done at the Company's own discretion and risk. ISX excludes all Liability for any loss or damage arising directly or indirectly from reliance on any such material and/or data.
- 21.6 ISX does not warrant that the ISX Services will be provided in an uninterrupted manner, that the ISX Services is or free from errors or that any identified defect in the ISX Services will be corrected immediately.
- 21.7 While ISX will ensure that reasonable security measures are put in place, ISX does not warrant the security of any information transmitted through the use of the ISX Services and the Company acknowledges and accepts the risk that any information transmitted or received from the ISX Services may be accessed by unauthorised third parties through no fault of ISX.
- 21.8 ISX does not warrant that the End User's Payment Instrument has not been compromised either as a result of account takeover or identity theft of the End User, or as a result of hacking of the financial institution or payment network, or other such criminal acts.
- 21.9 The Company has satisfied itself, by way of internal or external legal advice, that the ISX Services are suitable for whatever purposes it intends to apply the ISX Services in connection with.
- ## 22 Indemnities
- 22.1 The Company will at all times indemnify and hold harmless ISX and its Personnel from and against any loss (including reasonable legal costs and expenses) or Liability suffered or incurred by ISX or its Personnel arising from or in connection with any fraud, wilful, unlawful or grossly negligent act or omission on the part of the Company, its Merchants, its Clients or their respective Personnel.
- 22.2 ISX will at all times indemnify and hold harmless the Company and its Personnel from and against any loss (including reasonable legal costs and expenses) or Liability suffered or incurred by the Company or its Personnel arising from or in connection with any fraud, wilful, unlawful or grossly negligent act on the part of ISX or its Personnel.
- ## 23 Force Majeure
- 23.1 Neither Party will be liable for any delay or failure to perform its obligations pursuant to this Agreement if such delay is due to an event of Force Majeure. If a delay or failure of a Party to perform its obligations is caused due to Force Majeure, the affected Party must give notice in writing to the other Party stating the nature of the Force Majeure event and the performance of the Agreement will be suspended for the duration of the Force Majeure.
- 23.2 Unless otherwise agreed in writing, if a delay or failure by a Party to perform its obligations due to Force Majeure exceeds 90 days from the date of the written notice stating the Force Majeure event, either Party may terminate this Agreement by giving to the other Party 30 days' notice in writing.
- ## 24 Dispute Resolution
- 24.1 Nothing in this clause 24 prevents a Party seeking urgent injunctive or similar interim relief from a court.
- 24.2 The Parties must use best endeavours to resolve in good faith any dispute arising out of or in connection with this Agreement (**Dispute**). Each Party must follow the procedures in this clause before starting court proceedings (except for urgent injunctive or declaratory relief). Despite the existence of a Dispute, the Parties must continue

to perform their other obligations under this Agreement that are not affected by the Dispute.

- 24.3 Any Party (**Initiating Party**) claiming that a Dispute has arisen must give the other Party (**Recipient Party**) a notice setting out brief details of the Dispute (**Dispute Notice**).
- 24.4 Within 10 Business Days of service of a Dispute Notice, the Recipient Party must give the Initiating Party a notice setting out brief details of the Recipient Party's position on the Dispute (**Reply Notice**).
- 24.5 If a Dispute Notice and Reply Notice are given, the Parties must make representatives with authority to settle the Dispute available for the purpose of meeting in an effort to resolve the Dispute. At least one meeting of the authorised representatives must take place within 15 Business Days of service of a Reply Notice.
- 24.6 If:
- (a) the Dispute is not resolved in accordance with clause 24.5 within 20 Business Days after the Reply Notice is given; or
 - (b) the Recipient Party does not:
 - (i) give a Reply Notice within 10 Business Days of service of a Dispute Notice; or
 - (ii) make its authorised representatives available for a meeting within 15 Business Days of service of a Dispute Notice,

then either Party may, by written notice refer the Dispute to mediation under clause 24.7.

