General Terms and Conditions for a POS network system and card acceptance in interaction with a mobile device

Status 06/2015

General

Ingenico Payment Services GmbH (“IPS”) and ING BELGIUM NV/SA (“ING”) are offering a mobile solution (Part I-IV) to the Merchant enabling acceptance of debit and credit cards through a Mobile Device (as defined below). Some Parts of the solution will be delivered by ING and some Parts will be delivered by IPS.

Subject to the terms and conditions of the Agreement (as defined below), The Merchant will be provided with a Card Reader (as defined below) and the services relating hereto which include the acceptance and processing of card payments (including the settlement of these payments) as well as the grant of a licence to use the Mobile Application (as defined below) and the Portal (as defined below), which will enable the Merchant to accept and process card payments.

The present general terms and conditions apply to the mPOS solution the acceptance of debit and credit cards of the credit card associations MasterCard and Visa by Merchants at the Card Reader (as defined below) and the settlement of non-cash payments resulting from the contractual use of the aforementioned cards as a payment instrument (Part III) and the general contractual provisions (Part IV) between the Merchant and IPS.

Ingenico Payment Services GmbH is authorized by the German Financial Supervisory Authority (“Bundesanstalt für Finanzdienstleistungsaufsicht”), Graurheindorfer Straße 108 in D-53117 Bonn to operate as an e-money institution under the supervision of the Financial Supervisory Authority. The competent supervisory authority in Belgium is the National Bank of Belgium, Boulevard de Berlaimont 14, 1000 Brussels.

ING Belgium SA/NV, Avenue Marnix/Marnixlaan 24, B-1000 Brussels, Belgium, hereafter “ING”, is a bank licensed as a credit institution by the National Bank of Belgium (“BNB/NBB”), Boulevard de Berlaimont/de Berlaimontlaan 14, 1000 Brussels (www.bnb.be/www.nbb.be) and supervised by the BNB/NBB as well as the Financial Services and Markets Authority (“FSMA”), Rue du Congrès/Congresstraat 12-14, 1000 Brussels (www.fsma.be). With signing the Merchant Contract the merchant has signed two different agreements, with two different servicers for parts of one mPOS solution. The agreement between IPS and the Merchant and between ING and the Merchant is subject to the following respective terms and conditions (the “Conditions”), the form signed by the Merchant (the “Merchant Contract”) and the IPS price and services sheet (Part V) applicable at the time of the conclusion of the Merchant Contract, unless agreed otherwise in the Merchant Contract (hereinafter together referred to as the “Agreement”).

Definitions

Terms and expressions used in these Conditions and written with a capital letter, unless the context otherwise requires, shall have the following meaning:

- Chargeable Claim: the Merchant's claim against the Cardholder, acquired as a result of the Underlying Transaction and submitted for settlement to IPS on the basis of the present Agreement.
- Acquiring Services: the instruction given by the Merchant to third parties, whether entirely or partly, with the settlement and processing of card payments.
- Transaction Receipt: receipt, electronically generated by the Merchant’s Card Reader through the Mobile Application after swiping the Card through the Card Reader, inserting the Card into the Card Reader or, in case of contactless readers, by holding the Card against the reader.
- Privacy Act: Loi du 8 décembre 1992 relative à la protection de la vie privée à l'égard des traitements de données à caractère personnel / Wet van 8 december 1992 tot bescherming van de persoonlijke levenssfeer ten opzichte van de verwerking van persoonsgegevens, or any similar or replacement national legislation, as well as all related regulations and implementation measures.
IPS: Ingenico Payment services GmbH is a limited liability company incorporated under the laws of Germany (“Gesellschaft mit beschränkter Haftung”), having its registered office in D-40885 Ratingen, Am Gierath 20, Germany. Branch office Belgium: Boulevard de la Woluwe/Woluwedal 102 , BE-1200 Bruxelles/Brussel

EMV: EMV is a worldwide standard for credit and debit payment systems, based on chip card technology.

EDP: Electronic Data Processing.


Underlying Transaction: sales and/or services agreement concluded between the Merchant and the Cardholder.

Merchant: an enterprise (including hotels) participating in the IPS POS Network System under the Agreement.

Card: debit and/or credit card of the Card Associations, used for the payment of goods and/or services.

Cardholder: holder of a Card, personally used by the holder for the purposes of paying for a non-cash Underlying Transaction.

Identification: authentication procedure for the use of a card according to the regulations of the Card Association.

Additions: has the meaning given to it in Clause 0.

Modification: has the meaning given to it in Clauses 9.4.6

Maximum Amount without Identification: a maximum amount determined by a Card Association for contactless payments without the requirement of entering a PIN number or providing a signature for identification purposes. The maximum amount for MasterCard and Maestro is EUR 25,00, and for Visa and VPAY it is EUR 20,00.

Offline Maximum Amount: the maximum amount for which contactless payments may be made offline, if permitted by the Merchant Contract.

Card Associations: MasterCard and Visa.

PCI DSS: Payment Card Industry Data Security Standard, i.e. Card Associations requirements regarding the security of card payments.

POS: Point of sale.

POS-Service: Card Reader, POS Network System and the additional services related hereto.

POS Network System: Processing system of IPS, to which the Card Reader is connected through the Mobile Application.

Card Reader: an EMV certified payment device, authorized by IPS, which reads the Card data and technically processes the payment transaction. The Card Reader must be configured for EMV and must be initialized by IPS. The Card Reader also encompasses the saved or included programs, services and functions, as ordered by the Merchant in the Merchant Contract or, as the case may be, as laid down in the product specification. Related equipment (e.g. batteries, fittings etc.) must be ordered separately and purchased from IPS for a fee.

Business Day: a calendar day which is not a Saturday, a Sunday or a public holiday in Belgium.

Payment Services Act: Livre VII du Code de droit économique/Boek VII Wetboek van economisch recht, 28 February 2013, including any amendements thereto or replacement thereof.

General ISO 8583 Credit Card: message format and communication flow issued by the International Organisation for Standardization allowing that different systems can exchange transaction requests and responses.

Delivery: The moment the goods are presented for the first time at the shipping address as indicated by the Merchant.
- **Solution**: means the mobile solution for acceptance of Card payment in relation to Transactions with Cardholders that IPS shall provide to the Merchant under these Conditions;
- **Mobile Device**: a portable device such as a smartphone or tablet computer that can be connected to the internet, as further identified in Part II of these Conditions (“Compatible Mobile Devices”).
- **Mobile App or Mobile Application**: the software that IPS provides, as the case may be through an intermediary, for the installation on the Merchant’s Mobile Device and allows to open and access the Merchant account / Card acceptance. The Mobile App is only accessible with respective Merchant login data.
- **Portal**: The website operated by IPS, or as the case may be by an intermediary, on which the Merchant can find his transaction overview and his account details, only accessible with respective Merchant login data.
- **Download and Installation Manual**: The instructions provided by IPS to the Merchant as regards one or more aspects of the Solution.
- **Solution Components**: the works and materials (including – without limitation – software and other literary works) offered by, on behalf of or through IPS as part of the Solution (whether as part of the Card Reader, the Mobile Application, the Portal or otherwise).
- **mPOS**: mobile POS

**Part I: mPOS solution**

Part I describes the mPOS solution as a whole and applies between the Merchant and ING and/or the Merchant and IPS.

1. **Solution**

   1.1. The Solution allows the Merchant to accept Card payments with the use of a compatible Mobile Device, together with the Mobile App and the Card Reader.

   1.2. To be able to use the Solution, the Merchant must sign up with IPS and ING and be accepted as an authorized Merchant by IPS. In the course of such signing up process, the Merchant must fill in the relevant forms, provide the required information, and confirm that it orders the following from IPS or ING: (i) the Card Reader(s) and the services relating hereto (delivered by and under the contractual relationship with ING), (ii) the acceptance of debit and credit cards of the Card Associations MasterCard and Visa (delivered by and under the contractual relationship with IPS) and (iii) the settlement of non-cash payments resulting from the contractual use of the Cards as a payment instrument (further to the use of the Mobile App) delivered by and under the contractual relationship with IPS. Once the Merchant has completed the signing up process, IPS will carry out the required verifications. Upon acceptance of the Merchant by IPS, the Merchant will receive a “welcome” communication from or on behalf of IPS and/or ING, providing all relevant details regarding the use of the Solution, and more specifically the Merchant's log in details, the Download and Installation Manual and other relevant instructions.

