



**NIUM**

**SME TERMS & CONDITIONS**

SEPTEMBER 2021  
UNITED STATES

## 1. PROVISION OF PAYMENT SERVICES

- 1.1 **NIUM, INC.**, a company incorporated in Delaware with File number: 5702837 and having its principle office at 90 Washington Valley Road, Bedminster, NJ 07921 ("**NIUM**") is a program manager of Community Federal Savings Bank ("**CFSB**").
- 1.2 The Services are provided to You by CFSB in accordance with these terms & conditions (including any updates made from time to time) ("**Terms and Conditions**"). By visiting NIUM website, mobile application, NIUM Platform or using any of the Services, You agree to be bound by the Terms and Conditions. If You do not agree to these Terms and Conditions, please do not use the Services.
- 1.3 NIUM provides Customer Services to You on behalf of CFSB.
- 1.4 You acknowledge and agree that CFSB and NIUM are not obliged to provide any Service or execute any Transaction if CFSB or NIUM considers, in its sole discretion, the provision of Service or the execution of any Transaction would breach any Application Laws in any jurisdiction

## 2. CUSTOMER'S GENERAL OBLIGATIONS

- 2.1 You must (a) at all times comply with and (b) ensure that all Transactions submitted to CFSB via NIUM for processing are in accordance with all Applicable Laws, all Sanctions and the terms of these Terms and Conditions.
- 2.2 You shall use the Services only to transact for Your own legitimate business and commercial purposes and not on behalf of any other person or entity.
- 2.3 You shall deliver or cause to be delivered to CFSB and NIUM such information as CFSB or NIUM may reasonably request for the purpose of the Services including but not limited to documents and/or information regarding Your financial and business affairs and/ or identity. You represent and warrant that all information provided to CFSB or NIUM or any third party on Your behalf is accurate in all material respects and You will not omit or withhold any information which would make such information inaccurate in any material respect.
- 2.4 You are solely responsible at Your own cost for the provision of all equipment, software, systems, facilities which are necessary to receive the Services.
- 2.5 All U.S. persons, including U.S. banks, bank holding companies, and non-bank subsidiaries, must comply with OFAC's regulations. This means that CFSB may institute a hold on Your account or Your funds, if you are a Specially Designated National, or fall into the scope of a country- based sanction program.

## 3. NIUM PLATFORM

- 3.1 NIUM grants You a non-exclusive, non-transferable, non-sublicensable, revocable license to use the NIUM Platform for the sole purpose of facilitating Your use of the Services.
- 3.2 The security and secrecy of the Access Codes shall at all times remain Your sole responsibility. You shall ensure that none of the Access Codes is disclosed to any person, except for the Authorised Users who need to know them and the Authorised Users are aware of the requirement to keep the Access Codes secure and confidential. Unauthorised use of the NIUM Platform shall constitute a material breach of these Terms and Conditions which entitles NIUM to terminate the Services.
- 3.3 You represent and undertake to (i) use the NIUM Platform in accordance with the Terms and Conditions and (ii) establish, apply and maintain robust security systems and procedures to monitor effectively the access to, use of the Access Codes and the NIUM Platform; (iii) ensure that any data that has been accessed, printed or otherwise downloaded from the NIUM Platform is retained securely at all times and (iv) be fully liable for acts and omissions of any Authorised User or persons acting or purported to act on Your behalf.
- 3.4 NIUM may at its sole discretion decline to accept any individual nominated by You as an Authorised User if the results of any "know your customer" or other similar checks or screenings under Applicable laws or regulations conducted on such Appointed User are unsatisfactory.

- 3.5 You authorise NIUM to accept, rely and act upon any Instruction received from an Authorised User. Where NIUM receives any Instruction from a person using an Access Code, NIUM shall be entitled to treat such Instruction as having been received from an Authorised User. NIUM is under no obligation to check the authenticity or accuracy of any Instruction or data received from an Authorised User and shall not be liable for any Losses incurred or suffered by You or any third party for complying with such instruction.
- 3.6 Prior to submitting an Instruction to NIUM, You shall ensure that all information contained in the Instruction is complete and accurate. If You subsequently learn of any error in the Instruction, You must immediately notify NIUM in writing.
- 3.7 If You fail to provide a timely, accurate and complete Instruction, NIUM may be unable to process such Instruction or may have to delay the processing of such Instruction. NIUM shall not be liable for any Losses incurred or suffered by You or any third party as a result of such delay or failure in processing such Instruction.
- 3.8 NIUM may, at its sole discretion, without providing any explanation or liability, refuse to act upon any Instruction received from an Authorised User. NIUM shall, to the extent permitted by Applicable Laws and practicable, inform You prior to such refusal.
- 3.9 You shall notify NIUM immediately:
- (a) in the event of any suspected or actual unauthorised use of the Access Codes or breach of the NIUM Platform. Notwithstanding such notification, You accept sole responsibility for all acts or omissions of any person that access the NIUM Platform through the Access Codes and agree to be bound by the terms of all Transactions executed and placed through the NIUM Platform using the Access Codes; and
  - (b) if there is any change to its Authorised User. Until NIUM has been notified of such change and has had a reasonable opportunity to act on it, NIUM shall be entitled to continue to regard previously designated Authorised User as Your authorised representative and rely on all information and instructions provided by such Authorised User.
- 3.10 You are responsible for maintaining Your own records related to any Transactions and for reconciling such records against any entries made available on the NIUM Platform. You must notify NIUM promptly, and in any event, no later than fourteen (14) days after any unauthorised, incorrect, disputed entry is entered on the NIUM Platform. Following the expiry of this period, any such entry in the NIUM Platform shall be deemed as agreed.

#### **4. CUSTOMER FUNDS**

- 4.1 CFSB WILL AT ALL TIMES HOLD AND HAVE ACCESS TO AND CONTROL OVER ANY FUNDS DEPOSITED BY YOU OR BY THIRD PARTY FOR YOUR ACCOUNT. AT NO TIME SHALL NIUM BE CONSIDERED, ACTUALLY OR CONSTRUCTIVELY, AS CONTROLLING OR POSSESSING YOUR FUNDS. CFSB SHALL BE SOLELY LIABLE FOR ALL CUSTOMER FUNDS HELD WITH RESPECT TO THE SERVICES.**

#### **5. FEES AND OTHER SUMS**

- 5.1 You agree to and shall pay the Fees disclosed by NIUM when You create a Request on the NIUM Platform.
- 5.2 NIUM shall be entitled, without prior notice, to deduct any Fees or other amount which becomes due, owing or incurred to NIUM from any Funds held by NIUM on Your behalf at any time. In the event such Funds are insufficient, You shall remain liable to NIUM for any balance and shall forthwith pay or reimburse such balance in full to NIUM on demand.
- 5.3 All Fees and any amount payable by You shall be paid in full to NIUM without any deduction (including deductions in respect of items such as income, corporation, withholding, sales or other taxes, charges and/or duties). If You are required by Applicable Laws to make a deduction or withholding from any payment due under the Services, You shall pay such additional amounts as are required to ensure that the net amount received and retained by NIUM equals the full amount that would have been received and retained by NIUM had no such deduction or withholding been made and/or no such liability to tax been incurred.

