

SWiM PAY PTY LTD - Terms & Conditions

1. Why you should read this Agreement

1.1 What this Agreement covers. These are the terms and conditions on which we provide our Services to you.

1.2 Why you should read them. Please read this Agreement carefully before you start to use our Services. This Agreement (always together with the documents referred to in it) tells you who we are, how we will provide the Services to you, how this Agreement may be changed or ended, what to do if there is a problem and other important information. If you think that there is a mistake in this Agreement or require any changes, please contact us to discuss.

1.3 Other additional documents which apply to you. This Agreement refers to the following additional documents, which also apply to your use of our Services:

- (a) Our [Privacy Policy](#), which sets out the terms on which we process any personal data we collect about you, or that you provide to us. By using our Services, you consent to such processing and you promise that all data provided by you is accurate.
- (b) Our [Cookie Policy](#), which sets out information about the "cookies" on our website.
- (c) Our [Anti-Spam Policy](#), which sets out information about how commercial emails are handled by our business.

1.4 Future changes to this Agreement. All future changes at the time you sign-up for our Services are incorporated into this Agreement. The revised Agreement will take effect as soon as it is posted on our website or on the date notified to you.

1.5 You accept this Agreement. By visiting our website and/or using our Services you confirm that you accept and agree to this Agreement (including the Customer Updates and the additional documents referred to above). If you do not agree, please do not use our Services.

By accessing and using the SWiM Pay website (the "Website") you acknowledge that you have read, understood and agree to be bound by these Terms of Use (the "Terms"). Please make time to check these Terms periodically as continued use of the Website will constitute your agreement to any amendments to these Terms.

1.6 Where to get a copy of this Agreement. You can always see the most current version of this Agreement on our Website, which you can view, download or print.

2. General Terms

This Website is operated and owned by SWiM PAY PTY LTD (hereinafter referred to as SWiM PAY), a company incorporated in Australia under ACN No. 638 920 902 whose registered office is at 22/604 City Road, South Melbourne, Victoria 3205 AUSTRALIA

SWiM PAY users and clients expressly acknowledge and agree that:

- 2.1 The information contained in the Website is for informational purposes only and does not constitute financial or investment advice. SWiM PAY shall use its reasonable endeavours to ensure that any information on the Website is obtained from reputable sources and has been prepared in good faith and with reasonable care. SWiM PAY will not accept any liability for the use or interpretation of such information. It shall be your own responsibility to ensure that any products, services or information available through this Website meet your specific requirements.
- 2.2 Neither we nor any third parties provide any warranty or guarantee as to the accuracy, timeliness, performance, completeness or suitability of the information and materials found or offered on this Website for any particular purpose. You acknowledge that such information and materials may contain inaccuracies or errors and we expressly exclude liability for any such inaccuracies or errors to the fullest extent permitted by law.
- 2.3 This Website contains material which is owned by or licensed to us. This material includes, but is not limited to, the design, layout, look, appearance, graphics and copy. Reproduction is prohibited without obtaining prior written permission from SWiM PAY.
- 2.4 From time to time this Website may also include links to other websites. These links are provided for your convenience to provide further information only. They do not signify that we endorse the website(s) and we have no responsibility for the content of the linked website(s).
- 2.5 By accessing and/or using SWiM PAY, you expressly acknowledge and represent that you have carefully read, understood and accepted the Terms in its entirety as a legally binding agreement between yourself and the Company. You should immediately stop accessing and/or using SWiM PAY if you do not accept the Terms.
- 2.6 The Company may, from time to time, amend, restate or supplement the Terms (including the Fees) at the sole discretion of the Company, including to take into account future developments such as changes in industry trends and/or any changes in legal and/or regulatory requirements applicable to the Company.
- 2.7 In accessing and/or using SWiM PAY and/or the Services, you agree that it is your sole responsibility to ensure your compliance with the following at all times:
 - A. the Terms; and
 - B. any applicable laws and regulations.
- 2.8 For clients in the Asia-Pacific region, all payment services accessed via SWiM PAY's web application are provided **in Singapore** by Nium Pte. Ltd., **a company registered in Singapore** (UEN 201422465R), **and a major payment institution licensed by the Monetary Authority of Singapore** (hereinafter referred to as "Nium"). This does not constitute or form part of an offer, solicitation, or advertisement of Nium's services to any person outside Singapore.

2.9 In the United Kingdom payment services for SWiM PAY PTY Ltd are provided by Nium Fintech Limited, an Electronic Money Institution authorised and regulated by the Financial Conduct Authority with FRN 901024. Registered address Floor 3 18 St. Swithin's Lane, London, England, EC4N 8AD.

2.10 In the European Economic Area, payment services for SWiM PAY PTY Ltd are provided by UAB Nium EU, an Electronic Money Institution (License No. 14) regulated by Lietuvos Bankas (Bank of Lithuania). Registered address Konstitucijos pr. 21B, LT-08130, Vilnius.

2.11 In the United States of America, SWiM PAY USA INCOPORATED is “powered by Nium. Nium’s Program is sponsored by CFSB to which Nium is a service provider”.

2.12 You also agree to abide by Nium's terms and conditions, which are attached to our online Corporate Onboarding form, as part of these SWiM PAY Terms and Conditions.

2.13 SWiM PAY is a platform partner of Nium and **is not licensed, nor exempt to provide** payment, electronic money, or foreign exchange services of any kind.

2.14 These Terms are governed by and interpreted in accordance with the laws of Victoria, Australia.

3. Changes to Your Business

You agree to keep the information in your SWiM PAY Account current. You must promptly update your SWiM PAY Account with any changes affecting you, the nature of your business activities, your Representatives, beneficial owners, principals, or any other pertinent information. We may suspend your SWiM PAY Account or terminate this Agreement if you fail to keep this information current.

You also agree to promptly notify us in writing no more than three days after any of the

following occur: you are the subject of any voluntary or involuntary insolvency petition or proceeding, receivership, bankruptcy, or similar action; there is an adverse change in your financial condition; there is a planned or anticipated liquidation or substantial change in the basic nature of your business; you transfer or sell 25% or more of your total assets, or there is any change in the control or ownership of your business or parent entity; or you receive a judgment, writ or warrant of attachment or execution, or levy against 25% or more of your total assets.

4. Fees & Fines

SWiM PAY will provide the Services to you at the rates and for the fees (“Fees”) described in the Fee Schedule on our website, incorporated into this Agreement. The Fees include charges for Transactions (such as processing a payment) and for other events connected with your SWiM PAY Account (such as handling a disputed charge). We may revise the Fees at any time upon 30 days’ notice to you. We may charge additional Fees for cross-border transactions or foreign exchange services. In addition to the Fees, you are also responsible for any penalties or fines imposed on you or SWiM PAY by any bank, money services business, payment network,

or other financial intermediary (each a “Financial Services Provider”) resulting from your use of Payment Services in a manner not permitted by this Agreement or a Financial Services Provider’s rules and regulations.

You are also obligated to pay all taxes, fees and other charges imposed by any governmental authority (“Taxes”), including without limitation any value added tax, goods and services tax, provincial sales tax and/or harmonized sales tax on the Services provided under this Agreement. If you are tax-exempt, you will provide us with an appropriate certificate or other evidence of tax exemption that is satisfactory to us.

5. Suspension for Unauthorised or Illegal Use

We may refuse, condition, or suspend any Transactions that we believe may violate this Agreement or other agreements you may have with SWiM PAY; or that expose you, SWiM PAY, or others to risks unacceptable to SWiM PAY. If we suspect or know that you are using or have used the Services for unauthorised, fraudulent, or illegal purposes, we may share any information related to such activity with the appropriate financial institution, regulatory authority, or law enforcement agency consistent with our legal obligations. This information may include information about you, your SWiM PAY Account, your customers, and Transactions made through your use of the Services.

6. Data Protection & Privacy

6.1. Confidentiality: SWiM PAY will only use User Data as permitted by this Agreement, by other agreements between you and us, or as otherwise directed by you. You will protect all Data you receive through the Services, and you may not disclose or distribute any such Data, and you will only use such Data in conjunction with the Services and as permitted by this Agreement or by other agreements between you and us. Neither party may use any Personal Data to market to Customers unless it has received the express consent from a specific Customer to do so. You may not disclose Payment Data to others except in connection with processing Transactions requested by Customers and consistent with applicable Laws and Network Rules.

6.2. Privacy: Protection of Personal Data is very important to us. Our [Privacy Policy](#) explains how and for what purposes we collect, use, retain, disclose, and safeguard the Personal Data you provide to us. You agree to review the terms of our Privacy Policy, which we update from time to time.

If we become aware of an unauthorized acquisition, disclosure or loss of Customer Personal Data on our systems, we will notify you consistent with our obligations under applicable Law. We will also notify you and provide you sufficient information regarding the unauthorized acquisition, disclosure or loss to help you mitigate any negative impact on the Customer.

6.3. Data Transfers. We may disclose your Personal Information (as that term is defined in the Australian Privacy Act 1988 (Cth)) to our related entities or third parties located in

countries where the laws on the collection, use and disclosure of Personal Information are less stringent or protective than Australia.

6.4. Emails. By agreeing to these Terms & Conditions you specifically “opt in” and give us express permission to send you business related emails regarding your account with SWiM PAY. You may opt out at any time by cancelling your account with SWiM PAY and we shall not send you any further emails after confirming your cancellation.

7. Dispute Resolution: Agreement to Arbitrate

7.1. Binding Arbitration: Any dispute, controversy or claim arising out of or relating to this contract, including the formation, interpretation, breach or termination thereof, including whether the claims asserted are arbitrable, will be referred to and finally determined by arbitration. The language to be used in the arbitral proceedings will be English. Judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof.

This Agreement and the rights of the parties hereunder shall be governed and construed in accordance with the laws of England and Wales, exclusive of conflict or choice of law rules. Nothing in this paragraph will preclude the parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

7.2. Service of Process: Each party hereby irrevocably and unconditionally consents to service of process through personal service at their corporate headquarters, registered address, or primary address (for individuals or sole proprietors). Nothing in this Agreement will affect the right of any party to serve process in any other manner permitted by Law.

7.3. Class Waiver: To the fullest extent permitted by Law, each of the parties agrees that any dispute arising out of or in connection with this Agreement, whether in arbitration or in court, will be conducted only on an individual basis and not in a class, consolidated or representative action. If for any reason the claim or dispute proceeds in court rather than through arbitration, each party knowingly and irrevocably waives any right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement or any of the transactions contemplated between the parties.

7.4. Provision of an Award: Subject to the limitations of liability identified in this Agreement, the appointed arbitrators may award monetary damages and any other remedies allowed by Law. In making a determination, the arbitrator will not have the authority to modify any term or provision of this Agreement. The arbitrator will deliver a reasoned written decision with respect to the dispute (the “Award”) to each party, who will promptly act in accordance with the Award. Any Award (including interim or final remedies) may be confirmed in or enforced by any court having jurisdiction over either party or its assets. The decision of the arbitrator will be final and binding on the parties, and will not be subject to appeal or review.

7.5. Fees: Each party will advance one-half of the fees and expenses of the arbitrator, the costs of the attendance of the court reporter at the arbitration hearing, and the costs of the arbitration facility. In any arbitration arising out of or related to this Agreement, the arbitrator will award to the prevailing party, if any, the costs and attorneys’ fees reasonably incurred by

the prevailing party in connection with those aspects of its claims or defenses on which it prevails, and any opposing awards of costs and attorneys' fees awards will be offset.

7.6. Confidentiality: The parties will maintain the confidential nature of the arbitration proceeding, the hearing and the Award, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, or confirmation of an Award or its enforcement, or unless otherwise required by applicable Laws. The parties, witnesses, and arbitrator will treat as confidential and will not disclose to any third person (other than witnesses or experts) any documentary or other evidence produced in any arbitration hereunder, except as required by Law or except if such evidence was obtained from the public domain or was otherwise obtained independently from the arbitration.

8. Assignment

8.1. The Company may, at any time, assign, mortgage, charge or otherwise transfer any or all of our rights and obligations under the Terms without restriction.

8.2. You may not assign, mortgage, charge or otherwise transfer any of your rights and obligations under the Terms (including the licence granted to you under paragraph 94 above) without the prior written consent of the Company and any attempted assignment mortgage, charge or otherwise transfer in violation of the Terms shall be null and void.

9. Right to Audit

If we believe that a security breach, leak, loss, or compromise of Data has occurred on your systems, website, or app affecting your compliance with this Agreement, we may require you to permit a third-party auditor approved by us to conduct a security audit of your systems and facilities. The auditor will issue a report to us and our Financial Services Providers.

10. Force Majeure

Neither party will be liable for any delays in processing or other nonperformance caused by telecommunications, utility, failures, or equipment failures; labor strife, riots, war, or terrorist attacks; nonperformance of our vendors or suppliers, fires or acts of nature; or any other event over which the respective party has no reasonable control. However, nothing in this section will affect or excuse your liabilities or your obligation to pay Fees, Fines, Disputes, Reversals, or Returns under this Agreement.

11. Your Liability for Third Party Claims Against Us

You agree to defend SWiM PAY against any claim, suit, demand, loss, liability, damage, action, or proceeding (each, a "Claim") brought by a third party against SWiM PAY, and you agree to fully reimburse SWiM PAY for any Claims that result from: (i) your breach of any provision of this Agreement; (ii) any Fees, Fines, Disputes, Reversals, Returns, or any other liability we incur that results from your use of our Services; (iii) negligent or willful misconduct of your employees, contractors, or agents; or (iv) contractual or other relationships between you or your customers.