   1.3. To be able to use the Solution, the Merchant must successfully install the relevant Mobile App on the Mobile Device. The Merchant must also successfully pair the Mobile Device with the Card Reader via Bluetooth, according to the instructions described in the Download and Installation Manual provided by ING. The Mobile Device must support Bluetooth and must be able to connect to the Internet.

   1.4. Card payments can be processed only once the Card Reader and Mobile Device are switched on, the Mobile App is properly installed on the Mobile Device, the Card Reader and Mobile Device are successfully paired, the Mobile App is properly activated and the relevant login has been successful, and the Mobile Device has a network connection or access to Internet.

2. **Rights of Use**

   2.1. For the duration of the Agreement, ING and/or IPS grants the Merchant a personal, limited, non-exclusive, revocable, non-transferable license (without the right to sublicense) to electronically access and use the relevant Solution Components for the purpose of accepting Card payments. ING grants the Merchant the right to download and
install updates to the Solution Components as made available to the Merchant by ING from time to time.

2.2. The Merchant shall not (i) assign, sub-licence, copy, publish or distribute the Solution Components, (ii) allow third parties to use the Solution Components, (iii) assign the rights that the Merchant has acquired under the Agreement, or (iv) circumvent any of the technical limitations of the Solution Components, or decompile or otherwise reconstruct the Solution Components save only to the extent and circumstances permitted by law. The Merchant is also not allowed to modify the software or the hardware of the Card Reader in any way.

2.3. Upon successful registration, the Merchant will receive personalised username and password which will be needed in order to access his account and process payment transactions. It is in the responsibility of the Merchant to ensure that this information and other login information are stored safely. The Merchant agrees to maintain such account information solely at its own risk and in such a way that it remains inaccessible to unauthorised persons. Account information is personal and may not be transferred to or used by anyone other than the Merchant.

2.4. If the Merchant is concerned that any of the login details have been compromised, the Merchant must change them and can do so at any time through the Portal. In addition, the Merchant should immediately contact IPS and inform about how login details may have been compromised.

3. Third Party Services

3.1. The Merchants access to and use of the Solution is dependent on third-party services (such as mobile telephony services or mobile internet services) and is subject to the limitations and risks inherent to the same. The Merchant accepts that neither ING nor IPS shall have any responsibility for the performance of such third party services.

3.2. The Merchant must provide and maintain, at its own expense and under its own responsibility, the Mobile Device (required to use the Card Reader and the Mobile App) and the equipment (whether the Mobile Device or a different device) required to access the Portal, together with the necessary telecommunication contracts allowing, among others, the transmission of the Card payments / transaction data.

3.3. Any costs relating to the acquisition and use of the Mobile Device, such as – without limitation – costs arising from the contract between the Merchant and Mobile Device manufacturers, third party carriers and telecommunication providers, are not part of the ING or IPS offer and shall be exclusively borne by the Merchant.

4. Communication

4.1. The Merchant acknowledges and agrees that ING and IPS may, from time to time, issue communications or notices required by law, required or relevant to the Agreement, by posting them on ING’s or IPS’s website or by emailing them to the Merchants email address. The Merchant agrees that electronic communications and notices have the same significance and effect as if ING or IPS had provided it on paper. Such disclosures and notices are deemed to have been received by the Merchant within twenty-four (24) hours as from the exact time they have been posted on ING’s or IPS’s website, or within twenty-four (24) hours as from the time they are emailed to the Merchant (unless the respective sender receives notice that the email was not delivered). The Merchant agrees that, in addition to e-mail communications, ING and IPS may contact the Merchant also via letter or telephone when appropriate.

4.2. The Merchant must at all times maintain at least one valid email address in his Account. ING and IPS will not bear responsibility if the sole email address specified by the Merchant is not valid or if the Merchant changed email address but did not notify ING and IPS of the same.

4.3. The Merchant is required to check for incoming messages regularly and frequently.

5. Transaction Receipts

5.1. For each Underlying Transaction, the Merchant must deliver a Transaction Receipt to the Cardholder, to the extent that such a receipt must be issued or, in any event, at the request of the Cardholder. Transaction Receipts are provided electronically via email to the Cardholder. If the Cardholder does not want to provide his email address and must receive or asks to receive a Transaction Receipt, the Merchant must provide the
5.2. IPS will store the Merchant's Transaction Receipts and make them accessible through the Portal for at least fifteen (15) months as from the Underlying Transaction date. It is the responsibility of the Merchant to download the Transaction Receipts from the Portal and to store them for a period of at least eighteen (18) months. This Clause is without prejudice to longer retention periods legally applicable.

6. Provision of the Solution
6.1. ING and IPS shall use its reasonable endeavours to make the Solution available twenty-four (24) hours a day, seven (7) days a week. ING and IPS does not, however, warrant that the Solution shall be free from errors or interruptions during this time.

6.2. From time to time ING and/or IPS will perform maintenance and upgrades of the Solution, which may result in interruptions, delays or errors in the Solution (and more specifically in the availability of the POS Network System). ING and/or IPS shall try to communicate any planned maintenance in advance to the Merchant, but cannot guarantee that such notification will always be provided. In addition, the Solution may contain errors or bugs that may lead to interruptions. The Merchant acknowledges and accepts such potential risks. ING and/or IPS may contact the Merchant in order to help the Merchant with the Solution in case of interruption, delays or errors and the Merchant undertakes to provide ING and/or IPS with any information requested in order to identify and remedy such interruption, delays or errors.

7. Functions of card-based payment transactions – Transaction processing
7.1. The Card Reader (connected to the Mobile Device and with the intervention of the Mobile Application) offers the Merchant the possibility to process payment transactions electronically with cards in the Maestro system, V PAY system and with credit cards. For these purposes, the Cardholder swipes the Card through the card reader or inserts the Card into the card reader during the payment transaction. In case of contactless payment transactions, the Card is held in front of the reader. IPS transmits the data provided by the Merchant for verification purposes to the competent authorization centre and sends the answer to the Card Reader. Depending on the requirements of the Card issuer, the authorization is carried out. The results (successful or not) of the authorization is not part of the services under the present Agreement and is not guaranteed by IPS. IPS transmits the electronic payment data within the POS Network System from the Card Reader to the relevant authorization centre and compiles, if required, files for the payment.

7.2. The use of the Card Reader (and, more generally, of the Solution) for contactless payments shall only be authorized if a specific written agreement is entered into between the Merchant and ING and IPS to that effect (as part of the Merchant Contract).

7.3. The Merchant solely uses Card Readers admitted to the POS Network System with a view to participate in the card-based money transfers. The Card Readers required to access the POS Network System are provided by IPS only.

7.4. In accordance with Clause 3.2 and 3.3, the service fee for the data communication from the Card Reader to the interface of the IPS POS Network System, capacity fees and recurring fees for connections are borne by the Merchant.

8. Temporary saving
IPS saves information regarding the processing of transactions for the purposes of processing payment transactions and compliance with applicable legal obligations including those set out in the Payment Services Act and the relevant Money Laundering Provisions.

PART II. Card Reader

The present section only applies between ING and the Merchant

9. Card Reader
9.1. Generalities
9.1.1. This Agreement, only with regard to the relation between the Merchant and ING, is subject to the regulations of ING including but not limited to the General Regulations and
Special Regulations for Payment Transactions, which remain fully applicable except where this Agreement expressly derogates therefrom. In case of contradiction between these General and/or Special Regulations and the Agreement, the Agreement shall prevail.

The Merchant hereby expressly waives its own General Terms and Conditions, notwithstanding any reference to such conditions.

9.1.2. Bank account to be credited
The ING account number to which the sums received as a result of the use of the Solution are to be credited is indicated on the Order Form.

9.1.3. Fees
The Customer shall pay ING the purchase price of the Card Reader and a monthly support fee, specified in the Order Form.

The services provided shall be invoiced to the Customer according to the rates indicated on the Order Form.

The Customer's account indicated on the Order Form shall be debited with the charges indicated on the invoice plus the VAT payable on the date of the invoice.

Fees are subject to change according to the provisions referred to in article 9.1.1.

9.2. Compatibility Mobile Devices
9.2.1. ING does not warrant that the Solution will be compatible with third party carriers or telecommunication providers. The use of the Solution may be subject to the terms of agreements which exist between the Merchant and the Mobile Device manufacturer, the carrier and/or the telecommunication provider. ING cannot bear any responsibility or liability with respect to any of the foregoing.

