

## Commercial in Confidence

### Third Party Referral Terms And Conditions

#### Merchant Facilities, Digital KYC, Strong Customer Authentication, Payment Switching, E-Money Account for Client Payment Services

These Standard Third Party Referral Terms And Conditions, together with the Referral Terms, form the Agreement between ISX, ISX UK and the Referrer.

#### It is agreed

#### 1 Definitions & interpretation

1.1 In this Agreement, the words and expressions defined in this clause 1 have the meaning set out in the definition unless the context otherwise provides.

- (a) **Ad Valorem Taxes** means any Tax payable on the sale or supply of goods, services or other things and includes goods and services tax, value added tax, sales tax, consumption tax or any similar impost.
- (b) **Agreement** means these Third Party Referral Terms and Conditions together with the Referral Terms, and any schedules and annexures to them.
- (c) **Agreement Date** means the date set out in the Referral Details.
- (d) **Referral Terms** means a document that is signed by the Parties that sets out, amongst other things, the Referral Fees and the Referrer Platform.
- (e) **Card** means a credit card, debit card or other payment instrument (whether in the form of a card or otherwise), approved for use by ISX or ISX UK, that provides for card accounts or records to be accessed, utilised or authorised either by the use of a card or by reference to a card number, or as the Parties may otherwise agree in writing.
- (f) **Commencement Date** means the date set out in the Referral Terms.
- (g) **Confidential Information** means any information including all know-how, financial information and other valuable or sensitive information of any nature, trade secrets, formulae, graphs, drawings, designs, samples, devices, functional specifications and other material of whatever description provided to the receiving Party by the disclosing Party for the purposes of this Agreement, in any form whatsoever (including oral, written, and electronic information) of a technical, business, corporate, commercial or financial nature of or in relation to the disclosing Party, its Related Parties, associated entities and its business, shareholders or unitholders, or which the disclosing Party makes the receiving Party or its agents aware is

considered by it to be confidential or proprietary, or which is evident on its face as being confidential or proprietary, and includes:

- (i) any information or documents indicated to be confidential by the disclosing Party;
- (ii) where the Referrer is the disclosing Party, any information relating directly or indirectly to the business of the Referrer, including the Referrer's clients or suppliers, details of trade secrets, know-how, strategies, ideas, operations, compliance, information processes, methodologies and practices, business or marketing plans and the Referrer's own services;
- (iii) where ISX or ISX UK is the disclosing Party, any information relating directly or indirectly to the business of ISX, ISX UK or their Related Parties, including ISX's or ISX UK's own customers, suppliers or contractors, details of trade secrets, know-how, strategies, ideas, operations, compliance, information processes, methodologies and practices, business or marketing plans and the Services; and
- (iv) any information resulting directly or indirectly from the discussions or negotiations relating to this Agreement, and all copies, notes, records and all related information (in any form) generated by the Referrer based on or arising from any disclosures for this Agreement,

but excludes information that is publicly available other than as a result of a breach by a Party of its confidentiality obligations, or is required to be disclosed by Law.

(h) **Control** means any one or more of the following:

- (i) in respect of a corporation or other body corporate:

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- (1) the ability to exercise the right to vote in respect of more than 50% of the voting shares or other form of voting equity in a corporation;
- (2) the ability to dispose of more than 50% of the shares or other form of equity in a corporation;
- (3) the ability to appoint or remove all or a majority of the directors of a corporation; or
- (4) the ability to exercise the casting of a majority of the votes cast at the meetings of the board of directors of a corporation; or
- (ii) the ability of any person directly or indirectly to exercise effective control over the entity or person (including the ability to determine the outcome of decisions about the financial and operating and other policies of that entity or person) by virtue of the holding of voting shares, units or other interests in that entity or by any other means.
- (i) **Costs** means any and all costs and expenses incurred in connection with investigating, defending or asserting any claim, action, suit or proceeding incident to any matter indemnified against under the applicable agreement (including court filing fees, court fees, witness fees, and reasonable fees and expenses of legal counsel, investigators, expert witnesses, consultants, accountants and other professionals).
- (j) **Customer** means any incorporated entity party to which ISX UK issues an account for receiving and transmitting eMoney, including any account linked to an IBAN. A Merchant may also be a Customer.
- (k) **Force Majeure** means a circumstance beyond the reasonable control of a Party which results in the Party being unable to observe or perform on time an obligation under this Agreement. Such circumstances may include:
  - (i) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;
  - (ii) acts of war, acts of public enemies, terrorism, riots, strikes, civil commotion, malicious damage, sabotage and revolution; or
  - (iii) failure or fault in the equipment, machinery or software of internet service providers or telecommunication service or data centre hosting providers.
- (l) **Further Term** means
  - (i) if a further term or renewal term is specified in the relevant Service Terms, the period commencing on the day after the expiry of the Initial Term or previous Further Term (as applicable) and continuing for the period of the further term or renewal term listed in the relevant Referral Terms; or
  - (ii) if no such term is specified, the period commencing on the day after the expiry of the Initial Term or previous Further Term (as applicable) and continuing for 12 months.
- (m) **Initial Term** means the period specified in the Referral Terms.
- (n) **Insolvent** means where a Party:
  - (i) suspends payment of its debts;
  - (ii) is unable to pay its debts as and when they become due and payable;
  - (iii) has a receiver, manager, liquidator, administrator, or controller appointed by a third Party in relation to any of its assets; or
  - (iv) commits an act of bankruptcy, insolvency or similar default under the laws of the jurisdiction in which it is incorporated or domiciled.
- (o) **Intellectual Property Rights** means all current and future copyright, patents (whether or not as yet granted), trademarks or rights in databases, inventions or trade secrets, know-how, rights in designs, topographies, trade and business names, domain names, marks and devices (whether or not registered) and all other intellectual property rights and applications for any of those rights (where such applications can be made) capable of protection in any relevant country of the world.
- (p) **ISX UK** means ISX Financial UK Ltd (Company Number 10002662), with its registered office at Fieldfisher Riverbank House, 2 Swan Lane, London, EC4R 3TT, United Kingdom.
- (q) **ISX** means the ISX company identified in the relevant Service Terms, and may include Probanx Solutions Ltd, Authenticate BV or Authenticate Pty Ltd or any of their Related Parties from time to time.