Important Note for Individual Traders: If you are using our Services as a sole proprietor, please keep in mind that the Law and the terms of this Agreement consider you and your business to be legally one and the same. You are personally responsible and liable for your use of the Services, payment of Fees, Reversals, Fines, losses based on Disputes or fraud, or for any other amounts you owe under this Agreement for your failure to use Security Controls, and for all other obligations to us and to your customers. You risk personal financial loss if you fail to pay any amounts owed. Please take the time to read our Documentation and take any measures appropriate to protect against such losses.

12. Representations and Warranties

By accepting the terms of this Agreement, you represent and warrant that: (a) you are eligible to register and use the Services and have the authority to execute and perform the obligations required by this Agreement; (b) any information you provide us about your business, products, or services is accurate and complete; (c) any Charges represent a Transaction for permitted products, services, or donations, and any related information accurately describes the Transaction; (d) you will comply with all Laws applicable to your business and use of the Services; (e) you will not use our Services for household purposes or peer-to-peer money transmission, or (except in the normal course of business) intercompany Transactions; and (f) you will not use the Service, directly or indirectly, for any fraudulent or illegal undertaking, or to interfere in any manner with the normal operation of the Service.

13. No Warranties

WE PROVIDE THE SERVICES AND SWIM PAY IP “AS IS” AND “AS AVAILABLE”, WITHOUT ANY EXPRESS, IMPLIED, OR STATUTORY WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ANY OTHER TYPE OF WARRANTY OR GUARANTEE. NO DATA, DOCUMENTATION OR ANY OTHER INFORMATION PROVIDED BY SWIM PAY OR OBTAINED BY YOU FROM OR THROUGH THE SERVICES — WHETHER FROM SWIM PAY OR ANOTHER SWIM PAY ENTITY, AND WHETHER ORAL OR WRITTEN — CREATES OR IMPLIES ANY WARRANTY FROM A SWIM PAY ENTITY TO YOU.

YOU AFFIRM THAT NO SWIM PAY ENTITY CONTROLS THE PRODUCTS OR SERVICES THAT YOU OFFER OR SELL. YOU UNDERSTAND THAT WE CANNOT GUARANTEE AND WE DISCLAIM ANY KNOWLEDGE THAT YOUR CUSTOMERS POSSESS THE AUTHORITY TO, OR WILL COMPLETE ANY TRANSACTION.

SWIM PAY DISCLAIMS ANY KNOWLEDGE OF, AND DO NOT GUARANTEE: (a) THE ACCURACY, RELIABILITY, OR CORRECTNESS OF ANY DATA PROVIDED THROUGH THE SERVICES; (b) THAT THE SERVICES WILL MEET YOUR SPECIFIC BUSINESS NEEDS OR REQUIREMENTS; (c) THAT THE SERVICES WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, OR WILL FUNCTION IN AN UNINTERRUPTED MANNER OR BE SECURE; (d) THAT SWIM PAY WILL CORRECT ANY DEFECTS OR ERRORS IN THE SERVICE, DOCUMENTATION, OR DATA; OR (e) THAT THE SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL CODE. USE OF DATA YOU ACCESS OR DOWNLOAD THROUGH THE SERVICES IS DONE AT YOUR OWN RISK — YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY, LOSS OF DATA, OR ANY OTHER LOSS THAT RESULTS FROM

SUCH ACCESS OR DOWNLOAD. YOU UNDERSTAND THAT SWiM PAY MAKES NO GUARANTEES TO YOU REGARDING TRANSACTION PROCESSING TIMES OR PAYOUT SCHEDULES.

NOTHING IN THIS AGREEMENT OPERATES TO EXCLUDE, RESTRICT OR MODIFY THE APPLICATION OF ANY IMPLIED CONDITION, WARRANTY OR GUARANTEE, OR THE EXERCISE OF ANY RIGHT OR REMEDY, OR THE IMPOSITION OF ANY LIABILITY UNDER LAW WHERE TO DO SO WOULD: (A) CONTRAVENE THAT LAW; OR (B) CAUSE ANY TERM OF THIS AGREEMENT TO BE VOID.

14. Limitation of Liability

Under no circumstances will SWiM PAY be responsible or liable to you for any indirect, punitive, incidental, special, consequential, or exemplary damages resulting from your use or inability to use the Services or for the unavailability of the Services, for lost profits, personal injury, or property damage, or for any other damages arising out of, in connection with, or relating to this Agreement or your use of the Services, even if such damages are foreseeable, and whether or not you or SWiM PAY have been advised of the possibility of such damages. The SWiM PAY Entities are not liable, and deny responsibility for any damages, harm, or losses to you arising from or relating to hacking, tampering, or other unauthorised access or use of the Services, your SWiM PAY Account, or Data, or your failure to use or implement anti-fraud measures, the Security Controls, or any other data security measure. SWiM PAY further deny responsibility for all liability and damages to you or others caused by (a) your access or use of the Services inconsistent with the Documentation; (b) any unauthorised access of servers, infrastructure, or Data used in connection with the Services; (c) interruptions or cessation of the Services; (d) any bugs, viruses, or other harmful code that may be transmitted to or through the Services; (e) any errors, inaccuracies, omissions, or losses in or to any Data provided to us; (f) third-party content provided by you; or (g) the defamatory, offensive, or illegal conduct of others.

You agree to limit any additional liability not disclaimed or denied by the SWiM PAY Entities under this Agreement to your direct and documented damages; and you further agree that under no circumstances will any such liability exceed in the aggregate the amount of Fees paid by you to SWiM PAY during the three-month period immediately preceding the event that gave rise to your claim for damages – or US\$10,000.00 – whichever is the lesser.

These limitations on our liability to you will apply regardless of the legal theory on which your claim is based, including contract, tort (including negligence), strict liability, or any other theory or basis.

The Company, its directors, officers, employees, representatives and agents (each a "Relevant Person") shall not, save for any willful default or fraud on the part of any Relevant Person, be liable to you for any Losses arising from or in connection with, or anything done or not done as a direct or indirect consequence to, the provision of SWiM PAY and/or the Services (whether in whole or in part), including any one or more of the following:

(a). any failure, error, delay or malfunction of SWiM PAY, howsoever caused and whether or not identified or identifiable;

- (b). the access to, use of or inability to use SWiM PAY;
- (c). the access to, use of or inability to use any third-party services that may be accessed through or used on SWiM PAY;
- (d). anything done or omitted to be done in the course of, or in connection with the discharge or purported discharge of the obligations and/or rights of the Company under any applicable laws and regulations or in accordance with the Terms;
- (e). the exercise of the discretion of the Company under the Terms;
- (f). any failure, error, delay or malfunction of the provision of any services (whether in whole or in part) by any service provider engaged by the Company;
- (g). the termination of the services (whether in whole or in part) provided by any service provider engaged by the Company (whether in whole or in part and whether at the election of such service provider or otherwise) that allows the Company to provide SWiM PAY and/or the Services;
- (h). any virus or other disruptive, destructive, malicious or corrupting program, code, agent, script or macro;
- (i). the originality, accuracy, adequacy, timeliness or completeness of SWiM PAY and/or any Platform Materials (collectively, the "Content");
- (j). any reliance by you on the Content or any part thereof;
- (k). any information transmitted or received through SWiM PAY, or the interception of or access to such information by any unauthorised person;
- (l). any event, occurrence, or circumstance beyond the reasonable control of the Company, including any act of God, civil commotion, riot, act of war or terrorism, strike, government action, accident or equipment or transmission failure;
- (m). the provision of SWiM PAY and/or the Services.

In any event, any liability accruing to SWiM PAY, any SWiM PAY Entity or any Relevant Person shall not exceed US\$10,000.00 as an absolute maximum.

15. Entire Agreement

This Agreement and all policies and procedures that are incorporated by reference constitute the entire agreement between you and SWiM PAY for provision and use of the Services. Except where expressly stated otherwise in writing executed between you and SWiM PAY, this Agreement will prevail over any conflicting policy or agreement for the provision or use of the Services. This Agreement sets forth your exclusive remedies with respect to the Services. If any provision or portion of this Agreement is held to be invalid or unenforceable under Law, then it will be reformed and interpreted to accomplish the objectives of such provision to the greatest extent possible, and all remaining provisions will continue in full force and effect.

16. Responsibility for Your Account or Sub-Account

16.1. You acknowledge and agree that you shall be solely responsible for your Account or Sub-Account (as the case may be), provided always that the owner of an Account shall be ultimately responsible for the compliance of all related Sub-Account(s) and their respective user(s) with the Terms at all times.

16.2. Your Account and/or Sub-Account(s) can only be used by you and/or your authorised representative(s) (as the case may be) and you acknowledge and agree that you shall be fully liable at all times for any communication, transaction, instruction and/or operation made or performed, processed or effected through your Account and any Sub-Account (each an "Instruction") by you or any person purporting to be you, acting on your behalf or purportedly acting on your behalf, with or without your consent.

16.3. You must immediately notify the Company if you suspect or become aware of the use of your Account and/or any Sub-Account by any person or other entity other than yourself and your authorised representatives.

16.4. Without prejudice to any other provision of the Terms, you authorise the Company to act upon any Instruction (though the Company is not obliged to) which the Company believes was given by you (whether through your Account or otherwise).

16.5. Any Instruction shall not be considered to have been received by the Company until it has actually been received successfully by the Company (whether electronically or otherwise).

16.6. The Company shall not be responsible for confirming and/or verifying any Instruction or for monitoring or refusing to process any duplicate Instructions.

16.7. You acknowledge and agree that any records created and maintained by the Company of Instructions by you or any person purporting to be you, acting on your behalf or purportedly acting on your behalf, with or without your consent, shall be binding on you for all purposes and shall be conclusive evidence of such Instructions.

16.8. You acknowledge and agree that the Company may, at its sole discretion, refuse to act or defer acting upon any Instruction.

17. Intellectual Property

17.1. The Company and its licensor(s) (if any) reserve and retains all rights (including copyrights, trademarks, patents as well as any other intellectual property right) in relation to the products, services and all content and data contained in or provided on or via SWiM PAY and/or the Platform Materials (including all texts, graphics and logos).

17.2. You may not do anything that will violate or infringe such intellectual property rights and, in particular, you shall not copy, download, publish, distribute, transmit, disseminate, sell, broadcast, circulate, exploit (whether for commercial benefit or otherwise) or reproduce any of the information or content contained in or provided on or via SWiM PAY and/or the

Platform Materials in any form without the prior written permission of the Company and/or its licensor(s) (as the case may be).

17.3. No part or parts of SWiM PAY and/or any Platform Materials may be reproduced, distributed, republished, displayed, broadcast, hyperlinked, mirrored, framed, transferred or transmitted in any manner or by any means or stored in an information retrieval system without the prior written permission of the Company and/or its licensor(s) (as the case may be).

17.4. Subject to any other applicable terms, guidelines, notices, rules and policies, the Company grants you a non-transferable, non-exclusive, revocable, limited licence to use and access SWiM PAY and the Platform Materials, provided that you do not modify any Platform Materials.

17.5. Save as expressly provided otherwise in the Terms, you acknowledge that you are not granted any licence, interest or right by virtue of your use of or access to SWiM PAY and/or the Platform Materials.

18. Indemnity by User

You (the User) expressly agree to indemnify, defend, save and hold harmless all SWiM Pay entities and Relevant Persons from all liabilities, claims and Losses arising out of or in connection with:

- (a). your Account and/or Sub-Account(s);
- (b). the access and use of SWiM Pay;
- (c). the access and use of the Services;
- (d). any breach by you of the Terms;
- (e). any negligent act and/or omission by you in connection with SWiM Pay and/or the Terms, other than through the willful default or fraud by the Relevant Person.

19. Severability

If any provision of the Terms or part thereof is rendered void, invalid, illegal or unenforceable by any legislation to which it is subject or by a decision of a court of competent jurisdiction ("**Affected Provision**"), the Affected Provision shall be rendered void, invalid, illegal or unenforceable only to that extent and it shall in no way affect or prejudice the enforceability of the remainder of the Affected Provision or the other provisions of the Terms.

20. No Waiver

No failure or delay to exercise or enforce any right conferred upon the Company under the Terms shall be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.

Any waiver of any right arising from a breach or non-performance of the Terms or arising upon default under the Terms granted to you shall be null and void unless made in writing and signed by the Company.

21. English to Prevail

If the Terms are translated into a language other than the English language and there is any conflict or inconsistency between such translation and the English text, the English text shall prevail.

22. No Rights for Third Parties

22.1. Save for SWiM Pay or a Relevant Person(s), no person or entity who is not a party to the Terms shall have any right under the contract Acts of England, Wales or other similar laws to enforce the Terms or any part thereof, regardless of whether such person or entity has been identified by name, as a member of a class or as answering a particular description.

22.2. For the avoidance of doubt, any amendments to the Terms in accordance with the provisions herein shall not require any consent from any person or entity (including any Relevant Person) who is not a party to the Terms.

23. You Must Keep Your Account Safe

(i) What to do. You must:

(a) Change your password regularly and ensure that it isn't reused across other online accounts.

(b) Contact Customer Support if anyone asks for your password.

(c) Always follow recommended password management practice for example: <https://support.google.com/accounts/answer/32040?hl=en>.

(d) Set up 2-step MFA authentication when prompted

(e) Keep your e-mail account secure. You may reset your Account password using your email address. Let Customer Support know immediately if your email address becomes compromised.