- 24.7 If the Dispute remains unresolved in accordance with clause 24.6, then the Parties must refer the Dispute to mediation, to be conducted by the Centre for Effective Dispute Resolution (**CEDR**) mediation in accordance with the CEDR Model Mediation Procedure. The mediator will be nominated by CEDR. To initiate the mediation, either Party may give a notice in writing (**Mediation Notice**) to the other Party to the dispute requesting mediation. A copy of the Mediation Notice must be sent to CEDR. Unless otherwise agreed, the mediation will start not later than 10 Business Days after the date of the Mediation Notice.
- 24.8 If the Dispute is not settled within 30 Business Days after the appointment of the mediator under clause 24.7, then the Parties agree that the Dispute will be finally settled by binding arbitration under clause 24.9
- 24.9 Any unresolved Dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, must be referred to and finally resolved by binding arbitration, to be conducted in

London, United Kingdom in accordance with the Arbitration Rules of the Chartered Institute of Arbitrators (**CI Arb Arbitration Rules**) for the time being in force, which rules are deemed to be incorporated by reference in this clause. The arbitral tribunal will consist of one arbitrator, to be mutually agreed from a list prepared by the President of the CI Arb UK or, failing agreement between the Parties, appointed by the President. The language of the arbitration will be English.

25 Termination

- 25.1 Without prejudice to any other rights ISX may have under this Agreement or at law, this Agreement may be terminated by ISX immediately by notice in writing:
- (a) if the Company has been in breach of any of terms relating to privacy, Intellectual Property Rights or confidentiality as set out in clauses 7.2(g) to 7.2(l), 16 and 17; or
 - (b) in the event ISX issues a notice to the Company pursuant to clause 3.10 and Company fails to remedy any such threat and/or compromise within 30 days (or such other time as agreed to by ISX).
- 25.2 This Agreement may be terminated immediately by the Company by notice in writing if ISX has been in breach of any terms relating to confidentiality or privacy under clauses 16, 17 and 18 respectively.
- 25.3 The other Party may terminate this Agreement at any time by written notice to a Party (**Defaulting Party**) if any of the following apply:
- (a) the Defaulting Party fails to carry out any provision of this Agreement, the failure is capable of remedy and the Defaulting Party does not remedy that failure within 30 days after written notice to the Defaulting Party requiring it to be remedied;
 - (b) the Defaulting Party fails to carry out any material provision of this Agreement and the failure is not capable of remedy;
 - (c) the Defaulting Party is or becomes Insolvent;
 - (d) a Change in Control Event occurs in relation to the Defaulting Party, unless:
 - (i) the other Party has given their prior written consent to the Change in Control Event; or
 - (ii) the Change in Control Event is as a result of a public offering and a listing on a stock exchange or trading on a stock exchange; or
 - (e) it becomes unlawful for the Defaulting Party to perform its obligations under this Agreement.

- 25.4 The Company may terminate this Agreement by providing 3 months written notice to ISX during any Further Term.
- 25.5 On termination of this Agreement under clause 25.3 each Party retains its rights against the other Party in respect of any past breach, in addition to any other rights, powers or remedies provided by law.
- 25.6 Upon termination of this Agreement, the Company must immediately:
- (a) cease the use of the ISX Services and either make arrangements per Clause 12 to back up its data within seven (7) days or enter into agreement with ISX for data storage.
 - (b) where the Company is a Channel Partner, notify all Merchants and Clients that it has ceased to use the ISX Services; and
 - (c) within 14 days from the date of termination, return to ISX all materials, documents and information (including the Materials) issued by ISX to the Company.
 - (d) within 14 days from the date of termination, pay to ISX an amount equal to the minimum monthly charge set out in the Service Terms multiplied by the number of remaining months, as calculated in whole months from the date of termination, for the remaining duration of the current Initial Term or Further Term (as applicable) of the Agreement.

26 No Subcontracting or Assignment

- 26.1 Except as otherwise stated in this Agreement, neither Party may assign, transfer, sub-license, sub-contract or otherwise permit any other Party to undertake any of its obligations or to enjoy any of its rights under this Agreement without first obtaining the written consent of the other Party.

27 No Partnership

- 27.1 Nothing in this Agreement creates a joint venture, relationship of partnership or agency between the Company and ISX. Accordingly, except as expressly authorised under this Agreement neither Party has authority to pledge the credit or make any representation or give any authority to contract on behalf of another Party.