#### **6. REBATES**

- 6.1. Where NIUM has agreed to pay a Rebate to the Customer, this Clause 6 shall apply.

- 6.2. Subject to Clause 6.3 below, NIUM shall pay rebate in such amount and such frequency as set out in the pricing sheet signed by the Customer or the Rebate Report ("**Rebate**") to the Customer.
- 6.3. NIUM shall be required to pay a Rebate to the Customer under Clause 6.2 only if:
- (a) no outstanding Fees are owed by the Customer to NIUM; and
  - (b) (where applicable) the total amount of Fees received by NIUM for the relevant month in which NIUM was due to pay Rebate to the Customer equals to at least the Minimum Monthly Commitment.
- 6.4. NIUM shall deliver the Customer a report setting out the Rebate payable ("**Rebate Report**"). The Rebate Report is final and binding on both parties save for manifest error to which the Customer must notify NIUM within fourteen (14) days of receipt of the Report.
- 6.5. Any Rebate payable to the Customer under this Agreement shall be in the currency set out in the Rebate Report ("**Agreed Currency**"). If Customer requests payment of such Rebate be converted into any other currency, such conversion shall be made at the relevant exchange rate as determined by NIUM at the time of conversion. NIUM shall be entitled to deduct any cost, loss or liability arising out of or as a result of such conversion from such Rebate prior to settlement to the Customer.

## 7. TAX

- 7.1. Any Tax payable in respect of the Services will be payable by You. In the event CFSB, NIUM and You are jointly liable to a Tax Authority for any Tax, such sums will be payable by You. Neither CFSB nor NIUM shall be obliged, to pay any such Tax to the relevant Tax Authority. In the event CFSB or NIUM elects, at its sole discretion to pay any such Tax, You agree to immediately indemnify CFSB and NIUM against, and reimburse CFSB and NIUM for, such sums. CFSB may, at its sole discretion, deduct such sums from any sums held by CFSB on Your behalf.
- 7.2. In the event CFSB is required by Applicable Laws to deduct any Tax from any sum held by CFSB on Your behalf or payment due to You, CFSB will make such deduction in the amount as required by Applicable Laws and pay such amounts to the relevant Tax Authority. For the avoidance of doubt, neither CFSB nor NIUM shall be required to increase or gross-up any amount or payment on account of any Tax deduction and will pay You or any third party designated by You and approved by CFSB net of any such Tax deduction.
- 7.3. If a Tax Authority or a Regulatory Body requested information in relation to You and/or Transactions processed under these Terms and Conditions from CFSB or NIUM, You hereby agree that CFSB and NIUM may provide such information. You agree to provide CFSB and NIUM with Your Tax identification details on request.

## 8. SET-OFF

- 8.1 Without prejudice and in addition to any other rights and remedies available to CFSB or NIUM under Terms and Conditions, You authorise CFSB and NIUM via CFSB, without prior notice and both before and after demand, to set off the whole or any part of Your liabilities to CFSB and/or NIUM, whether such liabilities are actual or contingent, liquidated or unliquidated against any funds held from time to time by CFSB on Your behalf.
- 8.2 NIUM is entitled to convert any currency at the exchange rate to be determined by NIUM at its sole discretion for the purpose of exercising its rights under Section 8.1.

## 9. RIGHT OF AUDIT

- 9.1 Upon reasonable notice, You shall permit CFSB, NIUM and/or its authorised representative to access during business hours such premise or systems on which Your business takes place or where the Your records are located and to take and retain copies of all such records to ascertain if You are performing Your obligations under these Terms and Conditions.
- 9.2 Where an audit is undertaken pursuant to Applicable Laws, a request by any regulatory authorities with jurisdiction over CFSB or NIUM or any event or events giving rise to a security breach pertinent to these Terms and Conditions, You shall pay any cost and expenses incurred by CFSB and NIUM with respect to such audit.

## 10. CONFIDENTIALITY

- 10.1 Each Party will, and each will procure that its personnel will, keep confidential all Confidential Information of, or concerning the other Parties received by it.
- 10.2 Confidential Information will not include information that the receiving Party can demonstrate: (i) is now or thereafter becomes generally known or available to the public, through no act or omission on the part of the receiving party; (ii) was known by the receiving party prior to receiving such information from the disclosing party and without restriction as to use or disclosure; (iii) is rightfully acquired by the receiving party from a third party who has the right to disclose it under the circumstances and who provides it without restriction as to use or disclosure; (iv) is independently developed by the receiving party without access to any Confidential Information of the disclosing party or (v) is required to be disclosed by any court of competent jurisdiction or any competent judicial, governmental, supervisory or regulatory body or by any applicable law or regulation provided that to the extent permitted by laws or regulations, the receiving party uses reasonable efforts to give the disclosing party reasonable advance notice of such required disclosure.
- 10.3 Each Party agrees: (i) to take all reasonable action necessary to protect the confidentiality of the other Party's Confidential Information; and (ii) not to use any such Confidential Information for any purpose except in accordance with the terms of these Terms and Conditions. Each Party may disclose the Confidential Information of the other Party to its employees, officers, Group Entity, agents or independent contractors who have a bona fide need to know such Confidential Information, to fulfill its obligations and exploit its rights under these Terms and Conditions and who are under legally binding obligations of confidentiality no less restrictive than those set forth in this section. The receiving Party will be liable to the disclosing Party for any unauthorised disclosure by its employees, officers, Group Entity, agents or independent contractors. Unless expressly permitted under these Terms and Conditions, on expiry or termination of these Terms and Conditions, each Party will immediately cease to use any Confidential Information of the other and will return on written demand or, at its election, destroy, so far as practicable permanently erase all copies of that Confidential Information in its possession or control save that a Party is permitted to retain such part of that Confidential Information only for the purposes of, and for so long as is required by any Applicable Laws or its legitimate internal compliance requirements.
- 10.4 The obligations set forth under this Clause shall survive termination of these Terms and Conditions for five (5) years.
- 10.5 You authorise NIUM, directly or through third parties, to make any inquiries NIUM considers necessary for the performance of NIUM's obligations under these Terms and Conditions including validate the Your identity. This may include making periodic searches of, and provide information about You to credit reference, market research, customer feedback, fraud prevention agencies, group companies of NIUM and agents for any purpose in connection with the Services.

## 11. INTELLECTUAL PROPERTY

- 11.1 You agree that the NIUM Platform, NIUM web-pages, the Services, applications, process and systems, and deliverables produced by NIUM to perform its obligations under these Terms and Conditions (including without limitation, reports, compilations and databases in any and all media) (collectively, NIUM IP which shall include service marks, logos and trademarks) are and shall remain the exclusive property of NIUM and are protected by copyright law or other intellectual property laws. You agree that no copyright or other intellectual property rights, title or interest, whether express or implied, in any of NIUM IP shall be acquired by You, except to the extent expressly contemplated in these Terms and Conditions. Save as permitted under these Terms and Conditions, You shall not distribute, disclose, sell NIUM IP to, or permit use of NIUM IP by, any third party whether in whole or in part without the express written consent of NIUM. You shall not, directly or indirectly disassemble, reverse engineer or otherwise attempt to derive or discern the source code or internal workings of the NIUM IP. You may not: (i) reproduce any part(s) of NIUM IP in any form; (ii) create any derivative work based thereon; or (iii) incorporate the site into other websites, electronic retrieval systems, publications or otherwise.
- 11.2 NIUM may (a) refer You as being a client of NIUM and (b) use Your Intellectual Property Rights (as defined below) 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 You to participate in public relations activities and the Parties may issue a mutually agreed press release on execution of these Terms and Conditions. Subject to the foregoing, each Party shall obtain the written consent of the other Party prior to using or referring to any trademarks, logos, copyrighted materials, business names or other similar intellectual property rights ("**Intellectual Property Rights**").