(ii) What NOT to do. You must NOT:

(a) Disclose your Account password or your customer reference. Keep them safe.

(b) Let anyone access your Account or watch you accessing it.

(c) Use any functionality that allows your login details or passwords to be stored by the computer or browser you are using or to be cached or otherwise recorded.

(d) Do anything which may in any way avoid or compromise the 2-step authentication process.

Contact us if you suspect your Account has been compromised. If you suspect your SWiM PAY Account or other security credentials are stolen, lost, used without your authorisation or otherwise compromised, you must contact Customer Support immediately, you are also advised to change your password. Any undue delays in notifying us may affect the security of your SWiM PAY Account and also result in you being responsible for financial losses.

24. Our Responsibility for Loss or Damage to You

24.1 We are responsible to you for foreseeable loss and damage caused by us. If we do not reasonably meet our commitments to you, we are responsible for loss or damage you suffer that is a foreseeable result of our breaking this contract or our failing to use reasonable care and skill. We are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both we and you knew it might happen, for example, if you discussed it with us during your account sign up process.

24.2 We do not exclude or limit in any way our liability to you where it would be unlawful to do so. This includes liability for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors; for fraud or fraudulent misrepresentation.

24.3 We are not liable for business losses. If you use our Services for any commercial or business purpose we will have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.

24.4 We are not liable for technological attacks. We will not be liable for any loss or damage caused by a virus, or other technological attacks or harmful material that may infect your computer equipment, computer programmes, data or other proprietary material related to your use of our Services.

24.5 We have no control over websites linked to and from our website. We assume no responsibility for their content or any loss or damage that may arise from your use of them.

24.6 Our liability to you for unauthorised payments or our mistake. In case of an unauthorised payment or mistake due to our error, we shall at your request immediately refund the payment amount including all fees deducted by us. This shall not apply:

(a) where your SWiM PAY Account, or its personalised security features, are lost, stolen or misappropriated;

(b) if you have acted fraudulently, in which case we will not refund you in any circumstances;

(c) if you do not quickly notify us of security issues on your SWiM PAY Account (e.g., loss of your password), you remain liable for losses incurred up to your notification to us;

(d) if the payment transaction was unauthorised but you have with intent or gross negligence compromised the security of your SWiM PAY Account or failed to comply with your obligations to use your SWiM PAY Account in the manner set out in this Agreement. In such a case you shall be solely liable for all losses; or

(e) if you don't let us know about the unauthorised or incorrectly completed transaction within 13 months from the date of the payment transaction.

24.7 You are responsible for checking your SWiM PAY Account regularly. We rely on you to regularly check the transactions history of your SWiM PAY Account and to contact Customer Support immediately in case you have any questions or concerns.

24.8 We are not liable for things which are outside of our control. We (and our affiliates) cannot be liable for our inability to deliver or delay as a result of things which are outside our control.

24.9 You are liable for breaking this Agreement or applicable laws. In the event of loss, claims, costs or expenses (including reasonable legal fees) arising out of your breach of this Agreement, any applicable law or regulation and/or your, or any authorised third parties', use of our Services, you agree to defend, compensate us and our affiliates and hold us harmless. This provision will continue after our relationship ends.

25. When We Can End This Agreement or Suspend Your Services

25.1 We may end this Agreement by giving you prior notice. We may end this Agreement and close your SWiM PAY Account or any service associated with it by giving you prior notice.

25.2 We may suspend or close your SWiM PAY Account without notice in certain circumstances. We may at any time suspend or close your SWiM PAY Account and/or end this Agreement without notice if:

(a) you breach any provision of this Agreement or documents referred to in this Agreement;

(b) we are requested or directed to do so by any competent court of law, government authority, public agency, or law enforcement agency;

(c) we have reason to believe you are in breach of any applicable law or regulation; or

(d) we have reason to believe you are involved in any fraudulent activity, money laundering, terrorism financing or other criminal or illegal activity.

25.3 We may suspend your SWiM PAY Account for security reasons. We may suspend your SWiM PAY Account or restrict its functionality if we have reasonable concerns about:

1. the security of your SWiM PAY Account; or
2. suspected unauthorised or fraudulent use of your SWiM PAY Account.

25.4 We will give you notice of suspension where possible. We will give you prior notice of any suspension or restriction and the reasons for such suspension or restriction as soon as we can,

unless notifying you would be unlawful or compromise our reasonable security measures. We will lift the suspension and/or the restriction as soon as practicable after the reasons for the suspension and/or restriction have ceased to exist.

25.5 You cannot use the Service if this Agreement ends. On termination for any reason all rights granted to you in connection with the App shall cease.

26. Termination

26.1. Term and Termination: This Agreement is effective upon the date you first access or use the Services and continues until terminated by you or SWiM PAY. You may terminate this Agreement by closing your SWiM PAY Account at any time. If you use the Services again or register for another SWiM PAY Account, you are consenting to this Agreement. We may terminate this Agreement or close your SWiM PAY Account at any time for any reason by providing you Notice. We may suspend your SWiM PAY Account and your ability to access funds in your SWiM PAY Account, or terminate this Agreement, if (i) we determine in our sole discretion that you are ineligible for the Services because of significant fraud or credit risk, or any other risks associated with your SWiM PAY Account; (ii) you use the Services in a prohibited manner or other ways which do not comply with any of the provisions of this Agreement; or (iii) any Law or Financial Services Provider requires us to do so.

26.2. Effects of Termination: Termination does not immediately relieve you of obligations incurred by you under this Agreement. Your continued or renewed use of the Services after all pending Transactions have been processed serves to renew your consent to the terms of this Agreement. If you terminate this Agreement, we will pay out any remaining funds owed to you.

In addition, upon termination you understand and agree that (i) all licences granted to you by SWiM PAY under this Agreement will end; (ii) we reserve the right (but have no obligation) to delete all of your information and account data stored on our servers within 10 days of termination; (iii) we will not be liable to you for compensation, reimbursement, or damages related to your use of the Services, or any termination or suspension of the Services or deletion of your information or account data; and (iv) you are still liable to us for any Fees or fines, or other financial obligation incurred by you or through your use of the Services prior to termination.

27. Other Important Terms

27.1 Nobody else has any rights under this Agreement. This Agreement is between you and us. No other person shall have any rights to enforce any of its terms. Neither of us will need to get the agreement of any other person in order to end or make any changes to this Agreement.

27.2 We may transfer this Agreement to someone else. You may not transfer, assign, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of your rights and obligations under this Agreement (including the SWiM PAY Account) without

our prior written consent. We reserve the right to transfer, assign or novate this Agreement (including the SWiM PAY Account) or any right or obligation under this Agreement at any time without your consent. This does not affect your rights to close your SWiM PAY Account.

27.3 If a court finds part of this Agreement illegal, the rest will continue in force. Each of the paragraphs of this Agreement operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.

27.4 Even if we delay in enforcing this Agreement, we can still enforce it later. If we delay in asking you to do certain things or in taking action, it will not prevent us taking steps against you at a later date.

27.5 This Agreement supersedes any other previous agreements. This Agreement supersedes and extinguishes all previous agreements between you and SWiM PAY, whether written or oral, relating to its subject matter.

CORPORATE TERMS AND CONDITIONS

Updated as at January 2023

1. WHO ARE WE?

- 1.1. **Our company.** We are **NIUM PTE. LTD.**, a company registered in Singapore with company number 201422465R (**we / us / our**). Our registered office is at 16 Raffles Quay, Hong Leong Building, #20-05, Singapore 048581.
- 1.2. **Monetary Authority of Singapore authorisation.** We are authorised by the Monetary Authority of Singapore (MAS) as a major payment institution, with permission to provide certain payment services including account issuance service and e-money issuance service.

2. WHY HAVE YOU RECEIVED THESE TERMS?

- 2.1. **You applied for Pay In and Pay Out.** You have received these terms and conditions (**Terms**) because you have signed up for the following services:
 - (a) receive and maintain the Available Balance (as defined below) in a Supported Currency ("**Pay In**") in accordance with these Terms;
 - (b) convert the Pay In funds received by us in a currency supported by us as notified to you from time to time via the Platform Provider ("**Supported Currency**") to another Supported Currency in accordance with these Terms; and
 - (c) facilitate the transfer of Available Balance to yourself or to a third party approved by us ("**Pay Out**") in accordance with these Terms.
- 2.2. **Use of the Pay In or Pay Out constitutes your agreement to these Terms.** You are deemed to have consented to these Terms once You use the Pay In or Pay Out services.
- 2.3. **Use of Pay In and/or Pay Out services is facilitated by the Platform Provider.** Your use of the Pay In and Pay Out Pay In and/or Pay Out services is facilitated by a website, platform or mobile application (**Platform**) developed and operated by a platform provider to which you have a separate and independent agreement with . (**Platform Provider**). For the avoidance of doubt, the Pay In or Pay Out services are solely provided by us..
- 2.4. **Authority to agree to these terms on behalf of the Organisation.** By using Pay In or Pay Out which constitutes acceptance of these Terms on behalf of the organisation you represent

(**Organisation**), you confirm that you have appropriate authority to enter into an agreement with us on these Terms and bind the Organisation to these Terms. If you do not have appropriate authority, you will become personally liable for compliance with these terms. In these Terms, when we refer to "**you**" or "**yours**" we mean the Organisation you represent, who will be a party to these Terms with us. You must ensure that any person who will be permitted to use Pay In or Pay Out complies with these Terms.

- 2.5. **Pay In and Pay Out are offered by us in Singapore** The Pay In and/or Pay Out services are offered by us in Singapore. We do not intend to solicit, target or market Pay In or Pay Out services to any customers outside of Singapore through these Terms.

3. WHY IS IT IMPORTANT FOR YOU TO READ THESE TERMS?

- 3.1. **Please read these Terms carefully.** These Terms set out the terms and conditions on which we provide Pay In and Pay Out services to you, what your obligations are in respect of Pay In and Pay Out services, how you should use it and other important information. They also inform you what to do if there is a problem, what our responsibilities are and how these Terms between you and us may be terminated. We recommend that you save a copy of these Terms.
- 3.2. **Updates to these Terms.** We reserve the right to change these Terms from time to time. If we need to make any changes to these Terms, we will publish a revised version on the Platform before we implement the changes. If you do not agree to such new Terms, you can notify us (usually via the Platform but you can also contact the Platform Provider or us directly) that you reject the proposed new Terms. Your rejection will mean that you wish to terminate these Terms and Pay In and/or Pay Out services. You will not be charged anything for terminating these Terms in these circumstances. You must notify us before the expiry of the Change Notice, i.e. before the date when we propose to implement the new Terms. If we do not hear from you before such date, we will assume that you have accepted the changes, and you will be deemed to have accepted the new Terms.
- 3.3. **Pay In and/or Pay Out services are for business use only.** You can use Pay In and Pay Out services for business purpose and as authorised by the Organisation only. **You must not use the Pay In and Pay Out services for personal purpose.**
- 3.4. **Privacy Policy.** We will collect some personal data about you as the user of the Pay In and Pay Out services. For information regarding how we

process personal data, please see our Privacy Policy <https://www.nium.com/policies-and-notice>

4. THE PLATFORM AND OTHER THIRD PARTY SERVICES

4.1. **Relationship with Platform Provider.** At your request, we agree to enable to integrate our system with the Platform to facilitate your use of the Pay In and Pay Out services. The Platform Provider does not act as our agent or provide Pay In or Pay Out services on our behalf. The Pay In and Pay Out services are solely provided by us. We are not responsible for any acts or omissions of the Platform Provider or any losses caused by the Platform Provider to you.

4.2. **We are not operating the Platform and are not responsible for the Platform.** The Platform through which you access and use the Pay In and Pay Out service is not operated by us, but by the Platform Provider. Your use of the Platform is subject to the Platform Provider's terms and conditions which are separate and independent of these Terms. We are not responsible for the proper functioning of the Platform, and we cannot make any promises that it will always be available, that it will operate in accordance with your expectations, or that it will be safe and secure. We do not endorse the Platform and will not be responsible for any faults and failures of the Platform.

4.3. **Third party services offered by the Platform.** We are also not involved with any other products or services offered by the Platform, for example if the Platform offers any loyalty schemes, savings or lending products. Any services or products, including any links to third party apps or websites, are arranged solely by the Platform Provider without our involvement, endorsement or recommendation. As a result, we will not be responsible for any matters related to such third party services, and we do not endorse or recommend them.

4.4. **The Platform and the Platform Provider are your primary points of contact.** If you have any question or issues related to the Pay In or Pay Out services, you should direct your queries to the Platform Provider in the first place, by such means as the Platform Provider makes available to you (for example email, in-Platform chat or telephone).

The Platform Provider represents and undertakes that each End Customer has authorised and provided its consent to the Platform Provider to provide and receive from the Payment Service Bank and NIUM all information, communications, and Instructions in connection with this Agreement and any Payment Services. Where NIUM receives any information, communication, or Instruction from the Platform Provider, NIUM shall be entitled to treat such information, communication, or

Instruction as having been received from the relevant End Customer. The Platform Provider shall be bound as though such End Customer itself had given or received the information, communication, or Instruction to or from NIUM. NIUM is under no obligation to check the authenticity or accuracy of any information, communication or Instruction received from the Platform Provider and shall not be liable for any Losses incurred or suffered by the Platform Provider, the relevant End Customer or any person for complying with such information, communication, or Instruction.

