

## GENERAL TERMS AND CONDITIONS

These General Terms and Conditions outline the terms and conditions under which NIKO TECHNOLOGIES OÜ, a company incorporated under the laws of Estonia, under register code 14511282, having its registered office at Roosikrantsi tn 2-K162 Tallin Harjumaa 10119, Estonia ("NT") will provide Services to the MERCHANT as specified in the Agreement. In case of any conflict or discrepancies between these General Terms and Conditions and the provisions of the Agreement including its Appendices, the provisions of the Agreement shall prevail. NT and MERCHANT shall ensure full compliance with the Association Rules as well as the rules of any other financial institution or payment provider, if applicable. In case of any conflict between these General Terms and Conditions and the Association Rules, the provisions of the Association Rules shall prevail.

**1. Definitions** For the purpose of the Agreement and its Appendices as well as of these General Terms and Conditions the following definitions apply unless the context requires a different interpretation:

- 1.1. **Agreement:** the payment service agreement concluded between NT and MERCHANT;
- 1.2. **Alternative Payment Method:** any payment method other than wire transfer used by a Customer in order to fulfil a payment obligation or to top up the eWallet;
- 1.3. **Applicable Law:** any and all applicable laws and regulations, the prevailing rules and regulations of any regulatory authority and the Association Rules to which each Party is subject in respect of the performance of its obligations under the Agreement, including without limitation all state and federal consumer credit and consumer protection statutes and regulations and any data protection laws to the extent applicable to a Party;
- 1.4. **Acquirer or Acquiring Bank:** a financial institution that is a member of an Association and thus licensed for MERCHANT's Transactions and processing them for clearing and settlement purposes; Acquirer is identified in Appendix A of the Agreement;
- 1.5. **Approved Currencies:** currencies in which funds may be held on MERCHANT Account, currencies which can be received into MERCHANT Account or currencies which can be settled out from MERCHANT Account;
- 1.6. **Association Rules:** the current and future bylaws, rules, regulations, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Association (as amended from time to time by such Association), which are applicable to the Services or other payment methods;
- 1.7. **Best Industry Practice:** the standards that would be expected from an experienced and skilled service provider in the relevant industry for the provision of comparable services, having regard to factors such as the nature and size of the parties, the service levels, the term, the pricing structure, the locations in which the Services are being provided, and any other relevant factors;
- 1.8. **Business Day:** means a day in the Territory other than (i) a Saturday or Sunday, (ii) a holiday observed by NT, or (iii) a day on which NT remains closed in accordance with Applicable Law;
- 1.9. **Consents:** all licences, permissions, consents, authorisations, registrations and approvals from all relevant authorities, Government Bodies, Associations or other regulatory bodies as are necessary or desirable for a Party to fully and effectively perform its obligations under this Agreement;
- 1.10. **Customer:** a natural person, partnership, association or legal entity that is customer of a merchant or has registered with the eWallet;
- 1.11. **eWallet Solution or eWallet:** a software solution that provides electronic money to registered Customers and enables these Customers to transfer money to their own virtual accounts within the software solution and to initiate payments to third parties using the funds on these accounts. The transfer of money will be enabled by a Payment Service;
- 1.12. **Fees:** any fees payable by MERCHANT (and deducted from MERCHANT Settlement Proceeds) for the provision of Services as set out in Appendix A (services and pricing), including, but not limited to, applicable transaction fees and chargeback fees;
- 1.13. **Force Majeure Event:** an event beyond the reasonable control of the affected Party, including war, but not limited to circumstances beyond its control, including but not limited to acts of God, fire, explosion, civil commotion, insurrections, riots, strikes or industrial disputes of any kind (whether of its own or third party employees);
- 1.14. **Gateway Services:** the technical processing of Transactions between the Acquiring Bank, NT and MERCHANT and the services providing MERCHANT with an interface to be able to accept sales from customers over the internet;
- 1.15. **Government Body:** any foreign, national, international, regional, federal, state or local or other governmental authority or regulatory body including the European Union and any court, agency, authority or similar body;
- 1.16. **Intellectual Property Rights:** without limitation any patent, trademark, trade name, business name (including domain names and URLs), copyright and related rights, registered design, database right, unregistered design right (including rights in semiconductors) or other intellectual or industrial property protection and any application for such protection, and all rights in any secret process, know-how and inventions (whether

patentable or registrable or not) or other confidential information in each case whether registered or unregistered and including applications for the grant of such rights and all other rights or equivalent forms of protection anywhere in the world;