28 Waiver

- 28.1 No failure or delay by either Party in exercising or enforcing any right or option under this Agreement will operate as a waiver thereof or limit, prejudice or impair the Party's right to take any action or to exercise any right as against the other Party.
- 28.2 A waiver by one Party will not prejudice any rights of that Party in respect of any subsequent breach of this Agreement by the other Party.

29 Notices

- 29.1 ISX will refrain from any direct communications with a Merchant, Client or End User, except for:
- (a) routine notifications addressed to all End Users; or
 - (b) where the Company has requested that ISX communicate directly with Merchants, Clients and/or End Users.
- 29.2 A notice or other communication connected with this Agreement (**Notice**) has no legal effect unless it is in writing.
- 29.3 In addition to any other method of service provided by law, the Notice may be:
- (a) sent by prepaid priority post to the address of the addressee set out in this Agreement or subsequently notified;
 - (b) sent by email to the email address of the addressee set out in clause 29.5 or subsequently notified; or
 - (c) delivered at the address of the addressee set out in this Agreement or subsequently notified.
- 29.4 If the Notice is sent or delivered in a manner provided by clause 29.3, it must be treated as given to and received by the Party to which it is addressed:
- (a) if sent by post from within one country to another address in that same country, on the 3rd Business Day (at the address to which it is posted) after posting;
 - (b) if sent by post from within one country to an address in another country, on the 7th Business Day (at the address to which it is posted) after posting;
 - (c) if sent by email before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
 - (d) if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.
- 29.5 (a) ISX's email address is: legal@isignthis.com.
- (b) Company's email address is set out in the Service Terms (or is as subsequently notified).

30 Rights of Third Parties

- 30.1 A person who is not a Party to this Agreement has no right to enforce any term of this Agreement.

31 Entire Agreement

- 31.1 This Agreement and the Schedules thereto, which form part hereof, will constitute the entire agreement between the Parties, all prior contracts,

proposals, representations, negotiations and understandings, either orally or in writing being hereby superseded. Any amendment or modification hereof will only be binding if made in writing and signed on behalf of each Party by its duly authorised representative.

originating Party of a ".pdf" format data file, such signature will create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

32 Survival

32.1 Clauses 11, 16, 17, 18, 21 and 22 of this Agreement, together with those other provisions which by their content or nature are capable of or intended to have effect after the termination or expiry of this Agreement, will survive the termination or expiry of this Agreement and continue in full force and effect.

33 Governing Law

33.1 Except where provided otherwise in the Service Terms, this Agreement will be governed by and construed in accordance with the laws of England. The courts of England and Wales will have sole jurisdiction to determine any dispute relating to or arising under this Agreement.

34 Severance

34.1 If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

35 Execution by Counterparts

35.1 This Agreement, including the Service Terms, may be executed in two or more counterparts, each of which together will be deemed an original, but all of which together will constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery originating from the URL domain of the

36 Further assurances

36.1 Each Party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this Agreement.

37 Language

37.1 All meetings, documents, communications (including customer and system messages) and specifications must be in the English language.

37.2 Translation costs (if any) will be borne by the Company for each jurisdiction in which it operates where documentation is required to be translated for the benefit of End Users.

38 Variation

38.1 Except to the extent set out in clause 38.2, any variation to this Agreement is effective only upon the written agreement of the Parties executed by a duly authorised representative of each Party.

38.2 ISX may, from time to time, update, vary or amend these Standard Terms. Any updates, variations or amendments to these Standard Terms will be effective upon posting to the ISX Website. ISX will use its reasonable endeavours to notify the Company of the making of any updates, variations or amendments, such as by email or by posting a notification on the ISX Service dashboard. At any time within 30 days of the date of such an update, variation or amendment, the Company may (as its sole and exclusive remedy) terminate this Agreement with immediate effect by giving written notice to ISX.

These Standard Terms were last updated as set out in the footer information below.