9.2.2. ING does not warrant that the Solution will be compatible with any and all Mobile Devices. Below are the operating systems that ING has tested and which are, to IPS’s knowledge, compatible with the Solution. ING does, however, not guarantee such compatibility.

- **iOS:**
  iOS Mobile Devices require the operating system iOS 5.0. or beyond, as well as Bluetooth and Internet connections.

- **ANDROID:**
  Android Mobile Devices require the operating system Android 2.3.3 or beyond, as well as Bluetooth and Internet connections.

A list of tested Mobile Devices will be published and updated from time to time in the Portal.

9.2.3. Mobile Devices modified contrary to the manufacturer’s software or hardware guidelines, including but not limited to disabling hardware or software controls (sometimes referred to as “jailbreaking”) shall not be considered as compatible Mobile Devices. The Merchant acknowledges that the use of a modified Mobile Device contrary to the manufacturer’s software or hardware guidelines in connection with the use of the Solution is expressly prohibited, constitutes a violation of these Conditions and constitutes a ground for termination of the Agreement (including by closure of the Merchant’s account by ING).

9.3. Provision of card readers
9.3.1. How the payment card reader is made available
A Card reader is made available in accordance with the terms and conditions stipulated below.

The Card Reader purchased comprises: the hardware with accessories and the Mobile Application.

9.3.2. Purchase of Payment Card reader
The price for the Card Reader sold by ING to the Customer is specified on the Order Form.

9.3.3. Payment
The purchase price of the Payment Terminal in case of purchase are payable on expedition of the Card Reader. Payment is executed according to article 9.1.3.

9.3.4. Transfer of ownership and risk
All risk of damage, destruction, loss or theft of the Card Reader and of its components passes to the Merchant, from the time of Delivery of the Card Reader in question at the location agreed by the Parties on the Order Form.

ING remains the owner of the Card Reader until the purchase price has been paid in full; until then, the Merchant is prohibited from encumbering the Card Reader in any way (pledge, surety, mortgage, etc.), offering it as security, selling the Card Reader or making it available to a third party.

9.3.5 Maintenance and use of Payment Card reader
The Merchant undertakes to use the Card Reader with due diligence and according to the instructions in the guide it receives from ING with a view to enabling Cardholders to use them correctly. The Merchant is strictly prohibited from sub-renting the Card Reader, making it available to a third party or transferring it for payment without the prior written permission of ING.

9.3.6 Liability
If the Merchant detects a fault in a Service or Product delivered by ING under this Contract, attributable to ING, it shall inform ING's customer services department of such fault. Any complaint must be submitted within a period of 10 calendar days after the detection of the fault.

In case of a defect in the Payment Terminal attributable to ING, ING's liability is expressly limited to the replacement of such Payment Terminal (at ING’s discretion).

This liability for defect to the Payment Terminal ends upon expiry of the Initial Term as stipulated in article 25.2

9.4 Technical support and Maintenance
These specific provisions set out the rights and obligations of ING and the Merchant in connection with maintenance and repair services for ING Card reader, software and accessories in the possession of a Merchant on Belgian territory.

9.4.1 Technical support – Concept
Technical support comprises the services offered by ING as defined in this Article 9.4. Such services involve various aspects (as specified in this article 9.4) that the Merchant should bear in mind.

The services are offered at the request of the Merchant. The Customer service department is the single point of contact for the Merchant and offers the following services:

- recording of technical faults reported by the Merchant.
- if possible, forwarding of any technical information to help solve the problem reported by the Merchant.
- informing the Merchant of the action taken in response to its request.
- If the fault cannot be resolved over the telephone, it is referred to the 'assistance' department.
- at ING's discretion: replacement of defective components of the Card Reader that have caused the faults or irregularities or the whole existing Card Reader by a Card Reader with the same functionalities.

9.4.2 Maintenance of the Application
Such maintenance includes:

- Corrective maintenance to rectify irregularities in the operation of the software.
- Adaptive maintenance for the improvement of the existing functions of the software. Such maintenance can be performed remotely with or without support of the Merchant or by means of on-site intervention.

This includes ranking the menu to comply with the PCI regulations.

9.4.3 General terms and conditions relating to technical support
Technical support is supplied at the express request of the Merchant. The Merchant must inform ING customer services by telephone as soon as possible of any fault or poor operation of the Card Reader or the built-in software.

The Merchant is strictly prohibited from modifying or repairing the Card Reader without the prior written consent of ING. If the Merchant fails to comply with this obligation, ING is entitled to terminate the Contract immediately, without any notice period or compensation, without prejudice to ING's right to compensation.

Under no circumstances is the Merchant allowed to open the Card Reader, except where strictly necessary for tasks specific to the use of the Card Reader with printer, e.g.
replacing paper rolls, etc. The Merchant shall perform such tasks itself and provide the necessary materials itself.

9.4.4. Technical support
The Merchant can call the Customer helpline, available weekdays between 8 a.m. and 5 p.m. The Customer helpline is available in Dutch, French and English.

9.4.5. Excluded interventions
The following interventions and charges are not included in the Services provided under Article 9.4 and are invoiced to the Merchant according to the rates applying within ING at the time of the intervention:

- faults caused by an operating error or use of the Card Reader for purposes for which it is not intended or appropriate. This also includes damage caused by treatment to which this device is not resistant (such as power surges, heavy impacts and blows, immersion in liquids, etc.).
- damage caused by maintenance or repairs carried out by persons other than ING employees or subcontractors authorized for this purpose.
- interventions to rectify a malfunction of the Card Reader, caused by hardware or software not supplied by ING, or due to poor telephone connections.
- damage due to negligence, burglary, vandalism, sabotage, strikes, demonstrations or war.
- damage caused by lightning, fire, water, collapse of buildings and in general all accidents or disasters that may damage the Card Reader for which ING cannot be held liable.
- damage caused by the use of bad, damaged or non-ISO compliant cards.
- cleaning and maintenance of the outside of the Card Reader.
- replacement or supply of accessories or consumables.
- cost of extra services requested by the Merchant.
- replacement of a defective battery.
- defects caused by the installation and use of accessories and consumables which do not comply with the specifications set out in the guide.

9.4.6. Modifications/additions and reinitialization

ING is entitled to arrange for modifications of or additions to the purchased Card Reader, which are required for the purposes of maintenance or improvement of the Card Reader or which are required or appropriate for the continuation of the services. “Modifications” cover any deviations from mechanical, electric or electronic construction, including any modifications in respect of micro-programs. In this context, “Additions” cover any mechanical, electric or electronic connections of the Card Reader with other devices, parts or additional equipment. ING must inform the Merchant in advance of any such measures. The Merchant must allow the execution of the Modifications or Additions. Unless agreed otherwise in the Individual Agreement, costs related thereto shall be borne by the Merchant.

Any Modifications or Additions carried out by the Merchant to the Card Reader require the consent of ING. In this context, “Modifications” also cover the use of software programs that are not allowed by ING at the Card Reader. Should the Merchant carry out Modifications and/or repairs without informing ING hereof in advance, the Merchant’s guarantee claims expire to the extent that he cannot prove that the malfunctions are not caused by his own Modifications and/or repairs, without prejudice to injunctive relief and damage claims or other prejudice by easycash.

Should amended requirements of the Card Associations or legal provisions lead to a mandatory modification at the Card Reader, ING is entitled to take appropriate action (e.g. software download) for the purposes of maintaining the Card Reader’s functionality. Costs related hereto shall be borne by the Merchant.
Part III: Acceptance

This Part III applies only between IPS and the Merchant.

10. Contents
10.1. Part III pertains to the Merchant’s acceptance of MasterCard and VISA debit and credit cards at the Merchant’s Card Reader and the settlement of non-cash payment transactions triggered by the contractual use of the aforementioned Cards as a payment method. The provisions of Part III only apply to face-to-face transactions and not to non-cash distance selling transactions (e-commerce, e-mail order, telephony order). Part III pertains to the Acquiring Services that are rendered by the IPS.

10.2. The Merchant is entitled to accept the Card presented by the Cardholder as a non-cash means of payment and to forward the claims resulting from such transactions to IPS for payment, in accordance with the provisions of the present Agreement.

