



Welcome to Nium.

This Nium Services Agreement, any applicable Schedule(s) and any Fee Schedule(s)) (together, this “Agreement”) sets out the terms and conditions for the Client to receive the Services (defined below) that may be offered by Nium.

In this Agreement, the “Client,” is the entity that is requesting access to the Services offered by Nium. If a person makes that request on behalf of the Client, that person asserts that they are authorised and empowered to make the request on behalf of the Client. “Nium” is Nium, Inc. and the Client and Nium are each a “Party,” and together, the “Parties”.

You will access and use Services offered by Nium strictly in accordance with this Agreement, any Fee Schedule (defined below) and the Documentation (defined below).

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, and in addition to the defined terms included in any Schedule and Fee Schedule, the following capitalized terms have the following meanings:

“**Access Codes**” means a unique login identity and/or a unique login password, API keys, or such other form of approved user identification or authentication, provided by Nium to the Client for access to, and use of the Nium Account;

“**Affiliate**” means, with respect to any legal entity, another entity that directly or indirectly, controls, is controlled by, or is under common control with such entity. “Control” means ownership, possession, power to direct or cause the direction of management and policies of a legal entity;

“**Beneficiary**” means a person or entity identified by the Client in an Instruction as the intended recipient of a Payout;

“**Business Day**” means a day, other than a Saturday or Sunday or public or bank holiday, when banks are open for the transaction of business in the United States.;

“**Cancellation**” means an Instruction given by the Client to Nium to cancel another Instruction which has not yet been processed by Nium.

“**Customer**” means, if the Client is a Financial Institution, a person or entity that is a customer of the Client and to whom the Client provides payment processing or money transfer services;

“**Confidential Information**” means any information that is disclosed by one Party to another hereunder and that is designated as “confidential” or which by its nature should reasonably be regarded as confidential;

“**Clearing Account**” means a pooled, non-interest-bearing bank account in which Nium or a Program Bank holds Liquidity on behalf of the Client;

“**Data Protection Authority**” means an independent public authority that is legally tasked with overseeing compliance with applicable Data Protection Legislation;

“**Data Protection Legislation**” means the provisions of applicable Law which relate to the protection of individuals with regards to the Processing of Personal Data to which a Party is subject and, where applicable, the guidance and codes of practice issued by any competent regulatory authority;

“**Documentation**” means Nium’s product support documentation, API documentation and other pages on our website;



“Effective Date” means the date identified in the Fee Schedule;

“Fee Schedule” means a fee schedule by the Parties that forms part of this Agreement and identifies specific terms and pricing that apply to the Client’s use of the Services;

“Fees” means Nium’s fees and charges for the Client’s use of the Services as set out in the Fee Schedule and any other amounts due and payable by the Client under this Agreement;

“Financial Institution” means any Client that Nium designates as a “Financial Institution” in the applicable Fee Schedule or otherwise provides payment or money transfer services to its customers.

“Financial Partner” means a bank, financial institution or other partner which has entered into an agreement with Nium to facilitate Payouts;

“Force Majeure Event” an event or circumstance beyond the reasonable control of Nium or its permitted subcontractor or agent, including: (i) acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster; (ii) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions; (iii) acts of any government or governmental authority; (iv) terrorist attack, civil war, civil commotions or riots; (v) any labour disputes, including but not limited to strikes, industrial action or lockouts; (vi) nuclear, chemical or biological contamination or sonic boom; (vii) fire, explosion or other accidental damage; (viii) interruption or failure of utilities or other infrastructural service, including but not limited to electric power, gas or water; (ix) collapse of building structures, failure of plant machinery, machinery, computers, computer systems, or vehicles; and/or (x) any interruption to third party payment systems and networks outside of Nium’s reasonable control.

“Insolvent” means, (a) in respect of either Party, the Party is the subject of any voluntary or involuntary bankruptcy or insolvency petition or proceeding, or (b) in respect of the Client, Nium reasonably determines that the Client is likely to become the subject of bankruptcy or insolvency proceedings.

“Intellectual Property Rights” means rights in patents, database rights (including rights of extraction), designs, copyright, trade marks, service marks, domain names, whether registered or unregistered, and all other rights and forms of protection of a similar nature in any country or jurisdiction, together with all registrations, applications, renewals and extensions of and to such rights;

“Law” means all laws, rules, regulations, administrative orders or guidelines in force and applicable to a Party in respect of its rights and/or obligations under this Agreement, including any order of a court of competent jurisdiction and the rules or directions of any Regulatory Authority or administrative body;

“Liquidity” means the total balance of cleared funds held by Nium or the Program Bank on behalf of the Client in the Clearing Account;

“Losses” means any liability, loss, damage, charge, cost and/or expense (including reasonable and properly incurred legal fees and/or expenses);

“Nium Account” means the Client’s Nium account that the Client administers via the Nium Platform;

“Nium Platform” means the dashboard, APIs and other Nium systems made available to the Client;

“Nium Technology” means all hardware, software, APIs, user interfaces (including the Nium Platform), Documentation and other technology that Nium owns or licenses and that Nium uses to provide the Services.

“OFAC” means the United States Department of the Treasury’s Office of Foreign Assets Control;



“**OFAC Lists**” means the sanctions lists maintained by OFAC, including the Specially Designated Nationals and Blocked Persons List, Foreign Sanctions Evaders List, and the Sectoral Sanctions Identifications List (as defined by OFAC);

“**Payout**” means a transaction whereby funds are transferred from the Client Account to the designated bank account or other account of the applicable Beneficiary in accordance with an Instruction;

“**Program Bank**” means Community Federal Savings Bank or such other financial institution as notified to the Client from time to time that partners with Nium to provide the Services to the Client;

“**Personnel**” means **with respect to a Party**, the officers, directors, employees, contractors, representatives and agents, subcontractors and other advisors of that Party;

“**Personal Data**” means any information relating to an identified or identifiable living individual (“**Data Subject**”) that is Processed by Nium or the Client in connection with this Agreement;

“**Process**” means any operation which is performed upon Personal Data, whether or not by automatic means;

“**Recall**” means an Instruction given by the Client to Nium to cancel another Instruction which has already been processed by Nium;

“**Regulatory Authority**” means any governmental or regulatory authority, department, agency, commission, board, tribunal, crown corporation, or other law, rule or regulation making entity (including any stock exchange) that any of the Parties and/or their Affiliates thereof submit to, are regulated or governed by, or are subject to the jurisdiction of in respect of this Agreement;

“**Return**” means a Beneficiary’s bank has returned a Payout to Nium or the Program Bank upon request by the Client; and

“**Services**” means the Payout and Pay In services described in Schedule 1 and Schedule 2 to this Agreement, together with any other services described in the Fee Schedule;

“**Schedule**” means any schedule to this Agreement including Schedule 1 (*Payout Services*) and Schedule 2 (*Pay In Services*);

“**Term**” means the term as defined in the Fee Schedule.

2. TERM

2.1 This Agreement comes into force on the Effective Date and shall continue for the Term, unless otherwise terminated earlier in accordance with Clause 12.