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- (r) **ISX Services** means provision of an electronic service comprising of any or all of Digital Identity via Payment Instrument Verification, Strong Customer Authentication, Payment Gateway, payment switching services but excluding Acquiring or Merchant Services, the provision of eMoney Account (EMA), Client eMoney Payment Services and eMoney issue/redemption Services.
- (s) **Law** means all legislation, statutes, regulations and other rules or guidelines having the force of law, and all industry codes or guidelines or professional standards or rules of conduct which apply from time to time to the performance of the obligations and exercise of the rights under this Agreement.
- (t) **Loss** means any and all losses, Costs (including legal costs), expenses, obligations, liabilities, settlement payments, awards, judgments, fines, penalties, damages, deficiencies or other charges.
- (u) **Merchant** means any seller of goods and services that accepts Cards as a method of payment.
- (v) **Merchant Contract** means an agreement pursuant to which a Merchant is provided with Services.
- (w) **Merchant Services** means the provision of sales, service and support to Merchants of the UK by ISX UK, including:
- (i) the acquiring, switching and processing of Card based transactions and transactions using other payment instruments via electronic funds transfer at point of sale (**EFTPOS**), mail order/telephone order (**MOTO**), interactive voice response (**IVR**), manual vouchers or through the internet; and
  - (ii) any related or ancillary services that ISX UK may make available to its Merchant customers from time to time.
- (x) **Minimum Monthly Referral** means the minimum monthly referral amount, as set out in the Referral Terms.
- (y) **Parties** means the parties to this Agreement, being ISX, ISX UK and the Referrer, and **Party** means any one of them.
- (z) **Personal Data** means any information about or relating to an identified or reasonably identifiable natural person, and includes any information that falls within the meaning of personal information or personal data or substantially similar concepts in any applicable Privacy Law.
- (aa) **Personnel** means in relation to an entity or person, the directors, officers, agents, employees and sub-contractors of that entity or person.
- (bb) **Privacy Laws** means any Laws relating to Personal Data in force from time to time in any jurisdiction in which a Party is incorporated, operates or collects or holds Personal Data.
- (cc) **Referral Fee** means the referral fee as set out in the Referral Terms, subject to variation in terms of clause 7.3.
- (dd) **Referrer** means the entity named in the Referral Terms.
- (ee) **Referrer Account** means the account identified in the Referral Terms.
- (ff) **Referrer Trade Marks** means the Referrer's logos, insignia, get up and trade marks (whether registered or unregistered).
- (gg) **Referrer Platform** means the platform or services provided to a Merchant under separate agreement between a Merchant and the Referrer, and as described in the Referral Terms.
- (hh) **Related Parties** means, with respect to any Party, any other person or group of persons that:
- (i) Controls that Party;
  - (ii) is Controlled by that Party; or
  - (iii) is Controlled by the same third person as, or under common Control with, that Party.
- (ii) **Services** means either the ISX Services or the Merchant Services, or both.
- (jj) **Standard Terms** means this Agreement, including any schedules and annexures to it.
- (kk) **Successful Sales Referral** means a successful referral of a Merchant by the Referrer as specified in clause 3.5, and which otherwise meets the requirements set out in this Agreement and such other requirements as ISX or ISX UK may notify the Referrer of in writing from time to time.
- (ll) **Taxation or Tax** means:
- (i) any impost, tax, levy, charge, deduction, fee, withholding or duty by whatever name called levied, imposed, assessed or collected by any taxation authority (including Ad Valorem Taxes, withholding tax, employment taxes, land tax, property tax, excise duties, customs duties,

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stamp duty and transaction duties or any similar impost imposed or levied); and

(mm) any interest, penalty, charge, fine or fee or other amount of any kind assessed, charged or imposed on or in respect of the above,

but does not include any income tax on profits.