11. Obligations of the Merchant and conditions for the Merchant’s authorization to accept a Card as a means of payment
11.1. To the extent that a Cardholder presents his Card for the purposes of non-cash settlement, the Merchant must accept this Card subject to the conditions of the present Agreement and may not offer his goods or services to the Cardholder at a higher price or less advantageous conditions than to clients paying cash. However, in accordance with article VII.55, par. 3 of the Payment Services Act, the Merchant may offer discounts for card payments.

11.2. The Merchant may only accept a Card as a means of payment subject to the following conditions and/or the following duties of care.

11.2.1. Requirements pertaining to the card:
   a. The Cardholder must physically present the card.
   b. The Card information may not be transmitted to the Merchant in writing (e.g. by fax or postcard), by phone, e-mail or via the internet.
   c. The Card must be valid at the time of acceptance for payment and must be signed, as far as this is provided.
   d. The person presenting the Card coincides with the Cardholder’s picture on the Card, if any such picture appears on the Card.
   e. The Card has not been visibly modified or made illegible.
   f. The Card number and the expiry date of the validity of the card, to the extent that these are stated on the Transaction Receipt, coincide with the Card number and the expiry date stated on the face of the Card and (for MasterCard and Visa credit cards) with the Card number printed in the signature field on the back of the card, if available.
   g. The Cardholder has acknowledged the aggregate amount of the claim by signing the Transaction Receipt on the face in the presence of the Merchant or his representative or by personally entering the secret code of his Card (PIN). The signature on the Transaction Receipt coincides with the signature on the Card presented by the Cardholder. In case of contactless payment transactions, this Clause g) only applies when the transaction amount exceeds the Maximum Amount without Identification.
   h. The Merchant has ensured that his company or the denomination under which he offers his goods or services to the Cardholder is mentioned on the face of the electronically or manually issued Transaction Receipt, to the extent that such a receipt must be issued.
   i. The Merchant must deliver a Transaction Receipt to the Cardholder, to the extent that such a receipt must be issued or at the request of the Cardholder. The Merchant is not aware of the invalidity of the Card on the basis of black lists or any other notice.
   j. On the basis of the circumstances under which the Card was presented to the Merchant, the Merchant may not have any doubts about the Cardholder’s authority to use the card. Such doubts exist in particular:
i. if the aggregate amount of the claim is spread over several payment transactions or over several cards at the request of the Cardholder,
ii. if the Cardholder already announces potential acceptance problems when presenting his card.

11.2.2. Further requirements for the valid acceptance of the Card as a means of payment:

a. The Chargeable Claim of the Merchant is generated in the course of its activities for segments of goods or services stated by the Merchant in the Agreement or approved by IPS afterwards after notification to IPS by the Merchant.

b. The Chargeable Claim is generated in the Merchant’s activities and not in a third party business establishment. The claim must be based on a service provided by the Merchant to the Cardholder for his own account.

c. The Card may not be accepted as a means of payment for lending or partial payments or recurring payments.

d. The Card may not be used for the payment of already existing claims, non-recoverable claims or bounced checks.

e. The Card may not be used for the payment of claims resulting from gambling, Lotto or similar activities, for services in connection with erotic entertainment or for the payment of part-time rights of use (Time Sharing) or fees in connection herewith, unless IPS has given its prior written consent for these commercial operations.

f. The Underlying Transaction, which should be paid for with the Card, may not be unlawful.

g. The Card may not be used for cash pay-out.

11.2.3. Obligations of the Merchant during the payment transaction:

The Merchant issues a Transaction Receipt via the Card Reader, by inserting the Card into the chip reader of the Card Reader. Only if the Card does not have a chip and if the Card has a chip but the latter cannot be read, the Card Reader’s Card swipe reader can be used. In that case, the Card Reader reads the chip or, in case there is no chip on the Card, the magnetic strip of the Card. It is not permitted to enter the Card information manually into the Card Reader without the Card Reader reading the chip of the Card or, in the absence of a chip, the magnetic strip of the Card. In case of contactless payment transactions, the Merchant issues a Transaction Receipt via the Card Reader by holding the Card against the reader, in case the transaction amount exceeds the Maximum Amount without Identification or in case the Cardholder so requires.

11.3. For the acceptance of Maestro and V PAY card payments, the Cardholder must additionally enter the secret code (PIN) of his Card at the Card Reader. Payment with Maestro and V PAY Cards in another manner, e.g. by signing a Transaction Receipt, is not permitted. The PIN may only be entered by the Cardholder personally. Irrespective of the reservation set out in Part IV, Clause 30, IPS is entitled to change or supplement the obligations and requirements set out in Part III, Clause 11.2, by informing the Merchant hereof with a six (6) weeks’ notice, in case IPS deems these changes necessary due to potential abuse practices or in case such changes are required due to requirements of the Card Associations.

12. Requirements pertaining to the Card Reader and approval of the Card payment by IPS

12.1. Technical and security requirements

12.1.1. The Card Reader must be used in such a way that it is not possible to shoulder surf when people are entering secret codes.

12.1.2. The Merchant must hand the Card Reader over to the Cardholder so that the Cardholder may personally enter the secret code of his Card (PIN).

12.1.3. The Merchant must ensure that the Card Reader works properly. In particular, the Merchant must comply with the Card Reader’s Instruction Manual (provided with the Card Reader).

12.1.4. The Merchant ensures that it is not possible to manipulate any data input, in particular improper use of the Card Reader by employees or unauthorized persons in their personal business premises.

12.1.5. In particular, the Merchant undertakes to comply with the requirements of the Payment Card Industry Data Security Standard (PCI DSS). Should the Merchant not yet comply with these requirements upon conclusion of the Agreement, he will promptly fulfil all
requirements imposed by IPS with regard to the implementation of the PCI DSS requirements. For further information please consult www.pcisecuritystandards.org.

12.1.6. Costs in relation to any additional implementation measures with regard to any technical and security requirements under this Clause 12.1 are borne by the Merchant.

12. Online Authorization of the Card payment

12.2.1. Irrespective of the amount to be paid with the Card, the Merchant must carry out an online authorization of the payment transaction. This is done by IPS. In case a specific written agreement as part of the Merchant Contract (as referred to in Clause 7.2) allows the Merchant to process contactless payment transactions and in case of contactless payment transactions up to the Offline Maximum Amount, an offline authorization can take place if permitted by both the Card issuer and IPS. Contactless payment transactions that are authorized offline must be transmitted to IPS (reconciliation at the Card Reader).

12.2.2. In case of a positive online authorization, IPS provides the Merchant with an authorization code.

12.2.3. Payment acceptance in the sense of Part III, Clause 14.1 in respect of the Chargeable Claim is not linked to the provision of the authorization code. Notwithstanding acceptance, IPS remains entitled to refuse payment or to carry out a return debit regarding a Chargeable Claim already paid to the Merchant in accordance with Part III, Clause 18, provided that the conditions agreed in this respect are met.

12.2.4. Providing or refusing to provide the authorization code always happens automatically. In case of a refusal, an error message appears.

13. Settlement principles

13.1. Chargeable Claims may only be submitted to IPS for settlement once. At the request of IPS, the Merchant must provide evidence that each submitted Chargeable Claim is based on an Underlying Transaction. Settlement of Chargeable Claims will take place on a weekly basis.

13.2. The Merchant may only submit Chargeable Claims in amounts and currencies that coincide with the invoice/Transaction Receipt issued to the Cardholder for the relevant goods and services.

13.3. If goods or services are delivered/carried out at a later date (i.e. after the Card payment), in case of complaints by the Cardholder, the Merchant must prove to IPS in writing on the basis of appropriate documents that the Chargeable Claim is due and payable and undisputed, within a reasonable deadline imposed by IPS.

13.4. The Transaction Receipt, to be submitted by the Merchant to IPS in accordance with Part III, Clause 13.113.1, must contain the following information in extenso and in a legible way (Transaction Receipt in proper form): the Card number, the aggregate amount of the invoice, the date of the Transaction Receipt, the Merchant number, the transaction currency code and the signature of the Cardholder, to the extent that it does not concern a PIN-based procedure. For contactless payment transactions, up to the Maximum Amount without Identification, a signature of the Cardholders is not required, also if it does not concern a PIN-based procedure. The Merchant may not delete and/or change any information on the Transaction Receipt after the Cardholder has signed the receipt. The Cardholder should receive that part of the Transaction Receipt where only the last four digits of the Card number are legible and the remaining digits are blacked out or replaced by the characters *, # or x.