## 12. PRIVACY

- 12.1 You represent and warrant to CFSB and NIUM that You have the legal right to disclose all Personal Data that You disclose to CFSB and NIUM under or in connection with these Terms and Conditions.
- 12.2 Each Party acknowledges and agrees that it acts as independent data controller, or the equivalent under Data Protection Laws in relation to the Personal Data it Processes under or in connection with these Terms and Conditions. Each shall comply with its respective obligations under the Data Protection Laws.
- 12.3 Each Party shall ensure that access to Personal Data is limited to such Party's personnel who have a reasonable need to access Personal Data to enable such Party to perform its duties under these Terms and Conditions.
- 12.4 If either Party 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 24 hours of the occurrence 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 Laws.
- 12.5 If a notice is prohibited under Data Protection Laws, 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 Laws.
- 12.6 You acknowledge and agree that CFSB and NIUM, at its sole discretion, may disclose any Personal Data or transaction-related information to any Service Providers or third parties in order to perform CFSB and NIUM's obligations under these Terms and Conditions and/or legal obligations under Applicable Laws, including but not limited to anti-money laundering, Sanctions, or as may otherwise be required by law or court order. Furthermore, such disclosure may be made to any governmental agency, body or department that exercises regulatory or supervisory authority with respect to CFSB and NIUM's operations, 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 governmental entities in the ordinary course of business.

## 13. INDEMNITY

- 13.1 You agree to indemnify, defend and hold harmless CFSB and NIUM from and against any and all Losses whatsoever and howsoever arising which NIUM may sustain, incur, suffer or pay arising out of, in connection with or pursuant to any of the following:
- (a) Your access and/or use of the NIUM Platform and/or the Services (including any security breach), whether or not such access and/or use was authorised or whether it was due to any act or omission on Your part;
  - (b) CFSB and NIUM's relying and acting on any notice, request or instruction given by You;
  - (c) any information provided by You to NIUM in connection with these Terms and Conditions being or being alleged to be inaccurate or misleading in any material respect; and
  - (d) any breach of these Terms and Conditions, including, but not limited to a breach of its representations, warranties, obligations, covenants, and undertakings hereunder; and
  - (e) all Tax howsoever levied or imposed upon You or any Services (other than Tax payable on CFSB or NIUM's net income, profit or gains) by any federal, state or local government or governmental subdivision or taxing authority together with any cost incurred by CFSB and NIUM of defending such Tax.

## 14. EXCLUSION AND LIMITATION OF LIABILITY

- 14.1 Under no circumstances, including negligence, shall either Party be liable for any indirect, incidental, punitive, special or consequential damages incurred or suffered by the other Party arising out of or in connection with these Terms and Conditions, including without limitation lost revenue, loss of income, or loss of business advantage, even if the party suffering such damages or an authorised representative of such party has been advised of the possibility of such damages.

14.2 Neither CFSB nor NIUM make any representations or warranties, express or implied, including but not limited to any warranties of satisfactory quality, fitness for a particular purpose, no infringement and performance or otherwise. You agree that CFSB and NIUM shall not be liable for any errors or losses caused by third parties, including but not limited to any banking institution. CFSB and NIUM do not warrant any aspect of the underlying transaction(s), including, for example, whether goods or services for which payment is being made are conforming or satisfactory or whether payment has been made in the right amount or within the time agreed between You and the payee.

14.3 Except expressly provided otherwise under these Terms and Conditions, to the extent permitted under Applicable Laws, under no circumstances shall CFSB and NIUM's liability to You or any third party for any damages or losses of any kind whatsoever (however arising, regardless of the nature of the claim or the form of cause of action), exceed the amount of the total Fees charged and collected by NIUM from You under these Terms and Conditions for the preceding twelve (12) months from the date giving rise to such claim. The Parties acknowledge and agree that the exclusion and limitation of liability in this section are reasonable having regard to all relevant factors, including the nature and cost of the Services provided and the allocation of risk and liability between the Parties.

## 15. TERMINATION AND CONSEQUENCE OF TERMINATION

15.1 Without prejudice to any other rights and remedies under these Terms and Conditions, You may at any time immediately terminate these Terms and Conditions or any Service by written notice to NIUM if:

- (a) CFSB or NIUM commits a material breach of these Terms and Conditions which is not capable of remedy, or if capable of remedy, is not remedied to Your reasonable satisfaction within thirty (30) days of service of a notice requiring such remedy;
- (b) CFSB or NIUM becomes Insolvent; or
- (c) You are required to do so under Applicable Laws.

15.2 Without prejudice to any other rights or remedies under these Terms and Conditions, CFSB or NIUM may at any time immediately terminate these Terms and Conditions or all or parts of the Services, or suspend the provision of all or parts of any Services, by written notice to You if:

- (a) You fail to pay the Fees or any other amount due and payable to NIUM in connection with the Services;
- (b) You commit a material breach of these Terms and Conditions which is not capable of remedy, or if capable of remedy, is not remedied to NIUM's reasonable satisfaction within thirty (30) days of service of a notice requiring such remedy;
- (c) You become Insolvent;
- (d) all or parts of the Services or the NIUM Platform is used for (i) any purpose contrary to Applicable Laws or Sanctions or (ii) to facilitate any Restricted Activities;
- (e) CFSB or NIUM is required to do so under Applicable Laws or reasonably believe that any Transaction may be (i) contrary to Applicable Laws and/or Sanctions; (ii) security of any of the Services has been compromised; or (iii) unauthorized or fraudulent use of any of the Services;
- (f) the results of any "know your customer" or other similar checks or screenings under applicable laws or regulations conducted on You or in connection with any Transactions are unsatisfactory;
- (g) there is a withdrawal or termination of any licence, permission or authorisation required to operate Your business; or
- (h) You undergo a change of Control, or a sale or other disposal of any substantial division or part of Your business.

15.3 Upon termination of these Terms and Conditions, all rights and obligations of any Party will cease to have effect immediately, save that the sections which expressly or by implication have effect after termination will continue to be enforceable notwithstanding such termination (including clauses 5, 7, 8, 9, 10, 11, 12, 13, 14, 15.3, 21,

22.1 and 22.4) and termination will not affect accrued rights, obligations and liabilities of any Party under these Terms and Conditions as at the date of termination. Termination shall not affect Your obligation to pay any minimum commitment fees under these Terms and Conditions which are expressed to be applicable for a certain period agreed between the Parties.