- 1.2 In this Agreement, (a) references to clauses will be deemed to be references to the clauses of this Agreement, unless otherwise expressly provided; (b) clause headings are inserted for convenience only and will not affect the interpretation of this Agreement; (c) words importing the singular only will also include the plural and vice versa where the context requires; (d) whenever the words **include**, **includes** or **including** are used in this Agreement, they will be deemed to be followed by the words **without limitation**; (e) unless otherwise provided, any reference to any statute or legislation will be deemed a reference to such statute or legislation as amended from time to time or to a newly adopted statute or legislation replacing a repealed statute or legislation and be deemed to include any subsidiary legislation made thereunder; (f) a reference to a person will include a corporate entity or other legal entity; (g) where a word or expression is given a particular meaning in clause 1.1, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

## **2 Duration of the Agreement**

- 2.1 This Agreement commences on the Commencement Date and continues for the Initial Term, unless terminated earlier in accordance with clause 17.
- 2.2 This Agreement will be automatically renewed for a Further Term at the end of the Initial Term or the then-current Further Term (if applicable), unless any Party gives the other Parties a notice in writing at least 90 days before the Agreement is due to expire stating that the Agreement will not be renewed.

## **3 Referral**

- 3.1 The Referrer will, subject to clause 3.9, actively promote the Services to its customers that currently use merchant services, or that may be interested in receiving the Services, including by:
- (a) using its own customer list to generate leads to refer to ISX or ISX UK in accordance with this Agreement;
  - (b) making inquiries about its customers' existing KYC or merchant services, and whether they may require new or additional services; and
  - (c) promoting the Services to its customers via its website and in its marketing materials

(such as newsletters), in a form and manner which is approved by ISX and ISX UK in writing prior to publication, or which is provided to the Referrer by ISX or ISX UK.

- 3.2 The Referrer will, from time to time, refer to ISX or ISX UK in the form and manner as may be prescribed by ISX or ISX UK (the "**Merchant Application Form**" or "**Customer Application Form**"), any customers who may make enquiries about or may be interested in acquiring the Services or concluding Merchant Contracts.

- 3.3 When referring Merchants to ISX or ISX UK the Referrer must:

- (a) at all times comply with applicable Laws and ensure that its actions do not cause ISX or ISX UK to breach any applicable Laws;
- (b) inform each Merchant that the Referrer is acting as such and may receive a Referral Fee from ISX or ISX UK and, in doing so, ensure that it complies with any applicable Laws;
- (c) act in accordance with the reasonable directions and guidelines which may be provided by ISX or ISX UK from time to time;
- (d) ensure that each Merchant is provided with a copy of the privacy statement supplied to the Referrer by ISX or ISX UK which is intended to inform Merchants of the ISX or ISX UK privacy policies and processes;
- (e) ensure that each Merchant is aware that their information (including Personal Data) may be disclosed to ISX or ISX UK and their Related Parties and that each Merchant is informed of the purposes for which it may be used as outlined below, and that it consents to such disclosure and use; and
- (f) ensure that each Merchant consents to its information (including Personal Data) being provided to ISX or ISX UK and their Related Parties for any of the following purposes:
  - (i) ISX or ISX UK evaluating the Merchant and the prospect of entering into a Merchant Contract with the Merchant;
  - (ii) providing the Services to the Merchant;
  - (iii) the marketing and promotional purposes outlined in clause 6; and