4.5. By applying for the Pay In and/or Pay Out services and using the Platform, you authorise and have consented to the Platform Provider to:

- (a) collect and pass on to us all information, communications and instructions submitted by you, any payments or other transaction instructions in connection with the Pay In and/or Pay Out services. This includes information, communications and instructions submitted by any means accepted by the Platform Provider, for example in-Platform chat, telephone or email. We will rely on and will be entitled to act on any such information, communications and instructions received by us from the Platform Provider, as if the information, communications and instructions were given to us directly by you. Please note that we are not required to check their accuracy; and
- (b) receive all information, communications, instructions provided by us in connection with the Pay In and/or Pay Out services. We are entitled to rely on the Platform Provider to transmit such information, communications and instructions. We are not required to check that such information, communication or instructions have indeed been transmitted to you. We will not be liable to you for any losses caused to you if the Platform Provider subsequently fails to, or delays to, communicate such information, communications or instructions to you.

4.6. **You consent to all instructions sent to us pursuant to Pay Out or Pay In services.** You are deemed to have consented to all instructions or transactions submitted to us (whether via the Platform Provider, the Platform or otherwise) in connection with the Pay In or Pay Out services.

4.7. **You are responsible for checking the completeness and accuracy of all information, communications and instructions.** You must ensure that all information, communications and instructions submitted to the Platform Provider, via the Platform or by any other means is complete and accurate. Failure to provide complete information may cause delays, for example, we may be unable to process your instructions. If you notice any error

in any information, communication or instruction provided to us, you should correct it as soon as possible via the Platform or by contacting the Platform Provider. We will not be responsible, and will not compensate you, if you suffer any losses as a result of incomplete or inaccurate information provided to us (whether directly by you or via the Platform Provider), or as a result of any delays caused by any errors, inaccuracies or late submission of any instructions or requests.

4.8. **We may screen instructions received from you, but we are not obliged to do so.** We will have the right to screen any instructions received in respect of the Pay In and/or Pay Out services. We may refuse to act on any instructions or request received from you. If we are allowed to do so, we will inform you of the reasons why we are unable to act on your instructions or requests.

4.9. **Monitor your use of the Pay In and Pay Out services and keep your own records.** The Platform Provider will provide you with records of transactions processed by us pursuant to the Pay In and/or Pay Out services, whether via the Platform or by other means. You should monitor all your transactions and we recommend that you keep your own records. This will allow you to verify whether the transaction reports are accurate and enable you to inform the Platform Provider if you notice any errors. You should also enable the Platform to send you notifications of all transactions involving the Pay In and/or Pay Out services. Please note that although transactions records pursuant to Pay In and/or Pay Out services are provided by us to the Platform Provider, we cannot be responsible for the accuracy of the records displayed by the Platform, unless any errors are as a result of our failure. You should report all inaccurate records or notifications of transactions to the Platform Provider no later than 7 days after any unauthorised, incorrect, disputed entry is entered on the Platform. Following the expiry of this period, any such entry will be deemed as agreed.

5. ELIGIBILITY

5.1. **You and the Organisation must satisfy our eligibility criteria.** You and the Organisation must meet all eligibility criteria stipulated by us and communicated to you by the Platform Provider.

5.2. **We will carry out checks.** We are required by law to carry out certain checks on all our customers before we agree to provide the Pay In and/or Pay Out services. We may ask you to provide us with certain information and documentation to enable us to carry out our checks, for example to verify your identity, details of the Organisation you represent and its financial standing, and we may need to ask third party

service providers (for example credit reference agencies) to verify certain information about you. All information provided by you must be accurate in all material respects and you shall not omit or withhold any information which would make such information inaccurate in any material respect. Failure to comply with our requests for information or documentation may result in the refusal of application for Pay In and/or Pay Out services or suspension or termination of the Pay In and/or Pay Out services.

5.3. **Keeping us updated.** It is very important to keep us updated about any changes to the information provided as part of your application for Pay In and/or Pay Out services and any information and documentation submitted to us. It includes information about any sanctions applicable to you, the Organisation, or any other circumstances which would make your use of the Pay In and/or Pay Out services illegal. You must inform us promptly about any changes to your or the Organisation's circumstances affecting your eligibility for the Pay In and/or Pay Out services and/or your ability to comply with these Terms.

5.4. **We will have the right to refuse any application.** We have the right to refuse any application for Pay In and/or Pay Out services at any time and without providing any reason for our refusal.

6. PAY IN AND PAY OUT SERVICES

6.1. **We provide Pay In and/or Pay Out services upon payment of the Fees.** We will provide the Pay In and/or Pay Out services to you in accordance with these Terms subject to payment of fees by you.

6.2. **Use of Pay In and/or Pay Out Services solely for your own business purposes.** You may use the Pay In and/or Pay Out services solely for your own business purposes. You may not use the Pay In and/or Pay Out services on behalf of any third party or to facilitate any services provided by you to any third party or any purposes of any third party.

6.3. **You instruct and authorise us to receive any Pay In.** You irrevocably instruct and authorise us to receive any Pay In from yourself or a third party nominated by you ("Sender"). Where you have applied for and have been issued a Virtual Account, you also authorise and instruct us to maintain such Pay In funds in a Virtual Account in a Supported Currency.

6.4. **We do not make any representations and warranties with respect to any underlying transaction.** Where a Pay In arises from an underlying transaction between you and a Sender, we do not have any control of, or any liability for,

such underlying transaction or any goods, products or services provided to the Sender by you. You shall inform the relevant Sender of the foregoing and further that we do not guarantee you will complete any underlying transaction made with such Sender.

6.5. **Restrictions on the use of Pay in and Pay Out services.** You are not allowed to use the Pay In and/or Pay Out services in connection with the following transactions: (a) the prohibited list as set out on www.nium.com; (b) any activities or transactions prohibited by any applicable laws; (c) if we have reasonable suspicion that you are using Pay In and/or Pay Out services in a fraudulent or unauthorised manner; (d) you are in breach of these Terms; or (e) we are required to do so under any applicable law, regulation or guidance.

6.6. **Restrictions to the Pay In service.** We are not required to provide the Pay In service unless:

- (a) the Sender is located a jurisdiction approved by us as notified by the Platform Provider to you from time to time ("**Approved Jurisdiction**");
- (b) (where notified by us as a requirement for the Pay In service) we have received a Pay In collection request and the result of any checks performed on such Pay In collection request and the Sender are satisfactory;
- (c) (where the Pay In originates from India) you are a merchant offering digital content or services or online travel services, as applicable;
- (d) (where Pay In originates from the United States), the following limits have been complied with:
 - (i) the amount of Pay In has not exceeded the single limit of USD250,000;
 - (ii) the total amount of Pay In received by us on your behalf in a month has not exceeded USD250,000; and
 - (iii) the total amount of Pay In received by us on your behalf in a year has not exceeded USD2.5 million.
- (e) (where the Pay In originates from Japan) you have provided NIUM with relevant documents which establish the underlying transaction between you and the relevant Sender, and the Pay In relates to goods or services supplied by you to the Sender.

6.7. **Restrictions to Pay Out service.** We are not required to provide Pay Out service unless you have sufficient Available Balance to cover the transaction (plus any applicable fees).

6.8. **You are liable to us for shortfall.** Notwithstanding clause 6.7, if a Pay Out instruction has been processed despite there being insufficient Available Balance, you shall reimburse us the shortfall plus any applicable fees, along with any cost incurred by us on recovering or attempting to recover such shortfall from you. You shall immediately transfer an amount which equals to the shortfall to a bank account nominated by us.

6.9. **Currency of transactions.** If we receive a Pay In or Pay Out instruction for processing:

- (a) in a currency other than a Supported Currency, we will convert such currency into the Supported Currency at the applicable exchange rates plus a mark up. The Available Balance will be debited by the amount of funds after currency conversion and any administrative costs incurred by us in connection with the conversion; and
- (b) where the funding currency and payout currency are different from those published on the Platform, we may apply such transaction fee and foreign exchange rate at its sole discretion.

6.10. **You must ensure details of your bank account and the bank account of any beneficiary is correct and complete.** You must ensure that the details of your bank account and the bank account of any third party beneficiary are correct and complete and shall notify us (through the Platform Provider) in writing in advance of any change to your bank account or the bank account of any third party beneficiary. Until we have been notified of such change and has had a reasonable opportunity to act on it, we shall be entitled to process the Pay Out instruction to your existing bank account and the existing bank account of the relevant third party beneficiary. We are not liable for any losses arising from any Pay Out instruction due to incorrect or incomplete details provided by you or the Platform Provider or if you or the Platform Provider fails to inform us in advance of any change to your existing bank account or the existing bank account of the relevant third party beneficiary.

6.11. **Remittance Taxes may be applicable to a Payout.** You acknowledge and agree that the tax authorities of certain countries and/or jurisdictions may deduct certain tax, fee and/or tariff ("**Remittance Taxes**") from a Pay Out. If any Pay Out is subject to Remittance Tax, the amount you or the third party beneficiary actually receives may

be different from the amount stated in the Pay Out instruction (“**Shortfall**”). We are not required to make up for such Shortfall under any circumstances.

7. THE NIUM ACCOUNT NUMBERS (VBAN) AND AVAILABLE BALANCE

7.1 **Generation of Nium Account Numbers (VBAN).** We may generate one or more VBAN to you upon receipt of your request for the purposes of the Pay In services. Notwithstanding the foregoing, we may, at our sole discretion, refuse to comply with such request without any liability to you. We shall, to the extent permitted by Applicable Laws and practicable, inform you the reason of such refusal.

7.2 **About the VBAN.** You acknowledge and agree that, and shall ensure that a Payer is aware and understands that:

(a) VBAN (i) is a notional representation of the associated a physical bank account maintained by us with a licensed financial partner (**Nium Settlement Account** created for record keeping, reporting and administrative purposes; (ii) it does not hold funds or generate any actual credits and debits independently from the associated Nium Settlement Account; and (iii) is not a separate payment account or bank account owned and operated by you. It is associated with a Nium Settlement Account. Funds transferred by you or a Payer would be credited into the Nium Settlement Account; and

(b) none of the Financial Partner where the Nium Settlement Account is maintained has any contractual duty or relationship with you under any circumstances.

7.3 **Funding your Available Balance.** Only cleared funds received by us from you or a Payer would constitute “**Available Balance**” available for Pay Outs. “**Cleared funds**” means that the funds have been unconditionally received by us and cannot be recalled by you or the payment services provider used by you to send funds to us which may include Pay In funds received by us. All funds must be received by us in the Nium Settlement Account, in a Supported Currency. The Available Balance will be kept by us in accordance with the Payment Services Act 2019, which ensure that any funds held by a major payment institution are held safely.

7.4 **Representations and Undertakings.** You represent and undertake that:

(a) you own all titles, interest and rights to all Available Balance. No person or entity other than you have any rights in relation to any Available Balance and funds received pursuant to the Pay In service;

(b) you will not request us to correct any error pertaining to any Available Balance or initiate a reversal of Available Balance to the Payer at any point in time;

(c) you will not assign, charge, declare trust over or transfer the benefit of all or any part of any Available Balance;

(d) you are solely responsible for the reporting all tax matters to the relevant tax authority and payment of applicable taxes in respect of all Available Balance deposited into any Nium Account. You are also responsible for any other applicable reporting requirements, including but not limited to, any customs or foreign currency controls. You represent and warrant that You are in compliance with any applicable tax legislation and will remain compliant during the term of these Terms.

7.5 **We are not liable for shortfall in the Available Balance.** We are not liable to make up for any shortfall in any Available Balance (including due to bank or swift charges deduction) unless such shortfall is due to our gross negligence or wilful default.

7.6 **When we may cancel, reverse, demand refund or debit Available Balance.** We may cancel, reverse, demand refund, , cause any amount of the Available Balance to be unavailable for withdrawal and make corresponding adjustments to any entry if:

(a) we need to correct any error or omission;

(b) we are required to return the funds to the Payer;

(c) we have not received cleared and unconditional funds or in time; or

(d) we have reasonable grounds to do so for any other legitimate reasons.

7.7 You acknowledge and agree that:

(a) maintaining Available Balance in multiple currencies carry foreign exchange risks, for example it is possible that the exchange rate improves over time and you will not receive the benefit of such fluctuations. You agree to assume the aforementioned foreign exchange risks and waive all claims against us with respect to such risks;

(b) you do not have any right or control over the Nium Settlement Account and any

interest earned on monies held in the Nium Settlement Account is not payable to you.

8. THE NIUM ACCOUNT

- 8.1 **The Nium Account.** You may be granted one or more account (**Nium Account**) denominated in a Supported Currency to facilitate your use of the Pay In and Pay Out services including viewing the Available Balance in the relevant Supported Currency.
- 8.2 **Activating the Nium Account.** As part of the activation process, the user will be asked to create a PIN and/or other security credentials (for example passwords and security questions), which will be used to authorise your transactions. See paragraph 7.8 below for more details regarding the security credentials requirements.
- 8.3 **You must keep your Nium Account and your security credentials safe.** You must ensure that: (a) your Nium Account is kept safe from loss or theft; (b) the PIN and any other security credentials used to authenticate Nium Account transactions are known only you; and (c) the Platform can only be accessed by you and all devices used by you to access the Platform are appropriately protected from access by any unauthorised persons. We do not recommend writing down or storing the PIN and any other Nium Account security credentials, or any login details to your Platform. However, if you have to store such details somewhere, you should not store them near to your Nium Account and you should use secure and safe storage solutions. Revealing the PIN or other security credentials to anyone, or behaving carelessly with regards to the security of the Nium Account may result in unauthorised transactions being processed using your Nium Account. In these circumstances we will not refund any amounts lost by you as a result of such unauthorised transactions and you will be solely responsible for them.
- 8.1. **When you must suspend your Nium Account and notify us.** You must suspend your Nium Account within the Platform and notify the Platform Provider or us immediately if: (a) you believe the security of the Nium Account has been compromised (for example, if a third party has gained access to the PIN, other security credentials and/or the Platform); (b) your Nium Account is not working properly; and/or (c) you have identified an unauthorised transaction made using your Nium Account. You may be asked to provide details of the issues reported by you, and any supporting documentation, such as a copy of a police report to confirm the theft of your Nium Account. If you have not suspended your Nium Account, we will suspend it after receipt of your notification.