14. Settlement of the Chargeable Claims by IPS

14.1. If all of the following requirements are fulfilled, IPS will pay to the Merchant the Chargeable Claims resulting from the submitted credit card sales, based on the use of a Card, less the agreed fees, refunds, the legal value added tax or all other fees, penalties or charges which arises in according to the provision of the Acquiring Services and, possibly, the security amount.

14.2. Payment conditions:
   a. The acceptance of the Card as a means of payment was permitted and the Merchant complied with all obligations in accordance with Part III, Clause 11,
   b. The Merchant fully complied with the authorization requirements in accordance with Part III, Clause 12,
c. The Merchant complied with the settlement principles laid down in Part III, Clause 13.
d. According to the provisions of this Agreement, the use of the Card is not visibly restricted.
e. The card sales pertaining to the Chargeable Claim are submitted to IPS electronically within five (5) calendar days as of the payment date (by using the reconciliation button at the Card Reader). As an exception to the previous rule, card sales relating to Chargeable Claims generated by Maestro and Visa Electron, V PAY Card payments must be submitted electronically to IPS within two (2) calendar days following the payment date.
f. The submitted Transaction Receipt does not show any error messages.
g. In case of submission in electronic form (Part III, Clause 14.2 e) and at the request of IPS, the Merchant has provided IPS with the original Transaction Receipt (to the extent that such a receipt must be generated) within the retention period of eighteen (18) months following the issuance date (cfr. Part III, Clause 20).

14.3. The Merchant assigns his claims against the Cardholder resulting from the Underlying Transactions to IPS. For the purposes of fulfilling these claims, the Merchant has accepted a Card payment and the claims have been submitted to IPS for settlement in accordance with Part III, Clause 13.1 paragraph 1. IPS herewith accepts the assignment. In case of a return debit in accordance with Part III, Clause 18, IPS reassigns the claim to the Merchant upon full discharge of the relevant return debit claim by the Merchant. The assignment is effective upon receipt by IPS of the card sales pertaining to the Chargeable Claim.

14.4. Upon termination of the Agreement, all outstanding claims will be paid, irrespective of the amount. Payments will be made within the agreed payment deadlines on the basis of the duly and completely transmitted card sales, either via bank transfer or by crossed cheque and subject to the return debit rights in accordance with Part III, Clause 18. Regardless of the reservation set out in Part IV, Clause 30, IPS is entitled to change or supplement the requirements set out in Part III, Clause 14.2 lit. a)-g), by informing the Merchant hereof with a six (6) weeks’ notice, if IPS deems these changes necessary due to potential abuse practices or in case such changes are required due to requirements of the Card Associations. In case one or several payment conditions set out in Part III, Clause 14.2 is/are not fulfilled, IPS is not obliged to pay the Chargeable Claims submitted by the Merchant. Any payments made to the Merchant despite such non-fulfilment are subject to return debit or set-off in accordance with Part III, Clause 18. IPS will only retain the amount of Chargeable Claims that are affected by non-compliance with the requirements set out in Part III, Clause 14.2.

14.5. The Merchant must verify all statements provided to him without delay and inform IPS promptly, but at the latest within a cut-off period of six (6) weeks following receipt of the relevant statement, of any objections he may have.

14.6. The burden of proof as to the fulfilment of the conditions set out in Part III, Clause 14, lies with the Merchant.

14.7. IPS may retain as security, an amount as agreed in the Merchant Contract, it being understood that, should this amount be set off pursuant to Clause 14.114.1, IPS will be entitled to reconstitute the security amount in accordance with the above principles.

14.8. In case of a change of ownership of the Merchant, IPS is entitled to withhold the payment of the Chargeable Claims until the new owner has been fully reviewed.

14.9. If there are indications for an event that would entitle IPS to terminate the Agreement, IPS may suspend the execution of this Agreement, including the payment of the Chargeable Claims, until the situation is clear.

15. **Reimbursement of card sales due to cancellation of the Underlying Transaction**

15.1. The Merchant will only issue credit notes pertaining to card sales regarding cancelled Underlying Transactions by instructing IPS to credit the Cardholder’s account. IPS will credit the Cardholder’s account. The Merchant must reimburse the credit amount. The Merchant is not entitled to initiate a credit note if he did not submit the corresponding claim to IPS for settlement in advance or if the submitted claim was not based on a sale. The credit note may not exceed the initial transaction amount. The initial transaction must have been carried out with the same Card and with the same Merchant.
15.2. The Merchant must compile an electronic credit note data set in accordance with the provisions of the instructions manual of the Card Reader. This data set must be submitted to IPS within two (2) calendar days following issuance of the credit note. Simultaneously, the Merchant must electronically compile a credit note statement with the Card information and the amount of the credit note. This statement must be signed by the cashier. The original statement must be delivered to the Cardholder.

15.3. Should it not be possible to compile an electronic credit note data set due to technical reasons, the credit note must be issued by filling out and submitting a credit note form, to be applied for by the Merchant at IPS. The Merchant must fill out this form and sign it. The original form must be delivered to the Cardholder. The copy of the credit note form must be submitted to IPS within five (5) calendar days following issuance.

15.4. In case of non-compliance with the submission deadlines set out in Part III, Clauses 15.2 and 15.3, the Merchant must reimburse IPS (e.g. if a Card Association refuses to process the credit note vis-à-vis the Cardholder due to a delayed submission by the Merchant, as a result of which there is a return debit at IPS).

16. Cardholder complaints
Grievances and complaints of a Cardholder relating to the Underlying Transaction are dealt with by the Merchant directly. In case of a permitted return debit, the Merchant must direct any payment claims he may have directly to the Cardholder.

17. Acceptance notice
IPS recommends to the Merchant to put up the MasterCard/Maestro/Visa/Visa Electron/VPay/PayPass/payWave acceptance logo in a visible place to his customers if available and to actively promote the card acceptance. Moreover, the Merchant may only use the denominations “MasterCard” respectively “Visa”, “Maestro”, “V PAY”, “PayPass”, “payWave” for publicity purposes with the prior written consent of IPS.

18. Return debit
18.1. IPS is entitled to carry out a return debit with respect to claims that have already been paid within eighteen (18) months following the payment date, to the extent that one of the conditions set out in Part III, Clause 14.1 or one of the sector add-ons applicable to the Merchant was not fulfilled at the time of the Card payment (even if this was unknowable to IPS at the time of the payment to the Merchant) and if the Card issuer charged the card sales/ the amount of the claim back from IPS (so-called charge-backs). In addition to the return debit, a service fee relating to the return debit is charged.

18.2. Moreover, the Merchant must reimburse IPS if the Underlying Transaction was null and void or ceased to exist due to objection, termination or cancellation of the Cardholder.

18.3. To the extent that IPS already paid out in one of the aforementioned cases, it may claim a refund or set-off the payments with its own payment obligations vis-à-vis the Merchant. In the first case, the refund claim is immediately payable.

18.4. The provisions of this Clause 18 will survive the termination of this Agreement during a period of eighteen (18) months. The return debit rights of IPS vis-à-vis the Merchant are not limited by the issuance of the authorization code.

19. Information obligations of the Merchant, auditing rights
19.1. Upon conclusion of the Agreement, the Merchant must provide a full and true overview of the master data. Any changes occurring during the term of the Agreement must be reported to IPS in writing without any delay. Such changes include:
   a. Changes with respect to the corporate purpose and/or the nature of the product range,
   b. Sales or lease of the company or any other change of ownership,
   c. Changes with respect to the legal form or the company,
   d. Change of address or bank account,
   e. Change of the beneficial owner.

19.2. At the request of IPS, the Merchant must provide IPS without delay with the documents regarding the Merchant’s business operations (e.g. trade register excerpt, other register excerpts, business licences, articles of association, passport copies of the authorized representatives). At the request of IPS, the Merchant must reimburse all expenses
incurred by IPS and resulting from the changes set out in Part III, Clause 19.119.1 or as a result of a violation of the obligations set out in this Clause 19.

19.3. At the beginning of the term of the Agreement, IPS allocates one or several Merchant categories to the Merchant. In this respect, IPS must consider the requirements of the Card Associations. IPS may at all times change an allocated Merchant category if and to the extent that IPS deems this necessary on the basis of a new evaluation of the Merchant.