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- (iv) any other purpose notified to the Referrer from time to time.
- 3.4 The Referrer must not, and must ensure that its Personnel do not, under any circumstances:
- (a) represent to any of its customers or any Merchant that ISX or ISX UK will accept its application or that the Referrer can influence ISX's or ISX UK's decision to offer Services to it;
  - (b) make it a condition of the supply of goods or services to a Merchant that the Merchant enters into a Merchant Contract;
  - (c) make any misleading, deceptive or untrue statements to Merchants;
  - (d) act unconscionably or unfairly in dealings with Merchants; or
  - (e) use any marketing and promotional material in respect of the Services that has not been approved by ISX or ISX UK in writing, or other than in accordance with the directions of, and guidelines issued by, ISX or ISX UK.
- 3.5 A Successful Sales Referral is a referral of a Merchant by the Referrer to ISX or ISX UK where:
- (a) the Merchant has not previously concluded a Merchant Contract with ISX or ISX UK and has not been referred to ISX or ISX UK by any other party, and is not in current discussions with ISX or ISX UK regarding a possible Merchant Contract; and
  - (b) the Merchant has a genuine and demonstrable interest in acquiring Services, or eMoney Account Services, and/or eMoney issue/redemption Services from ISX or ISX UK; and
  - (c) the referral directly results in the Merchant executing a Merchant Contract for the provision of Services for a fixed term of no less than 2 years, subject to ISX acceptance and ISX UK credit assessment (as applicable); and
  - (d) the Merchant Contract is executed within 6 months of the date on which ISX or ISX UK receives a fully completed Merchant Pre-application Form from the Referrer relating to the Merchant; and
  - (e) the Merchant commences transacting under the Merchant Contract and continues to transact for a period of at least 60 days after the date of the first transaction.
- 3.6 The Referrer must submit a fully completed "Merchant Application Form" and/or "Customer Application Form" in the form prescribed by ISX or ISX UK from time to time in order for the referral of a Merchant to qualify as a Successful Sales Referral.
- 3.7 The Referrer may only submit a completed "Merchant Application Form" in respect of a genuine lead and ISX and ISX UK reserve the right to refuse any submission which, in its reasonable opinion, is purely speculative in nature.
- 3.8 ISX or ISX UK:
- (a) may accept or reject an application for Services or a referral by the Referrer at its sole discretion;
  - (b) will determine the terms and conditions under which the Services are provided to any Merchant referred under this Agreement; and
  - (c) will prepare all marketing and promotional material in respect of the Services.
- 3.9 If ISX or ISX UK rejects an application by a Merchant for Services, then the Referrer may approach other suppliers of services similar to the Services to supply such services to that Merchant.
- 4 Minimum Monthly Referrals**
- 4.1 In each calendar month of the Initial Term and any Further Terms, the Referrer must meet the Minimum Monthly Referrals in order to qualify for payment of Referral Fees.
- 4.2 In the event that Minimum Monthly Referrals are not met, any Referral Fees will be held over for payment in a future month when the accumulated Referral Fees have reached the Minimum Monthly Referrals.
- 5 Training**
- 5.1 If required by ISX or ISX UK the Referrer must make its sales agents and other relevant Personnel available for training by ISX or ISX UK relating to the Services or the Merchant Contracts. ISX or ISX UK will give reasonable notice of any training sessions.
- 6 ISX or ISX UK Marketing**
- 6.1 In addition to the purposes outlined in clause 3.3(f), ISX or ISX UK and its Related Parties may collect, store and use information obtained under this Agreement for the purpose of marketing any other products offered by ISX or ISX UK or its Related Parties and the Referrer must ensure that it has procured the consent that may be necessary for ISX or ISX UK to use the information in such a manner.
- 7 Referral Fee**
- 7.1 ISX or ISX UK will pay the Referrer a Referral Fee for each Successful Sales Referral.
- 7.2 All Referral Fees payable by ISX or ISX UK to the Referrer under this Agreement will, subject to clause 9, be paid electronically to the Referrer Account monthly in arrears within 28 days of the end of each calendar month.

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- 7.3 ISX or ISX UK may vary the Referral Fee at any time on 14 days' written notice to the Referrer.
- 7.4 ISX or ISX UK may, at its absolute discretion, refuse to pay any Referral Fee if it reasonably considers that the Referrer has not complied with the terms of this Agreement.
- 8 Invoices**
- 8.1 ISX or ISX UK will issue pro-forma tax compliant invoices in respect of Referral Fees under this Agreement.
- 8.2 The Referrer will issue any tax compliant invoices consistent with the pro forma invoice issued by ISX or ISX UK under clause 8.1.
- 8.3 As at the date specified in item 2 of the Agreement Details, each Party is registered for Ad Valorem Tax purposes and will notify the other Party if it ceases to be so registered.
- 9 Ad Valorem Tax**
- 9.1 Unless otherwise expressly stated, all monetary consideration to be provided under or in accordance with this Agreement is exclusive of Ad Valorem Taxes.
- 9.2 For any the consideration to be provided for any sale or supply (of goods, services or other things) made under or in accordance with this Agreement that is exclusive of Ad Valorem Taxes, the recipient must pay to the supplier (at the same time as payment is required to be made in accordance with this Agreement) an additional amount equal to the Ad Valorem Taxes payable.
- 9.3 The recipient's obligation to pay the Ad Valorem Taxes component of any consideration under this Agreement is subject to the recipient receiving a valid invoice or other documents required by Law in respect of the Supply at or before the time of payment.
- 9.4 For the avoidance of doubt, each Party is responsible for Taxes imposed in respect of its income in connection with this Agreement. If local Laws require taxes to be withheld by the paying Party on payments made to the other Party, such Taxes will be withheld and remitted to the local tax authorities by the paying Party unless the other Party provides the paying Party with an applicable exemption certificate.
- 10 Licence**
- 10.1 For the Initial Term and any Further Terms, the Referrer grants a non-exclusive, non-transferable, royalty-free licence to ISX or ISX UK and its Related Parties to use the Referrer Trade Marks for the purposes of promoting the Services, including making public announcements regarding the Referrer and use in any marketing and promotional material created by ISX or ISX UK to promote the Services.
- 11 Systems Integration**
- 11.1 The Referrer will integrate the Referrer Platform with the Services and the ISX or ISX UK platforms.
- 11.2 Where required, the Referrer will provide ISX or ISX UK with its PCI DSS attestation of compliance.
- 11.3 The Referrer must take reasonably practicable measures at its own cost to ensure that the Referrer Platform (including application servers, computer terminals, modem, software, hardware, subscriptions to any relevant certification authorities, network connectivity and telecommunications facilities):
- (a) does not interfere with the proper operation of the Services or the use of the Services by Merchants;
  - (b) has appropriate and adequate security designs; and is kept free of any malicious code or software including viruses, software bombs, Trojan horses and worms.
- 12 No Exclusivity**
- 12.1 This Agreement will not be construed to be a commitment by any Party to work exclusively with the other Parties regarding referrals of potential new business or any other business activities.
- 13 No Partnership**
- 13.1 Nothing in this Agreement creates a joint venture, relationship of partnership or agency between the Parties. Accordingly, except as expressly authorised under this Agreement neither Party has authority to pledge the credit or make any representation or give any authority to contract on behalf of another Party.
- 14 Compliance with Laws**
- 14.1 The Referrer must comply with (and ensure that its Personnel comply with) all applicable Laws in relation to the performance of its obligations in terms of this Agreement.
- 15 Privacy**
- 15.1 The Referrer represents and warrants that:
- (a) it will do all that is necessary in order to fully comply with all applicable Privacy Laws in relation to this Agreement;
  - (b) it will obtain any necessary consents to use and disclose Personal Data under the Privacy Laws, and ISX and ISX UK undertake to cooperate with the Referrer in this regard to the extent necessary; and
  - (c) any and all data communicated to ISX or ISX UK in relation to performance of this Agreement has been collected or obtained in full compliance with this Agreement and all applicable Privacy Laws in relation to the collection, storage and use of Personal Data.
- 15.2 The Referrer undertakes to immediately notify ISX and ISX UK of any suspected or alleged breach of Privacy Laws by it or its Personnel in relation to this