3. SERVICES

3.1 Nium shall provide the Services to the Client in accordance with the terms of this Agreement and the Program Bank Terms and Conditions (defined below).

3.2 The Client shall comply with all Documentation, instructions, guidelines and requirements relating to the Services, including those contained in the Fee Schedule.

3.3 The Client acknowledges and agrees that the use of the Services shall constitute the Client’s acceptance of the Program Bank’s terms and conditions. Such terms and conditions, as may be amended from time



to time, are available at <https://www.instarem.com/policy/US-terms-and-conditions.pdf> (“**Program Bank Terms and Conditions**”).

3.4 Client shall ensure that any payments or transactions made pursuant to an Instruction are not in any way associated with the activities, entities or industries listed in the prohibited list provided by Nium to the Client from time to time or as set out on www.nium.com (as amended from time to time) (“**Prohibited Business Categories**”).

3.5 Nium and the Program Bank may, from time to time, make changes to the Services which do not materially affect the nature or quality of the Service.

4. NIUM PLATFORM

4.1 Where reasonably practicable, Nium **shall notify** the Client **in advance of any** proposed changes, modifications, upgrades and/or updates (whether mandatory or otherwise) to the Nium Platform (“**Modifications**”) that may have a material impact on the Client’s use of the Services. Notwithstanding the foregoing, Nium may, without notice, make changes to the Nium Platform which do not materially affect the nature or quality of the Services.

4.2 Nium may accept, rely and act upon any instruction received from the Client (“**Instruction**”). Where Nium receives an Instruction from a person using an Access Code, the Instruction shall be deemed to have been given by an Authorized User. Prior to submitting an Instruction to Nium, the Client must ensure that all information contained in the Instruction is complete and accurate. Nium shall not be liable for any Losses incurred or suffered by the Client or any person resulting from processing any Instruction.

4.3 If the Client fails to provide a timely, accurate and complete Instruction, Nium may be unable to process, or may have to delay the processing of, such Instruction, and Nium will not be liable for any Losses incurred or suffered by the Client or any person as a result of any such delay.

4.4 Nium or the Program Bank may refuse to act upon any Instruction received from the Client that Nium or the Program Bank believe: (i) may violate this Agreement or other agreements you may have with Nium; (ii) are unauthorized, fraudulent or illegal; or (iii) expose you, Nium, Program Bank or others to risks unacceptable to Nium or Program.

4.5 The Client shall use reasonable efforts to ensure that its use of the Nium Platform does not create material technical problems, damage, interruption, or degradation of the Nium Platform. Upon the occurrence, or Nium’s reasonable belief of the occurrence, of such an event, Nium may immediately suspend the Client’s use of the Nium Platform to the extent necessary to mitigate the consequences of the event and the Client will take all necessary steps to remediate the event and as otherwise reasonably requested by Nium.

5. THIRD PARTY INTEGRATION

5.1 The Parties agree to connect their respective systems through a third party application programming interface operated by a third party (“**Third Party API**”) approved by Nium (“**Approved Third Party**”) so that Nium may provide the Services to the Client (“**Third Party API Integration**”). Each Party acknowledges and agrees that its integration to the Third Party API is autonomous and each shall be responsible for its own development work and bear its own costs in relation to the integration.

5.2 The Client’s use of the Third Party API, or any system or platform provided by Approved Third Party is subject to such terms and conditions imposed by the Approved Third Party which are separate and independent of this Agreement. Nium accepts no responsibility or liability in any way for the Client’s access and use of the Third Party API, any system or platform provided by the Approved Third Party and makes no representations or warranty as to the relevancy, adequacy, commercial value, completeness or reliability of the Third Party API, any system or platform provided by the Approved Third Party.

- 5.3 Each Party shall ensure that its development work relating to the Third Party API Integration does not (i) create material technical problems, damage, interruption, degradation of the other Party's systems or (ii) prevent the provision of the Services by Nium or the receipt of Services by the Client (each, a "**Material Adverse Effect on Services**"). Upon the occurrence of such an event, the Party who has become aware of a Material Adverse Effect on Services, whether it is the Party whose development work has caused the Material Adverse Effect on Services or the Party whose systems have been affected, shall promptly notify the other Party of such event and both Parties shall:
- (a) immediately suspend the Third Party API Integration to the extent necessary to mitigate the consequences of the Material Adverse Effect on Services;
 - (b) immediately suspend access to the affected Service;
 - (c) promptly following any decision to suspend, initiate a crisis management call between themselves to discuss and attempt to identify the source of the Material Adverse Effect on Services and potential remedies; and
 - (d) provide any and all necessary assistance to the other Party to resolve the problem.
- 5.4 The Client consents and authorises the Approved Third Party to provide and receive from Nium all information, communications, and Instructions in connection with the Services. The Client further consents and authorises Nium to accept, rely and act upon any information, communications, and Instructions transmitted by the Approved Third Party to Nium.
- 5.5 Where Nium receives any information, communication, or Instruction from the Approved Third Party, Nium shall be entitled to treat such information, communication, or Instruction as having been received from the Client. The Client shall be bound as though the Client itself had given or received the information, communication, or Instruction. Nium is under no obligation to check the authenticity or accuracy of any information, communication or Instruction received from the Approved Third Party and shall not be liable for any Losses incurred or suffered by the Client, or any person for complying with such information, communication, or Instruction.
- 5.6 Unless otherwise agreed between the Parties in writing, this Agreement and the Services shall automatically terminate once Nium has revoked its approval for the Approved Third Party or if the Third Party API has been disconnected from the Client's system or Nium's system.

6. OBLIGATIONS OF NIUM

- 6.1 Nium agrees that:
- (a) it shall comply with all Laws in fulfilling its obligations under this Agreement to provide the Services;
 - (b) it shall implement, maintain and comply with policies and procedures that are designed to detect and prevent money laundering, terrorist financing, fraud and/or other crimes or sanctions and shall review and update such policies as necessary to reflect any changes in Law, regulations, applicable guidelines and/or market practice; **and**
 - (c) it shall have in place reasonable business continuity and disaster recovery policies and at all times, maintain, test and comply with such policies.
- 6.2 Nium will not use any Liquidity in the Clearing Account for its internal business requirements or operations. The Program Bank is liable to repay to the Client all moneys held in the Clearing Account in accordance with the terms of the Program Bank Terms and Conditions.

