

3-D SECURE SPECIFICATION LICENSE AGREEMENT

(For Device Vendors)

THIS 3-D SECURE SPECIFICATION LICENSE AGREEMENT (the "Agreement"), effective upon acceptance hereof by Visa, is by and between Visa International Service Association Inc., a corporation organized and existing under the laws of the State of Delaware, United States of America, having a mailing address of P.O. Box 8999, San Francisco, California, U.S.A. 94128-8999 ("Visa" or "Licensor") and the Entity whose name and principal place of operations is shown on the attached Vendor Registration Form ("Licensee").

DEFINITIONS

As used in this Agreement:

"End User" is a company, entity or individual that is the ultimate purchaser, either directly or indirectly, from Licensee or a Related Party of Licensee, of a Compliant Product (as defined herein).

"Licensed Work" means the 3-D Secure Specifications and related documentation thereof as listed in Exhibit A hereto, any Intellectual Property therein, and all related documentation, including any subsequent updates, revisions, improvements, and enhancements of some or all of the Licensed Work, that Visa has developed or may develop in the future and may make available as part of the Licensed Work. Exhibit A may be amended by Visa by written notice to Licensee.

"Improvement" shall mean any inventions, discoveries, concepts, data, information know-how, suggestions, modifications, ideas, original expressions, working models, prototypes or other improvements of the Licensed Work whether patentable or not.

"Intellectual Property" shall mean (i) copyrights and copyright applications, including any renewals, in either the United States or any other country; (ii) trade secrets or any data or information which provides value or a competitive advantage to its holder by not being publicly known; and (iii) patents, patent applications, continuations, divisionals, reexaminations, reissues, continuations-in-part, and foreign equivalents of the foregoing, in the United States or any other country.

"Related Party" means any subsidiary, parent, joint venture, partner, or any other entity which, in whole or in part, is owned by, owns, or has a common owner with Licensee.

"Specification" means the Visa-proprietary design specification portions of the Licensed Work.

“You”, “Your” or “Yours” means the Licensee and Licensee’s Related Parties, that is acquiring a license under this Agreement.

“Visa” means Visa International Service Association Inc.

“Compliant Product” means a commercial implementation that has been certified by a recognized testing laboratory as complying with the Specifications.

TERMS AND CONDITIONS

1.0 Grant of License.

1.1 Effective upon acceptance hereof by Visa, Visa hereby grants You a non-exclusive, royalty-free, worldwide, non-transferable, revocable license to the Licensed Work to make, create, develop, implement, test, demonstrate, use, produce, sell and otherwise make use of Compliant Products manufactured by or for Licensee subject to the terms set forth in this Agreement. This license includes, under copyright, patent and patents pending, the right to sell, or offer for sale, demonstrate, produce, copy, create derivatives of and distribute such Licensed Work, all on as “AS IS” basis. Licensee shall not use, copy, demonstrate, distribute, sell, or offer for sale the Licensed Work to or for any third party unless approved by Visa. As a condition to Visa’s grant of license to You hereunder, You agree to comply with any reasonable Visa requirements for certifying that your Compliant Product is consistent with the Specifications and any other requirements as Visa may establish in the future.

1.2 Subject to the terms of this Agreement, the license set forth in Section 1.1 of this Agreement shall be sublicensable only to the extent necessary to permit the sale or distribution of Compliant Products subject to the restrictions defined in Section 2.0 below.

2.0 Restrictions.

2.1 [Intentionally omitted]

2.2 Advertising of Compliant Products. Licensee may indicate in its advertising or marketing materials its interoperability capabilities; provided, however, that the display of Visa’s marks and logos are equal in size to other names and logos on such products or services. Licensee shall obtain Visa’s prior written consent before engaging in such public advertising of Compliant Products using Visa’s marks or logos, including but not limited to, paid advertisements, press releases, brochures, pamphlets and trade show presentations.

2.3 Modifications and Distribution. You may not modify or distribute the Specifications except as set forth herein. You may disclose the Specifications to third party developers solely in connection with Your development of Compliant Product, provided that each such third party developer has executed a written agreement

obligating it to comply with terms and conditions no less restrictive than those set forth herein.

2.4 Sublicensing. You may not sublicense any of the Licensed Works, except you may provide a limited sublicense to other companies that are incorporating the Compliant Product into such companies' products such that End Users use the Licensed Works solely in conjunction with a Compliant Product.

2.5 Copyright/Patent Notice. You will include on all reproductions and embodiments of the Licensed Work documentation the legends that appear on the Licensed Work or as Visa may instruct You with respect to the Licensed Work, from time to time.

2.6 Restricted Rights. Use, duplication or disclosure by or to the United States government is subject to the restrictions as set forth in the Rights in Technical Data and Computer Software Clauses in DFARS 252.227-7013 (c)(1) and FAR 52.227-19(a)-(d) as applicable.