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Agreement.

- 15.3 The Referrer must assist ISX or ISX UK as reasonably required in order to resolve any allegation or claim brought by any person involving any breach or alleged breach of Privacy Laws in relation to this Agreement.

#### 16 Warranties

- 16.1 The Referrer warrants and represents that:
- (a) it validly exists under the Laws of its place of incorporation and has power and authority to execute this Agreement and carry out its obligations under this Agreement;
  - (b) if it is legally required to do so, it is validly registered for Ad Valorem Tax purposes (and will remain so while this Agreement is in force); and
  - (c) it has full capacity and all necessary licences, permits and consents to enter into and comply with its obligations under this Agreement.

#### 17 Termination

- 17.1 Any Party may terminate this Agreement immediately by giving written notice to the other Parties at any time if any other Party:
- (a) breaches any material term of this Agreement and does not rectify it within 7 days of being notified in writing of the breach;
  - (b) the defaulting Party is or becomes Insolvent; or
  - (c) is involved in a serious data breach that is the subject of formal notification by any card scheme, or, is fined, sanctioned or found to be non-compliant with regards to its data protection obligations or Privacy Laws or by any court or data protection agency or regulator.
- 17.2 In addition, ISX or ISX UK may terminate this Agreement:
- (a) immediately upon written notice to the Referrer, if the Referrer or any of its Personnel is convicted of any offence involving fraud or dishonesty or any other offence (except for a traffic offence) which is punishable by imprisonment (whether that person is imprisoned or not);
  - (b) immediately if the Referrer fails to provide a current PCI DSS certificate of attestation where Referrer Platform is involved in processing of Cards; or
  - (c) by giving the Referrer at least 14 days' notice of the termination, such period to commence on the date of the notice of termination.

#### 18 Consequences of Expiry or Termination

- 18.1 Termination of this Agreement for any reason does not affect the right of any Party to seek damages for any breach of this Agreement, including damages arising from breach which gave rise to the termination.
- 18.2 Upon expiry or termination of this Agreement, the Referrer must, at ISX's or ISX UK's direction, return or destroy (and not retain any copies of) all documents or other materials containing or referring to the Confidential Information and other property of ISX or ISX UK (such as hard copy of promotional materials) in its possession or control, or in the possession, power or control of persons who have received Confidential Information from the Referrer under clauses 22.3(a) or 22.3(b).
- 18.3 Clauses 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25 and 26 of this Agreement, together with those other provisions which by their content or nature are capable of or intended to have effect after the termination or expiry of this Agreement, will survive the termination or expiry of this Agreement and continue in full force and effect.

#### 19 Indemnity

- 19.1 The Referrer indemnifies ISX or ISX UK and its Related Parties from and against any and all Losses (whether in contract, tort (including negligence) or under statute and whether or not litigation is commenced, imposed in any manner upon, incurred by or asserted against ISX or ISX UK or its Related Parties) in connection with or arising from any breach of the Referrer's obligations under clause 3.4.
- 19.2 Each Party indemnifies the other against any and all Losses (whether in contract, tort (including negligence) or under statute and whether or not litigation is commenced, imposed in any manner upon, incurred by or asserted against or its Related Parties) in connection with or arising from:
- (a) any breach of their respective obligations under clause 15 (**Privacy**) of this Agreement; and
  - (b) any breach of their respective obligations under clause 22 (**Confidentiality**) of this Agreement.
- 19.3 The Party seeking indemnification and defence of a claim by a third party under clause 19, as the case may be (**Indemnified Party**), will give prompt written notice of the claim to the other Party (**Indemnifying Party**). In addition, the Indemnified Party will allow the Indemnifying Party to direct the defence and settlement of the claim, with counsel of the Indemnifying Party's choosing, and will provide the Indemnifying Party, at the Indemnifying Party's expense, with information and assistance that is reasonably necessary for the defence and settlement of the claim. The Indemnified Party reserves the right to retain counsel, at the Indemnified Party's sole expense, to participate in the defence of any such claim. The Indemnifying Party may not settle any claim without the Indemnified Party's prior written

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consent, if the settlement terms would adversely affect the Indemnified Party or its rights under this Agreement.

software associated with the Services, except to the extent permitted by non-excludable laws.