7. OBLIGATIONS OF CUSTOMER

7.1 The Client agrees that it shall:

- (a) fully cooperate and provide any information or documentation requested by Nium:
 - (i) that may be requested by any Regulatory Authority in connection with an examination or external audit; and
 - (ii) **to establish that** the source of any funds that are purportedly from the Client have been legitimately obtained by the Client;
- (b) **promptly notify** Nium of any changes affecting the Client, the nature of its business activities, its representatives, beneficial owners, principals, or any other pertinent information;
- (c) immediately notify Nium, and provide Nium with updated information, if (i) the Client experiences or anticipates experiencing a change of control; (ii) the Client experiences or anticipates experiencing a material change in its business or financial condition, including if it experiences or is likely to experience an insolvency proceeding; (iii) the regulatory status of the business for which the Client is using the Services changes, including if it becomes subject, or no longer subject, to regulatory oversight; or (iv) a Regulatory Authority has notified the Client that it or its business is the subject of investigative action.
- (d) comply with all Law applicable to its business, its use of the Services, and the performance of its obligations under this Agreement;
- (e) to the extent permitted by Law, it shall immediately notify **Nium** if it detects any suspicious, fraudulent or other form of criminal activity relating to an Instruction, the Nium Account or Service, and cooperate with **Nium** to investigate and/or prevent such further activity; and
 - (f) it shall not submit any transaction to Nium or the Program Bank for processing unless the funding currency and payout currency are included in the Fee Schedule. If the Client submits any transaction to Nium or the Program Bank for processing where the funding currency and payout currency are not included in the Fee Schedule, Nium or the Program Bank may apply any transaction fee and foreign exchange rate that it determines is applicable in its sole discretion.

7.2 If the Client is a Financial Institution, the Client further agrees that it shall:

- (a) implement, maintain and comply with policies and procedures that are designed to detect and prevent money laundering, terrorist financing, proceeds of crime, fraud and/or other crimes, sanctions and offences and shall review and update such policies as necessary to reflect any changes in Law, regulations, applicable guidelines and/or market practice;
- (b) perform all necessary know your customer, anti-money laundering, sanctions and politically-exposed persons or other relevant background checks on each Customer;
- (c) perform all necessary know your customer, anti-money laundering, sanctions and politically-exposed persons or other relevant background screening checks against Beneficiaries;

- (d) comply with Nium's anti-money laundering policy as provided to the Client from time to time. The Client shall grant Nium a right to audit the Client's business on the Client's premises on reasonable notice, in writing or by email, to confirm that the Client has complied with the policy; and
- (e) provide Nium with written notice as soon as is reasonably practicable of any complaints that it receives from its Customers arising from or in connection with the Services, including providing Nium with sufficient detail and support to investigate such complaints.

8. USE OF NIUM ACCOUNT

- 8.1 The Client shall keep, the Access Codes secret at all times and ensure that the Access Codes are disclosed only to authorised users on a need-to-know basis. The **Client** shall ensure that its authorised users are aware of the requirement to keep the Access Codes secure and confidential.
- 8.2 If the Client suspects or becomes aware of any unauthorised use of the Access Codes or its Nium Account, **the** Client shall notify Nium immediately of such unauthorised use in writing. Upon receipt of any such notification, Nium will promptly disable the Access Codes utilised for the unauthorized use.
- 8.3 The Client shall be solely responsible and liable for all acts (or omissions) effected through the Client's Nium Account with the Client's Access Codes. Nium shall not be responsible for any Losses arising from any unauthorised access or use of the Client's Nium Account unless such Losses result from Nium's intentional misconduct. The Client will fully reimburse Nium for any Losses that Nium incurs as a result of lost or stolen Access Codes.

9. FEES & LIQUIDITY

- 9.1 The Client shall pay Nium the Fees in full in accordance with the terms of this Agreement.
- 9.2 Nium shall invoice the Client each month for Fees incurred under this Agreement for the preceding month ("**Invoice**"). All outstanding amounts due under an Invoice shall be debited from the Client's Liquidity held in the Clearing Account seven (7) days after the date of the Invoice. If there is insufficient Liquidity in the Clearing Account to pay any Fees when due, the Client shall immediately transfer sufficient additional Liquidity into the Clearing Account to pay such fees upon notice from Nium.
- 9.3 The Client shall comply with all guidelines and directions issued by Nium from time to time to ensure that sufficient Liquidity (including any Fees payable to Nium) is transferred into the Clearing Account in the agreed currency in advance and with sufficient time to enable Nium to execute any applicable Instructions and to pay all Fees.
- 9.4 Nium shall process Payouts to Beneficiaries only if the Liquidity in the Clearing Account sufficiently covers the relevant Instruction, and any Fees or other amounts owing to Nium.
- 9.5 If Nium, in its sole discretion, does process a Payout despite insufficient Liquidity in the Clearing Account, the Client will immediately transfer sufficient Liquidity into the Clearing Account to fully reimburse Nium for any resulting negative balance in the Client's Nium Account.
- 9.6 All amounts payable by the Client under this Agreement:
 - (a) are exclusive of any value added tax or other applicable sales tax, which shall be added to the amounts payable by the Client; and
 - (b) shall be paid by the Client in full without any deductions (including deductions in respect of items such as income, corporation, withholding or other taxes, charges and/or duties).

9.7 All invoices issued by Nium relating to Fees payable are final and conclusive, save for manifest error, and are payable as invoiced. If any dispute arises as to the Fees payable by the Client to Nium, the Client shall inform Nium in writing within fourteen (14) days' of receipt of the relevant Invoice and the Parties agree to cooperate in good faith to settle the dispute in accordance with Section 19. This Section 8.7 does not affect the Client's obligation to pay disputed invoice when due.

9.8 The Client acknowledges and agrees that the Clearing Account (i) is not a bank account and does not offer the features and benefits of a traditional bank account, such as interest and (ii) does not constitute a deposit and is not protected under any government insurance scheme.

10. REPRESENTATIONS AND WARRANTIES

10.1 Each Party represents and warrants that:

- (a) it is a duly organized entity, validly existing and in good standing under the Laws of the jurisdiction in which it was formed;
- (b) it has all the requisite power, approvals and authority to execute, deliver, receive and perform its obligations under this Agreement;
- (c) it has obtained and shall maintain all governmental, regulatory and other third party licences, authorisations, approvals, consents or permits required to perform its obligations under this Agreement and to use or provide the Services as applicable;

10.2 The Client further represents and warrants that:

- (a) all information provided by the Client to Nium to satisfy Nium's "know your customer," anti-money laundering and regulatory or Program Bank obligations is accurate and complete;
- (b) it shall use the Services only for lawful purposes;
- (c) neither it nor any its Affiliates is directly involved in any unlawful activities, including without limitation, illegal gambling, illegal prescription drug sales, illegal tobacco product sales, counterfeiting or copyright infringement and that Company and its Affiliate's products, websites, marketing and advertising materials will not contain any illegal, obscene and/or objectionable materials;
- (d) it will comply with all applicable sanctions and export control laws and, if it is a Financial Institution, will not utilize the Services on behalf of any Customers that are (i) located or resident in any country or territory that is subject to a U.S. trade embargo or other applicable sanctions prohibiting such services, including but not limited to, the Crimea, Donetsk and Luhansk regions of Ukraine, Cuba, Iran, North Korea, and Syria or (ii) identified on any of the OFAC Lists or other applicable sanctions list prohibiting such services; and
- (e) it is not identified on any of the OFAC Lists, and has no director, officer, employee, or holder of equity or debt securities of the Party that is identified on, or is 50% or more owned, directly or indirectly, by any party that is identified on any of the OFAC Lists.