- 15.4 Upon termination of these Terms and Conditions for whatever reason, neither CFBSB nor NIUM shall obligation to retain, store or make available to You any data, records or other information relating to any of the Services or Transactions and You shall cease using the NIUM IP and the NIUM Platform.

## 16. FORCE MAJEURE

- 16.1 Except for the obligation to pay for Services delivered, non-performance of either Party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, other natural disasters, governmental acts, acts of terror or orders or restrictions, failure of suppliers, market disturbance, or act of God, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing Party ("**Force Majeure Event**").
- 16.2 The affected Party shall promptly notify the non-affected Party of the nature and extent of the circumstances giving rise to the Force Majeure Event.

## 17. NOTICE

- 17.1 All notices, demands and other communications required or desired to be given hereunder shall be in writing and shall be deemed to be given: (i) if personally delivered, upon such delivery; (ii) if mailed by certified mail, return receipt requested, postage pre-paid, to such address listed in these Terms and Conditions, three (3) days after such mailing; or (iii) if deliver by electronic mail, as soon as it has been sent by the sender (provided that the sender does not receive a notification that the e-mail was not sent). Addresses may be changed by written notice given as provided herein and signed by the Party giving the notice.
- 17.2 You may not serve notice to terminate these Terms and Conditions or all or parts of the Services by electronic mail.

## 18. DISPUTE RESOLUTION

- 18.1 Without prejudice to either party's rights or remedies under these Terms and Conditions, if any dispute between the parties (each a "**Disputing Party**") arises out of or in connection with these Terms and Conditions ("**Dispute**"), either Disputing Party shall give to the other a written notice of the Dispute, setting out the nature and full particulars of such Dispute, together with any relevant supporting documents ("**Dispute Notice**"). Following service of the Dispute Notice, the Disputing Parties shall attempt to resolve the Dispute in good faith.
- 18.2 If the Disputing Parties are unable to resolve the Dispute within fourteen (14) Business Days of service of the Dispute Notice or such other period as mutually agreed between the Disputing Parties ("**Period**"), either Disputing Party shall be entitled to commence proceedings under Clause 19.
- 18.3 If the Dispute is resolved within the Period, any settlement shall be recorded in writing and signed by the authorised representative of each Disputing Party.
- 18.4 Nothing in this Section shall prevent either Disputing Party from making any application for injunctive relief it considers necessary to protect its position.

## 19. SERVICE VARIATIONS AND AMENDMENTS TO AGREEMENT

- 19.1 NIUM may, from time to time:
- (a) make changes to the Services and/or the NIUM Platform which do not materially affect the nature or qualify of the Services and/or the NIUM Platform. If such changes lead to a material change in software, interfaces or operating procedures affecting You, NIUM will notify You as soon as reasonably practicable prior to the implementation; and
  - (b) amend, revise or update these Terms and Conditions from time to time by publishing a revised version on NIUM Website. Any variation or amendment shall come into effect on the date the revised Terms and Conditions are published on NIUM Website. Your continued use of the Services after any changes to



these Terms and Conditions shall constitute Your consent to all such changes. If You do not agree to the revised Terms and Conditions, please discontinue Your use of the Services.

## **20. ASSIGNMENT AND SUBCONTRACTING**

- 20.1 You may not assign, novate, charge, declare a trust over or transfer the benefit of all or any part of these Terms and Conditions.
- 20.2 You may not delegate the performance of its obligations under these Terms and Conditions to an agent or subcontractor save with the prior written consent of CFSB or NIUM, which CFSB or NIUM may reasonably withhold or withdraw at any time. You shall remain liable to CFSB and NIUM for the acts or omissions of any of its agents or subcontractors, regardless of whether You have obtained the consent for that person.
- 20.3 CFSB and NIUM shall be entitled to novate and/or assign any or all of its rights and obligations under these Terms and Conditions to a third party at any time on giving at least one (1) month's notice to You.

## **21. GOVERNING LAW AND JURISDICTION**

- 21.1 These Terms and Conditions shall be governed and construed in accordance with the laws of the State of New York regardless of the laws that might otherwise govern under applicable principles of choice or conflicts of laws thereof. Any controversy, claim or dispute arising out of or relating to this Agreement, whether based on contract, tort, common law, equity, statute, regulation or otherwise (each a "**Dispute**") shall be resolved solely as set out in this Clause 21.2
- 21.2 In the event of a Dispute, the Parties first shall endeavor to settle the matter informally. The Party that believes that a Dispute exists shall give written notice of the Dispute to the other Party describing the nature of the Dispute, the circumstances giving rise to the Dispute, the actions desired and the grounds upon which such actions are sought. The Parties shall meet and discuss the Dispute either in person or by teleconference within fourteen (14) days of the notice.
- 21.3 Any Dispute which cannot otherwise be resolved as provided in Clause 21.3 shall be resolved by arbitration conducted in accordance with the rules of the American Arbitration Association ("AAA") in accordance with its Revised Commercial Rules (2013), currently available at <http://go.adr.org/commercialrules>, 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 provision 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 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.
- 21.4 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.

## **22. MISCELLANEOUS**

- 22.1 These Terms and Conditions constitute the entire understanding and agreement of the parties with respect to the subject matter hereof and supersedes and replaces, in their entirety, any and all prior agreements, written or oral related to the subject matter hereto.
- 22.2 You acknowledge and agree that all Transactions, wherever originated, may be processed by CFSB or may be processed on behalf of CFSB by one or more of the Service Providers. All Transactions, wherever originated, shall be processed in accordance with the laws and regulations of the jurisdiction where the Transaction is being

processed, including but not limited to, those laws relating to anti-money laundering, anti-terrorism and foreign asset control. Neither CFSB nor NIUM make any representation or statement or endorsement of the quality, safety or legality of any services provided by any Service Provider and shall not be liable to You for any delays or Losses incurred as a consequence of CFSB, NIUM or any Service Provider making such enquiries as they deem necessary in order to discharge their legal and regulatory responsibilities.

- 22.3 At any time after the date of these Terms and Conditions, You shall, at NIUM's request, execute or procure the execution of such documents and do or procure the doing of such acts or things as CFSB or NIUM may reasonably require for the purpose of giving effect to these Terms and Conditions.
- 22.4 The Parties confirm and agree that a person who is not a party to these Terms and Conditions shall have no rights to enforce any term of these Terms and Conditions or have the benefit of any of its terms.
- 22.5 In the event any provision or part of these Terms and Conditions is found to be invalid or unenforceable, only that particular provision or part so found, and not the entire Agreement, will be inoperative.
- 22.6 Any delay in enforcing a party's rights under these Terms and Conditions or any waiver as to a particular default or other matter shall not constitute a waiver of such party's rights to the future enforcement of its rights under these Terms and Conditions, except with respect to an express written and signed waiver relating to a particular matter for a particular period of time.
- 22.7 CFSB, NIUM and You are each an independent contractor for all purposes. Nothing in these Terms and Conditions will be construed as constituting a partnership, joint venture or agency between or among the Parties.
- 22.8 Save to the extent expressly set out in these Terms and Conditions, CFSB and NIUM hereby exclude all warranties, conditions, terms, obligations, undertakings and representations, whether in each case express or implied by statute, common law, custom, trade usage, course of dealing or otherwise, (including but not limited to implied undertakings of satisfactory quality and reasonable fitness for purpose) to the fullest extent permissible by Applicable Laws, and You hereby waive irrevocably any rights or remedies it may otherwise have had in respect of any of the same.

