



VISA Inc.

**VISA 3-D Secure Authentication Services Testing Agreement**

Full Legal Name of Visa Entity: Visa International Service Association Inc.

Type of Entity/Jurisdictions of Organization: Delaware Corporation

Contact Name/Title for Contact Administration: Lauren Rossi

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Contact for Legal Notice: General Counsel

Address for Legal Notice: P.O. Box 8999, San Francisco, CA 94128-8999

Full Legal Name of Vendor: \_\_\_\_\_

Type of Entity/Jurisdictions of Organization: \_\_\_\_\_

Federal Tax Identification Number: \_\_\_\_\_

Contact Name/Title for Contact Administration: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Contact for Legal Notice: \_\_\_\_\_

Address for Legal Notice: \_\_\_\_\_

Fax Number for Legal Notice: \_\_\_\_\_

Effective Date of Agreement:	
Term of Agreement:	This agreement will commence as of the date of execution and shall continue until terminated by either party with prior written notice.

This Authentication Services Testing Agreement (the "**Agreement**") is entered into as of the effective date set forth above (the "Effective Date") between the Visa International Service Association ("Visa") and the other entity above ("Vendor") with respect to the following testing services to be conducted:

3-D Secure Components

This Agreement consists of the cover pages, such other documents as are expressly incorporated pursuant to the terms of this Agreement, and the following exhibits and annexes:

- Exhibit A      Form of Request for Testing Services
- Exhibit B      General Terms and Conditions

N WITNESS WHEREOF, each part has caused its duly authorized representative to execute and deliver this Agreement as of the Effective Date.

\_\_\_\_\_  
 Visa International Service Association Inc.

\_\_\_\_\_  
 Vendor

\_\_\_\_\_  
 By

\_\_\_\_\_  
 By

\_\_\_\_\_  
 Printed Name

\_\_\_\_\_  
 Printed Name

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Title (Must be Authorized Representative)

\_\_\_\_\_  
 Legal File No:



**VISA INTERNATIONAL SERVICE ASSOCIATION INC.**  
**AUTHENTICATION SERVICES TESTING AGREEMENT**

**EXHIBIT A**

**FORM OF REQUEST FOR TESTING SERVICES FORM**



**VISA INTERNATIONAL SERVICE ASSOCIATION INC.**  
**AUTHENTICATION SERVICES TESTING AGREEMENT**

**EXHIBIT B**

**GENERAL TERMS AND CONDITIONS**

**1 Scope of Agreement**

**1.1 Master Agreement.** This Agreement is a master agreement under which may govern one or more testing services for Vendor products. This Agreement shall not give rise to any obligation on the part of Visa to test or, at Visa's sole discretion, obtain testing from a Visa-Recognized Laboratory unless and until one or more Request for Testing Services, substantially in the form of Exhibit A is completed and delivered to Authentication Services ("Request for Testing Services"). No Request for Testing Services shall be effective until signed by an authorized representative of Visa. Upon signing and delivery by an authorized representative of Visa, each mutually agreed-upon Request for Testing Services shall be deemed to be incorporated into, and made a part of, this Agreement. Each Request for Testing Services shall contain, at a minimum, the following items, either by fully setting forth such items or thorough incorporation by reference to one or more other documents that fully sets forth such items:

**1.1.1** A reference to this Agreement using language substantially similar to the following: "This Request for Testing Services is governed by the Authentication Services Testing Agreement dated [Effective Date] between [Vendor name] and [Visa], [as amended]."

**1.1.2** A detailed description of the Testing Services to be performed;

**1.1.3** The fees, expenses and other amounts, if any, to be paid by Vendor for such Services as well as the appropriate invoicing address

**1.1.4** Any assumptions of the parties relevant to the performance of the Testing Services;

**1.1.5** If applicable, a start date and end date for the Testing Services, if applicable;

**1.1.6** If applicable, availability, response times, quality standards and other services levels that are applicable to the Testing Services;

**1.1.7** If applicable, any meeting, review and reporting requirements;

**1.1.8** If applicable, any security measures to be taken, in addition to those set form elsewhere in this Agreement;

**1.1.9** If applicable, the relevant project manager contact information;

**1.1.10** If applicable, the relevant problem management and incident notification information;

**1.1.11** If applicable, any other key personnel to be assigned by the parties om connection with such Testing Services; and

**1.1.12** If applicable, a fully executed Request for Testing Services

**2 Vendor Registration**

**1.2** Vendor agrees to adhere to the testing and approval requirements for: 3-D Secure Systems and Compliance Testing as may be amended from time to time, collectively (“Testing Requirement”), as reflected on Visa’s corporate website. These Testing Requirements provide important instructions and explain the process by which Vendors will need to facilitate its testing procedures. Failure to observe the instructions or to adhere to the procedures described therein shall be deemed to be a material breach of this Agreement.

**1 Services Fees, Taxes and Payments to Visa**

**3.1 Fees.** The fees quoted are exclusive of any fees associated with re-tests that may be incurred if the submitted product exceeds defined testing limits (i.e. does not pass within a specified number of tests, or becomes subject to other extraordinary circumstances as described in the appropriate Testing Requirements.

**3.2 Taxes.** Vendor is responsible for applicable taxes, including, without limitations, sales and use taxes, duties, stamp taxes, ad valorem taxes, withholding taxes, excise tax and all other taxes or government charges imposed in connection with the fees associated with this Agreement (other than tax based on the net income of Visa) and all penalties and interest associated with the foregoing. In the event any payment is subject to withholding for any of the foregoing taxes, the amounts payable hereunder shall be deemed to be increased to an amount which, after making the required withholding, equals the amount payable to Visa hereunder.