11. INTELLECTUAL PROPERTY

11.1 As between Nium and the Client, Nium owns all Intellectual Property Rights in and to the Services, the Nium Technology, the Documentation, the Nium website, the Nium trademarks, and all other services offered by Nium. As between Nium and the Client, the Client owns all Intellectual Property Rights in and to the Client's websites and software applications (excluding any Nium Technology that may be

embedded in or accessed from such websites or software applications) and the Clients trademarks. Joint development, if any, will be subject to a separate written agreement between the Parties.

- 11.2 Nium grants the Client during the term of this Agreement a limited, non-exclusive, worldwide, royalty-free, non-transferable license, without the right to sublicense, to electronically access and use the Services solely in compliance with this Agreement. Except as expressly permitted by Law, the Client must not: (i) work around any of the technical limitations of the Services or enable functionality that is disabled or prohibited; (ii) reverse engineer or attempt to reverse engineer the Services; or (iii) perform or attempt to perform any actions that interfere with the normal operation of the Services or affect use of the Services by Nium's other customers.
- 11.3 Each Party grants to the other Party a limited, non-exclusive, worldwide, royalty-free, non-transferable license, without the right to sublicense, to use the other Party's trademarks and logos during the term of this Agreement (subject to each Party's applicable trademark and use policy, as may be provided from time to time) to identify Nium as the Client's provider of the Services.
- 11.4 Nium may (a) refer to the Client as being a client of Nium and (b) use the Client's trademarks (as described in Section 11.3) in customer reference lists, sales presentation and via public disclosures (including but not limited to social media sites, promotional materials or on Nium's website). Nium may invite the Client to participate in public relations activities and the Parties may issue a mutually agreed press release to announce the existence, but not the terms of this Agreement. Except as otherwise permitted above, each Party shall obtain the written consent of the other Party prior to using the other Party's trademarks or publicly referring to other Party.

12. SUSPENSION AND TERMINATION

- 12.1 Either Party shall be entitled at any time to suspend or terminate this Agreement, immediately by giving written notice to the other Party if:
- (a) the other Party becomes Insolvent;
 - (b) the other Party ceases or there is a reasonable likelihood of it ceasing to carry on all or a material part of its business, except for the purpose of a bona-fide reconstruction, amalgamation, reorganisation, merger or consolidation;
 - (c) the other Party suffers any breach, suspension, withdrawal or termination of any governmental, regulatory and/or any other third party licences, authorisations, approvals, consents or permits required to operate its business;
 - (d) the other Party commits a material breach of this Agreement which is not capable of remedy or, if remediable, is not remedied to the non-defaulting Party's reasonable satisfaction within ten (10) Business Days of service of a notice requiring such remedy; and
 - (e) if required to do so by Law or any Regulatory Authority or under any applicable licence.
- 12.2 Either Party may terminate this Agreement at any time by giving the other Party at least thirty (30) days' written notice of termination.
- 12.3 Notwithstanding anything to the contrary in this Agreement, Nium may terminate this Agreement immediately if:
- (a) the results of any "know your customer" or other similar checks or screenings under applicable laws or regulations conducted on the Client or in connection with any transactions are unsatisfactory or if

Nium reasonably determines that continuing to provide the Service could cause reputational, regulatory, financial or other harm to Nium; or

- (b) the Client has breached Section 3.4.

12.5 Nium may suspect the Client's access to any of the Services without notice pursuant to any proprietary fraud and risk modelling used by Nium when assessing the risk associated with the Client's use of the Services.

12.6 Upon the termination or expiry of this Agreement, the Parties shall: (a) immediately discontinue use of the Services; (b) remove any reference to the other from any websites, software applications, marketing or advertising materials; (c) return and/or destroy any Confidential Information in accordance with the terms of this Agreement; (d) with respect to any remaining Client Liquidity held in the Clearing Account ("**Remaining Balance**"), Nium shall, within thirty (30) days of receipt of such written payment instructions from the Client and subject to satisfactory due diligence checks, initiate the refund or request the Program Bank to initiate a refund of the Remaining Balance (less all amounts owed to Nium under this Agreement, applicable bank charges, taxes and any third-party fees) to the Client ("**Refund**"). Where foreign currency conversion is required, Nium shall apply the prevailing exchange rate at the time such Refund is made.

12.7 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the Parties existing at termination.

13. INDEMNITY

13.1 The Client shall indemnify Nium, its Affiliates, and their respective directors, officers, agents, partners, and employees (collectively, the "**Indemnified Parties**") from and against all Losses whatsoever and howsoever arising, which the Indemnified Parties may sustain, incur, suffer or pay arising out of, in connection with or pursuant to any of the following:

- (a) the Client's access to and/or the use of the Services, whether or not such access or use was authorised or whether it was due to any act or omission on its part, including any fees, penalties or fines imposed on Nium or its Affiliates by any payment network or any government entity;
- (b) any breach of this Agreement, including, but not limited to a breach of its representations, warranties, obligations, covenants, and undertakings under this Agreement;
- (c) Nium's acting or relying on any notice, request or Instruction given by the Client which Nium reasonably believes to be genuine, correct and appropriately authorised;
- (d) any information provided by the Client to Nium in connection with this Agreement being or being alleged to be misleading or deceptive in any material respect; and
- (e) the Client's gross negligence, fraud or intentional misconduct.

13.2 Nium shall indemnify the Client for any Losses suffered or incurred by the Client where such Losses arise as a result of third party claims that the Client's use of the Services in accordance with this Agreement infringes any copyright, patent, trade secret or other intellectual property right of such third party.

14. DISCLAIMER AND LIMITATION OF LIABILITY

14.1 Except as expressly provided in this Agreement, and to the maximum extent permitted by Law, Nium does not make any, and expressly disclaims all, warranties (express or implied) with respect to its performance under this Agreement, the Services, and the Documentation, including the implied warranties for fitness for a particular purpose, merchantability, and non-infringement, and implied warranties arising from any course of dealing, course of performance or usage in trade.

- 14.2 Except for: (i) the Parties' indemnification obligations under Section 12; (ii) any breach of Section 15 (other than the unauthorized use or disclosure of Confidential Information that results in a breach of Section 12; (iii) a Party's fraud or criminal activity; or (iv) a Party's intentional misconduct, to the maximum extent permitted by Law, neither Party will be liable to the other, in relation to this Agreement or the Services, whether in contract, negligence, strict liability, other torts or other legal or equitable theory, for: (A) any lost profits, loss of data, business interruption, or indirect, incidental, exemplary, special, reliance, punitive or consequential damages, even if advised of the possibility of these damages; or (B) for any direct losses or damages in excess of the aggregate amount of Fees paid by the Client to Nium (excluding pass-through fees levied by Nium's Financial Partners) during the one year period immediately preceding the event giving rise to the claim for liability (or, if such event occurs in the first year after the Effective Date, the average monthly fees paid by the Client to Nium during the term of the Agreement multiplied by twelve). These limitations will apply notwithstanding the failure of the essential purpose of any limited remedy.
- 14.3 Nium shall not be liable for any Losses suffered by the Client where Nium declines to process any Payout or other transaction due to insufficient Liquidity or as otherwise permitted in accordance with this Agreement.