**SCHEDULE 1  
PAYMENT SERVICES**

**PART A MONEY TRANSFER SERVICES**

**1. PROVISION OF MONEY TRANSFER SERVICE**

- 1.1. CFSB shall provide the Money Transfer Service to You in accordance with these Terms and Conditions.
- 1.2. CFSB and NIUM may screen all Remittance submitted by You to processing in accordance with Applicable Laws CFSB's and NIUM's internal compliance policy.
- 1.3. CFSB shall not be required to provide the Money Transfer Service if any of the Transaction submitted by You is (a) against any Applicable Laws or Sanctions (b) to facilitate any Restricted Activities set out in Schedule 3 or (c) to send funds to any Beneficiary located outside the Approved Jurisdictions.

**2. LIQUIDITY**

- 2.1 You may fund the Liquidity via the following methods:
  - (a) ACH Pull Direct Debit; and
  - (b) ACH Push or domestic Wire Transfer.
- 2.2 You may not fund the Liquidity in cash, mailed check, or electronic check.
- 2.3 If You choose to fund the Liquidity using ACH Pull direct debit feature, You will need to provide Your bank account details, including Your bank account number and routing number (each such bank account is deemed "**Your Bank Account**").
- 2.4 When you choose to pay for Your transfer using our ACH Pull direct debit feature and where You provide Your Bank Account details:
  - (a) You represent that Your Bank Account payment details are correct, that You are authorized to access and transmit funds from Your Bank Account, that Your Bank Account is in good standing with the account-holding financial institution, and that You have the authority to initiate an electronic funds transfer in the amount at issue to or from Your Bank Account; and
  - (b) You authorize us to initiate electronic credits and debits to Your Bank Account through the automated clearinghouse (ACH) network in order to process the requested Transaction, including any applicable fees and charges using our ACH Pull direct debit feature and by.

Your authorization shall remain in effect for any Transaction that you have authorized while a registered user with the Service unless canceled in accordance with this Agreement.

**3. EXECUTION OF MONEY TRANSFER**

- 3.1 NIUM agrees to submit You Remittance Request to CFSB and CFSB shall process the Remittance in accordance with Your Remittance Request provided that Liquidity which sufficiently covers the Remittance (including any Fees and other amounts payable to NIUM in respect of the Money Transfer Service) has been received by CFSB in advance of any Instruction.
- 3.2 Notwithstanding Clause 3.1, CFSB may elect, in its sole discretion, to process the Remittance before receiving the Liquidity. If CFSB has processed such Remittance but the Liquidity has not been received in full for whatever reason ("**Liquidity Shortfall**"), You will reimburse CFSB by transferring an amount equalling to the Liquidity Shortfall to such bank account as notified by NIUM to You immediately on demand by NIUM.
- 3.3 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 the Remittance. If any Remittance 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. You further acknowledge and agree that Remittance Taxes are subject to changes from time to time and NIUM is under no obligation to notify You of any such changes.
- 3.4 Where foreign currency conversion is required, the prevailing exchange rate as disclosed by NIUM to You when a Request was created shall be applied.
- 3.5 CFSB or NIUM may, in its sole discretion, suspend, cancel, recall or refuse to complete a Remittance at any time without assigning any reason and without liability to You. In the event NIUM is unable to complete a Remittance for any reason, to the extent permissible under Applicable Laws and if practicable, NIUM shall provide reasonable details why such Remittance was not processed.

#### **4. RECALL OR CANCELLATION OF REMITTANCE**

- 4.1 You may recall or cancel a Remittance by sending an email to **techsupport@nium.com** (“**Recall Email**”) provided that such Recall Email is sent to NIUM before the “SENT TO BANK” status is reflected on the NIUM Platform. NIUM shall use its reasonable effort to procure the recall or cancellation of such Remittance in accordance with the Recall Email. NIUM does not guarantee that any recall or cancellation of Remittance would be successful.
- 4.2 You authorise CFSB and NIUM to accept, rely and act upon any Recall Email. Neither CFSB nor NIUM is under an obligation to check the authenticity or accuracy of any Recall Email received from You and shall not be liable for any Losses incurred or suffered by You or any third party for complying with such Recall Email.
- 4.3 Prior to submitting a Recall Email to NIUM, You shall ensure that all information contained in the Recall Email is complete and accurate. If You subsequently learn of any error in the Recall Email, You must immediately notify NIUM in writing.
- 4.4 If You fail to provide a timely, accurate and complete information in a Recall Email, NIUM may be unable to process such Recall Email or may have to delay the processing of such Instruction. NIUM shall not be liable for any Losses incurred or suffered by You or any third party as a result of such delay or failure in processing such Recall Email.
- 4.5 Any funds returned due to a recall or cancellation may be subject to charges and expenses and foreign exchange losses when converted at the prevailing exchange rate and You agree to indemnify NIUM in full against any and all Losses incurred by NIUM in connection with such recall or cancellation.

#### **5. UNAUTHORISED OR WRONGFUL REMITTANCE**

- 5.1 You shall notify NIUM as soon as You become aware of an unauthorised or incorrectly processed Remittance.
- 5.2 In the event such unauthorised or incorrectly executed Remittance is attributable solely to any act or omission of NIUM, NIUM shall be liable to compensate You for any shortfall or any amount wrongly disbursed to a third party other than the Beneficiary.

- 5.3 In the event such unauthorised or incorrectly executed Remittance is attributable to any act or omission of You, NIUM shall use its reasonable effort to recover the funds on behalf of You through CFSB. Neither CFSB nor NIUM shall be liable to You for any failed recovery effort and shall not be required to compensate or reimburse You for any Losses. You shall indemnify CFSB and NIUM for any Losses suffered by CFSB and NIUM due to such unauthorised or incorrectly executed Remittance.

#### **PART B PAY IN AND PAY OUT SERVICES**

##### **1. PROVISION OF THE PAY IN PAY OUT SERVICES**

- 1.1. CFSB shall provide the Pay In Pay Out Services to You in accordance with these Terms and Conditions.
- 1.2. Notwithstanding Section 1.1, neither CFSB nor NIUM not have control of or liability for any Underlying Undertaking that You provide to any Payer in connection with the Pay In Pay Out Services. You shall be solely responsible for performing your obligations towards any Payer under any Underlying Undertaking and shall fully indemnify and hold CFSB and NIUM harmless from any claim made by any Payer against CFSB or NIUM with respect to any Underlying Undertaking.
- 1.3. The Pay In Pay Out Services are intended to enable payments solely for legitimate business related and commercial activities and are not intended for personal or person-to-person use. CFSB and NIUM reserves the right to block all payments into any Virtual Account for personal reasons. You shall not, under any circumstances, use the Pay In Pay Out Services for (a) self-compensation and/or self-provision of goods and services, including provision of goods and/or services by You to an entity owned or controlled by You or (b) any other purposes other than to receive or make payments arising from any Underlying Undertaking.
- 1.4. You represent and warrant that all information provided in connection with the Pay In Pay Out Services or any Underlying Undertaking is accurate in all material respects and You shall not omit or withhold any information which would make such information inaccurate in any material respect.
- 1.5. CFSB shall not be required to provide the Pay In Pay Out Services unless:

- (a) You have submitted to NIUM a Collection Request alongside the relevant invoice containing the name and address of the Payer that establishes the commercial relationship between You and the relevant Payer under the relevant Underlying Undertaking or (where the Payer is located in India) an Import Service;
- (b) the Payer or Beneficiary is located in an Approved Jurisdiction;
- (c) with respect to the Payer, deposit of funds into any Virtual Account (i) is not made via over the counter checks or cash deposit and (ii) originates from the Payer Bank Account; and
- (d) the results of any due diligence checks on any Transaction is satisfactory.