- 1.17. **Issuer:** an entity that is a member of the Association and that issues Cards to Cardholders pursuant to the Association Rules;
- 1.18. **KYC:** “know your customer”;
- 1.19. **KYC Process:** the process carried out by NT in order to fulfil the KYC requirements requested by Associations, other financial institutions or public authority;
- 1.20. **MERCHANT Account or Account:** account enabling MERCHANT to accept payment services.
- 1.21. **MERCHANT Cash Reserve Account or Cash Reserve Account:** account to be established by NT to satisfy MERCHANT’s obligations or potential obligations under the Agreement;
- 1.22. **Merchant Contract:** a contract entered into by MERCHANT with a Customer for the provision of eWallet Solution;
- 1.23. **MERCHANT Settlement Proceeds:** the proceeds resulting from a Transaction which are payable by NT to MERCHANT;
- 1.24. **Payment Service Provider Guidelines:** the guidance provided by NT to MERCHANT in Appendix A as notified to MERCHANT in writing from time to time, that set forth the “dos and don’ts” to be observed by MERCHANT;
- 1.25. **Payment Processing Services:** means the following services to be provided by NT:
  - (i) capturing payment transactions, including SWIFT and SEPA transfers, Alternative Payment Method or direct debit transaction; and
  - (ii) submitting transactions set out in (i) above, to or on behalf of the validly registered MERCHANT through wire or Alternative Payment Provider via the relevant Association for clearing and settlement, direct or indirect via an Acquiring Bank, for which settlement takes place pursuant to the terms of the Agreement;
- 1.26. **PCI Certificate:** PCI DSS certification;
- 1.27. **PCI DSS:** the Payment Card Industry Data Security Standards, which is a set of comprehensive requirements for enhancing payment account data security, as released from time to time by the PCI Security Standards Council;
- 1.28. **PCI Self-Assessment Questionnaire:** assists merchants and service providers permitted by the payment brands to self-evaluate their compliance with the PCI DSS;
- 1.29. **Privacy Policy** governs NT’s collection, processing and use of Relevant NT Personal Data available on <https://elegro.io>, <https://niko-technologies.com>
- 1.30. **Prohibited Merchant:** any Merchant whose business falls within an industry category listed in Appendix B of the Payment Service Provider Guidelines;
- 1.31. **Relevant Personal Data:** personal data, being data used to identify a natural person (i) contained in the Transaction Data; (ii) relating to any merchant or Transaction; and / or (iii) generated or otherwise processed as a result of the performance of the obligations of either Party under this Agreement;
- 1.32. **Services:** any services provided to MERCHANT by NT as agreed upon in the Agreement, in particular Payment Processing Services, Gateway Services or other payment related services;
- 1.33. **Territory:** European Economic Area and / or such additional territories notified in writing by NT from time to time;
- 1.34. **Transaction:** the purchase or lease by a Client of goods and / or services from MERCHANT (including a credit or refund or Chargeback) by use of a SWIFT transfer;
- 1.35. **Transaction Data:** all information required or used by the Associations and / or NT in order to process a Transaction;
- 1.36. **Transaction Record:** an electronic or paper record of a Transaction generated at website evidencing the purchase of goods or services, payment pursuant to any Agreement or Contract that is in force between a Client/ Customer/ Affiliate/ Partner and valid MERCHANT using a SWIFT, Direct Deposit or any Alternative Payment Method.

## 2. Services of NT

- 2.1. The Services to be provided by NT to MERCHANT are specified in the Agreement. NT’s policy is to prohibit and actively prevent money laundering and any activity that facilitates money laundering or terrorism financing or criminal activities. NT will only provide the Services to the MERCHANT upon successful completion of its KYC Process and its anti-money-laundering and risk due diligence in accordance with the laws of Estonia and European law, including, but not limited to, Regulation (EU) 2016/679, and Directive (EU) 2015/849 and acceptance of MERCHANT by an Acquiring Bank and/or a provider of Alternative Payment Method, if not directly accepted by NT in accordance with NT’s ability as payment facilitator. NT insists on a comprehensive and thorough KYC and AML compliance framework, which includes monitoring of suspicious transactions, obligatory reporting to local regulators and other compliance authorities and keeping the identification and proof of address of documents and transaction records.

- 2.2. Changes to the Services shall generally be agreed upon between the Parties in written form. Notwithstanding the foregoing, NT may issue new policies with regard to the Services which will be published on <https://www.elegro.io>. NT will notify MERCHANT by giving thirty (30) Business Days' notice in advance, unless the change is required immediately due to legal or regulatory requirements. If MERCHANT continues using NT's Services after the date when the changes become effective, it is deemed that MERCHANT has accepted the changes. In the event MERCHANT raises an objection to the changes, NT is entitled to terminate the Agreement.
- 2.3. MERCHANT authorizes and instructs NT (i) to act as its payment facilitator in connection with any Transaction in accordance with the terms and conditions set forth in the Agreement and these General Terms and Conditions and (ii) to claim on its behalf, but for the account of MERCHANT, the settled transaction amounts from the Acquiring Bank or the relevant financial institution. NT shall be entitled to receive and to hold this amount on behalf of MERCHANT.
- 2.4. Depending on the Services agreed upon in the Agreement, MERCHANT may have to enter into additional agreements with the Acquiring Bank or other financial institutions or with NT or its affiliates and/or provider of Alternative Payment Methods in order for NT to render the Services to MERCHANT. If such agreement is required, but not concluded for any reason, the effected payment method or the specific service to be covered by the additional agreement shall not be considered part of the Services and NT shall not be responsible in any way whatsoever for the non-availability of the relevant payment method or specific service.
- 2.5. NT warrants and guarantees that it shall perform the Services and carry out its obligations under this Agreement with all due diligence and efficiency in accordance with the generally accepted techniques and practices commonly recognized in the industry. MERCHANT acknowledges that the Services are not fault free and the quality and availability of the Services may be affected by factors outside the control of NT.
- 2.6. If NT shall be unable to perform the Services due to factors beyond its control, including but not limited to a Force Majeure Event, change of law, or change in sanctions policy. NT shall not be liable for the Services provided under the Agreement during the time period coincident with the event.

### **3. MERCHANT Obligations**

- 3.1. MERCHANT will notify NT immediately – at least thirty (30) Business Days' in advance by a written notice prior to the effectiveness of the change – of any relevant changes, including, but not limited to legal representative(s), bank account (for settlement), website/online shop URL, major ownership (10 % or more), key geographical markets, financial standing, type, scope or nature of business, change of business name or entering into a joint venture or joint marketing agreement or any other information provided in the application and the KYC Process.
- 3.2. MERCHANT shall:
  - 3.2.1. provide NT with any information necessary to provide the Services and respond promptly, at least within five (5) Business Days, to requests of NT to provide direction, information, approvals, authorizations or decisions that NT deems necessary to perform the Services;
  - 3.2.2. assist NT with the implementation and performance of the Services, if necessary;
  - 3.2.3. implement adequate security measures to prevent its programs from damage including data (re-) storage;
  - 3.2.4. not forward its access data (User ID, password) for the Services to any third parties. MERCHANT acknowledges that, for security reasons, ghost names and pseudonyms cannot be used;
  - 3.2.5. inform NT immediately, if an employee or any other person, who was given access to the Services, resigns. NT will close this access for security reasons; and
  - 3.2.6. notify NT immediately of any unauthorised use of the Account, password or any other breach of security.

If NT is unable to perform the Services for any reasons beyond the control of NT which are caused by MERCHANT, NT shall not be held responsible in any way.