15. DATA PROTECTION

- 15.1 Nium's [Privacy Policy](#) explains how and for what purposes we collect, use, retain, disclose, and safeguard the Personal Data that the Client provides to Nium. The Client agree to the terms of Nium's Privacy Policy, which Nium may update from time to time.
- 15.2 The Client represents and warrants to Nium that it has the legal right to disclose all Personal Data disclosed to Nium under or in connection with this Agreement.
- 15.3 Nium and the Client each acknowledges and agrees that they each act as independent data controller, or the equivalent under Data Protection Legislation in relation to the Personal Data they each Processes under or in connection with this Agreement. Each Party shall comply with its respective obligations under Data Protection Legislation.
- 15.4 Nium and the Client shall each ensure that access to Personal Data is limited to Nium's or the Client's Personnel who have a reasonable need to access Personal Data to enable the Nium or the Client to perform its respective obligations under this Agreement.
- 15.5 If Nium or the Client receives or becomes aware of any of the following, it shall promptly notify the other Party of:
- (a) any breach of security or unauthorised access to Personal Data within forty eight (48) hours of becoming aware of such incident; and
 - (b) any complaint, inquiry or request from a Data Subject or Data Protection Authority regarding Personal Data unless such notice is prohibited by Data Protection Legislation.
- 15.6 Each Party shall refrain from notifying or responding to any Data Subject or Data Protection Authority on behalf of the other Party unless (i) specifically requested to do so by the other Party in writing or (ii) by Data Protection Legislation.
- 15.7 The Client acknowledges and agrees that Nium, at its sole discretion, may disclose any Personal Data or transaction-related information to the Program Bank or third parties in order to perform Nium's obligations under this Agreement as required under Law, including but not limited to anti-money laundering, sanctions, or as may otherwise be required by Law. Furthermore, such disclosure may be made to any Regulatory Authority, where such disclosure is made to satisfy routine governmental audit or examination

requirements or as part of informational submissions required to be made to such Regulatory Authority in the ordinary course of business.

- 15.8 Nium may transfer Personal Data on a global basis as necessary to provide the Services. In particular, Nium may transfer Personal Data to its Affiliates and sub-processors in other jurisdictions. Where Nium transfers Personal Data under this Agreement to a country or recipient not recognised as having an adequate level of protection for Personal Data according to Data Protection Legislation, Nium will comply with its obligations under Data Protection Legislation.

16. CONFIDENTIALITY

- 16.1 Each Party will keep confidential all Confidential Information disclosed by the other Party in connection with this Agreement. The receiving Party agrees (i) not to disclose or permit disclosure of any confidential information to any third parties; (ii) to protect Confidential Information using at least the same precautions it uses for its own similar information and no less than a reasonable standard of care; (iii) not to remove proprietary markings from Confidential Information or reverse engineer technology provided as Confidential Information and (iv) not to export Confidential Information or any direct product of Confidential Information in violation of export Laws.

- 16.2 Section 16.1 does not apply to information that:

- (a) is or becomes publicly available through no fault of receiving Party;
- (b) the receiving Party rightfully knew or possessed prior to receipt from disclosing Party without confidentiality restrictions;
- (c) receiving Party rightfully received from a third party without confidentiality restrictions; or
- (d) receiving Party independently developed without using or referencing Confidential Information.

- 16.3 Section 16.1 will not restrict the sharing of any Confidential Information by the receiving Party to (a) its directors, Affiliates, employees, professional advisors or sub-contractors or (b) in the case of Nium, the Program Bank, or any Financial Partner, in each case, on a need-to-know basis in relation to this Agreement and/or to manage the relationship between the Parties, provided that such persons use it solely for such purpose and are under obligation to the receiving Party to keep such information confidential. The receiving Party may also disclose the disclosing Party's Confidential Information to the extent required by Law or court order, as long as the receiving Party uses reasonable efforts to limit disclosure and to obtain confidential treatment or a protective order and has, to the extent reasonably possible, allowed the Disclosing Party to participate in the proceeding.

- 16.4 Other than as expressly permitted under this Agreement, on expiry or termination for whatever reason, each Party will immediately: (a) cease to use any Confidential Information of the other and will return on written demand or, at its election, destroy or, so far as is reasonably practicable, permanently erase all copies of that Confidential Information in its possession or control; and (b) upon request by the disclosing Party, the receiving Party shall provide a certificate signed by its director within one (1) month from the date of termination that this has been done, save that a Party may continue to retain such part of that Confidential Information only for the purposes of, and for so long as required by, any Law or its legitimate internal compliance requirements.

- 16.5 Each Party shall immediately notify the other upon discovery of any loss or unauthorized disclosures of the Confidential Information of the other Party

17. FORCE MAJEURE

- 17.1 If Nium's ability to perform its obligations under this Agreement has been affected by an Force Majeure Event, it shall not be deemed to be in breach of this Agreement or otherwise liable to the Client for any delay in performance or any non-performance of any of its obligations under this Agreement provided that Nium has used reasonable efforts to mitigate the effect of the Force Majeure Event and to carry out its obligations under this Agreement in any other way that is reasonably practicable. A Force Majeure Event shall not excuse Nium from its obligations to make any payments due to the Client under this Agreement.
- 17.2 Nium shall:
- (a) promptly notify the Client of the nature and extent of the circumstances giving rise to the Force Majeure Event;
 - (b) subject to Section 17.3, immediately after the cessation of the Force Majeure Event, notify the Client and resume full performance of its obligations under this Agreement.
- 17.3 If the Force Majeure Event continues for more than thirty (30) days then, without limiting any other rights it may have, the Client may terminate this Agreement immediately by giving written notice to Nium.

18. ASSIGNMENT AND SUB-CONTRACTING

- 18.1 Except as provided for in this Section 18, neither Party may assign, licence, sub-contract or otherwise transfer any of its rights, obligations or liabilities under or in connection with this Agreement without the other Party's prior written consent which shall not be unreasonably withheld or delayed.
- 18.2 Nium may subcontract, assign or otherwise transfer all or any of its liabilities, rights and obligations under this Agreement to any:
- (a) of its Affiliates; or
 - (b) entity that acquires all or substantially all of the assets of Nium and its Affiliates; or
 - (c) successor in a merger or acquisition of Nium and its Affiliates.
- 18.3 Nium may subcontract its obligations under this Agreement to third parties.

19. NOTICES

- 19.1 Any notice, demand or other communication given or made hereunder (a "**Notice**") must be in writing in the English language and must be delivered by e-mail, hand, courier, or prepaid first class post (air mail if posted to or from a place outside of the United States). Each Notice must be sent (as applicable): (a) to the receiving Party's address or (b) to the receiving Party's e-mail address, in each case, as detailed below or as notified by one Party to the other from time to time.

To Nium: Legal Department

Mailing Address: 95 Federal St, San Francisco, CA 94107

Nium's email contact: legal_notices@nium.com

To Client: as provided in the Fee Schedule

- 19.2 A Notice will be deemed received if:
- (a) delivered personally, at the time of delivery to the receiving Party;

- (i) if delivered by mail ten (10) days after posting; or
- (b) sent by email, on the day on which the Notice is sent (or, if sent after 5.00pm Pacific Standard Time on a Business Day, then the following Business Day), provided no report of non-delivery is received by the sender.