- 8.2. **You are the only person that is permitted to use the Nium Account.** The Nium Account is issued to the Organisation for business purposes only and can only be used by you

9. FEES

- 9.1. **What fees apply to your use of the Pay In and/or Pay Out services?** The fees that apply to the Pay In and/or Pay Out services will be displayed in the Platform.
- 9.2. **How will we charge all fees and payments due to us?** All fees that apply to the Pay In and/or Pay Out services and any other amounts due to us from you under these Terms will be deducted by us from your Available Balance. You agree to any such deductions made by us. If you do not have sufficient Available Balance to cover any sums due to us, we will issue a payment request and you must make the payment immediately. If we have to take additional steps to recover any such amounts due to us, we may charge you for the costs incurred by us in recovering such sums from you, and this may include costs of any third parties who support us in this process, for example debt collection agencies.

10. UNAUTHORISED TRANSACTIONS

- 10.1. **You must notify the Platform Provider of unauthorised transactions.** You must notify the Platform Provider no later than 7 days from the date of transaction for any transaction that has not been authorised by you or has been recorded to you.
- 10.2. **When will we not make a refund?** We will not make a full refund and you will be responsible for the unauthorised transactions, in the following circumstances:
- (a) you have **acted fraudulently**, or we have good reasons to believe you have acted fraudulently. However, if our investigation reveals that you have not acted fraudulently, we will immediately issue a full refund;
 - (b) we are **not notified by you** about the unauthorised transaction, or we are **notified after the applicable Notification Deadline** specified in paragraph **Error! Reference source not found.**;
 - (c) we are **not notified, or are notified late of any security issues** with the Nium Account and/or your Platform, about the loss, theft or misappropriation of the Pay In or Pay Out services or the Nium Account – you will be responsible for all transactions that occurred before the date when you notify us and we will not issue a refund for

any unauthorised transactions that occurred before we were notified;

- (d) you (and/or the Card and/or Nium Account user) deliberately or with gross negligence (i.e. extremely carelessly) compromised the security of the Nium Account fail to use the Pay In or Pay Out services or the Nium Account in accordance with these Terms; and
- (e) the Nium Account was misappropriated (i.e. used by someone else).

10.3. **We may investigate unauthorised and incorrectly executed transactions.** We will have the right to investigate any transaction reported by you as unauthorised or executed incorrectly. We may ask you to provide us with supporting information and documentation to help us with our investigation and you agree to cooperate with us and provide to us all information and documentation we reasonably require for this purpose. You also agree to cooperate with any authorities involved in our investigation. We will treat any payment instruction given via the Platform or Platform Provider as evidence of authorisation of the payment, and in this case you will need to provide us with evidence to show that the transaction was not authorised in accordance with these Terms.

10.4. **Can we take back the refund?** If, as a result of our investigation, we discover that the transaction was authorised appropriately and executed by us correctly, that you have acted fraudulently or that you have acted intentionally or with gross negligence (i.e. extremely carelessly), we will deduct from your Available Balance all sums previously refunded to you. If you do not have sufficient Available Balance, we will make a request for immediate payment.

11. REFUNDS, RETURNS FOR PAY OUT

11.1. **Cancellation of Pay Out prior to approval by the compliance team.** You may cancel a Pay Out instruction through the Platform Provider before such Pay Out instruction was approved by our compliance team.

11.2. **Recall of Pay Out.** You may recall a Pay Out after such Pay Out has been made to our partner bank.

11.3. **No GUARANTEE.** We do not guarantee a successful cancellation or recall and any request for cancellation or recall shall be processed by us on best effort basis. You shall bear all bank charges

and administrative costs relating to such any Pay Out for these purposes; and

12. CANCELLATION RIGHTS

12.1 **You can cancel your VBAN at any time.** You can cancel your VBAN at any time by contacting the Platform Partner.

13. SUSPENSION OR TERMINATION OF THE PAY IN OR PAY OUT SERVICES, VBAN AND THE NIUM ACCOUNT

13.1. **We can suspend the Pay In or Pay Out services, the VBAN or your Nium Account.** We can suspend or terminate the Pay In or Pay Out services, the VBAN and your Nium Account in exceptional circumstances, including (but not limited to):

- (a) if we have good reason to suspect that you are behaving fraudulently, you or the Organisation is involved in any unlawful or illegal activity (for example money laundering or terrorist financing), or you are using the Pay In or Pay Out services, the VBAN or the Nium Account for any other unlawful purpose;
- (b) if you commit a serious breach of these Terms (serious breach includes persistent breaches of the requirements of these Terms) and you have not corrected your breach when we asked you to do so and within the timeframe we reasonably requested;
- (c) our agreement with the Platform has been terminated or your access to the Platform is suspended or terminated by the Platform Provider;
- (d) if we have asked you to pay us money you owe us under these Terms and you have failed to do so despite our efforts to remind you about it (normally via email or post, including any communications sent by the Platform Provider on our behalf);
- (e) you are subject to any insolvency-related proceedings, you suspend your business, your financial position deteriorates to justify the opinion that you will be unable to meet your obligations under these Terms;
- (f) if any information provided by you (or someone on your behalf) is false, or if you fail to provide us with information that we reasonably request from you;
- (g) if we have good reason to believe this is necessary for security reasons (for example any security issues affecting any

card processing facilities or the Platform Provider);

- (h) if we believe it is necessary to comply with any law, regulation, guidance, court order or instructions of any regulator or government authority; or
- (i) any of the transaction limit applicable to the VBAN has been exceeded.

13.2. **We will notify you about the reason(s) of suspension.** If we have to suspend the Pay In or Pay Out services or the VBAN or the Nium Account for any reason(s), we will notify you of the reason(s), as long as we are allowed to do so in compliance with applicable laws. We will only re-activate the Pay In or Pay Out services and the Nium Account if we are satisfied that the reason(s) for suspension is/are no longer applicable.

13.3. **We can terminate these Terms in exceptional circumstances.** We will be entitled to terminate these Terms and the Pay In or Pay Out services, the VBAN or the Nium Account in the exceptional circumstances listed in paragraph 12.1 above. We can also terminate these Terms and the Pay In or Pay Out services, the VBAN or the Nium Account if (a) your agreement with the Platform Provider for the use of the Platform is terminated for any reason or if the Platform Provider or (b) if our agreement with the Platform Provider is terminated for any reason.

13.4. **When can we terminate these Terms without a reason?** We can terminate these Terms and the Pay In or Pay Out service, the VBAN or the Nium Account without giving you any reason if we provide you with at least 30 days' advance notice..

13.5. **Inactive VBAN.** If the VBAN remains inactive for a period of 12 months, meaning no Pay In or Pay Out has taken place via a VBAN or zero balance has been associated with such VBAN, We may designate such VBAN to be "Inactive". Once the VBAN has been designated as Inactive, we may close such VBAN by giving you seven (7)days' notice ("**Inactive Termination Notice**").

13.6. **We will return your funds upon termination of these Terms.** When these Terms are terminated for any reason, we will return any remaining Available Balance (net of any amount due to us, applicable bank charges or taxes) ("**Net Balance**") to a bank account in your name within 60 business days of receipt of a request from you, but we will be entitled to deduct any sums due to us under these Terms. If you do not provide us with a valid bank account details to make the transfer or request the return of the Net Balance within 12 months from the

date of termination of these Terms, we will not be required to return your funds. Please note that:

- (a) any funds transfers are subject to due diligence checks and we are not required to return the Net Balance to you if the result of due diligence checks is unsatisfactory, pursuant to an order of a regulator or doing so might put us in breach of applicable laws. ; and
- (b) we are not required to return the Net Balance if such Net Balance is less than SGD 100.

14. LIABILITY

14.1. **When we will not be liable to you.** We will not be liable to you for any loss or damage which:

- (a) was not foreseeable at the time these Terms became binding on us. By 'foreseeable' we mean that, it is something we and you could predict would happen or that is a normal consequence of our non-compliance with these Terms or our failure to use reasonable skill and care;
- (b) was not caused by our breach of these Terms or our failure to use reasonable skill and care
- (c) is related to any business or commercial activity you carry on, and includes any business losses, loss of profit and loss of business opportunity;
- (d) was caused by events outside of our (or our agents' or subcontractors') control which we could not have avoided (for example war or industrial action);
- (e) was caused by your breach of these Terms or any laws or regulations;
- (f) was caused by any third parties including the Platform Provider (unless we are responsible for the actions of such third parties);
- (g) was caused by any goods or services purchased or sold using the Pay in or Pay Out service..

14.2. **Our liability is limited.** Subject to paragraph 10 **Error! Reference source not found.** (refund for unauthorised transactions) and paragraph 14.7, if you have suffered losses and we are found to be liable to you, our total aggregate liability to you under these Terms will not exceed SGD 100,000. This does not extend to our obligation to return your

Available Balance upon termination in accordance with these Terms.

- 14.3. **Our liability for deductions made by us in error.** If we make any deductions from your Available Balance in error, our liability to you will be limited to an obligation to refund to you the incorrectly deducted amount.
- 14.4. **Time limit to bring claims.** You must notify us of your intention to make a claim against us within 6 months from the date of the event giving rise to your claim. If you fail to notify us, and subject to paragraph 13.8, we will have no liability to you in respect of such event.
- 14.5. **Your indemnity to us.** You will indemnify us on demand and in full for any loss or damage we suffer (including any expenses and costs incurred by us, such as legal fees) as a result of:
- (a) your use of or access to the Pay In or Pay Out services, the VBAN or the Nium Account,
 - (b) your breach of these Terms, if we have to enforce any provisions of these Terms against you (for example if you fail to pay us any sums due to us), or
 - (c) any acts and/or omissions of the Platform Provider.
- 14.6. **Your liability to us.** You will compensate us for any loss or damage we suffer (including any expenses and costs incurred by us, such as legal fees) as a result of your breach of these Terms, if we have to enforce any provisions of these Terms against you (for example if you fail to pay us any sums due to us), or if you are fraudulent in your use of the Pay In or Pay Out services, the VBAN or the Nium Account. You will remain liable even after these Terms are terminated.
- 14.7. **Liability which we do not exclude or limit.** Nothing in these terms excludes or limits our liability for any death or personal injury caused by our negligence, liability for fraud or fraudulent misrepresentation, or any other liability that the law does not allow us to exclude or limit.

15. COMPLAINTS AND DISPUTES

- 15.1. **How to submit complaints.** If you are unhappy with anything related to the Pay In or Pay Out services, the VBAN or the Nium Account, you should submit your complaints to the Platform Provider in the first instance. The Platform Provider would reach out to us with respect to your complaint. If the complaint is not resolved to your satisfaction, you can contact us and we will do our

best to respond to your complaint as soon as possible, or we will inform you if we need more time or more information from you to help us investigate your complaint.

16. GENERAL

- 16.1. **Notices and communications.** All notices and communications between you and us will be in English. If we need to notify you of anything, we will normally communicate with you via the Platform or through the Platform Provider. We may also use your email address or business address to send you any notifications or communications. You should send all notices or communications via Platform or contact the Platform Provider in the first instance. If you need to send a notice or communication to us directly, you can do so by email at escalations@nium.com, by post at 20-05, Hong Leong Building, 16, Raffles Quay Singapore – 048581 or via our website at <https://www.nium.com/contact-us>.
- 16.2. **Transfer of rights and obligations under these Terms.** You are not allowed to transfer your rights or obligations under these Terms to anyone without our prior written consent. We may transfer our rights and obligations under these Terms to another business without your consent, but we will notify you of the transfer and make sure that your rights are not adversely affected as a result.
- 16.3. **Invalid provisions.** If any provision of these Terms (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of these Terms will not be affected.
- 16.4. **Taking action when you are in breach of these Terms.** If you breach these terms and we take no action, we will still be entitled to use our rights and remedies in any other situation where you breach these Terms.
- 16.5. **Entire agreement.** These Terms set out the entire agreement between us.
- 16.6. **Nobody else has any rights under these Terms.** These Terms is between you and us and nobody else has any rights to rely on or enforce any of these Terms.
- 16.7. **These Terms replace any previous agreements between us.** These Terms supersede (i.e. replace) any previous agreements between us in respect of the Pay In or Pay Out services or the Nium Account including any written or oral agreements relating to the subject matter of these Terms.



16.8. **Laws that apply to these Terms.** These Terms and any dispute or claim arising out of these Terms will be governed by, and interpreted in accordance with, the laws of Singapore and you and us agree any dispute between you and us may be brought in the courts of Singapore.