2.7 Visa Marks.

2.7.1 Ownership of Marks. The 3-D SECURE trademark is and shall remain the sole and exclusive property of Visa. Nothing contained in this Agreement shall be deemed to give You any right, title or interest in the 3-D SECURE trademark except the limited license as expressly stated herein.

2.7.2 Limited License. While this Agreement is in effect, and subject to all of the terms and conditions of this Agreement, You are granted a limited license to use the 3-D SECURE trademark, solely in connection with your promotion of your Compliant Products.

2.7.3 Advertising and Marketing. You shall not make any public statements, advertise or market any derivative product or service developed by You based on the Licensed Work or representing that such product or service is a Compliant Product unless such representation is true. All advertising and promotion of your Compliant Products must prominently state the version of the Specification to which your Compliant Product complies.

2.7.4 Approval. Except as set forth above, You shall not use any of Visa's trademarks, service marks or trade names on materials written, produced or developed by You without Visa's prior written consent. Any such use of Visa's trademarks, service marks and/or trade names shall be limited to the scope of the specific written consent granted by Visa, and shall not be deemed or considered the grant of a license to use such marks in any other manner or for any purpose whatsoever.

3.0 Support and Maintenance. Visa shall have no obligation to You, Your Related Parties or End Users to support or maintain any or all of the Licensed Work.

4.0 New Versions and Updates. Periodically, Visa may, in its sole discretion, release new versions or updates to the then current version of the Licensed Work. Upon release of a new version or update, Visa shall indicate whether it is a “Mandatory Update” or a “Discretionary Update”. Discretionary Updates may be adopted in a manner determined by You, provided that You utilize commercially reasonable efforts to incorporate such Discretionary Update into all new Compliant Products within twelve (12) months of the release date. A plan for adoption of Mandatory Updates, including, but not limited to schedules for incorporation of Mandatory Updates into all new Compliant Products as well as schedules for recall of existing products, if necessary, shall be communicated to Licensee within fourteen (14) days of the release date. Licensee shall provide Visa with written acceptance of Visa’s plan for adoption of Mandatory Updates within fourteen (14) days of receipt of Visa’s plan for adoption of Mandatory Updates. If Licensee does not provide written acceptance of Visa’s plan for adoption of Mandatory Updates with fourteen (14) days of receipt, Visa may terminate the license granted in this Agreement.

5.0 Intellectual Property.

5.1 Ownership of Intellectual Property. You acknowledge and agree that all right, title and interest in and to the Licensed Work shall, at all times, be and remain the exclusive property of Visa, and nothing in this Agreement shall be construed to convey to You any ownership interest in the Licensed Work. Visa acknowledges and agrees that, as between You and Visa, Compliant Products developed exclusively by You shall be Your exclusive property. Your ownership and use of such Compliant Products shall be subject in all respects to Visa’s exclusive ownership of the underlying Licensed Work and the terms and conditions of this Agreement.

5.2 Ownership of Improvements. Licensee does, and hereby agrees to, irrevocably transfer and assign to Visa all right, title and interest in and to Improvements, except as provided in Section 5.3 below. Licensee waives and further agrees not to assert any moral or comparable rights that Licensee may have in the Improvements including, without limitation, any right to prevent modification, any right to receive attribution of authorship, or any right to control Improvements.

5.3 Improvements that Incorporate Licensee’s Intellectual Property. To the extent that an Improvement, or any part thereof, is subject to Intellectual Property right which is owned by Licensee and not subject to Section 5.2, Licensee hereby grants to Visa a non-exclusive, perpetual, world-wide, irrevocable and fully transferable license to make, use, sell, offer for sale, reproduce, create derivatives of, display or otherwise practice such Intellectual Property rights.

5.4 Duty to Assist. Upon request, Licensee agrees to deliver to Visa fully executed documents giving full effect to this Section 5.0.

6.0 Confidentiality. For the purposes of this Agreement, “Confidential Information” shall mean: the Licensed Work; drawings, samples, artwork, and computer-generated media pertaining to Titles; and any other materials marked “Confidential” by Visa. You will hold in strict confidence and will not use for any purpose other than purposes within the licenses granted hereunder, either before or after termination of this Agreement, any Confidential Information. You will take all reasonable precautions to avoid such use or disclosure.

7.0 Termination of License.

7.1 Breach. In the event of any material breach of this Agreement, the non-breaching Party shall give the breaching Party written notice (at the address provided upon registration) and an opportunity to cure. If the breach is not cured within thirty (30) days after written notice, or if the breach is of a nature that cannot be cured, then the non-breaching Party may immediately or thereafter terminate this Agreement.

7.2 Termination by Licensee. You may immediately terminate the license granted in this Agreement upon written notice to Visa.