- 3.3. While using the Services, MERCHANT undertakes

- 3.3.1. to provide such necessary information to its customers as required pursuant to Applicable Laws;
  - 3.3.2. not to sell any goods or offer services prohibited pursuant to Applicable Laws;
  - 3.3.3. to comply with the Association Rules;
  - 3.3.4. to comply with applicable European and/or national data protection laws;
  - 3.3.5. to perform its obligations toward its customers, including the assumption of responsibility for the acceptance of a Customer order and its fulfilment, in the agreed manner;
  - 3.3.6. to determine any and all taxes assessed, incurred or required to be collected, paid or withheld for any reason in connection to the use of Services, it is the sole responsibility of the MERCHANT to collect, withhold, remit and pay correct taxes to the appropriate authority;
  - 3.3.7. not to use the Services for any improper purpose or in any manner, which may constitute a violation of Applicable Laws or which may cause damage to NT's reputation or which may expose NT to investigation, prosecution or legal action;
  - 3.3.8. to indemnify NT and hold NT harmless for all costs (including reasonable legal fees) and damages incurred resulting from a claim by a customer of MERCHANT or any other third party in connection with the business model or an act or omission of MERCHANT;
  - 3.3.9. to provide its services consistent with the local laws and regulations, the MERCHANT is solely responsible for obtaining any information required of those who purchase its goods or services, and, similarly;
  - 3.3.10. to consistently with the Applicable Law verify the customer's identity and it is the sole responsibility of the MERCHANT to obtain any information required of those who purchase the goods or services,
  - 3.3.11. to maintain the confidentiality of the Account information, including the password, and to safeguard all activity relating to the Transactions;
  - 3.3.12. not to prepare any derivative work based on NT's Intellectual Property Rights, nor to translate, reverse engineer, decompile or disassemble NT's intellectual property;
  - 3.3.13. to follow the rules and regulations applicable in the MERCHANT's country of residence and/or country from which the MERCHANT accesses the services.
- 3.4. Before MERCHANT conducts any Transaction, it will obtain an authorization for the full amount of the Transaction from the authorization centre designated by NT. Authorization is required for each instalment of instalment transactions. Authorizations only confirm the availability of credit. They are not a promise, guarantee or representation by NT or the authorization centre that a Transaction is or will be deemed valid and is not nor will be subject to dispute. Authorizations will not in any way affect NT's right to revoke payment or otherwise exercise NT's right to charge the Transaction back to MERCHANT.
- 3.5. MERCHANT shall not process or submit Transactions that aggregate more than the "monthly transaction limit" NT establishes for MERCHANT. MERCHANT agrees to notify NT immediately if MERCHANT has reason to believe it will exceed this limit. MERCHANT may apply to NT in writing for a greater monthly transaction limit. Requests to increase the "monthly transaction limit" shall not be approved unless and until NT has reviewed the delivered documentation to its satisfaction and has confirmed the accuracy and authenticity of the information therein. If MERCHANT submits Transaction Records to NT for processing that exceed the monthly transaction limit, NT may hold the excess funds as reserves until the Chargeback period related to the excessive Transactions has expired. If NT permits MERCHANT to exceed the limit, NT may refuse without cause or prior notice to continue allowing that practice at another time.
- 3.6. MERCHANT will not use the services of any bank, corporation, entity or person other than NT for authorization of Transaction throughout the term of the Agreement.

#### **4. Chargebacks**

- 4.1. NT may chargeback Transactions to MERCHANT under the following circumstances. MERCHANT agrees to immediately pay NT the amount of the Chargebacks without any further demand from NT.
  - 4.1.1. The Transaction Record is (i) illegible or the data contained therein is otherwise indiscernible, (ii) not endorsed, (iii) not delivered to NT within the required time limits or (iv) altered or incomplete.
  - 4.1.2. MERCHANT fails to obtain prior authorization for the Transaction.
  - 4.1.3. The Transaction Record is a duplicate of an item previously paid or is one of two or more Transaction Records generated in a single Transaction in violation of the Agreement.
  - 4.1.4. The Client disputes the validity or authorization of the Transaction Record, or the sale, delivery, quality or performance of the goods or services purchased; or alleges that a credit adjustment was requested and refused, or that a credit adjustment was issued by you but not posted to the account.
  - 4.1.5. NT determines that MERCHANT has violated any term of the Agreement in connection with the Transaction Record or the related Transaction.
  - 4.1.6. NT determines that the Transaction Record is fraudulent or that the related transaction is not a bona fide transaction in the ordinary course of MERCHANT's business or is subject to a claim of illegality, cancellation, rescission, avoidance or offset for any reason whatsoever, including without limitation negligence, fraud or dishonesty for which you, your agents or employees are responsible. If there is suspicious activity related to the MERCHANT Account, NT may request additional information, including authenticating documents and freeze any transaction pending for review.
  - 4.1.7. The Transaction Record arises from a mail order, telephone order, or e-commerce transaction that the Client disputes entering into or authorizing or involves an account number that never existed or has expired.
  - 4.1.8. In any other situation in which a Transaction has been charged back to NT in accordance with the Chargeback rules established by the Association.
- 4.2. NT may chargeback a Transaction in accordance with this section 4 even if an authorization was obtained. NT may impose a per-item handling fee for each Chargeback that is processed. NT may from time to time, at its sole discretion, and without prior notice, change the Chargeback fee. If the Chargeback activities of MERCHANT exceed a ratio of 1 % (calculated by dividing the number of Chargebacks in any month by the number of sales during that month) or any other amount as set forth by an Association, MERCHANT will pay an additional per-item charge established by NT for processing such excessive Chargebacks. Since Association Rules may not allow the reversal of a Chargeback in certain electronic Transactions, MERCHANT agrees to accept all Chargebacks issued pursuant to the Association Rules. MERCHANT may also be charged a Chargeback research fee of EUR 50.00 per Chargeback. If after MERCHANT Account has terminated, and MERCHANT fails to instruct us NT to where to transmit funds that NT is holding and that are due to MERCHANT, NT may deduct an amount of EUR 75.00 associated with the maintenance of such funds on a monthly basis.