#### 20 Liability

- 20.1 To the maximum extent permitted by Law, each of ISX and ISX UK exclude and disclaim all warranties and representations, express or implied, made to the Referrer or any other person relating to this Agreement or its subject matter.
- 20.2 The liability of ISX or ISX UK in respect of warranties and representations that cannot be excluded by Law is limited, as ISX or ISX UK may elect, to:
- (a) in relation to goods, the replacement of the goods, supply of equivalent goods, repair or payment of the cost of repair; or
  - (b) in relation to services, the supply of the services again or payment of the cost of having the services supplied again.
- 20.3 To the extent permitted by Law, each of ISX and ISX UK excludes all liability for indirect, special, consequential or punitive loss or damage (including for loss of goodwill, loss of profit, loss of expected savings, opportunity costs, loss of business, damage to image and loss or corruption of data) in contract, tort (including negligence), under any statute or otherwise arising from or related in any way to this Agreement or its subject matter.
- 20.4 To the extent not excluded by clauses 20.1 to 20.3 (inclusive) and to the extent permitted by Law, the total liability of ISX and ISX UK combined for loss or damage of any kind, however caused, in contract, tort (including negligence), under any statute or otherwise arising from or relating in any way to this Agreement or its subject matter is limited in aggregate for any and all claims to the amount of Referral Fees paid in the most recent 12 month period of the term of the Agreement from the date the claim arises.
- 20.5 Any liability that may accrue to either ISX or ISX UK is several and not joint, and neither of ISX or ISX UK will be liable for the acts, omissions or liabilities of the other.

#### 21 Intellectual Property Rights

- 21.1 Except as otherwise expressly set out in this Agreement, nothing in this Agreement transfers any interest or otherwise affects the ownership of any Intellectual Property Rights of any Party in any material, data, work, item, process or thing.
- 21.2 The Referrer acknowledges ownership by ISX Group of the Intellectual Property Rights in the patent family PCT/AU2011/000377 and US Patent 8,620,810, and that the Intellectual Property Rights are incorporated in the ISX Service.
- 21.3 The Referrer must not attempt to reverse engineer the Services, or reproduce or disseminate any

#### 22 Confidentiality

The Parties acknowledge that the terms of this Agreement and all Merchant Contracts are part of the Confidential Information of ISX or ISX UK.

##### 22.1 The Referrer agrees:

- (a) to use the Confidential Information solely in the proper performance of its responsibilities and duties under this Agreement;
- (b) to keep the Confidential Information secret and to protect and preserve the confidential nature and secrecy of the Confidential Information; and
- (c) not to copy or remove from ISX or ISX UK's premises any Confidential Information without ISX or ISX UK's prior written consent.

##### 22.2 The Referrer must not disclose Confidential Information to any person, except:

- (a) Personnel who require it for the purposes of this Agreement, provided that those persons are informed of and undertake to and are compelled to keep such Confidential Information confidential;
- (b) with the prior written consent of ISX or ISX UK;
- (c) if the Referrer is required to do so by law or a stock exchange; or
- (d) if the Referrer is required to do so in connection with legal proceedings relating to this Agreement.

##### 22.3 The Referrer must:

- (a) ensure that persons receiving Confidential Information from it do not disclose the information except in the circumstances permitted in clause 22.3;
- (b) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access or use;
- (c) keep the Confidential Information under its control;
- (d) immediately take all steps to prevent or stop, and comply with any direction issued by ISX or ISX UK from time to time regarding a suspected or actual unauthorised use, copying or disclosure of Confidential Information; and
- (e) immediately notify ISX or ISX UK of any suspected or actual unauthorised use, copying or disclosure of the Confidential Information.



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22.4 The Referrer acknowledges that the Confidential Information is valuable to ISX or ISX UK any breach of this clause 22 may result in damage to ISX or ISX UK, and ISX or ISX UK is entitled to enforce its rights by specific performance or injunction proceedings as monetary damages may not be sufficient relief.

22.5 The Referrer must not make any statement, press release or other announcement relating to this Agreement without ISX or ISX UK's prior written consent.

#### 23 Dispute Resolution

23.1 Nothing in this clause 23 prevents a Party seeking urgent injunctive or similar interim relief from a court.

The Parties must use best endeavours to resolve in good faith any dispute arising out of or in connection with this Agreement (**Dispute**). Each Party must follow the procedures in this clause before starting court proceedings (except for urgent injunctive or declaratory relief). Despite the existence of a Dispute, the Parties must continue to perform their other obligations under this Agreement that are not affected by the Dispute.

23.2 Any Party (**Initiating Party**) claiming that a Dispute has arisen must give the other Party (**Recipient Party**) a notice setting out brief details of the Dispute (**Dispute Notice**).