19.4. At the request of IPS and after due notification, the Merchant must grant IPS access to his business premises, in order to allow IPS to verify whether the contractual provisions are complied with. Moreover, the Merchant undertakes to fully cooperate and to facilitate security verification procedures (e.g. PCI Audit) introduced by the Card Associations.

20. Data storage, retention of Transaction Receipts
20.1. The Merchant must retain all Transaction Receipts and evidence and documents regarding the Underlying Transaction during a period of minimum eighteen (18) months following the date of issuance in due form and in order to avoid destruction. The retention obligation survives the termination of the Agreement during a further period of minimum eighteen (18) months, without prejudice to longer retention periods legally applicable.

20.2. The Merchant undertakes to protect the information collected and stored in relation to the cardholder against unauthorized access by third parties. The Merchant may only store the card information in his own system for the purposes of authorization and submission of the claims.

20.3. The Merchant must inform IPS without any delay about an unauthorized attempt to access his card related EDP systems or of any fact potentially compromising card information and must take the required measures in order to prevent such events in the future in consultation with IPS.

21. Collateral
21.1. IPS is entitled to require collateral for all claims resulting from the Agreement, even if it concerns conditional claims (e.g. return debit rights in the sense of Part III, Clause 18).

21.2. Should IPS initially not (entirely) have used its right to require (the extension of) collateral as a result of the claims, IPS can still require new collateral or the extension of existing collateral afterwards, as well as an increase of the amount withheld in accordance with Part III, Clause 14.7. However, this is subject to the condition that circumstances occur or become public, which justify an increased risk evaluation of the claims against the Merchant. This may, for instance, be the case if:
   a. the economic conditions of the Merchant have adversely changed or are threatened to adversely change, or
   b. the value of the existing security has deteriorated or is threatened to deteriorate.

21.3. IPS will grant the Merchant an appropriate period of time for the establishment or the extension of collateral. If IPS intends to use its right to terminate the Agreement without notice in accordance with Part IV, Clauses 25.425.4 and 25.5, in case the Merchant does not comply with his obligation to create or extend security in due time, IPS will notify the Merchant hereof.

22. Changes of procedural provisions of MasterCard Worldwide and VISA Europe/International
The Merchant will observe and implement changes of the procedural provisions of MasterCard Worldwide and Visa Europe/International regarding the acceptance and the submission of card sales after notification by IPS within the deadlines indicated by MasterCard Worldwide and Visa Europe/International. IPS will inform the Merchant hereof in due time, in particular in respect of the deadlines to be observed, and will advise the Merchant with respect to the implementation of these changes. Costs in connection herewith shall be borne by the Merchant.

23. Information obligations of IPS
In accordance with article VII.26 of the Payment Services Act, the information obligations of IPS resulting from Title II of the Payment Services Act in conjunction with articles VII.27, VII.28, VII.30, VII.31 and VII.32 and the provisions of article VII.24, of the
Payment Services Act are waived and therefore do not apply to the services to be rendered by IPS.

24. **Trust agreement**
IPS (the “Trustee”) will credit the counter value received from the Card issuers for the cleared card sales and the counter values for the cleared card sales from cancelled transactions received from the Merchant after return deposits in trust for the Merchant as the trustor to an IPS trust account with a German financial institution. These accounts are kept at one or several financial institutions as open collective trust accounts§ 13 Abs. 1 Satz 2 Nr. 1b des German Supervisory Act for Payment Institutions (ZAG). IPS will inform the financial institution of the trust relationship. Furthermore, IPS will ensure that, in terms of accounting, the payment amounts accepted in accordance with the first sentence are attributable to the Merchant and shall at no time be mixed with funds of other individuals or other legal entities than the Merchant, for whom the funds are held, in particular not with own funds. IPS is entitled to withdraw fees and interests accrued for the benefit of IPS from the trust account. At the request of the Merchant, IPS must inform the Merchant without delay with which financial institution and on which account the received counter values for the cleared card sales are kept and whether the institution where the client funds are held is a member of an organization for the protection of deposit and investment claims and to which extent the received counter values for the cleared card sales are secured by that organization. IPS is also entitled to secure the received counter values for the cleared card sales otherwise, as defined in § 13 Abs. 1 Satz 2 Nr. 1b (ZAG). IPS will inform the Merchant hereof well in advance.

**Part IV: General provisions**
Part IV applies only between IPS and the Merchant, Articles 25.1, 25.2 and 25.3 also apply between ING and the Merchant, subject to the provisions of article 9.1.1.

25. **Term – Termination**
25.1. The Agreement is effective upon the acceptance of the Merchant Contract by IPS which intervenes by way of the earlier of the Delivery of the purchased Card Reader(s) or the provision of the “welcome” communication from ING and IPS (written date of the welcome letter).
25.2. The Agreement is concluded for a fixed period of time of one (1) year (the “Initial Term”).
25.3. The Initial Term of the Agreement is automatically renewed for successive one year periods (each a “Subsequent Term”), unless the Agreement is terminated by one of the parties to the Agreement three (3) month prior to the expiry of the Initial Term, or, as the case may be, of a Subsequent Term. During the Initial Term and/or any Subsequent Term, the Agreement may only be terminated for cause in accordance with Part IV, Clauses 25.4, 25.5 or 32.
25.4. Clause 25.3 Error! Reference source not found. does not affect the right of each party to terminate the Agreement for cause. A cause is inter alia, the cessation of the Merchant’s business activities in Belgium.
25.5. Moreover, IPS is entitled to terminate her Agreement with the Merchant without notice for cause, for instance, in the following situations:
   - if, after the Agreement has been concluded, IPS becomes aware of circumstances illustrating that the Merchant misrepresented his business operations, in particular his range of goods or services, and submits claims resulting from Underlying Transactions that he did not declare before, for clearing,
   - if the Merchant is in payment default in respect of two payments and fails to make these payments in spite of a reminder with a payment deadline,
   - if the Merchant’s financial situation materially deteriorates (except if the Merchant is subject to judicial restructuring (“réorganisation judiciaire” / “gerechtelijke reorganisatie”). This can be reflected, inter alia, by filing a petition in bankruptcy,
instituting insolvency proceedings or the rejection of initiating such a procedure due to insufficient assets to cover the costs for such proceedings,
  o if the Merchant, within six (6) months after the conclusion of the Agreement does not submit claims for clearing,
  o if the Merchant submits Chargeable Claims resulting from distance-selling transactions, i.e. without the physical presentation of a Card in his shop,
  o if the amount or the number of charge-backs resulting from Underlying Transactions of the Merchant in one month exceeds 0.5 per cent of the aggregate amount or of the aggregate number of the claims submitted by the Merchant in the corresponding period or if the aggregate amount of the charged back claims, resulting from the underlying transactions of the Merchant exceeds EUR 5,000.00,
  o if the ratio between the submitted monthly claims with stolen, lost or forged Cards and the submitted monthly claims with Cards non stolen, not lost and not forged exceeds one (1) %,
  o if the Merchant repeatedly violates his obligations and the conditions arising out of Part III, Clauses 11, 12 and 13, or in particular the duty of care obligations under this Agreement,
  o if MasterCard Worldwide, Visa Europe/International, demands that the Merchant ceases to accept cards,
  o if the activities of IPS under this Agreement are or become unlawful without an administrative license or if the activities are prohibited by the supervisory authorities,
  o in case of a change of ownership in respect of the business operations of the Merchant,
  o in case of criminal conduct of the Merchant; this also applies in case of reasonable suspicion of criminal conduct of the Merchant,
  o if the Merchant does not comply with his obligation to grant or extend security in accordance with Part III, Clause 22 or on the basis of another agreement within a reasonable deadline set by IPS,
  o in case of a breach of one of the Merchant’s obligations under Part IV, Clause 32, 34 of this Agreement
  o if a Card Association imposes fines on IPS, due to the Merchant’s negligence.

25.6. Termination notices must be given in writing. IPS is also entitled to terminate the Agreement in part.

26. Liability

26.1. Liability of the Merchant

26.1.1. The Merchant is liable vis-à-vis IPS for all direct and indirect losses or damages incurred by IPS due to acts or omissions of any nature whatsoever of the Merchant, his employees and other third parties engaged by the Merchant in connection with this Agreement. In this respect, the Merchant undertakes to act with due care as a diligent operator. In particular, the Merchant is liable for compliance with the provisions of Part III, Clause 12. Should there be chargeback of the settled claim due to a violation of the Merchant of the aforementioned provisions, IPS is entitled to carry out a corresponding return debit in the sense of Part III, Clause 18 against the Merchant, without prejudice to any other rights.