## 2. THE VIRTUAL ACCOUNT

- 2.1 You may open and maintain any number of Virtual Accounts with CFSB in USD upon the approval of CFSB and NIUM.
- 2.2 The total amount of funds received into all Virtual Accounts shall not exceed USD250,000 in any month and USD2.5 million in a year.
- 2.3 You represent and undertake that:
  - (a) You own all titles, interest and rights to all funds received into any Virtual Account. No person or entity other than You has any rights in and to such funds;
  - (b) (where the Payer is located in India) You are a merchant offering (i) digital content or services or (ii) online travel services, as applicable ("**Import Services**") and the Pay In Pay Out Services shall be used solely to facilitate the receipt of payments from such Payer pursuant to any Import Services; and
  - (c) You are solely responsible for reporting to all applicable government tax authorities in respect of funds deposited into any Virtual Account and for the payment of any applicable taxes that apply to such funds as well as 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 and Conditions.
- 2.4 You may not:

- (a) request NIUM to correct any error pertaining to any Collection Request or initiate a reversal of any amount due to be received in any Virtual Account once such Collection Request has been submitted to NIUM for processing;
- (b) assign, charge, declare trust over or transfer the benefit of all or any part of any funds held in any Virtual Account; or
- (c) accept or request NIUM to accept any funds made via over the counter checks or cash deposit to any Virtual Account or does not originate from the Payer Bank Account.

2.5 CFSB may, and NIUM may request CFSB to, cancel, reverse, demand refund, debit any Virtual Account, cause any amount of the funds to be unavailable for withdrawal or treat any Virtual Account as overdrawn and make corresponding adjustments to any entry on the NIUM Platform at no liability to You if:

- (a) CFSB or NIUM needs to correct any error or omission;
- (b) CFSB or NIUM is required to return the funds to the Payer;
- (c) CFSB or NIUM has not received cleared and unconditional funds from any Payer in full or in time; or
- (d) where NIUM has reasonable grounds to do so for any other legitimate reasons.

2.6 NIUM shall not be liable to make up for any shortfall in any amounts received by NIUM pursuant to any Collection Request (including due to bank or swift charges deduction) unless such shortfall is due to the gross negligence or wilful default of NIUM.

2.7 Where foreign currency conversion is required, NIUM shall apply the prevailing exchange rate as disclosed to You when a Collection Request was created.

## 3. SECURITY OF THE VIRTUAL ACCOUNT

- 3.1. You shall be solely responsible and shall take all steps to keep any Virtual Account opened and maintained with CFSB safe at all times.
- 3.2. You shall notify NIUM immediately upon becoming aware of or reasonably suspect that any Virtual Account has been misappropriated, used without authorisation or otherwise compromised. Any delay in or failure to notify NIUM shall result in You being liable for any

Losses that arise in connection therewith.

- 3.3. The Virtual Account shall be operated and accessed by an Authorised User and You shall be fully liable for any acts and omissions of any Authorised User or persons acting or purported to act on its behalf. If You allow any other third party to have access to or to operate any Virtual Account for whatever reason, You shall be deemed to have authorised such use and shall be liable for all Losses and fees incurred by such use.

#### 4. WITHDRAWAL FROM THE VIRTUAL ACCOUNT

- 4.1. You may withdraw the funds in any Virtual Account (“**Withdrawal Request**”) at any time in accordance these Terms and Conditions.
- 4.2. You may not withdraw funds from any Virtual Account if:
- (a) the amount is less than the minimum withdrawal threshold, which at the date of these Terms and Conditions is USD 100 or currency equivalent. NIUM may, in its sole discretion, vary the minimum withdrawal threshold from time to time upon notice to You; or
  - (b) after deducting all Fees and any other amounts due and owing to NIUM, such withdrawal would result in negative balance in any Virtual Account.
- 4.3. Upon receipt of a Withdrawal Request from NIUM, CFSB shall initiate a Remittance to the Customer Bank Account or Beneficiary Bank Account as may be approved by CFSB and NIUM in writing from time to time in USD and in such amount as indicated in the Withdrawal Request.
- 4.4. You shall ensure that the details of any Customer Bank Account or Beneficiary Bank Account are correct and complete and shall notify NIUM in writing in advance of any change to Customer Bank Account or Beneficiary Bank Account. Until NIUM has been notified of such change and has had a reasonable opportunity to act on it, NIUM shall be entitled to continue initiating any Remittance to the existing Customer Bank Account or Third Party Bank Account. Neither CFSB nor NIUM shall be liable for any Losses arising from any Remittance due to incorrect or incomplete details provided by You or Your failure to inform NIUM in advance of any change to You Bank Account or Third Party Bank Account.
- 4.5. You agree that all information and data relating to payments You make to a Beneficiary via the

Pay In Pay Out Service will be shared with and/or disclosed to such Beneficiary.

- 4.6. You acknowledge and agree that the tax authorities of certain countries and/or jurisdictions may deduct Remittance Taxes from the Remittance. If any Remittance 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. You further acknowledge and agree that Remittance Taxes are subject to changes from time to time and NIUM is under no obligation to notify You of any such changes.
- 4.7. CFSB may, in its sole discretion, suspend, cancel, recall or refuse to complete a Remittance at any time without assigning any reason and without liability to You. In the event CFSB is unable to complete a Remittance for any reason, to the extent permissible under Applicable Laws and if practicable, NIUM shall provide reasonable details why such Remittance was not processed.
- 4.8. You may recall or cancel a Remittance by sending an email to techsupport@nium.com (“**Recall Email**”) provided that such Recall Email is sent to NIUM before the “SENT TO BANK” status is reflected on the NIUM Platform. NIUM shall use its reasonable effort to procure the recall or cancellation of such Remittance in accordance with the Recall Email. NIUM does not guarantee that any recall or cancellation of Remittance would be successful.
- 4.9. You authorise CFSB and NIUM to accept, rely and act upon any Recall Email. Neither CFSB or NIUM is under an obligation to check the authenticity or accuracy of any Recall Email received from You and shall not be liable for any Losses incurred or suffered by You or any third party for complying with such Recall Email.
- 4.10. Prior to submitting a Recall Email to NIUM, You shall ensure that all information contained in the Recall Email is complete and accurate. If You subsequently learn of any error in the Recall Email, You must immediately notify NIUM in writing.
- 4.11. If You fail to provide a timely, accurate and complete information in a Recall Email, NIUM may be unable to process such Recall Email or may have to delay the processing of such Instruction. Neither CFSB nor NIUM shall be liable for any Losses incurred or suffered by You or any third party as a result of such delay or failure in processing such Recall Email.