## **5. MERCHANT Cash Reserve Account and security interest**

- 5.1. NT may establish a MERCHANT Cash Reserve Account, which may be funded by:
  - 5.1.1. demand and receive immediate payment for such amounts;
  - 5.1.2. debit the account identified in MERCHANT Account;
  - 5.1.3. withhold MERCHANT Settlement Proceeds until all amounts are paid; and
  - 5.1.4. pursue any remedies NT may have at law or in equity.
- 5.2. NT may use funds in MERCHANT Cash Reserve Account to cover Chargebacks, credits, fines, costs and other obligations MERCHANT incurs under the Agreement. NT is entitled, at its sole discretion, to change the required reserve amount at any time without notice, and to determine the period that reserves may be held, and the percentage withheld from each transaction based on its assessment of the amount needed to cover current and future liabilities of

MERCHANT under the Agreement.

- 5.3. If NT requires a MERCHANT Cash Reserve Account at the time of MERCHANT's approval of its application for the Services, NT will notify MERCHANT of the percentage and period of required reserves in the merchant approval. If a reserve is required at a later date, or if a reserve amount is increased, NT may establish and/or increase the reserve without advance notice. MERCHANT agrees to deposit additional amounts in its MERCHANT Cash Reserve Account upon request of NT.
- 5.4. MERCHANT will have no right or interest in the funds in the Cash Reserve Account; provided that upon satisfaction of all of MERCHANT's obligations under the Agreement, NT will pay to the MERCHANT any funds then remaining in the Cash Reserve Account. Any funds in the Cash Reserve Account may be commingled with other funds and need not to be maintained in a separate account.
- 5.5. Effective upon establishment of a Cash Reserve Account by NT, the MERCHANT irrevocably grants NT a security interest in any and all funds, together with the proceeds thereof, that may at any time be in NT's possession and would otherwise be payable to the MERCHANT pursuant to the terms of the Agreement. MERCHANT agrees to execute and deliver to NT such instruments and documents that NT may reasonably request to perfect and confirm the security interest and right of set-off set forth in the Agreement.
- 5.6. The Parties' rights and obligations under this section 5 shall survive the termination of the Agreement, at least for a period of eighteen (18) months, but in any case as long as any of MERCHANT's transactions remain subject to Chargebacks, and so long as any Fee, charge, cost or obligation described in the Agreement remains unpaid by MERCHANT or could be incurred by NT as a result of actions or omissions of MERCHANT.

## **6. Fees**

- 6.1. MERCHANT is obliged to promptly – within ten (10) Business Days – pay the Fees and charges NT establishes for the Services according to Appendix A of the Agreement if not deducted already by NT from any settlement; payments made by the Acquirer to NT with reference to the Agreement shall be passed through to MERCHANT minus applicable Fees and charges for the Services, including (without limitation) the following:
  - 6.1.1. Fines and penalties: The Associations may impose fines or penalties upon NT for violations of the Association Rules. The Associations may charge NT a Chargeback handling fee or fine, for example, if MERCHANT exceeds certain thresholds set by the Association. MERCHANT is obliged to pay or reimburse NT within twenty-four (24) hours of NT's request, whether or not MERCHANT intends to protest the Association's assessment. MERCHANT may contact NT for information regarding Association Chargeback limitations and fines.
  - 6.1.2. Legal fees and costs: NT will pass through to the MERCHANT, and the MERCHANT agrees to pay, the legal fees and costs NT incurs in seeking legal advice in matters not in the ordinary course of the relationship with the MERCHANT, as described in the Agreement. This includes, but is not limited to, contract disputes, legal procedures, bankruptcy or other similar events, whether the fees or costs are incurred during or after the term of the Agreement.
  - 6.1.3. Service Fees. These are Fees listed in Appendix A of the Agreement, as amended by NT from time to time. For Transactions that do not qualify, Association interchange fees provide for a "down-grade," and NT will apply a higher rate for the non-qualifying Transactions than the qualifying rate as set forth in the documentation. NT may modify the pricing by giving ten (10) Business Days' prior written notice. In addition, by giving written notice to MERCHANT, NT may change the Fees, charges and discounts for any reason, including, but not limited to, a result of (i) Changes in Associations fees (such as interchange, assessments and other charges) or (ii) changes in pricing by any third-party provider of a product or service used by MERCHANT. Such new prices shall be applicable to the MERCHANT as of the effective date established by the Association or third-party provider, or as of any date specified in NT's notice to MERCHANT. In the event MERCHANT raises an objection to the changes, NT is entitled to terminate the Agreement.
  - 6.1.4. Monthly investigation fee: MERCHANT may be charged a monthly investigation fee of fifteen percent (15 %) or EUR 500 (whatever is higher) for first and second initiated investigation, of the EURO (or any currency) transaction amount investigated for any suspicious or unusual transaction activity or any transaction activity which deviates from the Agreement. In case the respective merchant is being investigated a transaction fraud for the third time, the Investigation fee to be charged is 15% or EUR 2500

(whatever is higher) of the investigated transaction. Hereby Merchant acknowledges and about the hold of funds related to the respective investigated transaction for minimum of 30 days. An additional audit fee of EUR 50.00 for each diversion of MERCHANTS funds by NT pursuant to its Monitoring of MERCHANT Account will be charged to the MERCHANT.

- 6.1.5. Set up fees: If MERCHANT voluntarily terminates the Agreement before an agreement between MERCHANT and the Acquirer has been concluded, MERCHANT may be charged a setup fee of EUR 10,000.00 to compensate NT for the setup costs such as costs of verifying management, use of partner-databases or costs of due diligence and other. MERCHANT shall be entitled to furnish proof of lesser damage.
- 6.2. MERCHANT Account shall contain and maintain sufficient funds to cover any unbilled processing costs plus our estimated exposure based on reasonable criteria for Chargebacks, fines and returns. Simultaneously, with each transaction processed by MERCHANT, NT has a contingent and non-matured claim against MERCHANT for any amount NT is required to pay as a result of your processing of transactions, including, but not limited to, any Chargebacks, Fees, discounts, customer credits and adjustments, charges, fines, assessments and penalties. All settlements or credits given, or payments made by NT to the MERCHANT in connection with Transactions are provisional and subject to revocation, Chargeback or refund, according to the terms and conditions of the Agreement and the Association Rules. MERCHANT's right to receive any amounts due from NT is expressly subject and subordinate to NT's Chargeback, set-off, lien and security interest rights without regard to whether such Chargeback, set-off, lien and security interest rights are applied to claims that are liquidated, unliquidated, fixed, contingent, matured or non-matured. NT may, without further notice, electronically debit the MERCHANT Account to cover all sums owing to NT pursuant to the Agreement, including, but not limited to, amounts owing for Chargebacks, related fees and fines imposed by associations.