20. GOVERNING LAW AND JURISDICTION

- 20.1 This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York without reference to conflicts of laws principles thereof. 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, this Agreement.
- 20.2 Any Dispute which cannot otherwise be resolved shall be resolved by arbitration conducted in accordance with the rules of the American Arbitration Association (“AAA”) in accordance with its Commercial Arbitration Rules, 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) calendar days of such notice of objection, then a qualified arbitrator shall be appointed by the AAA. “Qualified” for purposes of this Section 20.2 means an attorney licensed to practice law in a U.S. jurisdiction, with (i) experience advising financial institutions or arbitrating disputes involving financial institutions, (ii) with expertise in financial services laws and regulations, and (iii) at least fifteen (15) years of total working experience. The place of arbitration shall be New York, New York, unless the Parties agree to another location, and all proceedings and written submissions shall be in English. 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. The arbitrator is not authorized to award punitive or other damages not measured by the prevailing Party’s actual damages.
- 20.3 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.
- 20.4 The arbitrator shall require exchange by the parties of (i) the name and, if known, address and telephone number of each person likely to have knowledge of relevant information, identifying the subjects of the information, and (ii) non-privileged documents, including those in electronic form, that are relevant to the issues raised by any claim, defense or counterclaim or on which the producing Party may rely in support of or in opposition to any claim, defense or counterclaim. The arbitrator shall limit such production based on considerations of unreasonable expense, duplication and undue burden.
- 20.5 The exchange of information between the Parties shall occur no later than a specified date within sixty (60) days following the appointment of the arbitrator. At the request of a Party, the arbitrator may at his or her discretion order the deposition of witnesses. Depositions shall be limited to a maximum of three depositions per Party, each of a maximum of four hours duration, unless the arbitrator otherwise determines. The arbitrator may allow such other discovery as he or she determines is reasonably necessary for a fair determination of the dispute. Any dispute or objections regarding discovery or the relevance of evidence shall be determined by the arbitrator.
- 20.6 The arbitrator shall issue a reasoned award. Judgment upon the arbitrator’s award may be entered in any court having jurisdiction. The arbitration proceedings and arbitrator’s award shall be maintained by the parties as strictly confidential, except as is otherwise required by court order or as is necessary to confirm, vacate or enforce the award and for disclosure in confidence to the parties’ respective attorneys, tax advisors and senior management and to family members of a Party who is an individual.

- 20.7 In the case of a conflict between the provisions of this Section 13 and the AAA Commercial Arbitration Rules, the provisions of this Section 19 will prevail.
- 20.8 To the extent Law permits, any dispute arising out of or relating to 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. Notwithstanding any other provision of this Agreement or the AAA Commercial Arbitration Rules, disputes regarding the interpretation, applicability, or enforceability of this class waiver may be resolved only by a court and not by an arbitrator. If this waiver of class or consolidated actions is deemed invalid or unenforceable, neither Party is entitled to arbitration.
- 20.9 Each Party retains the right to seek judicial assistance: (i) to compel arbitration, (ii) 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), (iii) to obtain other interim measures of protection prior to or pending arbitration, and (iv) to enforce any decision of the arbitrator, including the final award. Judicial assistance pursuant to this subsection may be sought in and of the courts located in New York, New York (and for purposes of provisions (ii) and (iii) exclusively in such courts), and the Parties submit to the jurisdiction thereof. Injunctive relief shall be granted without the requirement of posting a bond.
- 21. MISCELLANEOUS**
- 21.1 The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining provisions.
- 21.2 No failure or delay by a Party in exercising any of its rights hereunder or under Law will be construed as a waiver or release of that right or any other right or remedy, nor will any single or partial exercise of such rights preclude or restrict the further exercise of such rights. A waiver of any breach of any provisions of this Agreement will not constitute a waiver of any other breach, and will not affect the other provisions, of this Agreement. Any waiver must be in writing to be effective.
- 21.3 The terms of this Agreement constitute the entire agreement between the Parties regarding its subject matter and supersede and replace all prior agreements, understandings or arrangements between the Parties, whether oral or in writing, with respect to the same. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the Parties prior to this Agreement except as expressly stated herein. Neither Party shall have any remedy in respect of any untrue statement made by the other upon which that Party relied in entering into this Agreement (unless such untrue statement was made fraudulently) and that Party's only remedies shall be for breach of contract as provided hereunder.
- 21.4 Nium may modify all or any part of this Agreement at any time by posting a modified version of this Agreement (including any terms incorporated by reference into this Agreement) on the Nium Legal Page or by notifying the Client. The modified Agreement is effective upon posting or, if Nium notified the Client, as stated in the notice. If the Client objects to any of the modified terms in the Agreement, the Client may terminate this Agreement in accordance with Section 12. By continuing to use the Services after the effective date of any modification to this Agreement, the Client agrees to be bound by the modified Agreement. It is the Company's obligation to check the Nium Legal Page regularly for modifications to this Agreement. Nium last modified this Agreement on the date listed at the top of this Agreement. Except as this Agreement (including this Section 21.4) otherwise allows, this Agreement may not be modified except in writing by the parties.
- 21.5 Nothing in this Agreement shall constitute, or be deemed to constitute, a partnership, joint venture or agency between the Parties.
- 21.6 Subject to any express provisions to the contrary in this Agreement, neither Party shall have any right or authority to and shall not do any act, enter into any contract, make any representation, give any warranty,

incur any liability, assume any obligation, whether express or implied, of any kind on behalf of the other Party or bind the other Party in any way.

21.7 Except for the Indemnified Persons, no other person will have any right whatsoever to enforce this Agreement or have the benefit of any of its terms.

22. INTERPRETATION

22.1 No provision of this Agreement will be construed against any Party on the basis of that Party being the drafter.

22.2 References to “includes” or “including” not followed by “only” or a similar word mean “includes, without limitation” and “including, without limitation,” respectively.

22.3 Except where expressly stated otherwise in a writing executed between you and Nium, this Agreement will prevail over any conflicting policy or agreement for the provision or use of the Services. If any term in this Nium Services Agreements conflicts with a term in any Schedule, Fee Schedule or set of terms incorporated by reference into this Agreement, then unless terms of lower precedence expressly state to the contrary, the order of precedence is: (a) the Fee Schedule; (b) any other Schedule; (c) this Nium Services Agreement; and (c) all other terms incorporated by reference into this Agreement.

22.4 All references in this Agreement to any terms, documents, or Laws are to those items as they may be amended, supplemented or replaced from time to time. All references to APIs and URLs are references to those APIs and URLs as they may be updated or replaced.

22.5 The section headings of this Agreement are for convenience only, and have no interpretive value.

22.6 Unless expressly stated otherwise, any consent or approval that may be given by a Party (i) is only effective if given in writing and in advance; and (ii) may be given or withheld in the Party’s sole and absolute discretion.

22.7 Unless expressly stated to the contrary, when a Party makes a decision or determination under this Agreement, that Party has the right to use its sole discretion in making that decision or determination.