## 5. SUSPENSION AND CLOSURE OF THE VIRTUAL ACCOUNT

- 5.1. Subject to You providing NIUM a seven (7) day prior written notice and such information or documents as may be requested by NIUM for due diligence checks purposes, You may request that any Virtual Account be closed or suspended at any time for whatever reason.
- 5.2. Notwithstanding anything in these Terms and Conditions, CFSB may, in its sole and absolute discretion and without liability to You, refuse to open a Virtual Account for You and shall not be obliged to provide any reasons for any such refusal.
- 6.3 CFSB may close or suspend any Virtual Account, or limit Your access to (i) the Pay In Pay Out Services and/or any other Services under these Terms and Conditions and/or (ii) the funds in such Virtual Account without prior notice ("**Closure Notice**") to You if (a) You violate these Terms and Conditions or any other agreement You enter into with CFSB or NIUM or (b) pursuant to any proprietary fraud and risk modeling used by CFSB when assessing the risk associated with Your use of the Pay In Pay Out Services or any Services under these Terms and Conditions or (c) pursuant to Applicable Law, Sanctions or the instructions of law enforcement or any Regulatory Body.
- 5.3. If for a period of twelve (12) consecutive months no Transactions have taken place via a Virtual Account or zero balance has been maintained in such Virtual Account:
- (a) CFSB may, or NIUM may request CFSB to, designate such Virtual Account to be "Inactive". Once the Virtual Account has been designated as Inactive, CFSB may disable certain features and of the Pay In Pay Out Services including terminating
- such Virtual Account; and
- (b) if a Virtual Account has been suspended or designated as Inactive, You may request CFSB via NIUM to reactivate the status of such Virtual Account at any time by giving a seven (7) days' prior written notice and CFSB may agree to do so in its sole discretion. You agree that neither CFSB or NIUM is liable for any Losses incurred by You as a result of the suspension of such Virtual Account or the discontinuance of the Pay In Pay Out Services.
- 5.4. If a Virtual Account holds funds at the time of its closure, You shall withdraw any such remaining funds within seven (7) days from the date of the Closure Notice. Upon expiry of the stated period, You shall not be able to access such Virtual Account. Any request for return of the remaining funds can only be made by sending NIUM an email at techsupport@nium.com and subject to the laws applicable to unclaimed properties in the state where You are located. You shall continue to observe its obligations with regards to keeping the Virtual Account safe pending withdrawal of the remaining funds.
- 5.5. NIUM shall be entitled to carry out any necessary checks pursuant to its internal compliance procedures or Applicable Laws before authorising any return of funds to You or any third party nominated by You and approved by NIUM after closure of an Virtual Account. NIUM's obligation to return funds is subject to satisfactory due diligence checks. In the event NIUM is not able to return the funds to You, NIUM shall to the extent permissible by Applicable Laws and practicable, notify You of the reasons.

## SCHEDULE 2 DEFINITIONS

In these Terms and Conditions, the following definitions shall apply:

**“Access Codes”**

means a unique identification number and/or password which enables You to access and/or use the NIUM Platform;

**“Applicable Laws”**

means any law, regulation or generally accepted practices or guidelines in the relevant jurisdictions applicable to the Services from time to time, including but not limited to laws governing payment services such as those related to anti-money laundering or countering the financing of terrorism, consumer protection, data protection, gambling, false advertising, illegal sales, purchases or exchanges of any goods or services, export/import activity, taxes or foreign currency transactions;

**“Approved Jurisdictions”**

means those countries as notified by NIUM to You from time to time being where NIUM has the ability to facilitate processing of Transactions pursuant to any Services provided under this Agreement;

**“Authorised User”**

means an individual authorised by You and approved by NIUM to access and use the NIUM Platform;

**“Beneficiary”**

means any third party located in an Approved Jurisdiction to which NIUM agrees to process a Remittance to pursuant to Your Request (and "Beneficiaries" will be construed accordingly);

**“Beneficiary Bank Account”**

means an account with a duly licensed financial institution held in the name of the Beneficiary used to receive funds Remitted by NIUM pursuant to any Services set out in Schedule 1;

**“BizPay Services”**

means the services where NIUM acts as the intermediary to facilitate Payments between the Customer and any Supplier;

**“Chargeback”**

means the full or partial reversal of funds initiated by the Customer to the issuer of a Payment Card and resulting in financial liability to NIUM;

**“Collection Request”**

means means a request submitted by You to NIUM via the NIUM Platform to accept funds of

not more than USD250,000 from any Payer pursuant to the Pay In Pay Out Services;

**“Confidential Information”**

means any information of a Party provided in relation to the Services which: (i) might reasonably be presumed to be proprietary or confidential in nature; (ii) is disclosed in a writing that is marked “confidential” or “proprietary” at the time of such disclosure; or (iii) is disclosed orally and identified as “confidential” or “proprietary” at the time of such disclosure, and is summarised in a writing sent by the disclosing Party to the receiving Party within fourteen (14) days after any such oral disclosure

**“Customer Bank Account”**

means an account maintained by You with a duly licensed financial institution used to receive funds Remitted by NIUM pursuant to any Services set out in Schedule 1;

**“Customer Money Account”**

means such non-interest bearing bank account established and maintained by NIUM with a financial institution in accordance with Applicable Laws for the sole purpose of safeguarding funds held on behalf of customers of NIUM (including but not limited to funds held on Your behalf) which is segregated from any operating funds of NIUM;

**“Data Protection Authority”** shall mean an independent public authority that is legally tasked with overseeing compliance with applicable data protection laws;

**“Data Protection Laws”**

means all Applicable Laws relating to the protection of Personal Data;

**“Data Subject”** shall mean any individual whose Personal Data is being collected, held or Processed in connection with this Agreement;

**“Fees”**

means the transaction fee, foreign exchange charges and any other amounts payable You in respect of any Services;

**“Insolvent”**

means circumstances under which a Party (i) has a receiver or similar officer appointed over all or a material part of its assets or undertaking; (ii) passes a resolution for



winding-up (other than a winding-up for the purpose of, or in connection with, any solvent amalgamation or reconstruction) or a court makes an order to that effect or a court makes an order for administration (or any equivalent order in any jurisdiction); (iii) enters into any composition or arrangement with its creditors (other than relating to a solvent restructuring); (iv) ceases to carry on business; (v) is unable to pay its debts as they become due in the ordinary course of business;

**“Instruction”**

means an instruction provided by You or by any third party on behalf of You (including an Authorised User) to NIUM by telephone, letter, text message, email or via the NIUM Platform and shall include any Request. Any Instruction shall be binding upon You once it is submitted to NIUM;

**“Liquidity”**

means the total balance of funds received by NIUM in respect of the Money Transfer Services which are no longer subject to a right of recall initiated by the payment provider or financial institution from which the funds are sent;