## **7. Risks**

- 7.1. Based on the Agreement and on these Terms the MERCHANT may have exposure to certain cryptocurrencies. Before obtaining such exposure, it is required to read these risk warnings, and by proceeding to use the Services, the MERCHANT accepts and acknowledges the associated risks in dealing with cryptocurrencies.
- 7.2. The MERCHANT is fully aware that the trading of goods and products, real or virtual, as well as virtual currencies involves a significant risk. Prices can and do fluctuate on any given day. Such price fluctuations may increase or decrease the value of the assets at any given moment. Any currency, virtual or not, may be subject to large swings in value and may even become worthless. There is an inherent risk that losses will occur as a result of buying, selling, or trading anything on the market.
- 7.3. Cryptocurrency exchanges also carry special risks not generally shared with official currencies or goods or commodities in a market. Unlike most currencies, which are backed by governments or other legal entities, or by commodities such as gold or silver, cryptocurrency is a unique type of currency, backed by technology and trust. There is no central bank that can take corrective measure to protect the value of cryptocurrency in a crisis, or issue more currency.
- 7.4. Cryptocurrencies are a unique type of "fiat" currencies, backed by technology and trust. Cryptocurrencies are an as-yet autonomous and largely unregulated global system of currency firms and individuals. Traders put their trust in a digital decentralised and partially anonymous system that relies on peer-to-peer networking and cryptography to maintain its integrity.
- 7.5. There may be additional risks that NT as not foreseen or identified in this Terms and Conditions. The MERCHANT undertakes to carefully assess whether its financial situation and tolerance for risk are suitable for using the services provided by NT.

## **8. Representation and Warranties of MERCHANT**

- 8.1. Without limiting any other warranties in accordance with the Agreement, MERCHANT represents and warrants that:
  - 8.1.1. the MERCHANT is of legal age to enter a binding agreement; and if the MERCHANT is a corporation, governmental organization or other legal entity that the MERCHANT has the right, power and authority to enter into this Agreement on behalf of the corporation, governmental organization or other legal entity and bind them to these terms;

- 8.1.2. the information provided in the application and the KYC Process is true, accurate, current and complete and provides an accurate picture of the true nature of MERCHANT's business;
- 8.1.3. each Transaction submitted for processing represents a bona fide sale or lease of the goods, products or services which the MERCHANT has provided in its ordinary course of business and the transaction is not submitted on behalf of a third party;
- 8.1.4. the Transaction does not involve any element of credit for any purpose other than payment for a current transaction (including payment of a previously-dishonoured check) and, except in the case of approved instalment or pre-payment plans, the goods have been shipped or services actually rendered to the Client/ Partner/ Affiliate;
- 8.1.5. the amount charged in the Transaction is not subject to any dispute set-off or counterclaim;
- 8.1.6. to the MERCHANT's best knowledge, the Transaction does not indicate any facts or circumstances which would impair the validity or collectability of the Client's obligation and the transaction is in compliance with all Applicable Laws, ordinances and regulations; and MERCHANT has originated the Transaction in compliance with the Agreement and the Association Rules;
- 8.1.7. to the MERCHANT's best knowledge, the goods or services described in each Transaction are MERCHANT's sole property and it is free to sell them;
- 8.1.8. MERCHANT has made no representations or agreements for the issuance of refunds except as it states in its return / cancellation policy;
- 8.1.9. MERCHANT will not hold any funds on behalf of its Customers. It is NT's sole duty in case to hold Customer funds in order to process payment transactions among Customers of MERCHANT if applicable;
- 8.1.10. the Services shall not be used to perform criminal activity of any sort, including but not limited to money laundering, illegal gambling operations, terrorist financing, malicious hacking or any other criminal or illegal activity.

**9. Indemnification, Liability and limitation of liability**

- 9.1. The MERCHANT shall indemnify and keep NT and any member of its affiliates (together with its officers, servants and agents) indemnified from any and all liability, losses, damages, costs, awards, expenses, claims, costs, penalties and fines incurred or suffered (including reasonable professional legal fees) or other assessments imposed on NT, arising out of any dispute or proceedings brought by a third party, including any Government Agency, against NT or any member of its Affiliate arising out of:
  - 9.1.1. any breach of any of its obligations under the Agreement, including, without limitation, any breach or alleged breach of any of the warranties and representations of the Agreement or
  - 9.1.2. any act within MERCHANT's reasonable sphere of control or
  - 9.1.3. any violation of any Applicable Law or Association Rule
  - 9.1.4. any violation security guidelines or failure (whether negligent or otherwise) to maintain the security or confidentiality of Client's Information, or your misuse of any such information.
- 9.2. NT shall not be held liable by and to the MERCHANT:
  - 9.2.1. for damages resulting from the provision of the Services and ancillary services relating to KYC and account Information in accordance with the Agreement and the Applicable Laws, unless directly caused by its gross negligence or wilful misconduct;
  - 9.2.2. for any failure or delay in performing its obligations under the Agreement if such failure or delay is caused by acts or omissions of third parties or circumstances beyond NT's control. For the avoidance of doubt, any act regarding the provision of the Services, especially the non-execution or incorrect execution of a payment by NT or any failure arising out of a malfunctioning of the NT's designated web site shall be considered as within NT's reasonable sphere of control;