22.8 The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

Schedule 1: Payout Service

1. Description of Payout Service

Nium shall facilitate the provision of Payout Service to the Client through the Program Bank in accordance with the terms of this Agreement and the Client agrees to use the Payout Service for itself in accordance with the terms of this Agreement.

The Client shall ensure that Nium or the Program Bank receives cleared funds, and any Fees, prior to the intended payout time specified in the Instruction and in accordance with such guidelines and instructions provided to it by Nium from to time.

The Liquidity held in the Clearing Account shall be used to pay Beneficiaries in accordance with the following process:

- (a) the Client transfer funds to the Clearing Account;
- (b) the Client shall use its Nium Account to send Instructions to Nium, including all necessary details of the Beneficiaries;
- (c) If the Client is a Financial Institution, the Client shall perform screening checks against Beneficiaries relating to each Payout in accordance with applicable Law and shall provide Nium with satisfactory evidence of such upon request;
- (d) Nium shall perform anti-money laundering, sanctions, politically-exposed persons and other necessary checks on the source of funds, the identity of the Beneficiaries, Payers and all other parties relating to an Instruction in accordance with applicable Laws and Nium's policies and procedures. The Client shall supply Nium with satisfactory documentary evidence or such other assistance as may be required to comply with such checks;
- (e) the Payouts shall be processed through the relevant Financial Partner;
- (f) the relevant Financial Partner shall process the Payout directly to the Beneficiary via its bank (or other applicable payment method) or report any transaction failures to Nium; and
- (g) Nium shall provide transaction information to the Client via the Nium Account as set out below.

2. Transaction Flow (end to end)

- (a) The Client will submit Instructions to Nium, listing the Beneficiaries that the Client requires Payouts to be sent to.
- (b) Provided that (i) sufficient Liquidity is received in advance by Nium and (ii) all money laundering, sanctions, politically-exposed persons and other necessary checks have been successfully performed, Nium shall:
 - (i) make the Payouts corresponding to the Instructions received on each Business Day before the relevant cut-off time for that country corridor on that same Business Day. If the Instructions are received after the respective cut-off time for a specific country corridor, or if banks are not open for the transaction of business in the country in which the Beneficiary is located on such date, Nium shall make the Payout on the following Business Day when banks are open for the transaction of business in such country;
 - (ii) make the Payout in the full amount stipulated in the Instruction;



- (iii) report to the Client via the Nium Account the Instructions that were successfully executed and any Instructions that could not be executed due to data errors or for other reasons; and
 - (iv) process Payouts according to the sequence in which the Instructions were received (first in, first out).
- (c) All Payouts are required to be made in accordance with Instructions. The Client acknowledges and agrees that the tax authorities of certain countries and/or jurisdictions may deduct certain tax, fee and/or tariff ("**Remittance Taxes**") from the Payouts. If any Payout is subject to Remittance Tax, the amount the Beneficiary actually receives may be different from the amount stated in the Instruction ("**Shortfall**"). Nium shall not be required to make up for such Shortfall under any circumstances. The Client acknowledges and agrees that Remittances Taxes are subject to changes from time to time and Nium is under no obligation to notify the Client of any such changes.
- (d) If for any Payout, the funding currency is different from the currency to be received by the Beneficiary, Nium shall apply an exchange rate comprised of a base rate (which, as of the date of this Agreement, is based on the rates published on the Reuters platform) plus its margin specified in the Fee Schedule. Nium will identify the exchange rate that will apply to the Payout at the time of the submission of the Instruction (for example, through the API). By submitting the Instruction, the Client will be deemed to have accepted the applicable exchange rate.
- (e) If Nium is unable to complete a Payout for any reason it shall notify the Client promptly and shall, to the extent practicable and permissible by applicable Laws, provide details explaining why the Payment was not made.
- (f) For all Proof of Payment and Trace requests, the Client shall send such requests to Nium by email or the Nium Account (if permitted by Nium).

3. **Recalls**

- (a) A Payout may be Cancelled by the Client only if such Payout has not already been approved by Nium.
- (b) A Payout may be Recalled only after the Payout has a "PAID BY BANK" status as specified in the Nium Account.
- (c) The Client acknowledges and agrees that Nium cannot guarantee a successful Cancellation or Recall and any request for Cancellation or Recall shall be processed by Nium on a best efforts basis. The Client shall bear all bank charges and administrative costs relating to such Cancelled or Recalled Payouts.

4. **Nium Reporting Requirements**

All reporting shall be provided by Nium and accessed by the Client via the Nium Account.

Schedule 2: Pay In Service

1. DEFINITIONS

1.1. In this Schedule 2, the following capitalized terms and expressions will have the following meanings:

“Approved Jurisdictions”	means those countries as notified by Nium to the Client from time to time being where Nium or the Program Bank have the ability to facilitate the provision of the Pay In Service;
“Pay In Request”	means an Instruction submitted by the Client to Program Bank (via Nium) to accept Pay In into a Virtual Account;
“Client Bank Account”	means an account held in the name of the Client with a duly licensed financial institution in an Approved Jurisdiction used to receive an Payout pursuant to the Pay Out Service;
“Pay In”	means any funds received by the Program Bank (including via Nium) on behalf of the Client in a Supported Currency;
“Pay In Service”	means such services provided by the Program Bank which enables the Client to (a) receive a Pay In in a Supported Currency from a Payer and maintain such Pay In in USD; and (b) exchange the Pay In from a Supported Currency to USD
“Payer”	means any individual, company or organisation located in an Approved Jurisdiction that transfers funds into the Clearing Account (including via any virtual account provided by Nium or its Financial Partners) pursuant to an Underlying Transaction between the Client and such individual, company or organization;
“Payer Account”	means where applicable, a bank account or other type of account held in the name of a Payer with a duly licensed financial institution in an Approved Jurisdiction, which is used to send funds into the Clearing Account (including via any virtual account provided by Nium or its Financial Partners);
“Tax”	means and includes, in relation to any jurisdiction, whether levied during or after the expiry of the term, any applicable national, state, local or foreign income, gross receipts, license, payroll, employment, excise, business, corporate income, severance, occupation, premium, windfall profits, capital gains tax, entertainment tax, registration fees or stamp duties, works contract tax, advertising/sponsorship-related taxes, luxury tax, environmental, customs duties, tariffs, octroi, capital stock, wealth, land, franchise, profits, withholding taxes, fringe benefits, payroll, unemployment, disability, real property, personal property, sale, use, consumption, lease, research and development, service, transfer, recording, documenting, registration, sales tax, alternative or add-on minimum, estimated or other tax or duty of any kind whatsoever and includes any surcharge, cess, charge, levy, interest, fee, penalty, related to or in addition thereto (whether direct or indirect and wherever and whenever imposed or could potentially be imposed or any deposit of tax with the authorities by way of a guarantee or security pursuant to or without any tax claim (whether disputed or not, whether by way of withholding or deduction for or on account of tax or otherwise, on a normative or deemed basis or by applying any other method, and includes for the purpose of clarity, any tax levied pursuant to audit by

the tax authorities under any of the processes prescribed under the relevant law) by any authorities) and “**Taxes**” shall be construed accordingly; and

“Underlying Transaction”

means any legitimate business transactions between the Client and a Payer.