**“Losses”**

means any liability of any kind, loss, claim, damage, interest, fine, penalty, fee, charge, cost and/or expense (including any foreign exchange losses and reasonably incurred legal and other professional fees, costs and/or expenses);

**“Money Transfer Services”**

means the domestic or cross-border money transfer services operated by CFSB that enable the Customer to send funds to Beneficiaries located within or outside of United States;

**“NIUM Platform”**

means the proprietary online system(s) and the components thereof, developed, owned and maintained by NIUM that enables the Customer to obtain the Services from NIUM, including any replacement thereof and any related software, websites, URLs, software programs and deliverable ancillary to the NIUM Platform such as reports, compilations or databases;

**“Payer”**

means any individual, company or organisation located in an Approved Jurisdiction that deposits funds into any Virtual Account pursuant to a, or a series of Underlying Undertakings;

**“Payer Bank Account”**

means an account with a duly licensed financial institution held in the name of the Payer used to deposit any funds into any Virtual Account;

**“Pay in Pay Out Services”**

means the services which enable You to receive and make global payments to and from Approved Jurisdictions for the purposes approved by NIUM and to facilitate the provision of foreign exchange services;

**“Payment”**

means an amount payable by the Customer to the Supplier pursuant to any Underlying Service;

**“Payment Card”**

means any corporate credit or debit card issued by a licensed credit or financial institution used by the Customer to make a payment to a Supplier or to NIUM pursuant to any Services;

**“Remittance Request”**

means a request submitted by the Customer on NIUM Platform to make a Remittance to a Beneficiary in the Supported Currency;

**“Request”**

means any of the following:  
 (a) Collection Request;  
 (b) Remittance Request; or  
 (c) Withdrawal Request;

**“Restricted Activities”**

means any of the restricted activities as set out in Schedule 3;

**“Sanctions”**

means any economic sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by: (i) the European Union; (ii) the United States government; (iii) the United Nations; or (iv) any other relevant sanctions authorities;

**“Services”**

means any payment processing services as set out in Schedule 1;

**“Service Providers”**

means such persons whom NIUM may from time to time utilise to facilitate the provision of any Services under this Agreement, including but not limited to the NIUM Entities, other financial institutions, third party banking counterparts and/or such other payment providers that NIUM may from time to time utilise or determine. For the avoidance of

doubt, Service Providers do not act as agents of NIUM;

**“Settlement”**

means the crediting by the relevant acquirer to NIUM of funds equating to the Payment and any amounts payable to NIUM under this Agreement in respect of the BizPay Services;

**“Supplier”**

means an individual, organisation or company located in an Approved Jurisdiction that requires Payment pursuant to an or a series of Underlying Services; and

**“Supported Currency”**

means a currency in which a Transaction may be processed under this Agreement, as notified by NIUM to the Customer in writing from time to time; and

**“Tax”**

means all forms of tax and statutory, governmental, state, federal, provincial, local, government or municipal charges, duties, imposts, contributions, levies, withholdings or

liabilities wherever chargeable in any jurisdiction and any penalty, fine, surcharge, interest, charges or costs relating to it;

**“Tax Authority”**

means any authority competent to impose, administer or collect any Tax in any jurisdiction;

**“Underlying Services”**

means such agreement or transaction between You and such Supplier whereby such Supplier provides goods or services to You;

**“Underlying Undertakings”**

means any legitimate business transactions between You and any individual, company or organization where You provide goods or services to such individual, company or organization; and

**“Virtual Account”**

means such multi-currency virtual wallet opened in accordance with these Terms and Conditions to enable the ongoing use of the Pay in Pay Out Services.

### SCHEDULE 3 RESTRICTED ACTIVITIES

NIUM does not support businesses or transactions which are involved in any of the following categories. While this list is representative, it is not exhaustive, and NIUM reserves the right to deny Services to any customers who exceed our risk tolerance.

(A) Products or services that:

- in any way that breaches any applicable local, national, or international law or regulation, or causes NIUM to breach any applicable law or regulation (including evasion, or facilitation of evasion of applicable taxes or tax laws);
- in any way that is unlawful or fraudulent, or has any unlawful or fraudulent purpose or effect;
- for the purpose of harming or attempting to harm minors in any way;
- for anything that is abusive, harmful, or does not comply with our content standards;
- for any unsolicited or unauthorised advertising, promotional material, or any other form of spam; or
- to deal in harmful programs such as viruses, spyware, or similar computer code designed to adversely affect the operation of any computer software or hardware.

(B) Regulated or illegal products and services

- Adult content: Pornography and other visual content depicting explicitly sexual acts. Services of sexual nature (webcam shows, live chats, prostitution, escorts, etc). Sexually oriented establishments (massage parlors, strip clubs, gentleman's clubs).
- Alcohol, Tobacco and Firearm related products, including electronic cigarettes
- Drug and drug related products including Cannabis, products containing CBD, any other products or services related to legal marijuana trade.
- Controlled substances or other products that present a risk to consumer safety.
- Drug paraphernalia: Any equipment, product, or material which is intended for making, using, or concealing drugs
- Pharmaceuticals: Nutraceuticals, pseudo-pharmaceuticals, or similar products not approved by the applicable regulatory body. Online pharmacies. Prescription-only pharmaceutical drugs.
- Chemicals. Nuclear Chemicals or related product sales, distribution or related businesses.

- Counterfeit goods: Unauthorised sale of designer and/or brand products. Sale of illegally imported or exported goods.
- Gambling: payments related to any types of gambling including lotteries, fantasy sports, games of chance.
- Intellectual property, copyright, patent, trademark, trade secret, proprietary rights infringement.
- Products and services which are not legal/meet the regulatory requirement in the jurisdiction they are being offered in or in any country that NIUM operates in.

(C) Financial and other Professional Services

- Companies involved in the exchange or trading of cryptocurrencies, or any other virtual currencies, including payments for the purpose of purchasing cryptocurrencies.
- Unregulated Money service businesses. Regulated payments service activity is only permissible with explicit approval by NIUM.
- Investment & Credit Services – Securities brokers; mortgage consulting or debt reduction services; credit counselling or repair; real estate opportunities; lending instruments, crowdfunding, unless explicitly approved NIUM and regulated/authorised by relevant authority.
- Others: Shell banks. Platforms allowing the trading and/or exchanging of FX/CFD/options. Superannuation funds. Syndicates. Trusts and trust formation activity.
- Any other financial services operating without a licence/registration where one is required.
- Services that facilitate anonymous payments/financial services.
- Binary options. Factoring. Using the NIUM account as an escrow or safeguarding account.

(D) Other Restricted Activities

- IPTV and VOIP services.
- Individuals, entities, or countries subject to international sanctions.
- Weaponry, military and semi-military goods and services.
  1. Weapons (including weapons of historic significance), military software, or any other goods or services intended for military use.
- Trade of restricted and/or endangered animal species and products derived from them.
- Trade of precious metals and stones

- Multi-level marketing, pyramid schemes, unreasonably high rewards schemes, referral marketing.
- Charities, except: - UNICEF - Prime Minister Relief fund - The International Red
- 
- Cross. Any other registered and highly reputable charity only upon explicit approval by NIUM
- Section 311 of USA Patriot Act designated entities