- 9.2.3. in no event will NT or its affiliates, or any of its or their respective service providers, officers, directors, employees, partners and agents be liable to MERCHANT or any third party for any use, interruption, delay or inability to use the software, lost revenues or profits, delays, interruption or loss of services, business or goodwill, loss or corruption of data, loss resulting from system or system service failure, malfunction or shutdown, failure to accurately transfer, read or transmit information, failure to update or provide correct information, system incompatibility or provision of incorrect compatibility information or breaches in system security, or for any consequential, incidental, indirect, exemplary, special or punitive damages, whether arising out of or in connection with this Agreement, breach of contract, tort (including negligence) or otherwise, regardless of whether such damages were foreseeable;
  - 9.2.4. some jurisdictions prohibit certain warranty disclaimers or limitations on liability, so only disclaimers or limitations that are lawful in the applicable jurisdiction will apply to the MERCHANT. The liability of NT shall be limited to the maximum extent permitted by the Applicable Laws in the applicable jurisdiction and in no event shall NT, its licensors, service providers or subcontractors (if any) be liable for the exceeding amount arising from any use, interruption, delay or inability to use the software, lost revenues or profits, delays, interruption or loss of services, business or goodwill, loss or corruption of data, loss resulting from system or system service failure, malfunction or shutdown, failure to accurately transfer, read or transmit information, failure to update or provide correct information, system incompatibility or provision of incorrect compatibility information or breaches in system security, or for any consequential, incidental, indirect, exemplary, special or punitive damages, whether arising out of or in connection with this Agreement, breach of contract, tort (including negligence) or otherwise, regardless of whether such damages were foreseeable and
  - 9.2.5. for any consequential, indirect, incidental, reliance or exemplary damages arising out of or relating to the Agreement and its Appendices as well as these General Terms and Conditions.
- 9.3. In any case, NT's aggregated total liability to the MERCHANT or any third party arising out of or related to the Agreement shall not exceed the lesser of EUR 25,000.00 or the amount of fees received by NT for Services performed in the immediately preceding six (6) months.
  - 9.4. Except in respect of payment liabilities, neither Party shall be liable for any failure to perform or delay in performing its obligations under the Agreement if such failure or delay is caused by a Force Majeure Event, however to the Party so delaying immediately notifying the other Party in writing of the reasons for the delay and the likely duration of such delay; and such Party shall be granted an extension of time for performance equal to the period of delay, provided always that if the conditions of Force Majeure Event apply for a period of more than three (3) months either Party may terminate the Agreement immediately upon providing notice of termination in writing to the other Party.
  - 9.5. Notwithstanding the foregoing, nothing in the Agreement shall exclude or limit the liability of a Party for death or personal injury resulting from the negligence of that Party; or damage or loss incurred by the other Party as a result of the fraud of that Party.

## **10. Monitoring of MERCHANT activity**

- 10.1. NT is entitled to monitor MERCHANT's daily Transaction activity. MERCHANT acknowledges that NT periodically reviews MERCHANT and its business relating to the KYC Process during the term of the Agreement, including inter alia, monitoring of fraud reports and Chargeback rates, screening against sanctions and PEP lists, Website content checks and periodic credit ranking and monitoring of settlement reports.
- 10.2. MERCHANT authorizes NT to obtain, from time to time, credit, financial, and other information regarding MERCHANT from third parties, such as credit reporting agencies. MERCHANT authorizes NT to respond to requests from others about NT's experience with MERCHANT. MERCHANT agrees to provide NT, at its request, with:
  - 10.2.1. an updated financial statement;
  - 10.2.2. information regarding the ownership, character and nature of its business; and
  - 10.2.3. the estimated amount and volume of the MERCHANT's future Transactions. The MERCHANT agrees to permit NT and the Associations to review the Transaction Records of MERCHANT and inspect MERCHANT's business locations during regular business hours.

- 10.3. The MERCHANT authorizes NT and any Association to inspect MERCHANT's premises and computers, and the premises and computers of any company MERCHANT has contracted with, for the purposes of verifying that Client's/ Affiliate/ Contractor or Subcontractor's Information is securely stored and processed, and is not used for any purpose other than processing the Transactions to which it relates.

## **11. Confidentiality and data protection**

- 11.1. "Confidential Information" means any information belonging to or in the possession or control of a Party that is of a confidential, proprietary or trade secret nature and that is furnished disclosed or imparted by one Party (the "Disclosing Party") to the other (the "Receiving Party"), including, but not limited to, any technical or non-technical information (whether in oral, written or other form), Relevant Personal Data, ideas, confidential or proprietary concepts, know-how, development, reports, designs, flow charts, data, specifications, computer programs, databases, inventions and any commercial, financial and business information (in any form), industry knowledge and expertise, business plans and strategies, marketing plans and techniques, which relates directly or indirectly to the Agreement including the relationship between the Parties arising out of the Agreement as well as all information for which a Party owes a duty of confidentiality to any third Party. Confidential Information will remain sole property of the Disclosing Party. Confidential Information shall not include information which

11.1.1. was demonstrably already in the possession of the Receiving Party before receipt under the Agreement or is independently developed by the Receiving Party without access to or use or knowledge of the Confidential Information;

11.1.2. was demonstrably lawfully received by the Receiving Party or its employees from a third party free of any obligations of confidence to such third party; or

11.1.3. demonstrably is in or subsequently comes into the public domain other than by breach of the Agreement.

- 11.2. The Receiving Party shall only use the Confidential Information as strictly necessary for the performance of its obligations under the Agreement and maintain confidential all Confidential Information and not disclose it to any third party except in confidence and on a need to know basis to its employees, officers, advisers, agents or sub-contractors who are subject to confidentiality obligations in respect thereof under their contracts of employment or engagement. Confidential Information may be disclosed in accordance with judicial or governmental order or if required by Applicable Law or court order.

- 11.3. Each Parties shall exercise at least the same degree of care as it uses with its own data, but in no event less than reasonable care, to protect the Confidential Information from misuse and unauthorized access or disclosure, including:

11.3.1. maintaining adequate physical controls and password protections for any server or system on which any data may reside;

11.3.2. encrypting any data that is in transmission; and

11.3.3. encrypting any data located on any storage media.

- 11.4. Relevant Personal Data shall only be processed in accordance with applicable data protection law. The Parties shall only collect, save and process Personal Data that are necessary, adequate, relevant and not excessive in relation to the purpose for which they are collected or further processed.