7.3 Litigation. Visa may terminate all or part of the licenses granted in this Agreement in the event Compliant Products sold by You or your Related Parties give rise to a claim against a Visa Party (as defined in Section 10 below), containing at least one claim predicated upon manufacture, use, import, offer for sale, or sale of your Compliant Product and (a) for which the indemnification of Visa Parties in Section 10 does not apply or (b) for which Licensee asserts that such indemnification does not apply.

7.4 Licensee’s Insolvency. Visa may terminate this Agreement immediately if Licensee becomes insolvent, is dissolved or liquidated, has a petition in bankruptcy, reorganization, dissolution or liquidation, or similar action filed by or against it, is adjudicated as bankrupt, has a receiver appointed for its business, or makes an assignment for the benefit of creditors, or if Licensee breaches the confidentiality provisions of this Agreement.

7.5 Failure to Incorporate Updates. In the event You fail to adopt any updates in accordance with the provisions of Section 4.0, Visa may terminate this Agreement.

7.6 IP Claims. In the event Visa receives actual notice of a claim that a Compliant Product or system relating thereto infringes a third party Intellectual Property right as a result of such Compliant Product complying with the Licensed Work, Visa may, at its sole option, elect to immediately terminate the license granted in this Agreement by providing written notice to Licensee pursuant to Section 10.2(iii).

7.7 Rights and Obligations After Termination. Upon termination of this Agreement, You will immediately cease all use of the Licensed Work except as

permitted in this Section and will cease marketing any Compliant Product. Upon termination, you may continue to support Compliant Products in use by End Users prior to the termination date for twenty-four (24) months from the termination date. Notwithstanding the previous sentence, in the event of termination pursuant to Section 7.6, for twenty-four (24) months from the termination date, You may continue to support the particular Compliant Product identified by Visa pursuant to Section 7.6; however, You agree to indemnify Visa against any claims, causes of action or damages for use of the identified Compliant Product or related system after the date of termination. All such use of the Licensed Work will be subject to the terms and conditions of this Agreement. Upon the earlier of Your ceasing to support Compliant Products or the expiration of such 24-month period, You will make no further use of the Licensed Work and You will return or destroy all copies of the Licensed Work in your possession or under your control and expunge all electronic copies. Furthermore, You shall recall, or cause to be recalled, all Compliant Products in use.

7.8 Injunctive Relief. The Parties acknowledge that a violation of Sections 2.7 and 6.0 (Confidentiality) would cause irreparable injury and that damages at law for any such breach would be inadequate, and would impossible to ascertain. In the event of the breach or threatened breach of any such obligations, in addition to any and all other remedies at law or in equity, the non-breaching Party shall have the right to injunctive relief enjoining any and all threatened or actual activities in violation thereof; and each Party hereby consents and agree that temporary and permanent injunctive relief may be granted in any proceedings which might be brought to enforce any such rights without the necessity of posting bond.

8.0 No Warranties. THE LICENSED WORK AND TITLES ARE PROVIDED ON AN "AS IS", "WHERE IS", BASIS, "WITH ALL FAULTS" KNOWN AND UNKNOWN. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VISA EXPLICITLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE LICENSED WORK AND TITLES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

9.0 No Damages. EXCEPT FOR CLAIMS RELATED TO SECTIONS 7.7, 10 AND 11, IN NO EVENT SHALL EITHER PARTY, ITS PRINCIPALS, MEMBERS, OFFICERS, EMPLOYEES, AFFILIATES, CONTRACTORS, SUBSIDIARIES, OR PARENT ORGANIZATION, BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER MONETARY LOSS, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE LIMITATIONS OF DAMAGES OR LIABILITY SET FORTH IN THIS AGREEMENT ARE FUNDAMENTAL ELEMENTS OF THIS CONTRACT. THE PARTIES ACKNOWLEDGE AND AGREE THAT NEITHER WOULD BE ABLE TO PROVIDE THE

LICENSED WORK OR PERFORM HEREUNDER ON AN ECONOMIC BASIS WITHOUT SUCH LIMITATIONS.

10.0 Indemnification; Claims.

10.1 Your Indemnity of Visa. You agree to indemnify, defend and hold harmless Visa, its members and affiliated companies, and each of their employees, officers, directors and agents (each, a “Visa Party”) from all losses, costs, damages, claims and other expenses (including reasonable attorneys’ fees) (“Losses”) arising out of any claim that a third party Intellectual Property right is infringed in connection with the manufacture, use, importation, sale, offer for sale, distribution, reproduction or display by You, Your Related Parties or End Users, of any Compliant Product (or any other product, process, or system which implements or relies on the Licensed Work and any improvements or derivatives thereof) either alone or in combination with other products, processes or systems (each, a “Claim”).