2. PROVISION OF PAY IN SERVICE

- 2.1 Nium shall facilitate the provision of Pay In Service to the Client through the Program Bank in accordance with the terms of this Agreement and the Client agrees to use the Pay In Service for itself in accordance with the terms of this Agreement.
- 2.2 Neither the Program Bank nor Nium makes any representation or warranty nor does the Program Bank or Nium have control of or liability for any Underlying Transaction or any goods, products or services provided by the Client to any Payer pursuant to any Underlying Transaction. The Program Bank and Nium do not guarantee or ensure that any Payer will complete an Underlying Transaction made with the Client.
- 2.3 Neither the Program Bank nor Nium shall be required to process a Pay In Request unless:
- (a) the Client has provided Nium with the relevant proof containing the name and address of the Payer that establishes the relevant Underlying Transaction;
 - (b) (where a Payer is located in India) an Import Service;
 - (c) the Payer is located in an Approved Jurisdiction and such Pay In is (i) not made via over the counter checks or cash deposit and (ii) originates from the Payer Account;
 - (d) the results of any due diligence checks on such Pay In Request is satisfactory; and
 - (e) any other information requested by Nium.
- 2.4 The Program Bank or Nium may cancel, reverse, demand refund, or cause any Pay In to be unavailable for processing and make corresponding adjustments to any entry in the Nium Platform if:
- (a) the Program Bank or Nium needs to correct any error or omission;
 - (b) the Payer requests a reversal due to the Client’s failure to discharge its obligations under any Underlying Transaction;
 - (c) the Program Bank or Nium has not received cleared and unconditional Pay In in full or in time; or
 - (d) where the Program Bank or Nium has reasonable grounds to do so for any other legitimate reasons.
- 2.5 In the event a Pay In is not denominated in USD, Nium shall apply an exchange rate comprised of a base rate (which, as of the date of this Agreement, is based on the rates published on the Reuters platform) plus its margin specified in the Fee Schedule to convert such Pay In to USD.
- 2.6 Neither the Program Bank or Nium shall be liable to make up for any shortfall in any amounts received by the Client pursuant to any Pay In Request (including due to bank or swift charges deduction) unless such shortfall is due to the gross negligence or wilful default of the Program Bank or Nium.
- 2.7 In the event the Program Bank elects to process a Withdrawal Request via Nium upon confirmation from a third party (including but not limited to the Client) that a Pay In is in progress but before Nium or the Program Bank has actually received such Pay In, the Client shall reimburse and indemnify the Program Bank and

Nium for the shortfall on demand if such Pay In is not eventually received by Nium or the Program Bank in full for whatever reason.

- 2.8 The Client represents and undertakes that:
- (a) it owns all titles, interest and rights to all Pay In. No person or entity other than the Client has any rights in relation to any Pay In;
 - (b) all information provided in connection with a Pay In Request is accurate in all material respects and the Client shall not omit or withhold any information which would make such information inaccurate in any material respect and each Pay In Request submitted to Nium relates to an Underlying Transaction;
 - (c) it shall not request Nium to correct any error pertaining to any Pay In or initiate a reversal of Pay In at any point in time; and
 - (d) it shall not assign, charge, declare trust over or transfer the benefit of all or any part of any Pay In.
- 2.9 The Client may view the total balance of Pay Ins accepted by the Program Bank on behalf of the Client via its Nium Account.
- 2.10 The Client is responsible for maintaining its own records related to any Pay In and for reconciling such records against any entries displayed via the Nium Platform. The Client must notify Nium immediately, and in any event, no later than forty-eight (48) hours after any unauthorised, incorrect, disputed entry is displayed in the Nium Account. Following the expiry of this period, any such entry in the Nium Account shall be deemed as agreed.

3. WITHDRAWAL FROM THE VIRTUAL ACCOUNT

- 3.1 The Client may Instruct Nium to pay out any Pay In funds to the Client Bank Account in accordance with the terms in Schedule 1: Payout Service and any other applicable terms of this Agreement provided that such withdrawal would not result in negative balance in its Nium Account after deducting all Fees and any other amounts due and owing to Nium or the Program Bank.
- 3.2 The Client shall ensure that the details of any Client Bank Account are correct and complete and shall notify Nium in writing in advance of any change to Client Bank Account. Until Nium has been notified of such change and has had a reasonable opportunity to act on it, the Program Bank shall be entitled to continue process any Withdrawal Request to the existing Client Bank Account. The Program Bank and Nium shall not be liable for any Losses arising from any Withdrawal Request due to incorrect or incomplete details provided by the Client or the Client's failure to inform Nium in advance of any change to the Client Bank Account.

4. TAXES

- 4.1 The Client is solely responsible for:
- (a) reporting to all applicable government Tax authorities ("**Tax Authorities**") in respect of any Pay In and for the payment of any applicable taxes that apply to any Pay In as well as any other applicable reporting requirements, including but not limited to, any customs or foreign currency controls. The Client represents and warrants that it is in compliance with any applicable Tax Laws and will remain compliant during the term of this Agreement; and



- (b) Nium is not obligated to, and will not determine whether Taxes apply, and unless required to do so by any Tax Authority, Nium will not calculate, collect, pay or remit any Taxes to any Tax Authority arising from any Pay In, which is strictly the Client's sole responsibility.

4.2 If a Tax Authority and/or Applicable Law requires:

- (a) Nium to make any form of deduction or payment in respect of Tax for which the Client is liable, Nium may make such deduction and/or payment to the Tax Authority; and
- (b) information from Nium in relation to the Client and/or a Pay In, the Client hereby agrees to provide Nium with such information and Nium may provide such requested information to the Tax Authority.

4.3 The Client shall indemnify and hold Nium harmless for all Tax imposed in connection with any Pay In and any action, cost, damage, disbursement, expense, liability, loss, deficiency, diminution in value, obligation, penalty or settlement of any kind or nature, including, but not limited to, interest or other carrying costs, penalties, legal, accounting and other professional fees and expenses reasonably incurred in the investigation, collection, prosecution and defence of claims and amounts paid in settlement, that may be imposed on or otherwise incurred or suffered by Nium.

5. ROLLING RESERVES

5.1 The Client agrees that, at the request of Nium, the Program Bank may withhold such amount, as determined by Nium from time to time, from Pay Ins ("**Rolling Reserves**") to cover any issues arising from, or obligations of the Client under this Agreement or any other agreement the Client or its Affiliates have with Nium (including disputed transactions and outstanding Fees). Nium may additionally fund the Rolling Reserves through any or all of: (a) funds provided by the Client at Nium's request; (b) any amount owed by Nium to the Client or its Affiliates; and/or (c) debiting the Client Bank Account.

5.2 Nium may vary the rate or terms of the Rolling Reserves or as required upon notice to the Client.

5.3 Nium's rights with respect to the Rolling Reserves shall survive the termination of this Agreement.