- 11.5. MERCHANT shall exercise the utmost care to prevent the disclosure of any Information, other than to the applicable Association, or as specifically required or permitted by Applicable Law and the Association Rules. MERCHANT agrees not to use any account information or other Client/ Affiliate/ Contractor or subcontractor -'s Information other than for the sole purpose of completing the Transaction authorized by the customer for which the information was provided to MERCHANT, or as specifically allowed by Association Rules or required by Applicable Law. MERCHANT shall limit access to Customer's Information to a secure area that is only accessible to selected personnel. MERCHANT's disposal procedures must ensure the security of all Customer Information and all Customer Information that has been discarded must be rendered unreadable. MERCHANT acknowledges that it will not obtain ownership rights in any information derived from Transactions.

If at any time either Party determines that account information has been compromised, such Party will notify the other Party immediately and assist in providing notification to the proper parties as NT deems necessary. MERCHANT's information may be shared by NT with its affiliates in terms of provisions of the Agreement and Association Rules.

Full details of NT's Privacy Policy can be found at [https://elegro.io/privacy\\_policy/](https://elegro.io/privacy_policy/). The MERCHANT undertakes to read the Privacy Policy carefully in order to be aware of the collected data, how the data is used and with who the data is shared with.

## **12. Intellectual Property Rights**

Each Party acknowledges the Intellectual Property Rights of the other Party whether registered or not. MERCHANT shall pay full compensation to NT for any violation of NT's copyrights or other Intellectual Property Rights. The trademarks and other materials should not be copied, reproduced, modified, republished, uploaded, posted, transmitted, scraped, collected, or distributed in any form or by any means, whether manual or automated. The use of any such materials for any other purpose is strictly prohibited; any such unauthorised use may violate copyright, trademark, and other applicable laws, and could result in criminal or civil penalties. NT will pursue any violation of its Intellectual Property Rights with claims for injunctive relief and damages. NT is entitled to refer to MERCHANT as reference customer and to use its name, brand and logo for all kinds of marketing activities and campaigns free of charge, including, but not limited to, the use in marketing folders. MERCHANT herewith agrees that NT's logo is displayed to MERCHANT's Customers, whenever MERCHANT uses the standard payment selection page and / or standard payment details page.

Upon expiration or termination of this Agreement, MERCHANT will immediately cease all display, advertising and use of all of the Intellectual Property Rights.

## **13. Termination for Good Cause**

13.1. Either Party may terminate the Agreement at any time with immediate effect by giving prior written notice to the other Party if:

13.1.1. the other Party commits a material breach of any provision of the Agreement which, in the case of a breach capable of being remedied, has not been remedied to the satisfaction of the Party claiming the breach within thirty (30) Business Days' of notice in writing specifying the breach and requiring the same to be remedied having been given; or

13.1.2. the other Party becomes insolvent or being unable to pay its debts as they fall due or any corporate action, legal proceedings or other procedure or step is taken or threatened in relation to (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation, (ii) a composition, assignment or arrangement with any creditor or (iii) the appointment of a liquidator, receiver, trustee in bankruptcy, judicial custodian, compulsory manager, administrative receiver, administrator or similar office

13.1.3. the other Party commits (or its representatives or Affiliates commit) fraud; or

13.1.4. if it is required to do so due to an amendment of Applicable Law or due to a decision by a court or a Government Body.

13.2. NT may at any time terminate the Agreement or parts of the Agreement with immediate effect if:

13.2.1. The MERCHANT fails to notify NT of any material change in the nature of its business, goods and / or services or of any additional business MERCHANT commences or any material business MERCHANT closes down within five (5) Business Days of such change;

13.2.2. an event occurs that may affect or a matter is brought to the attention of NT which it considers may affect MERCHANT's ability or willingness to comply with any or all of its contractual obligations or liabilities hereunder or if any other change in MERCHANT's circumstances or the circumstances of MERCHANT's business occurs (including a deterioration in or a change of MERCHANT's financial position or ownership) which NT, acting in good faith, considers material to the continuance of the Services;

13.2.3. NT, acting in good faith, reasonably considers any activity or omission of MERCHANT to increase the risk of a claim against or loss or liability of NT or a financial institution in its financial network;

13.2.4. any security granted to NT by MERCHANT ceases to be enforceable, is withdrawn or loses considerable value;

- 13.2.5. the Association Rules require NT to terminate the agreement or if an Association gives notice to NT that it considers the provision of the Services to MERCHANT to constitute a breach of the Association Rules;
  - 13.2.6. MERCHANT violates any duty to collaborate under the Agreement;
  - 13.2.7. the Services are used by any third party or any third-party benefits from the Services without NT giving its prior written consent;
  - 13.2.8. NT, acting in good faith, reasonably believes that MERCHANT is involved in any activities or omissions that would qualify as a criminal offence pursuant to Applicable Laws;
  - 13.2.9. MERCHANT disrupts NT's regular business activities by means of, for example, spoofing, parameter tampering, exploitation of bugs, brute force or denial of service attacks and any other malicious activities;
  - 13.2.10. MERCHANT exceeds any threshold set out in Association Rules;
  - 13.2.11. NT is required by any Associations, Acquiring Banks or an order from any Government Body to cease providing Services to MERCHANT;
  - 13.2.12. MERCHANT fails to successfully pass any anti-money-laundering or risk due diligence, or KYC Process executed by NT or fails to provide to NT the relevant PCI certificate or PCI Self-Assessment Questionnaire (that the MERCHANT is required to complete and submit it to their Acquiring Bank) upon request;
  - 13.2.13. MERCHANT does not accept a variation of the risk and security arrangements (i.e. processing limit, reserve requirements) following any assessment or evaluation of MERCHANT.
- 13.3. For the avoidance of any doubt, any termination of the Agreement does not relieve MERCHANT of any obligations to pay any fees or costs accrued prior to termination and any other amounts owed by MERCHANT to NT as provided in the Agreement or in these General Terms and Conditions. MERCHANT will continue to be responsible for any and all Chargebacks, credits and adjustments and all other amounts then due, or which later become due.
- 13.4. In case MERCHANT during the course of contract stops processing or transacting NT is entitled to charge a minimum fee as stated in Annex B and to withhold sufficient funds in order to cover payment of such fees by the MERCHANT.