10.2 Avoidance of Claims and Mitigation of Damages. In the event that Visa becomes aware of a potential claim of infringement with respect to the Licensed Work that has been or may be asserted against Visa, You or any third party, Visa may in its sole discretion (i) modify the Licensed Work such that it avoids such infringement or potential claim, (ii) procure for You the right to continue using the Licensed Work, or (iii) Visa shall have the right terminate this license pursuant to Section 7.6 of this Agreement. In the event that Visa modifies the Licensed Work pursuant to this Section 10.2, You shall promptly upon written notice from Visa modify Your Compliant Products so as to implement the modification to the Licensed Work and offer to deploy such modified Compliant Products in any uses of the Compliant Products by You, Your Related Parties or End-Users. In the event any Related Party or End-User does not implement the modified Compliant Products, You agree to terminate any sub-license, if any, granted to the Related Party or End-User and to discontinue supporting any Compliant Product that has not implemented the modifications to the Licensed Work.

11.0 Compliance with Law and Export Regulations. You acknowledge that the Specification, and encryption hardware and software developed using the Specification, may be subject to the US Export Administration Regulations (EAR) and other US and foreign laws and regulations. To the extent applicable, You agree to comply with the EAR and all other laws and regulations governing export, import or use of encryption products and technology. You agree to hold harmless the Visa Parties, as defined in Section 10 above, from and against all Losses arising from Your failure to comply with such laws and regulations.

12.0 Miscellaneous Provisions.

12.1 Governing Law. This Agreement shall be governed by the internal laws of the State of California, without giving effect to its principles of conflict of laws. Any action or any dispute arising out of this Agreement shall be tried in San Francisco,

California, and the parties consent to the jurisdiction of the state and federal courts therein.

12.2 Notices. All notices require under this Agreement shall be in writing. Notice shall be deemed given when delivered personally to an authorized representative or one (1) day after deposit for overnight delivery upon written verification of receipt. Notices and correspondence to Visa should be sent to the attention of Jennifer Botts (or such other person as may be designated in writing by Visa), except as may be required by specific Sections of this Agreement. Notices and correspondence to Licensee shall be sent to the person and address identified by You in the form indicated below.

12.3 Nonassignability. Licensee, by operation of law or otherwise, may not assign or otherwise transfer any of its rights or delegate any of its duties or obligations under this Agreement without the prior written consent of Visa, which consent shall not be unreasonably withheld. Any attempt to do so is void. Notwithstanding the foregoing, Visa may assign this Agreement to any of its affiliates in its sole discretion.

12.4 Waiver. The waiver, express or implied, by either party of any breach of this Agreement by the other party will not waive any subsequent breach by such party of the same or a different kind.

12.5 Headings. The headings to the Sections and Subsections of this Agreement are included merely for convenience of reference and shall not affect the meaning of the language included therein.

12.6 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes hereof, a facsimile copy of this Agreement, including the signature pages hereto, shall be deemed to be an original. Notwithstanding the foregoing, the parties shall deliver original execution copies of this Agreement to one another as soon as practicable following execution thereof.

12.7 Attorney's Fees. In the event of any action, suit or proceeding brought by either party to enforce the terms of this Agreement, the prevailing party shall be entitled to receive its costs, expert witness fees, and reasonable attorneys fees and expenses, including costs and fees on appeal.

12.8 Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will in no way be affected or impaired thereby so long as the intent of the parties can be preserved.

12.9 Survival. The following Sections of this Agreement shall survive the expiration or earlier termination of this Agreement: Sections 2.7, 6, 7, 8, 9, 10, 11 and 12.

12.10 Entire Agreement. This Agreement sets forth the entire agreement and understanding between You and Visa regarding the Licensed Work. No modification or waiver of this Agreement or any exhibit shall be binding unless it is in writing and signed by both parties. If any provision of this Agreement is invalid, illegal or unenforceable under applicable law, then it shall be deemed omitted to the extent required, and the remaining terms shall remain in full force and effect. This Agreement supersedes any and all prior agreements between Visa and You regarding your right to use the Licensed Work.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

**ACCEPTED AND AGREED TO BY:
Licensee:**

Vendor Name: _____
Please Print Vendors Complete Name

Signed: _____

Print Name: _____

Title: _____

Date: _____

Address Notices to: _____

Title: _____

Street Address: _____

City, State, ZIP: _____

**ACCEPTED AND AGREED TO BY:
Visa International Service Association Inc.**

Signed: _____

Print Name: _____

Title: _____

Date: _____

EXHIBIT A
3-D SECURE SPECIFICATIONS

The following Visa Specifications are to be used to produce Licensed Work

1. Core Functions v1.0.2.pdf
2. ACS v1.0.2l.pdf
3. MPI v1.0.2.pdf
4. 3DS Security Requirements.pdf