23.3 Within 10 Business Days of service of a Dispute Notice, the Recipient Party must give the Initiating Party a notice setting out brief details of the Recipient Party's position on the Dispute (**Reply Notice**).

23.4 If a Dispute Notice and Reply Notice are given, the Parties must make representatives with authority to settle the Dispute available for the purpose of meeting in an effort to resolve the Dispute. At least one meeting of the authorised representatives must take place within 15 Business Days of service of a Reply Notice.

23.5 If:

- (a) the Dispute is not resolved in accordance with clause 23.5 within 20 Business Days after the Reply Notice is given; or
- (b) the Recipient Party does not:
  - (i) give a Reply Notice within 10 Business Days of service of a Dispute Notice; or
  - (ii) make its authorised representatives available for a meeting within 15 Business Days of service of a Dispute Notice,

then either Party may, by written notice refer the Dispute to mediation under clause 23.7.

23.6 If the Dispute remains unresolved in accordance with

clause 23.6, then the Parties must refer the Dispute to mediation, to be conducted by the Centre for Effective Dispute Resolution (**CEDR**) mediation in accordance with the CEDR Model Mediation Procedure for the time being in force, which procedure is deemed to be incorporated by reference in this clause. The mediator will be nominated by CEDR. To initiate the mediation, either Party may give a notice in writing (**Mediation Notice**) to the other Party to the dispute requesting mediation. A copy of the Mediation Notice must be sent to CEDR. Unless otherwise agreed, the mediation will start not later than 10 Business Days after the date of the Mediation Notice.

23.7 If the Dispute is not settled within 30 Business Days after the appointment of the mediator under clause 23.7, then the Parties agree that the Dispute will be finally settled by binding arbitration under clause 23.8.

23.8 Any unresolved Dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, must be referred to and finally resolved by binding arbitration, to be conducted in London, United Kingdom in accordance with the Arbitration Rules of the Chartered Institute of Arbitrators (**CI Arb Arbitration Rules**) for the time being in force, which rules are deemed to be incorporated by reference in this clause. The arbitral tribunal will consist of one arbitrator, to be mutually agreed from a list prepared by the President of the CI Arb UK or, failing agreement between the Parties, appointed by the President. The language of the arbitration will be English.

#### 24 Notices

24.1 A notice, demand, certification, process or other communication relating to this document must be in writing in English and may be given by an agent of the sender.

24.2 In addition to any other lawful means, a communication may be given by being:

- (a) personally delivered;
- (b) left at the Party's current address for notices;
- (c) sent to the Party's current address for notices by pre-paid ordinary mail or, if the address is outside the United Kingdom (UK), by pre-paid airmail;
- (d) sent by email to the Party's current email address for notices; or
- (e) emailed to the email address last notified by the addressee.

24.3 If a communication is given by:

- (a) post, it is taken as received if posted within the UK to a UK address five Business Days (in place of receipt) after posting (or ten Business Days after posting if sent to or from a place outside the UK); or

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- (b) facsimile, when the sender's facsimile machine produces a report that the fax was sent in full to the addressee, the report will be prima facie evidence that the facsimile was received by the addressee in legible form at the time indicated on that report.

24.4 If a communication is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

24.5 Each Party may from time to time change its particulars for service by notice to each other Party, however, the particulars for services initially are as set out in item 8 of the Referral Terms.

## 25 Anti-Bribery

### 25.1 Covenant

The Referrer covenants and agrees that it, and each of its owners, directors, employees, and every other person working on its behalf, have not and will not, in connection with the services contemplated by this Agreement or in connection with any other business transactions involving ISX or ISX UK make, offer or promise to make any payment or transfer anything of value, directly or indirectly, to:

- (a) any governmental official or government employee (including employees of government-owned and government-controlled corporations and public international organisation);
- (b) any political party, official of a political party, or candidate;
- (c) an intermediary for payment to any of the foregoing; or
- (d) any other person or entity,

if such payment or transfer would have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks or other unlawful or improper means of obtaining business for itself or on behalf of ISX or ISX UK in terms of any applicable Law. This provision does not, however, prohibit normal and customary business entertainment of nominal value or the giving of business mementos of nominal value to the extent permitted by applicable Law.

### 25.2 Implementing Legislation

The Referrer acknowledges that laws implementing the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (**International Anti-bribery Convention**), including the US Foreign Corrupt Practices Act and UK Bribery Act, prohibit bribery of government officials, and further acknowledges that

certain anti-bribery laws also prohibit the bribery of individuals not connected with any governmental body. The Referrer agrees to comply with all applicable Laws in connection with the services contemplated by this Agreement and in connection with any other business transactions involving ISX or ISX UK including all applicable Laws implementing the International Anti-bribery Convention.

### 25.3 Receipt of Policy

The Referrer acknowledges that it is ISX or ISX UK policy to strictly prohibit, and conduct its business, with zero tolerance for corruption of any kind by or on behalf of ISX or ISX UK and to comply with all applicable anti-corruption Laws. The Referrer agrees to comply with such policy at all times in connection with the services contemplated by this Agreement and in connection with any other business transactions involving ISX or ISX UK.