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TERMS AND CONDITIONS FOR BUSINESS CUSTOMERS

Effective Date: July 11, 2023

1. WHO ARE WE?

- 1.1. **Parties to the Terms.** NIUM, Inc. is a Delaware corporation (file number 5702837) (“Nium”), with a principal office address at 85 Second Street, Fl. 2, San Francisco, California, 94105. Nium operates a software and services platform that permits you to receive the payment services as set out in these Terms through **Community Federal Savings Bank**, a federal savings bank chartered in the United States (“**Payment Service Bank**”). Nium and the Payment Service Bank are collectively referred to us “**we, our, us**”. You and the organization you represent are collectively referred to as “**you**” or “**yours**”.
- 1.2. **Nium is not licensed as a money transmitter in the United States and does not offer the payment services set out in these Terms.** Nium operates under a program sponsored by the Payment Service Bank. The Payment Service Bank provides the payment services as set out in these Terms to you in the United States. Nium is the Payment Service Bank’s service provider, and shall administer the payment services set out in these Terms on behalf of the Payment Service Bank.

2. WHY HAVE YOU RECEIVED THESE TERMS?

- 2.1. **You applied for Pay In and Pay Out.** You have received these terms and conditions (“**Terms**”) because you have signed up for the following services:
 - (a) Deposit United States Dollars (“**USD**”) into a custodial account held by the Payment Service Bank in accordance with these Terms (“**Settlement Account**”). The Payment Service Bank will pool your USD in the Settlement Account with that of other customers, and we will always associate your USD balance with you through a sub-ledger we maintain on your behalf. The Settlement Account will be held for the benefit of you and such other customers. Your sub-ledger balance of cleared USD funds in the Settlement Account shall be referred to as your “**Available Balance**,” and such service shall be referred to in these Terms as the “**Pay In**” service.
 - (b) Facilitate the transfer of the Available Balance to yourself or to a third party approved by us (“**Pay Out**”) in accordance with these Terms.
- 2.2. **Use of the Pay In or Pay Out services constitutes your agreement to these Terms.** You are deemed to have consented to these Terms once you use the Pay In or Pay Out services.
- 2.3. **Use of Pay In and/or Pay Out services is facilitated by the Platform Provider.** Your use of the Pay In and/or Pay Out services is facilitated by a website, software and technology platform, or mobile software application (“**Platform**”) developed and operated by a third-party platform provider with which you have a separate and independent agreement (“**Platform Provider**”). Please see Section 4 below for more information regarding the Platform Provider and your use of the Platform.
- 2.4. **Authority to agree to these terms on behalf of the Organization.** By using Pay In or Pay Out services, which constitutes acceptance of these Terms on behalf of the organization you represent (“**Organization**”), you confirm that you have appropriate authority to enter into an agreement with us on these Terms and bind the Organization to these Terms. If you do not have appropriate authority, you will become personally liable for compliance with these terms. You must ensure that any person who will be permitted to use Pay In or Pay Out complies with these Terms.

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2.5. **Pay In and Pay Out services are offered by the Payment Service Bank in the United States.**

The Pay In and Pay Out services are offered by the Payment Service Bank in the United States. Neither Nium nor the Payment Service Bank intend to solicit, target or market Pay In or Pay Out services to any customers outside of the United States through these Terms.

2.6. **Nium Account.** In order to be eligible for the Pay In and/or Pay Out services, you must first establish a Nium Account (as defined in Section 9.1) within the Platform. The Nium Account will be used to access and facilitate your use of the Pay In and/or Pay Out services. For more information about the Nium Account, please see Section 9 below.

3. **WHY IS IT IMPORTANT FOR YOU TO READ THESE TERMS?**

3.1. **Please read these Terms carefully.** These Terms set out the terms and conditions on which the Pay In and Pay Out services are provided to you, what your obligations are in respect of Pay In and Pay Out services, how you should use the Pay In and Pay Out services, and other important information. They also inform you what to do if there is a problem, what our responsibilities are and how these Terms between you and us may be terminated. We recommend that you save a copy of these Terms.

3.2. **Updates to these Terms.** If we need to make any changes to these Terms, we will ask the Platform Provider to publish a revised version of the Terms on the Platform. If you do not agree to such new Terms, you can notify us (usually via the Platform, but you can also contact the Platform Provider or us directly) that you reject the proposed new Terms. Your rejection will mean that you wish to terminate these Terms and Pay In and/or Pay Out services. You will not be charged anything for terminating these Terms in these circumstances. If you continue to use the Pay In or Pay Out services after the revised Terms have been notified to you or published on the Platform, we will assume that you have accepted the changes, and you will be deemed to have accepted the new Terms.

3.3. **Privacy Policy.** We will collect some personal data about you, as the user of the Pay In and Pay Out services. For information regarding how we process personal data, please see our Privacy Notice at <https://www.nium.com/legal>.

4. **THE PLATFORM AND OTHER THIRD PARTY SERVICES**

4.1. **Relationship with Platform Provider.** At your request, we agree to integrate our system with the Platform to facilitate your use of the Pay In and Pay Out services. The Platform Provider does not act as our agent or provide Pay In or Pay Out services on our behalf. The Pay In and Pay Out services are solely provided by the Payment Service Bank in association with Nium. We are not responsible for any acts or omissions of the Platform Provider or any losses caused by the Platform Provider to you.

4.2. **We are not operating the Platform and are not responsible for the Platform.** The Platform through which you access and use the Pay In and Pay Out service is not operated by us, but by the Platform Provider. Your use of the Platform is subject to the Platform Provider's terms and conditions, which are separate and independent of these Terms. We are not responsible for the proper functioning of the Platform, and we cannot make any promises that it will always be available, that it will operate in accordance with your expectations, or that it will be safe and secure. We do not endorse the Platform and will not be responsible for any faults and failures of the Platform.

4.3. **Third party services offered by the Platform.** We are also not involved with any other products or services offered by the Platform, for example if the Platform offers any loyalty schemes, savings or lending products. Any services or products, including any links to third party apps or websites, are arranged solely by the Platform Provider without our involvement, endorsement or recommendation. As a result, we will not be responsible for any matters related to such third party services, and we do not endorse or recommend them.

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- 4.4. **Transmission of Information from Platform Provider.** By applying for the Pay In and/or Pay Out services and using the Platform, you irrevocably authorize and have consented to the Platform Provider to:
- (a) collect and pass on to us all information, communications and instructions submitted by you, any payments or other transaction instructions in connection with the Pay In and/or Pay Out services. This includes information, communications and instructions submitted by any means accepted by the Platform Provider, for example in-Platform chat, telephone or email. We will rely on and will be entitled to act on any such information, communications and instructions received by us from the Platform Provider, as if the information, communications and instructions were given to us directly by you. Please note that we are not required to check their accuracy; and
 - (b) receive all information, communications, instructions provided by us in connection with the Pay In and/or Pay Out services. We are entitled to rely on the Platform Provider to transmit such information, communications and instructions. We are not required to check that such information, communication or instructions have indeed been transmitted to you. We will not be liable to you for any losses caused to you if the Platform Provider subsequently fails to, or delays to, communicate such information, communications or instructions to you.
- 4.5. **Authorization and consent for instructions sent via the Platform Provider.** You are deemed to have irrevocably authorized and consented to all information, communication, instructions or transactions submitted to us (whether via the Platform Provider, the Platform or otherwise) in connection with the Pay In or Pay Out services, the VBAN, the Settlement Account, or the Nium Account. We are under no obligation to check the authenticity or accuracy of any information, communication, instruction or transaction received from the Platform Provider and shall not be liable for any losses incurred or suffered by you or any person for complying with such information, communication, instruction or transaction.
- 4.6. **You are responsible for checking the completeness and accuracy of all information, communications and instructions.** You must ensure that all information, communications and instructions submitted to the Platform Provider, via the Platform or by any other means is complete and accurate. Failure to provide complete information may cause delays, for example, we may be unable to process your instructions. If you notice any error in any information, communication or instruction provided to us, you should correct it as soon as possible via the Platform or by contacting the Platform Provider. We will not be responsible, and will not compensate you, if you suffer any losses as a result of incomplete or inaccurate information provided to us (whether directly by you or via the Platform Provider), or as a result of any delays caused by any errors, inaccuracies or late submission of any instructions or requests.
- 4.7. **We may screen instructions received from you, but we are not obliged to do so.** We will have the right to screen any instructions received in respect of the Pay In and/or Pay Out services. We may refuse to act on any instructions or request received from you. If we are allowed to do so, we will inform you of the reasons why we are unable to act on your instructions or requests.
- 4.8. **Monitor your use of the Pay In and Pay Out services and keep your own records.** The Platform Provider will provide you with records of transactions processed by us pursuant to the Pay In and/or Pay Out services, whether via the Platform or by other means. You should monitor all your transactions and we recommend that you keep your own records. This will allow you to verify whether the transaction reports are accurate and enable you to inform the Platform Provider if you notice any errors. You should also enable the Platform to send you notifications of all transactions involving the Pay In and/or Pay Out services. Please note that although transactions records pursuant to Pay In and/or Pay Out services are provided by us to the Platform Provider, we cannot be responsible for the accuracy of the records displayed by the Platform, unless any errors are as a result of our failure. You should report all inaccurate records or notifications of transactions to the Platform Provider no

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later than seven (7) days after any unauthorized, incorrect, disputed entry is entered on the Platform. Following the expiration of this period, any such entry will be deemed as agreed.

5. ELIGIBILITY

- 5.1. **You and the Organization must satisfy our eligibility criteria.** You and the Organization must meet all eligibility criteria stipulated by us and communicated to you by the Platform Provider.
- 5.2. **We will carry out customer identification and verification checks.** We are required by law to carry out certain checks on all our customers before we agree to provide the Pay In and/or Pay Out services. We may ask you to provide us with certain information and documentation to enable us to carry out our checks, for example to verify your identity, details of the Organization you represent and its financial standing, and we may need to ask third party service providers (for example credit reference agencies) to verify certain information about you. All information provided by you must be accurate in all material respects and you shall not omit or withhold any information which would make such information inaccurate in any material respect. Failure to comply with our requests for information or documentation may result in the refusal of application for Pay In and/or Pay Out services or suspension or termination of the Pay In and/or Pay Out services.
- 5.3. **We may carry out a verification of your bank account through ACH micro-entries.** We may verify your bank account through micro-entries into your bank account of ACH credits, or offsetting ACH credits and debits, that are each in an amount of less than \$1.00. You authorize us to conduct this process as part of our customer identification and verification check.
- 5.4. **Keeping us updated.** It is very important to keep us updated about any changes to the information provided as part of your application for Pay In and/or Pay Out services and any information and documentation submitted to us. It includes information about any sanctions applicable to you, the Organization, or any other circumstances which would make your use of the Pay In and/or Pay Out services illegal. You must inform us promptly about any changes to your or the Organization's circumstances affecting your eligibility for the Pay In and/or Pay Out services and/or your ability to comply with these Terms.
- 5.5. **We will have the right to refuse any application.** We have the right to refuse any application for Pay In and/or Pay Out services at any time, for any reason, and without providing any reason for our refusal.

6. PAY IN AND PAY OUT SERVICES

- 6.1. **Use of Pay In and/or Pay Out Services solely for your own business purposes.** You may use the Pay In and/or Pay Out services solely for your own business purposes. Any use of the Pay In and/or Pay Out Services for personal, family or household purposes is strictly prohibited. You may not use the Pay In and/or Pay Out services on behalf of any third party or to facilitate any services provided by you to any third party or any purposes of any third party.
- 6.2. **You instruct and authorize the Payment Service Bank to receive any Pay In.** You irrevocably instruct and authorize the Payment Service Bank to receive any Pay In from yourself or a third party nominated by you ("**Payer**") and maintain such Pay In funds as the Available Balance.
- 6.3. **We do not make any representations and warranties with respect to any underlying transaction.** Where a Pay In arises from an underlying transaction between you and a Payer, we do not have any control of, or any liability for, such underlying transaction or any goods, products or services provided to the Payer by you. You shall inform the relevant Payer of the foregoing and further that we do not guarantee you will complete any underlying transaction made with such Payer.

