

Three-Party Agreement regarding acquiring services

The parties:

1. **European Merchant Services B.V.**, a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*), organized under the laws of The Netherlands having its registered office at Herikerbergweg 25, 1101CN Amsterdam, The Netherlands, registered in the Chamber of Commerce under number 34226533 ("**EMS**");
2. **GoCredible B.V.**, a company incorporated under the laws of the Netherlands, having its registered office at Hogehilweg 20, 1101CD Amsterdam, the Netherlands, and registered with the trade register of the Chamber of Commerce (*handelsregister van de Kamer van Koophandel*) under number 63715791 (the "**MSP**"); and
3. [name merchant], a company [existing / incorporated] under the laws of the Netherlands, having its registered office at [_____] the Netherlands, and registered with the trade register of the Chamber of Commerce (*handelsregister van de Kamer van Koophandel*) under number [_____] (the "**Merchant**").

together referred to as the "**Parties**" and each individually as a "**Party**".

Whereas:

- a. EMS and MSP are payment institutions (*'betaalinstellingen'*) within the meaning of the Dutch Financial Supervision Act (*'Wet op het financieel toezicht'*; the "**DFSA**");
- b. MSP and the Merchant intend that MSP provides certain services to the Merchant as set out in the Relationship Agreement (as defined below);
- c. under sponsorship by ABN AMRO bank N.V., EMS is a member of the Associations (as defined below). As such, EMS is permitted to provide Acquiring Services (as defined below) to merchants;
- d. EMS and MSP cooperate under a member service provider agreement ("**MSP Agreement**") between EMS and MSP for the provision of Acquiring Services by EMS to certain prospect merchants of MSP;
- e. the Parties intend that EMS provides Acquiring Services to the Merchant under the Merchant Acquiring Agreement (as defined below);
- f. EMS has a payment obligation to the Merchant under the Merchant Acquiring Agreement; and
- g. to support the agreed commercial and operational model under the MSP Agreement, the Parties wish to arrange that EMS can fulfil its payment obligation *vis-a-vis* the Merchant under the Merchant Acquiring Agreement by paying MSP instead of the Merchant and that MSP can fulfil its payment obligations *vis-a-vis* the Merchant.

the Parties have agreed as follows:

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1 DEFINITIONS

1.1 Definitions

1.1.1 In this Agreement, the following terms have the following meaning:

- (a) **Agreement** means the whole of this Agreement and any schedules or appendices.
- (b) **Acquiring services** means the following services to be provided by EMS to Merchant under the EMS Merchant Acquiring Agreement:
 - (i) capturing payment transactions, including cash advances/disbursements, made with a Card from physical point-of-sale terminals (including unattended acceptance terminals), virtual point-of-sale terminals, e-commerce, mail/telephone and/or vouchers; and
 - (ii) submitting such transactions to the Issuer of the aforementioned Card via the relevant Association for clearing and settlement, for which settlement takes place with the Merchant (but via MSP Settlement Account in the case of the Alternative Settlement Model applying);
- (c) **Association** means MasterCard, and Visa, together with such other card payment systems as EMS might be sponsored for by ABN AMRO Bank N.V. from time to time and in respect of which EMS agrees to provide processing and settlement and which, for the purposes of this definition, includes Laser and Maestro.
- (d) **Merchant Acquiring Agreement** means the contract entered into between the Merchant, EMS and ABN AMRO N.V. for the provision of Acquiring Services to the Merchant.
- (e) **MSP Settlement Account** means each of the segregated client accounts (and constituting a “trust account”) established by, and in the name of, MSP for the purpose of (i) receiving all Settlement Funds from EMS, (ii) effecting all appropriate debits and credits to and from such accounts for the purpose of funding Merchant in accordance with the Relationship Agreement and MSP Agreement, and (iii) for such other purposes as contemplated by this Agreement.
- (f) **Relationship Agreement** means the agreement between MSP and the Merchant under which MSP provides certain PSP services and a centralised solution for various payment options as set out therein.
- (g) **Settlement Funds** means any funds that Merchant may owe from EMS from time to time under or in connection with the Transactions.
- (h) **Transaction** has the meaning as set out in the Merchant Agreement.

2 MERCHANT UNDERTAKING

Merchant undertakes to enter into the Merchant Acquiring Agreement with EMS and the Relationship Agreement with MSP.

2.1.1

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3 RESPONSIBILITIES OF EMS AND MSP

EMS will be the Merchant's acquirer for the Associations and MSP will be the Merchant's service provider as further set out in each of the Merchant Acquiring Agreement and Relationship Agreement respectively. For the avoidance of doubt: during the term of the Relationship Agreement, the MSP is entitled to make changes to the fees it charges towards the Merchants under the Relationship Agreement agreed between the MSP and the Merchant.

4 POWER OF ATTORNEY

4.1.1 Merchant grants an irrevocable power of attorney (*volmacht in de zin van art. 3:60 Burgerlijk Wetboek*) to MSP to receive and/or collect the Settlement Funds for and on behalf of Merchant, and to perform all such acts as may be necessary and/or desirable in the sole opinion of MSP in connection with the receipt and/or collection of such funds, also in cases where MSP acts as the Merchant's counterparty or as representative of Merchant's counterparty within the meaning of section 3:68 of the Dutch civil code.

4.1.2 By way of deviation from article 3:72 (b) Dutch civil code, the power of attorney expressed in clause 4.1.1 above survives the bankruptcy (*faillissement*) of MSP.

5 DISCHARGE OF CLAIMS

5.1.1 Merchant acknowledges and agrees that payment by EMS of any Settlement Funds to MSP shall constitute full and final discharge of all of EMS' settlement obligations to Merchant under or in connection with the Merchant Acquiring Agreement.

5.1.2 From the time that Settlement Funds are received into an MSP Settlement Account, MSP shall bear the sole responsibility and liability for ensuring that it onwards remits such Settlement Funds due, to Merchant.

5.1.3 The Merchant hereby in advance irrevocably and unconditionally releases and waives (*doet afstand van*) any claim (*vordering*) it may have on EMS under or in connection with the Settlement Funds, at the time that such Settlement Funds are received into an MSP Settlement Account.

6 GOVERNING LAW AND JURISDICTION

The rights and obligations of the parties under this Agreement – including the power of attorney and all questions and/or claims relating to agency – are governed by the laws of the Netherlands, and the parties submit to the exclusive jurisdiction of the courts of Amsterdam, the Netherlands.

7 SUBORDINATION AND WAIVER OF RIGHTS

7.1.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of any other agreement concluded between Merchant and MSP now or in the future, the terms of this Agreement have precedence.

7.1.2 Merchant waives any right it has or may have against or towards EMS under the terms of any other agreement concluded between Merchant and MSP to:

- (a) litigate against EMS;
- (b) claim payment from EMS; and/or

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(c) enforce any other right against EMS,
insofar it might have such a right in spite of article 7.1.1 above.

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SIGNED for and on behalf of:

European Merchant Services B.V.

SIGNED for and on behalf of:

[MSP]

Name:
Title:
Date:

Name:
Title:
Date:

Name:
Title:
Date:

Name:
Title:
Date:

SIGNED for and on behalf of

[the Merchant]

Name:
Title:
Date:

Name:
Title:
Date:

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