### 25.4 Certification

The Referrer represents and warrants that, except as disclosed to ISX or ISX UK, no Personnel of the Referrer or Personnel of a Related Party of the Referrer or any direct or indirect owner of the Referrer is a government official, political party official or candidate, or an immediate family member of such an official or candidate. If there is a change, so that the above representation and warranty may no longer be accurate, the Referrer will make immediate written disclosure to ISX or ISX UK of the relevant facts and, in that case, ISX or ISX UK may immediately terminate this Agreement by written notice.

### 25.5 Notification

The Referrer will notify ISX or ISX UK immediately if the Referrer becomes aware of or suspects that the Referrer or any of its Personnel or Related Parties has engaged in any act that is inconsistent with this clause 25.

### 25.6 Training

The Referrer will, during the term of this Agreement, communicate the anti-corruption requirements under this Agreement to all relevant Personnel of the Referrer performing services under this Agreement and require all such Personnel to complete anti-bribery and corruption training commensurate with industry standards.

The Referrer is responsible for maintaining appropriate records supporting this training obligation.

### 25.7 Payments

The Referrer agrees that no payment by ISX or ISX UK to the Referrer will be made without ISX or ISX UK first receiving a bona fide written invoice. The Referrer agrees that payments to the Referrer will be made by cheque or wire transfer only, and no requests for cash payments will be accepted. All payments to the Referrer by ISX or ISX UK will be

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made to the Referrer directly and not to third parties. Payments to the Referrer by ISX or ISX UK will be made in the country where the Referrer performed the work, or in the country of the Referrer's principal office, and in the currency in which the Merchant was invoiced. The Referrer agrees that if requested by ISX or ISX UK, the Referrer will certify in writing that the Referrer is not aware of any non-compliance with any applicable anti-bribery Laws before receiving payment.

#### 26 Audit Rights

Once every 12 months during the term of this Agreement, ISX or ISX UK or their independent auditor will have the right, at its own cost and expense, to perform a reasonable audit of the Referrer's performance under and in compliance with the terms of this Agreement. However, such audits may be conducted more frequently if required by applicable Law, a court order, a regulatory authority with jurisdiction or if a breach is suspected. The Referrer will (a) make Personnel with knowledge of the Referrer's performance of this Agreement available to ISX or ISX UK and (b) provide ISX or ISX UK with copies of applicable financial records and other documentation reasonably requested, all as reasonably necessary to assist the carrying out of an audit.

#### 27 Force Majeure

27.1 No Party will be liable for any delay or failure to perform its obligations pursuant to this Agreement if such delay is due to an event of Force Majeure. If a delay or failure of a Party to perform its obligations is caused by an event of Force Majeure, the affected Party must give notice in writing to the other Party stating the nature of the Force Majeure event and the Parties will be excused from performing their obligations under this Agreement to the extent that their performance is affected by the Force Majeure event.

27.2 Unless otherwise agreed in writing, if a delay or failure by a Party to perform its obligations due to Force Majeure exceeds 90 days from the date of the written notice stating the Force Majeure event, any Party may terminate this Agreement by giving to the other Parties 30 days' notice in writing.

#### 28 No Assignment

28.1 Except as otherwise stated in this Agreement, the Referrer may not assign, transfer, sub-license, sub-contract or otherwise permit any other Party to undertake any of its obligations or to enjoy any of its rights under this Agreement without first obtaining the written consent of ISX or ISX UK.

#### 29 Non-solicitation of employees

29.1 The Referrer undertakes that it will not for the term of this Agreement and a period of six months thereafter on its own behalf or on behalf of any person directly or indirectly canvass, solicit or endeavour to entice away from ISX or ISX UK or an associated company any person who has at any time during the term of this

Agreement been employed or engaged by ISX or ISX UK or an associated company.

#### 30 Entire Agreement

30.1 This Agreement constitutes the entire agreement between the Parties in relation to its subject matter and all prior contracts, proposals, representations, negotiations and understandings, either orally or in writing are superseded. Any amendment or modification will only be binding if made in writing and signed on behalf of each Party by its duly authorised representative.

#### 31 Rights of Third Parties

31.1 A person who is not a Party to this Agreement has no right to enforce any term of this Agreement.

#### 32 Waiver

32.1 No failure or delay by any Party in exercising or enforcing any right or option under this Agreement will operate as a waiver thereof or limit, prejudice or impair the Party's right to take any action or to exercise any right as against another Party.

32.2 A waiver by one Party will not prejudice any rights of that Party in respect of any subsequent breach of this Agreement by the other Party.

#### 33 Severance

33.1 If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

#### 34 Governing Law

34.1 Except where provided otherwise in the Referral Terms, this Agreement will be governed by and construed in accordance with the laws of the United Kingdom. The courts of the UK will have sole jurisdiction to determine any dispute relating to or arising under this Agreement.

#### 35 Execution by Counterparts

35.1 This Agreement may be executed in two or more counterparts, each of which together will be deemed an original, but all of which together will constitute one and the same instrument. If any signature is delivered by facsimile transmission or by e-mail delivery originating from the URL domain of the originating Party of a ".pdf" format data file, such signature will create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original.

\*\*END\*\*