26.1.2. Should one of the Card Associations impose penalties on IPS due to the Merchant’s intentional or negligent violation of one of his obligations under this Agreement, the Merchant fully holds IPS harmless against this, respectively fully indemnifies IPS for the corresponding amounts invoiced to IPS.

26.2. Liability of IPS

26.2.1. IPS is liable for non-authorized or incorrect completion of payment transactions only to the extent that IPS intentionally or negligently violated its obligations at the occasion of such completion. The liability of IPS does not extend to unusual and/or unforeseeable events, which cannot be influenced by IPS and the consequences of which could not have been prevented, even in case of due care. The liability of IPS also does not extend
to the non-completion of payment transactions on the basis of mandatory statutory provisions.

26.2.2. In case payment services are not concerned, IPS is only liable vis-à-vis the Merchant for damages resulting from a violation of contractual or pre-contractual obligations or from tort, in accordance with the following provisions:

a. In case of wilful intent, claims in accordance with the Product Liability Act and personal injury, bodily harm or damage to health, IPS is liable in accordance with the statutory provisions.

b. The Merchant must prove the existence of wilful intent.

c. IPS is not liable for ordinary negligence nor for gross negligence.

d. Moreover, IPS is not liable for loss of profit, loss of clientele and other consequential or indirect damages and expenses, in particular not for losses as a result of a business interruption.

e. In addition, the liability is limited to the following amounts: EUR 25,000.00 per loss occurrence with an annual cap of EUR 50,000.00.

f. The aforementioned restrictions and exclusions also apply to possible claims for compensation of the Merchant or third parties.

26.2.3. If the damages were caused by several parties, IPS is only liable in proportion to its contribution to the damages and in accordance with the agreed liability restrictions.

26.2.4. Should the Solution not be available, it is assumed on the basis of alternative methods of payment that the Merchant did not suffer any damages beyond the technical aspects. However, the Merchant is entitled to prove to IPS that he incurred damages beyond the technical aspects.

26.2.5. IPS is not liable for interruptions or limited services due to technical infrastructure which does not fall within its liability scope, including telecommunication channels operated by the telecommunication provider or telecommunication channels of the Card Reader locations.

26.2.6. Damage claims of the Merchant against IPS become time-barred within six (6) months as of the moment that the Merchant became aware of his claim, whether under this Agreement or in tort, against IPS.

27. Invoicing, fees and mode of payment

27.1. General provisions

27.1.1. Any fees payable by the Merchant are exclusive of value added tax in accordance with the Belgian tax provisions relating to the value added tax applicable at the time of the services and are exclusive of other taxes, fees and charges.

27.1.2. The amount of the fees to be paid by the Merchant results from the price and services sheet of IPS (Part V) applicable at the time the Agreement was concluded and from the fees set out in the Merchant Contract between the Merchant and IPS. Agreements resulting from the Merchant Contract take precedence over the price and services sheet. Charging fees for the fulfilment of secondary obligations is also allowed. The price and services sheet is provided to the Merchant prior to the conclusion of the Agreement. IPS reserves the right to adapt the prices if, after entering into the Agreement, one or several factor(s) determining the prices, such as, without it being limited to, raw materials, labour costs, etc. are subject to a modification. Any increase of one of these factors allows IPS to proportionally adapt the prices up to maximum 80% of the prices initially agreed. This objective adaptation does not give the right to the Merchant to object thereto or to terminate the Agreement. This right to adapt the prices may not be exercised in the course of the first three (3) months following the entry into force of the Agreement, unless agreed otherwise.

27.1.3. Unless agreed otherwise, the provisions of this Part IV, Clause 27 regarding invoicing on the part of IPS for services agreed under this Agreement apply as follows.
27.1.4. In case the fees and expenses to be paid by the Merchant as described in Part IV, Clause 27.1.4 cannot be settled, the Merchant undertakes to pay the invoice immediately.

27.1.5. In principle, all fees are due and payable as of the invoice date.

27.1.6. The Merchant cannot set off the amounts it owes to IPS against the amounts due by IPS to the Merchant, except if IPS authorizes the same in writing. In addition, the Merchant hereby waives the benefit of the exception non adimpleti contractus and can thus not invoke any (alleged) breach or tort on the part of IPS to suspend or withhold payments to IPS. This Clause applies without prejudice to Part III, Clause 21.

27.2. **Acceptance and payment services (Part III)**

27.2.1. The provisions of this Clause 27.2 apply to the services and products of IPS described in Part III (see above).

27.2.2. The fees and expenses, including the value added tax (if any) due on these fees and expenses, will be invoiced to the Merchant and may be deducted from the amounts to be provided to the Merchant by IPS in accordance with Part III, Clause 14.114.1, even before these amounts are provided to the Merchant.

27.2.3. The Merchant must compensate IPS for all expenses incurred by IPS in connection with the execution of this Agreement, to the extent that IPS could deem these expenses necessary under the given circumstances. Instead of compensation, IPS may demand exemption of one of its obligations. Expenses in the sense of this Clause 27.2 include in particular:

   a. Fees charged by MasterCard and Visa for registration of the Merchant in a special Merchant program;
   b. Interchange fees for Merchant card sales, which must be paid by IPS to the Card issuer, such as MasterCard and Visa;
   c. Fines, to be paid by IPS to MasterCard and Visa in connection with the execution of this Agreement, to the extent that the Merchant was negligent;
   d. So-called charge-backs, caused by the Cardholder's Card issuer in respect of the payment of the Underlying Transaction.

27.2.4. The Merchant agrees to the financial statement based on the description of the price components in the contract form set out under Part V or attached to the Merchant Contract.

28. **Due payments by the Merchant**

28.1. Without prejudice to the relevant provisions of the Act of 2 August 2002 on combating late payment in commercial transactions (“Loi concernant la lutte contre le retard de paiement dans les transactions commerciales / Wet van 2 augustus 2002 betreffende de bestrijding van de betalingsachterstand bij handelstransacties”), late payment by the Merchant will accrue interest at an annual rate of twelve per-cent (12%) without prior notice (without prejudice to any other rights and remedies of IPS) as of the due date until full payment (whether before or after a court ruling).

28.2. In case of (partial) late payment, the Merchant owes IPS a lump-sum compensation for recovery and collection costs of fifteen per-cent (15%) of the invoiced amount, with a minimum of EUR 60 and a maximum of EUR 3,200. Such lump-sum compensation is in addition to interests for late payment, legal costs or expenses and/or other possible compensation for damages or losses suffered by IPS.

28.3. In case of late payment and without prejudice to the right of termination for cause in accordance with Clause 25.5 IPS is entitled to suspend or interrupt all or part of the services to be provided in accordance with the present Conditions if the Merchant is in default with one of his payment obligations under this Agreement and fails to fulfill his payment obligations in part or in full within a reasonable deadline imposed by IPS. The assertion of any claims based on the fact that the Merchant cannot use the Card Reader or the Solution is excluded.

29. **Assignment and assumption**

29.1. The Merchant is not entitled to transfer the Agreement to third parties without prior written consent of IPS and may not assign or impose other rights and/or obligations resulting from this Agreement to/on third parties.
29.2. IPS is entitled to assign or encumber all or part of the claims, resulting from this Agreement, or transfer all or part of its rights or obligations within the limits of this Agreement to third parties.

29.3. If required, IPS informs the Merchant of which contractors are deployed for which operations. The Merchant’s prior consent is not required. The Merchant herewith irrevocably agrees to such assignments, encumbrances or transfers.

30. Amendment of the Conditions
IPS is entitled to amend these Conditions. Any amendment to these Conditions by IPS shall become binding on the Merchant as of the date of its communication to the Merchant, unless IPS notifies the Merchant that a later entry into force applies for such amendment.

31. Change of law / regulations
In case services under this Agreement must be adapted due to a change of law or the Card Association’ regulations, IPS is entitled to charge the costs arising out of such adjustment to the Merchant subject to prior notice, in order to guarantee the lawful provision of services in accordance with the provisions of the Agreement.