Schedule A: Service Levels and Support for ISX Services

Service Levels

The following services are provided with the corresponding Service Levels. Service Levels are indicative of targeted performance only, with reasonable endeavours to be taken by ISX to minimise any outages.

No	Service Level	Definition
SL 1	The ISX Service achieves 99.3% availability in a calendar month	<p>ISX Service Availability = ((Total Service Hours per month in minutes) – (Total unscheduled downtime in minutes)) / (Total Service Hours per month in minutes) x 100%</p> <p>For the purpose of this service level, downtime is not unscheduled if it has been notified by ISX to the Company in advance under clause 9.6.</p> <p>The ISX Service is available on a 24x7 basis including Saturdays, Sundays and public holidays.</p>
SL 2	Business Continuity - Recovery Time Objective to be 6 hours	The period of time within which systems, applications or functions will be recovered after a disruption has occurred.
SL 3	<p>Following receipt from the End User, ISX authentication responses are passed to Company's payment gateway as follows:</p> <ul style="list-style-type: none"> • 90% within 5 seconds • 100% within 15 seconds 	<p>The response time is defined as being from the time that the ISX authentication response is received by ISX to the time that the ISX authentication response leaves ISX.</p> <p>ISX Service completion = (Number of instances when PIV authentication is completed within 800ms or 2 second) / (Total instances of ISX authentication request) x 100%</p>

Standard Support

ISX will provide second level support for the ISX Services in accordance with the below support levels and severity classifications.

Response times, communication frequencies and resolution times are indicative only. ISX will use commercially reasonable endeavours to achieve these timeframes. Enhanced support subject to specific agreement.

Ex Melbourne, Australia & Nicosia Cyprus 24/7 Support					
Support Level	Severity	Initial Response (Payment Services)	Initial Response (Identity Services)	Communication Frequency	Resolution
Basic Support	<u>1</u>	<u>2 Hours</u>	<u>4 Hours</u>	<u>Every 3 Hours</u>	<u>6 hrs (Payments) / 12 Hours (Identity)</u>
	<u>2</u>	<u>6 Hours</u>	<u>12 Hours</u>	<u>Every Business Day</u>	<u>4 Business Days</u>
	<u>3</u>	<u>12 Hours</u>	<u>24 Hours</u>	<u>Every 2 Business Days</u>	<u>7 Business Days</u>

Severity Classification	Scenario
1	<p>Business operations are severely affected</p> <p>IT security incidents on ISX's system resulting from internal/external malicious security attacks, such as virus/worms/Trojans attacks. The situation has one or more of the following characteristics:</p> <ul style="list-style-type: none"> • direct / indirect loss of revenue • business or ISX Service is not available / operational, including service to handle ISX payment and identity authentication related requests (e.g. payment processing, task management, KYC revocation) • partial or complete outage of the production system • data integrity at risk • leakage/loss of confidential data • production 'get' API call and recovery operations fail <p><u>Examples:</u></p> <p>The ISX authentication server is down due to an unknown/new virus attack and as a result the Company is unable to authenticate End Users using the ISX Service.</p> <p><u>Payments not being processed to acquirer(s)</u></p> <p>Company or End User Data is corrupted or lost due to a database malfunctioning and as a result the Company is unable to use all of the ISX Services.</p>
2	<p>Moderate impact to certain functions</p> <p>The situation can be circumvented so that operations may continue. There is a minimal effect on performance, but with no business impact to the End User. Problems that affect a particular process or parts of the ISX Services for which there are existing alternatives to by-pass the problems.</p> <p><u>Examples:</u></p> <p>Memory leakage in certain computer programs are causing the Company's services to experience either slowness or intermittent slowness when using any of the Authentication services.</p> <p>ISX's web portal is down due to a Denial Of Service (DoS) attack on its web server and the Company is unable to use any of the API or web services as a result.</p>
3	<p>Situation does not impede operations</p> <p>Results in no business impact to the End User</p> <p><u>Example:</u></p> <p>The Company is unable to view its latest bills because of unavailability of billing data/details.</p> <p>The Company is unable to perform certain activities on the ISX web portal such as to check the payment status due to broken link or configuration error.</p> <p><u>Reports not available</u></p>