#### **14. Diversion of funds and suspension of Services**

- 14.1. NT is entitled to divert the disbursement of funds and / or to suspend its Services in the event of reasonable grounds, if MERCHANT fails to properly fulfil its obligations under the Agreement. In that case NT shall notify MERCHANT thereof within three (3) Business Days following the suspension. Reasonable grounds shall include, but not be limited to, the following:
- 14.1.1. suspicious or unusual Transaction activity;
  - 14.1.2. failure to comply with any with all applicable anti-money laundering laws and obligations that apply to NT or fails to provide all necessary information that NT may deem necessary for anti-money laundering compliance within 48 hours of NT's request which can be made in accordance with Article 16.1. of the General Terms and Conditions;
  - 14.1.3. material variance in the nature of MERCHANT's business, type of product and / or service sold or average ticket size, monthly volume or swiped / keyed percentages, from such disclosures made by MERCHANT in the Agreement;
  - 14.1.4. MERCHANT does not authorize Transactions;
  - 14.1.5. MERCHANT receives excessive retrieval requests against its prior activity; or
  - 14.1.6. excessive Chargebacks are debited against MERCHANT's prior activity.

NT shall provide MERCHANT with notice of such action. NT reserves the right to close, suspend or limit access to the

MERCHANT Account in the event NT is unable to obtain and verify such information for monitoring purposes or in the case of MERCHANT's non-compliance with the obligations, representations and warranties from the Agreement and these Terms and Conditions.

- 14.2. Diversion of funds or suspension of Services shall be for any reasonable period of time required by NT to fully investigate MERCHANT's account activity and resolve, to NT's sole satisfaction, the subject questionable, suspect or fraudulent Transactions or activity of MERCHANT. Any funds diverted shall be maintained by a bank in a non-interest-bearing account at bank.
- 14.3. The right to extraordinary termination as sets herein shall remain unaffected by such suspension.

## **15. Amendment of General Terms and Conditions**

NT is entitled to amend these General Terms and Conditions from time to time. MERCHANT shall be notified in writing no later than thirty (30) Business Days before the amendments become effective, unless these amendments are required immediately due to legal or regulatory requirements. Such amendments shall be deemed approved, unless NT has received a written objection from MERCHANT. The notification to MERCHANT shall point out this consequence and lay out the material content of the amendments. In case MERCHANT raises an objection, NT shall have the right to terminate the Agreement by giving two (2) weeks' notice within six (6) weeks following the receipt of the objection.

## **16. Miscellaneous**

- 16.1. MERCHANT agrees that NT may provide notices and disclosures to MERCHANT by posting them on the official website, emailing them to MERCHANT or sending them to MERCHANT through pre-paid envelope by registered postal mail, by hand or by facsimile transactions at its respective address or facsimile number as set out in the Agreement. Any such notice shall be deemed to have been given: if by hand, when delivered to the address in question; or if by facsimile transmission, at noon on the first Business Day after transmission; or if by post, at noon on the second Business Day after posting. Any electronic communications shall be considered to be received by the MERCHANT within 24 hours of the time NT posts it to its website or delivers by email to the MERCHANT. Furthermore, the MERCHANT agrees that if NT sends an email, but the MERCHANT does not receive it because the primary email address on file is incorrect, out of date, blocked by its service provider, or the MERCHANT is otherwise unable to receive electronic communications, NT will be deemed to have provided the communication to you. In addition, NT may send MERCHANT emails, including, but not limited to, those relating to product updates, new features and offers and MERCHANT hereby consents to such email notification. THE MERCHANT also agrees that electronic disclosures and notices have the same meaning and effect as if NT had provided the MERCHANT with a paper copy.
- 16.2. Notices to NT shall be considered valid only if sent in text form and shall be either delivered by hand or sent by facsimile transmission or in a pre-paid envelope by registered post at NT's respective address or facsimile number as set out in the Agreement.
- 16.3. Neither the Agreement nor any rights, duties or obligations under it may be assigned, delegated, transferred, or otherwise disposed of by MERCHANT in whole or in part without the prior written consent of NT, provided that the rights, duties and obligations of NT under the Agreement may be assigned, delegated, transferred or otherwise disposed of, in whole or in part, to an affiliate and third party without MERCHANT's prior written consent.
- 16.4. Neither Party shall publicise the existence of the referral arrangements between the Parties and / or the terms of the Agreement without the prior written approval of the other Party.
- 16.5. No failure or delay (in whole or in part) of either Party to the Agreement to enforce at any time any provisions of the Agreement, or to exercise any rights or remedies provided by law or under the Agreement shall be construed to be or operate as a waiver thereof or affect any other right or remedy. No single or partial exercise of any such right, power or remedy shall prevent any further or other exercise of the same or the exercise of any other right, power or remedy.
- 16.6. If any provision of the Agreement shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of the Agreement which shall continue in full force and effect and the Parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the invalid, unenforceable or illegal provision which as nearly as possible validly gives effect to their intentions as expressed in the Agreement.
- 16.7. MERCHANT gives its consent to display MERCHANT's Logo on the Company's web site, and web sites operated by

Niko Technologies OU, its subsidiaries

- 16.8. All matters arising from or in connection with this Agreement and these General Terms and Conditions and/or its appendices including, but without any limitation whatsoever, its interpretation, validity, existence or termination for any reason shall be determined in accordance with the laws of Estonia. The parties hereby consent and submit to the exclusive jurisdiction of the Estonian courts for the purpose of any action or other legal proceedings that any of them may institute with regard to any matters or claims of whatsoever nature arising out of or pursuant to this agreement or its annexure. The Agreement shall be construed in accordance with and governed in all respects by Estonia law and the Parties hereto submit to the non-exclusive jurisdiction of the Estonia Courts. The Agreement shall be construed in accordance with and governed in all respects by Estonia law and the Parties hereto submit to the non-exclusive jurisdiction of the Estonia Courts.

UBO  
Yurii Lamdan