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- 6.4. **Restrictions on the use of Pay In and Pay Out services.** You acknowledge and agree that you are not allowed to use the Pay In and/or Pay Out services in connection with the following transactions: (a) the prohibited business categories list as set out on <https://www.nium.com/regulatory-disclosures/prohibited-business-categories>, (b) any activities or transactions prohibited by any applicable laws; (c) any transactions prohibited by the regulations or sanctions lists of the Office of Foreign Assets Control of the US Department of Treasury, or other applicable government agency; (d) if we have reasonable suspicion that you are using Pay In and/or Pay Out services in a fraudulent or unauthorized manner; (e) you are in breach of these Terms; or (f) we are required to do so under any applicable law, regulation or guidance.
- 6.5. **Restrictions to the Pay In service.** We are not required to provide the Pay In service unless all of the foregoing restrictions of service have been met:
- (a) The Payer is located a jurisdiction approved by us as notified by the Platform Provider to you from time to time (“**Approved Jurisdiction**”);
 - (b) In the event that you are notified by us that the foregoing is a condition for you to receive the Pay In service, we have received a Pay In collection request from you and the result of any checks performed on such Pay In collection request and the Payer are satisfactory.
 - (c) The amount of the Available Balance and each Pay In transaction complies with our limits, which, as of the date of these Terms, included the following:
 - (i) the amount of Pay In has not exceeded the single limit of USD \$6 million; and
 - (ii) the total amount of Available Balance received by us on your behalf in a year has not exceeded USD \$12 million.
 - (d) In the event that the Pay In originates from Japan, you have provided us with relevant documents which establish the underlying transaction between you and the relevant Payer, and the Pay In relates to goods or services supplied by you to the Payer.
 - (e) In the event that the Pay In originates from India, you are a merchant offering digital content or services or online travel services, as applicable.
- 6.6. **Restrictions to Pay Out service.** We are not required to provide Pay Out service unless you have a sufficient Available Balance to cover the transaction (plus any applicable fees).
- 6.7. **You are liable to us for any shortfall.** Notwithstanding Section 6.6, if a Pay Out instruction has been processed despite there being insufficient Available Balance, you shall reimburse us the shortfall plus any applicable fees, along with any cost incurred by us on recovering or attempting to recover such shortfall from you. You shall immediately transfer an amount which equals to the shortfall to a bank account nominated by us.
- 6.8. **Currency of Transactions.** Where the Pay In funds and Pay Out currency are different from those published on the Platform, we may apply a transaction fee and foreign exchange rate at our sole discretion.
- 6.9. **You must ensure that the details of your bank account and the bank account of any beneficiary are correct and complete.** You must ensure that the details of your bank account and the bank account of any third party beneficiary are correct and complete and shall notify us (through the Platform Provider) in writing in advance of any change to your bank account or the bank account of any third party beneficiary. Until we have been notified of such change and have had a reasonable opportunity to act on it, we shall be entitled to process the Pay Out instruction to your existing bank account and the existing bank account of the relevant third party beneficiary. We are not liable for

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any losses arising from any Pay Out instruction due to incorrect or incomplete details provided by you or the Platform Provider or if you or the Platform Provider fails to inform us in advance of any change to your existing bank account or the existing bank account of the relevant third party beneficiary.

- 6.10. **Remittance Taxes may be applicable to a Pay Out.** You acknowledge and agree that the tax authorities of certain countries and/or jurisdictions may deduct certain tax, fee and/or tariff ("**Remittance Taxes**") from a Pay Out. If any Pay Out is subject to Remittance Tax, the amount you or the third party beneficiary actually receives may be different from the amount stated in the Pay Out instruction ("**Shortfall**"). We are not required to make up for such Shortfall under any circumstances.
- 6.11. **UCC Article 4A Disclosure.** Your credit entry may be transmitted through the ACH network. Your rights or obligations, as an originator, concerning the credit entry are governed by and construed in accordance with the laws of the State of New York, unless you and the originating depository institution have agreed that the laws of another jurisdiction govern their rights and obligations. Credit given by the receiving depository financial institution ("**RDFI**") to the receiver for the entry is provisional until the RDFI has received final settlement through a Federal Reserve Bank or through a funds transfer system in accordance with Section 4A-403(a) of UCC Article 4A. If the RDFI does not receive such payment for the entry, the RDFI is entitled to a refund from the receiver in the amount of the credit to the receiver's account, and the originator will not be considered to have paid the amount of the credit entry to the receiver.

7. THE NIUM ACCOUNT NUMBERS (VBAN) AND AVAILABLE BALANCE

- 7.1 **Generation of Virtual Bank Account Numbers.** We may generate one or more virtual bank account numbers ("**VBAN**") to you upon receipt of your request for the purposes of the Pay In services. Notwithstanding the foregoing, we may, in our sole discretion and for any reason, refuse to comply with such a request, without any liability to us. We shall, to the extent permitted by applicable laws and practicable, inform you about the reason of any such refusal.
- 7.2 **About the VBAN.** You acknowledge and agree that, and shall ensure that a Payer is aware and understands that:
- (a) Each VBAN: (i) is a notional representation of the Settlement Account, which is created for record keeping, reporting and administrative purposes; (ii) does not hold funds or generate any actual credits and debits independently from the associated Settlement Account; and (iii) is not a separate payment account or bank account owned and operated by you. No VBAN by itself creates a separate account or other contractual relationship between you and Payment Service Bank, other than your beneficial interest in the Settlement Account.
 - (b) Funds transferred by you or a Payer are credited into the Settlement Account and no financial partner where the Settlement Account is maintained has any contractual duty or relationship with you with respect to the VBAN.
- 7.3 **Funding your Available Balance.** Only cleared funds received by the Payment Service Bank from you or a Payer will constitute the Available Balance for Pay Outs. "**Cleared funds**" means that the funds have been unconditionally received by the Payment Service Bank and cannot be recalled by you or the payment services provider used by you to send funds to the Payment Service Bank which may include Pay In funds received by the Payment Service Bank. The Payment Service Bank will have sole custody over your funds in the Settlement Account.
- 7.4 **Representations and Undertakings.** You represent and undertake that:

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- (a) you own all title, rights and interest to the entire Available Balance. No person or entity other than you have any rights in relation to any Available Balance and funds received pursuant to the Pay In service;
- (b) you will not assign, charge, declare trust over or transfer the benefit of all or any part of any Available Balance; and
- (c) you are solely responsible for the reporting all tax matters to the relevant tax authority and payment of applicable taxes in respect of all of the Available Balance deposited into any Nium Account. You are also responsible for any other applicable reporting requirements, including but not limited to, any customs or foreign currency controls. You represent and warrant that you are in compliance with any applicable tax legislation and will remain compliant during the term of these Terms.

7.5 **We are not liable for shortfall in the Available Balance.** We are not liable to make up for any shortfall in any Available Balance (including due to bank or swift charges deduction), unless such shortfall is due to our gross negligence or wilful default.

7.6 **When we may cancel, reverse, demand refund or debit the Available Balance.** We may cancel, reverse, demand refund, or cause any amount of the Available Balance to be unavailable for withdrawal and make corresponding adjustments to any entry if:

- (a) we need to correct any error or omission;
- (b) we are required to return the funds to the Payer;
- (c) we have not received cleared and unconditional funds or in time; or
- (d) we have reasonable grounds to do so for any other legitimate reasons.

7.7 **Settlement Account.** You acknowledge and agree you do not have any right or control over the Settlement Account and any interest earned on monies held in the Settlement Account is not payable to you.

8. ACH DEBIT AUTHORIZATION AGREEMENT

8.1. **ACH Rules.** Transactions transmitted through an automated clearing house (“ACH”) shall be subject to the ACH operating rules (the “ACH Rules”) of the National Automated Clearing House Association (“NACHA”). You agree to comply with and be bound by the ACH Rules. We can reject an ACH transfer if it is not in compliance with the ACH Rules.

8.2. **Funding the Available Balance through Direct Debit.** Each time you choose on the Platform to fund the Available Balance through a direct debit, you authorize us to debit your bank account in an amount up to the amount of USD you authorize for that debit on the Platform, plus any applicable taxes and fees. After you authorize the debit on the Platform, you will not receive any separate notice from us of the amount or timing of the debit (or any other information about the debit) before we debit your bank account. Before you may begin funding your Available Balance through direct debits on a standing basis to your bank account, you must provide us the name of your bank, the bank account number, routing number for your bank account, and the type of account (for example, checking or savings). You acknowledge that your bank account is a legitimate, open, and active account. Your authorization under this Section 8.2 will remain in full force and effect until (a) your

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Nium Account is closed or (b) all fees and other amounts you owe under these Terms are paid, whichever occurs later.

- 8.3. **Collection of amounts owed through direct debit.** You also authorize us to debit your bank account, without any notice other than this notice provided in this Section 8.3, to collect amounts you owe under these Terms, including, each as a separate debit or aggregated into a single debit or multiple debits at the same time or different times, amounts owed under Sections 6.8, 6.9, 8.6, 10.1, 10.2, and 11.4.
- 8.4. **Reinitiation of Debit Entries.** If we are unable to collect the amount of any debit to your bank account due to insufficient funds in your bank account, then we may reinitiate that debit in the same amount up to a maximum of two additional times, in accordance with the ACH Rules.
- 8.5. **Bank Account Eligibility.** Your bank account must be able to accept debits denominated in the currency indicated in the direct debit request. You confirm that you are the only person required to authorize debits from your bank account.
- 8.6. **Sufficient Funds in the Bank Account.** It is your responsibility to ensure that there are sufficient cleared funds available in your bank account to allow a debit payment to be made in accordance with the direct debit request. The debited amount will be reflected in the Nium Account several days after a successful debit.
- 8.7. **Fees Chargeable.** We may charge you applicable fees if your bank rejects a direct debit transaction or if a direct debit transaction is subsequently disputed by you or your bank for any reason.
- 8.8. **Notification and Correction of Error; Updates.** You must report any incorrect debits processed by Nium to your bank account to the Platform Provider no later than seven (7) days after the debited amount is reflected in the VBAN. To make such a report, you will need to provide us your Nium Account information, bank account information, and date and time of the debit you believe is incorrect. Following the expiration of this period, any such entry will be deemed as agreed. In addition to authorizing debits to the bank account, you also authorize us to credit your bank account, if necessary, to correct an erroneous debit, in the amount necessary to correct the error. If there is any missing or erroneous information regarding your bank account, then you authorize us to verify and correct such information. You also agree to update your bank account information with us by contacting the Platform Provider.
- 8.9. **Revoking Direct Debit.** We may revoke your ability to fund the Available Balance through direct debit at any time if (a) Nium was unable to debit your bank account for any reason not solely attributable to Nium, (b) you have requested a refund of any amount properly paid to Nium through direct debit; or (c) you have breached any of these Terms. You may disable the direct debit function at any time by notifying the Platform Provider, through such means made available

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to you by the Platform Provider, or by notifying your bank.

- 8.10. **No Liability.** Nium is not liable to you for any losses suffered by you due to a direct debit failing to be processed for any reason.

9. THE NIUM ACCOUNT

- 9.1. **The Nium Account.** You may be granted one or more accounts denominated in USD (“**Nium Account**”) to facilitate your use of the Pay In and Pay Out services.
- 9.2. **Activating the Nium Account.** As part of the Nium Account activation process, you will be asked to create a PIN and/or other security credentials (for example, passwords and security questions), which will be used to authorize your transactions.
- 9.3. **You must keep your Nium Account and your security credentials safe.** You must ensure that: (a) your Nium Account is kept safe from loss or theft; (b) the PIN and any other security credentials used to authenticate Nium Account transactions are known only by you; (c) the Platform can only be accessed by you, and (d) all devices used by you to access the Platform are appropriately protected from access by any unauthorized persons. In the event that you write down or store the PIN, security or login credentials, you should not store them near your Nium Account and you should use secure and safe storage solutions. Revealing the PIN or other security credentials to anyone, or behaving carelessly with regards to the security of the Nium Account may result in unauthorized transactions being processed using your Nium Account. In these circumstances we will not refund any amounts lost by you as a result of such unauthorized transactions and you will be solely responsible for them.
- 9.4. **When you must suspend your Nium Account and notify us.** You must suspend your Nium Account within the Platform and notify the Platform Provider or us immediately if: (a) you believe the security of the Nium Account has been compromised (for example, if a third party has gained access to the PIN, other security credentials and/or the Platform); (b) your Nium Account is not working properly; or (c) you have identified an unauthorized transaction made using your Nium Account. You may be asked to provide details of the issues reported by you, and any supporting documentation, such as a copy of a police report to confirm the theft of your Nium Account. If you have not suspended your Nium Account, we will suspend it after receipt of your notification.
- 9.5. **You are the only person that is permitted to use the Nium Account.** The Nium Account is issued to the Organization for business purposes only and can only be used by you.

10. FEES

- 10.1. **What fees apply to your use of the Pay In and/or Pay Out services?** The fees that apply to the Pay In and/or Pay Out services will be displayed in the Platform.
- 10.2. **How will all fees and other amount due to us be paid?** All fees that apply to the Pay In and/or Pay Out services and any other amounts due to us from you under these Terms will be deducted by us from your Available Balance. You agree to any such deductions made by us. If you do not have sufficient Available Balance to cover any sums due to us, we will issue a payment request and you must make the payment immediately. If we have to take additional steps to recover any such amounts due to us, we may charge you for the costs incurred by us in recovering such sums from you, and this may include costs of any third parties who support us in this process, for example debt collection agencies.

11. UNAUTHORIZED TRANSACTIONS

- 11.1. **You must notify the Platform Provider of unauthorized transactions.** You must notify the Platform Provider immediately and no later than seven (7) days from the date of the transaction date.

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11.2. **When will we not make a refund?** We will not make a full refund and you will be responsible for the unauthorized transactions, in the following circumstances:

- (a) you have **acted fraudulently**, or we have good reasons to believe you have acted fraudulently. However, if our investigation reveals that you have not acted fraudulently, we will immediately issue a full refund;
- (b) we are **not notified by you** about the unauthorized transaction, or we are **notified after the applicable Notification Deadline** specified in Section 11.1;
- (c) we are **not notified, or are notified late of any security issues** with the Nium Account and/or your Platform, about the loss, theft or misappropriation of the Pay In or Pay Out services or the Nium Account. You will be responsible for all transactions that occurred before the date when you notify us and we will not issue a refund for any unauthorized transactions that occurred before we were notified;
- (d) you and/or Nium Account user deliberately, or with gross negligence (i.e., extremely carelessly), compromised the security of the Nium Account, or fail to use the Pay In or Pay Out services or the Nium Account in accordance with these Terms; or
- (e) the Nium Account was misappropriated (i.e., used by someone else).