32. Public permits
The Merchant warrants that he holds all public permits/authorizations/licenses required, as the case may be, to lawfully carry out his commercial activities and this Agreement. In the absence hereof, IPS has the right to terminate this Agreement without any notice. In addition, in that case the Merchant must compensate IPS for all damages arising out of such violation in accordance with the first sentence of this Clause, independent of any negligence on behalf of the Merchant.

33. Confidentiality, Data Protection
33.1. Protection of personal data
33.1.1. By signing the Merchant Contract, the Merchant and/or his representative acknowledge that they are informed of the fact that IPS will process his personal data. Such data are protected by the Privacy Act as amended from time to time.

33.1.2. IPS processes the personal data in order to fulfil its contractual obligations under the Agreement and its legal obligations. IPS may, subject to the explicit consent of the Merchant and/or his representative, revocable at all times, also process these data for the purposes of direct marketing via ordinary mail or e-mail.

33.1.3. Within the scope of the aforementioned purposes, IPS is entitled to forward these data to other group companies and to service providers, who were selected on the basis of their services and their guarantees in connection with the protection of personal data, and to the Card Associations in the framework of the provision of services in accordance with the Agreement. Forwarding these data as described above may entail forwarding of data to countries outside of the European Economic Area, which do not offer a proper level of data protection. In that case, IPS will take appropriate measures (including contractual measures) in order to ensure that the receivers of the personal data will offer sufficient guarantees in relation to data protection.

33.2. Confidentiality
In addition to the protection of personal data and bank secrecy, the parties to this Agreement agree to the following confidentiality undertaking:
Each party undertakes to treat any business related information of the other party in a strict confidential manner and only disclose such information to third parties to the extent that this is required for the due execution of the Agreement and solely for the purposes of the Agreement, especially in respect of information about the Merchant provided to IPS by third parties (bank information, information about creditworthiness). Information about Cardholders which is not made anonymous is confidential information. Both parties must comply with all statutory provisions regarding data protection and take proper precautions to avoid unauthorized use of Card and Cardholder information. Third parties in the sense of this Agreement are companies that are not affiliated with a party to this Agreement in accordance with articles 11 et seq. of the Companies Code.
This confidentiality obligation is continuing and will survive the termination of the Agreement and any negotiations.
It does not apply to information that, at the time of disclosure, was demonstrably known to the other party or was public knowledge and/or became known to the other party after disclosure other than as a result of a breach of the confidentiality obligation by the receiving party and/or to the extent that the receiving party is requested by statutory or regulatory provisions or by requirements or orders to disclose the information. The confidentiality obligation does not apply to information that, at the time of disclosure, was already demonstrably public knowledge, and where the use or disclosure of such information was explicitly permitted in writing by the other party, or where the disclosure of such information is requested by statutory provisions or regulatory rules, e.g. for disclosure of the contents of this Agreement, to the extent required for the fulfillment of statutory supervisory obligations vis-à-vis the National Bank of Belgium or another competent supervisory body. Any questions regarding data protection may be sent to DataProtection@Ingenico.com. The data protection officer of IPS will answer these questions.

34. **Money laundering obligations**

Due to Money Laundering Provisions, IPS must obtain certain information about the Merchant. The Merchant undertakes to provide IPS with the required information, which is complete and correct, and undertakes to inform IPS without delay about any changes regarding this information. The Merchant undertakes to comply with any statutory Money Laundering Provisions, which are applicable to the Merchant in his capacity as a client of IPS. Without prejudice to Part III, Clause 19.119.1 IPS is entitled to terminate the Agreement if the Merchant violates this obligation or any applicable Money Laundering Provisions.

35. **Intellectual Property**

Unless otherwise determined by IPS, the Merchant acknowledges that all intellectual and industrial property rights in and to the Card Reader, the Mobile Application, the Portal (and more generally in and to the Solution Components) and the services provided (including, but without being restricted to surveys, plans and software programs) are and remain the sole property of IPS (or, as the case may be, of third parties holding these rights). In particular, unless otherwise agreed, the Merchant is only granted access to the software, whether the latter is integrated in the Card Reader or not, and the right to use the software for the purposes of his activities and as strictly authorised by the Agreement. This right is granted on a non-exclusive basis and does not entail the right to grant sublicenses. The labels on the Card Reader and the brand under which the Card Reader is sold, and the brands used in relation to the Solution may only be used by the Merchant for the purposes of identifying respectively the Card Reader or the Solution.

36. **Credit assessment**

36.1. At the request of IPS, the Merchant provides IPS with financial information (including, but not limited to invoices, annual reports and tax forms) and other information regarding his business, for the purposes of allowing IPS to determine whether IPS accepts or continues the Agreement, and for the continuing evaluation of the Merchant’s financial situation and creditworthiness.

36.2. In connection with the credit assessment, IPS reserves the right to obtain information and other data about the Merchant from commercial agencies / solvency information offices and other institutions prior to the conclusion of the Agreement and during the term of the Agreement for the purposes of allowing IPS to determine whether IPS accepts or continues the Agreement, and for the continuing evaluation of the Merchant’s financial situation and creditworthiness, and the Merchant agrees to this.

36.3. IPS may carry out creditworthiness checks solely within the limits of the applicable data protection provisions.

37. **Applicable law and place of venue**

37.1. This Agreement shall be governed by and construed in accordance with Belgian law, excluding the conflict of law rules and the UN Sales Convention. The scope of services to be provided by IPS conforms with the statutory provisions, the terms and conditions of the Card Associations and other applicable rules and provisions at the time of the
conclusion of the Agreement. If these terms change due to laws or the aforementioned rules and provisions, they are not included in the scope of services. The Merchant hereby expressly and irrevocably waives the application of its own terms and conditions with respect to the subject matter of this Agreement.

37.2. The Merchant is not a consumer in the sense of Article I.2° of the Code of Economic law. In accordance with Article VII.26 of the Payment Services Act, the Parties agree that the Title II of the Payment Services Act does not apply and is herewith waived and replaced by the provisions of this Agreement. Moreover, in accordance with Article VII.54 of the Payment Services Act, the parties agree that Articles VII.27, § 3, VII.28, VII.34, VII.36 to VII.38, VII.41, VII.49 to VII.51 and VII.55, § 1 do not apply and are herewith waived and replaced by the provisions of this Agreement.

37.3. The competent courts of Brussels have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement between IPS and the Merchant, including issues regarding the conclusion, interpretation, validity, performance, and dissolution of the Agreement.

38. **Severability**

38.1. If any provision of this Agreement is held to be invalid or unenforceable, in whole or in part, (due to legal reasons and beyond the parties’ control), the validity of the remaining provisions of the Agreement shall not be affected. The invalid or unenforceable provision shall be replaced by an appropriate arrangement, which comes as close as possible to what the parties would have agreed if they had been aware of the invalidity or unenforceability of the initial provision, within the limits of the contractual goals. The same applies to any contractual gaps in the Agreement.

38.2. Contractual changes must be made in writing. This also applies to an amendment of the written form requirement.

39. **Notices**

Unless otherwise provided in this Agreement, all notices of the Merchant to IPS shall be sent simultaneously by e-mail and by ordinary mail to: Ingenico Payment Services GmbH, [mpos.support@ingenico.com], Am Gierath 20, 40885 Ratingen, Germany.

40. **Force majeure**

In case of force majeure, the party concerned must inform the other party hereof by means of a registered letter with acknowledgement of receipt within fifteen (15) days after the occurrence of the event of force majeure. The parties explicitly agreed on the following list of events of force majeure, including but not limited to: all state decisions, strikes, riots, war, bans on import, flooding, fire, or any other events of force majeure of the applicable Belgian case law. The parties’ obligations are cancelled without compensation during such an event of force majeure. In case the event of force majeure should last longer than three (3) months, both parties may automatically terminate the Agreement without compensation, by issuing a written notification to the other party.

### Part V: Price and Services

#### Transaction Services

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<thead>
<tr>
<th>Pos.</th>
<th>Card Schemes</th>
<th>Provider</th>
<th>Merchant Service Charge per Transaction:</th>
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<tbody>
<tr>
<td>5</td>
<td>Visa</td>
<td>IPS GmbH</td>
<td>see Application form</td>
</tr>
<tr>
<td>6</td>
<td>MasterCard</td>
<td>IPS GmbH</td>
<td>see Application form</td>
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<td>7</td>
<td>V PAY</td>
<td>IPS GmbH</td>
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<td>8</td>
<td>Maestro</td>
<td>IPS GmbH</td>
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