11.3. **We may investigate unauthorized and incorrectly executed transactions.** We will have the right to investigate any transaction reported by you as unauthorized or executed incorrectly. We may ask you to provide us with supporting information and documentation to help us with our investigation and you agree to cooperate with us and provide to us all information and documentation we reasonably require for this purpose. You also agree to cooperate with any authorities involved in our investigation. We will treat any payment instruction given via the Platform or Platform Provider as evidence of authorization of the payment, and in this case you will need to provide us with evidence to show that the transaction was not authorized in accordance with these Terms.

11.4. **Can we take back the refund?** If, as a result of our investigation, we discover that the transaction was authorized appropriately and executed by us correctly, or that you have acted fraudulently or that you have acted intentionally or with gross negligence (i.e., extremely carelessly), we may debit from your bank account for such sums in accordance with Section 8.3 of the ACH Debit Authorization Agreement. We also may issue a request for immediate repayment.

12. REFUNDS, RETURNS FOR PAY OUT

12.1. **Cancellation of Pay Out prior to approval by the compliance team.** You may cancel a Pay Out instruction through the Platform Provider before such Pay Out instruction was approved by the compliance team.

12.2. **Recall of Pay Out.** You may recall a Pay Out after such Pay Out has been made to our Payment Service Bank.

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12.3. **NO GUARANTEE.** We do not guarantee a successful cancellation or recall and any request for cancellation or recall shall be processed by us on best effort basis. You shall bear all bank charges and administrative costs relating to such any Pay Out for these purposes; and

13. CANCELLATION RIGHTS

13.1. **You can cancel your Nium Account or VBAN at any time.** You can cancel and terminate your Nium Account or VBAN at any time by contacting the Platform Provider.

14. SUSPENSION OR TERMINATION OF THE PAY IN OR PAY OUT SERVICES, VBAN AND THE NIUM ACCOUNT

14.1. **We can suspend the Pay In or Pay Out services, the VBAN or your Nium Account.** We can suspend or terminate the Pay In or Pay Out services, the VBAN and your Nium Account in exceptional circumstances, including (but not limited to):

- (a) if we have good reason to suspect that you are behaving fraudulently, you or the Organization is involved in any unlawful or illegal activity (for example money laundering or terrorist financing), or you are using the Pay In or Pay Out services, the VBAN or the Nium Account for any other unlawful purpose;
- (b) if you commit a serious breach of these Terms (serious breach includes persistent breaches of the requirements of these Terms) and you have not corrected your breach when we asked you to do so and within the timeframe we reasonably requested;
- (c) our agreement with the Platform has been terminated or your access to the Platform is suspended or terminated by the Platform Provider;
- (d) if we have asked you to pay us money you owe us under these Terms and you have failed to do so despite our efforts to remind you about it (normally via email or mail, including any communications sent by the Platform Provider on our behalf);
- (e) you are subject to any insolvency-related proceedings, you suspend your business, your financial position deteriorates to justify the opinion that you will be unable to meet your obligations under these Terms;
- (f) if any information provided by you (or someone on your behalf) is false, or if you fail to provide us with information that we reasonably request from you;
- (g) if we have good reason to believe this is necessary for security reasons;
- (h) if we believe it is necessary to comply with any law, regulation, guidance, court order or instructions of any regulator or government authority; or
- (i) any of the transaction limits applicable to the Pay In or Pay Out services have been exceeded.

14.2. **We will notify you about the reasons for the suspension.** If we have to suspend the Pay In services, the Pay Out services, the VBAN or the Nium Account for any reason, we will notify you of the reasons, as long as we are allowed to do so in compliance with applicable laws. We will only re-activate the Pay In or Pay Out services and the Nium Account if we are satisfied that the reasons for suspension are no longer applicable.

14.3. **We can terminate these Terms in exceptional circumstances.** We will be entitled to terminate these Terms and the Pay In services, the Pay Out services, the VBAN or the Nium Account in the exceptional circumstances listed in Section 14.1. We can also terminate these Terms and the Pay In services, the Pay Out services, the VBAN or the Nium Account if (a) your agreement with the Platform

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Provider for the use of the Platform is terminated for any reason or (b) if our agreement with the Platform Provider is terminated for any reason.

- 14.4. **When can we terminate these Terms without a reason?** We can terminate these Terms and the Pay In service, the Pay Out service, the VBAN or the Nium Account without giving you any reason if we provide you with at least seven (7) days' advance notice.
- 14.5. **Inactive VBAN.** If the VBAN remains inactive for a period of twelve (12) months (meaning that either (i) no Pay In or Pay Out has taken place via a VBAN or (ii) a zero balance has been associated with such VBAN), we may designate such VBAN to be "Inactive". Once the VBAN has been designated as Inactive, we may close such VBAN by giving you seven (7) days prior notice.
- 14.6. **We will return your funds upon termination of these Terms.** When these Terms are terminated for any reason, we will return any remaining Available Balance, net of any amount due to us, applicable bank charges or taxes ("**Net Balance**"), to a bank account in your name within sixty (60) business days of receipt of a request from you, but we will be entitled to deduct any sums due to us under these Terms. Please note that any funds transfers are subject to due diligence checks and we are not required to return the Net Balance to you if (i) the result of due diligence checks is unsatisfactory, (ii) we are prohibited by an order or directive of an applicable regulator, or (iii) doing so might otherwise put us in breach of any applicable laws.

15. LIABILITY

- 15.1. **When we will not be liable to you.** We will not be liable to you for any loss or damage which:
- (a) was not foreseeable at the time these Terms became binding on us. By 'foreseeable' we mean that, it is something we and you could predict would happen, that is a normal consequence of our non-compliance with these Terms, or our failure to use reasonable skill and care;
 - (b) was not caused by our breach of these Terms or our failure to use reasonable skill and care;
 - (c) is related to any business or commercial activity you carry on, and includes any business losses, loss of profit and loss of business opportunity;
 - (d) was caused by events outside of our control (or the control of our agents or subcontractors) which we could not have avoided (for example natural disasters, civil unrest, pandemics or other force majeure events);
 - (e) was caused by your breach of these Terms or any laws or regulations;
 - (f) was caused by any third parties including the Platform Provider (unless we are contractually responsible for the actions of such third parties); or
 - (g) was caused by any goods or services purchased or sold using the Pay in or Pay Out service.
- 15.2. **Our liability is limited.** Subject to Sections 11.2) and 15.7, if you have suffered losses and we are found to be liable to you, our total aggregate liability to you under these Terms will not exceed USD \$100,000. This limit does not extend to our obligation to return your Available Balance upon termination, in accordance with these Terms.
- 15.3. **Our liability for deductions made by us in error.** If we make any deductions from your Available Balance in error, our liability to you will be limited to an obligation to refund to you the incorrectly deducted amount.

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- 15.4. **Time limit to bring claims.** You must notify us of your intention to make a claim against us within six (6) months from the date of the event giving rise to your claim. If you fail to notify us, and subject to Section 15.7, we will have no liability to you in respect of such event.
- 15.5. **Your indemnity to us.** You will indemnify us on demand and in full for any loss or damage that we suffer (including (i) any charges or assessments imposed by NACHA as a result of a breach by you of the ACH Rules and (ii) any expenses and costs incurred by us, such as legal fees) as a result of:
- (a) your use of or access to the Pay In services, the Pay Out services, the VBAN, or the Nium Account;
 - (b) any breach by you of the ACH Rules; or
 - (c) your breach of these Terms, if we have to enforce any provisions of these Terms against you (for example, if you fail to pay us any sums due to us).
- 15.6. **Your liability to us.** You will compensate us for any loss or damage we suffer (including any expenses and costs incurred by us, such as legal fees) as a result of your breach of these Terms, if we have to enforce any provisions of these Terms against you (for example if you fail to pay us any sums due to us), or if you are fraudulent in your use of the Pay In services, the Pay Out services, the VBAN or the Nium Account. You will remain liable even after these Terms are terminated.
- 15.7. **Liability which we do not exclude or limit.** Nothing in these terms excludes or limits our liability for (a) any death or personal injury caused by our negligence, (b) fraud or fraudulent misrepresentation, or (c) any other liability that the law does not allow us to exclude or limit.

16. COMPLAINTS AND DISPUTES

- 16.1. **How to submit complaints.** If you are unhappy with anything related to the Pay In services, the Pay Out services, the VBAN or the Nium Account, you should submit your complaints to the Platform Provider in the first instance. The Platform Provider would reach out to us with respect to your complaint. If the complaint is not resolved to your satisfaction, you can contact us and we will do our best to respond to your complaint as soon as possible, or we will inform you if we need more time or more information from you to help us investigate your complaint.

17. GENERAL

- 17.1. **Notices and communications.** All notices and communications between you and us will be in English. If we need to notify you of anything, we will normally communicate with you via the Platform or through the Platform Provider. We may also use your email address or business address to send you any notifications or communications. You should send all notices or communications via Platform or contact the Platform Provider in the first instance. If you need to send a notice or communication to us directly, you can do so by (i) email at escalations@nium.com or (i) by overnight courier or certified mail (return receipt requested) sent to the following address: Attn: Legal Notices, NIUM, Inc., 85 Second Street, Fl. 2, San Francisco, California, 94105.
- 17.2. **Transfer of rights and obligations under these Terms.** You are not allowed to transfer your rights or obligations under these Terms to anyone without our prior written consent. We may transfer our rights and obligations under these Terms to another business without your consent, but we will notify you of the transfer and make sure that your rights are not adversely affected as a result.
- 17.3. **Invalid provisions.** If any provision of these Terms (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of these Terms will not be affected.

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- 17.4. **Taking action when you are in breach of these Terms.** If you breach these terms and we take no action, we will still be entitled to use our rights and remedies in any other situation where you breach these Terms.
- 17.5. **Entire agreement.** These Terms set out the entire agreement between us.
- 17.6. **Nobody else has any rights under these Terms.** These Terms is between you and us, and nobody else has any rights to rely on or enforce any of these Terms.
- 17.7. **These Terms replace any previous agreements between us.** These Terms supersede (i.e., replace) any previous agreements between us in respect of the Pay In services, the Pay Out services, the VBAN, or the Nium Account including any written or oral agreements relating to the subject matter of these Terms.
- 17.8. **Laws that apply to these Terms.** These Terms shall be governed by and construed and enforced in accordance with the laws of the State of New York, without reference to the conflicts of laws principles. Each party hereby waives trial by jury in any court action or proceeding to which they may be parties, arising out of, in connection with or in any way pertaining to, these Terms.
- 17.9. **Arbitration.** Any dispute controversy or claim arising from these Terms or the Pay In and/or Pay Out services (“**Dispute**”) shall be resolved by arbitration conducted in accordance with the rules of the American Arbitration Association (“**AAA**”), in accordance with its Commercial Arbitration Rules that are currently available at https://www.adr.org/sites/default/files/CommercialRules_Web-Final.pdf, as such rules may be revised by the AAA, and judgment upon the award rendered by the arbitral tribunal may be entered in any court having jurisdiction thereof. The arbitral tribunal shall consist of a single arbitrator. The Party initiating the arbitration proceeding shall, in the notice of arbitration, nominate an arbitrator duly qualified to preside, and if the other Party does not object to the nominated arbitrator, such arbitrator shall preside. If the other Party objects by giving written notice to the other Party, and if the Parties do not agree on an arbitrator within ten (10) days of such notice of objection, then a qualified arbitrator shall be appointed by the AAA. “**Qualified**” for purposes of this section means a person licensed to practice law in a U.S. jurisdiction, with experience advising financial institutions or arbitrating disputes involving financial institutions, and with expertise in financial services laws and regulations. The place of arbitration shall be in New York, New York, unless the Parties agree to another location, and all proceedings and written submissions shall be in English. The arbitration award shall be final and binding. The Parties waive any right to appeal the arbitration award, to the extent a right to appeal may be lawfully waived. Each Party retains the right to seek judicial assistance: (A) to compel arbitration, (B) to seek temporary injunctive relief in any court with jurisdiction over the Party against which the relief is sought (with such relief to extend only until the propriety of permanent relief can be decided by the arbitrator), (C) to obtain other interim measures of protection prior to or pending arbitration, and (D) to enforce any decision of the arbitrator, including the final award. Judicial assistance pursuant to this Section 17.9 may be sought in and of the state or federal courts located in New York, New York (and for purposes of subsections (B) and (C), exclusively in such courts), and the Parties submit to the jurisdiction thereof. Injunctive relief shall be granted without the requirement of posting a bond. The Parties acknowledge and agree that these Terms evidences a transaction involving interstate commerce and will be governed by the Federal Arbitration Act (9 U.S.C.1-16). No demand for arbitration may be made after the date when the institution of legal or equitable proceedings based on such claim or dispute would be barred by the applicable statute of limitation. Subject to the exclusions, disclaimers and limitations of liability set forth in these Terms, the arbitrator may award damages and any other remedies allowed by the laws of the State of New York. In making a determination, the arbitrator will not have the authority to modify any term of these Terms. The arbitrator shall issue to the Parties a reasoned and written decision with respect to the Dispute. Judgment upon the arbitrator’s award may be entered in any court having jurisdiction. The parties will keep confidential the existence of the arbitration, the arbitration proceeding, the hearing and the arbitrator’s decision, except (A) as necessary to prepare for and conduct the arbitration hearing on the merits; (B) in connection with a court application for a

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preliminary remedy, or confirmation of an arbitrator's decision or its enforcement; (C) as disclosed in confidence to their respective attorneys, accountants and other professional advisors that are subject to a duty of confidentiality; or (D) as otherwise required by applicable laws or court order.