**3.3 Payment Method.**

**3.3.1.** Fees to Visa. Fees and costs for the particular testing services to be conducted by Visa are delineated in the appropriate Testing Requirements, if any. Payment in U.S. Dollars must be effected by wire transfer utilizing the following wire transfer banking information:

BANK OF AMERICA
555 CALIFORNIA STREET
SAN FRANCISCO, CA 94137 UNITED STATES
ACCOUNT NUMBER: 14990-02709
ABA ROUTING NUMBER: 121000358

**4 Schedules.** Notwithstanding anything contained herein the contrary, Visa shall have no responsibility or liability if testing takes longer than estimated in the applicable Testing Requirements, regardless of cause. In the event that Vendor’s product(s) submitted for testing is determined by Visa, in Visa’s sole discretion, to be functionally flawed to the extent that it is incapable of passing tests within a reasonable period of time, Visa reserves the right to terminate the testing services without having completed all of testing services specified. In such an event, Vendor shall not be entitled to a refund of any portion of the fees.

**5 Letter of Compliance; Listing on Visa Website.** As defined in the appropriate Testing Requirements, Vendor’s product, upon completion of testing, shall be deemed “compliant”, depending on the type of testing services that was requested.

**5.1** 3-D Secure Website Acknowledgement; Letter of Compliance.

**5.1.1.** Upon Vendor's successful completion of compliance testing of its Product, Visa will identify Vendor's Product on a list of compliant products on its website. Vendor's name, e-mail address and other contact information shall be listed thereto, unless Vendor request in writing that it does not wish to be included in such a list.

**5.1.2.** Visa will provide Vendor with a letter of compliance, stating that Vendor's Product complies with certain of Visa's product specifications. Said letter may also, upon Visa's discretion, be available for viewing on Visa's website. Upon receipt of a letter of compliance from Visa, Vendor shall be authorized to represent that Vendor's product is "compliant". Vendor acknowledges and agrees that it shall not promote any one or more of its products, services or facilities as being "compliant" or endorsed by Visa in any way, or imply that Visa has either endorsed or approved, in whole or in part of any aspect of Vendor's products, services or facilities, except as provided herein. Vendor shall indemnify and hold Indemnified Visa Parties, as defined below, harmless in connection with any claims made by a third party that relied on Vendor's wrongful assertions that it or its Products are Visa-Compliant with 3-D Secure authenticated payment protocol or other violations by Vendor under this Section 5.

**6 Confidentiality**

**6.1** General; Restrictions on Use and Disclosure. Except as set for in this Section 6, each party and their respective Personnel shall use Confidential Information only for the purpose of performing each party's obligations under this Agreement and for no other purpose whatsoever. Neither party nor any of its Personnel shall disclose any Confidential Information to any third party without the other party's prior express written consent in each instance except as otherwise permitted herein. Vendor shall restrict disclosure of Confidential Information to those of its Personnel who have a need to know such Confidential Information for purposes of this Agreement. Without limiting the foregoing obligations, each party shall take all reasonable precautions to prevent the unauthorized use or disclosure of any Confidential Information in its possession or control for a period of five (5) years of disclosure, subject to Section 6.2 below. For the purposes of this Agreement, "Confidential Information" shall mean on behalf of Visa, all information provided or made available by or on behalf of Visa, any Visa Affiliate or Visa Europe and/or any of its Personnel in connection with this Agreement and on behalf of Vendor, all information related to the Product requested by Visa in connection with the testing services; provided, however, that all such information: (a) is marked as confidential or proprietary;; or (b) is otherwise identified orally or in writing as confidential or proprietary. For the purposes of this Agreement, "Visa Europe" shall mean Visa Europe Services, Inc. and any of its subsidiaries.

**6.2** Exceptions. Either party's obligation under Section 6.1 above shall not apply to Confidential Information to the extent that the disclosing party can prove by written documentation that such Confidential Information:

**6.2.1** Was already know to the receiving party prior to its first disclosure to receiving party in connection with this Agreement; or

**6.2.2** is disclosed to receiving party without obligation of confidentiality from a third party who has the right to disclose such information without restriction;

**6.2.3** is or becomes publicly available through no fault of the receiving party; or

**6.2.4** is independently developed by receiving party without any use of Confidential Information disclosed pursuant to this Agreement

**6.2.5** In addition, notwithstanding anything contained herein or any other agreement to the contrary, Visa may disclose Confidential Information to:

**6.2.5.1** The extent that it is so ordered by a court of competent jurisdiction or by any other government, administrative or quasi-judicial entity;

**6.2.5.2** the extent it is subject to a request in any litigation in which Visa is a party provided, however, that Visa provides to Vendor prompt written notice of such request prior to such disclosure and provides reasonable information and assistance to Vendor, at Vendor's request, to contest or limit such request;

**6.2.5.3** its Clients banks, financial institutions and to Visa personnel of a Visa Affiliate and Visa Europe and its member banks and financial institutions, a list of vendors that have scheduled or submitted products for testing and, with respect to all products submitted under this Agreement, testing status, results and issues;

**6.2.5.4** any third party subject to similar obligations of confidentiality as set form in this Section 6 any summary or cumulative information, such as test benchmarking and processes, as Visa in its discretion deems appropriate in connection with aligning testing standards and platforms; and

**6.2.5.5** the extent the sharing of test results, including without limitations, restrictions stated on approval letters, may be useful in providing testing services with respect to a subsequent vendor's products that incorporate or rely on Vendor's previously tested and approved products.

**6.3** **Return or Destruction.** Upon the earliest of: (a) the termination or expiration of this Agreement; (b) the termination or expiration of the applicable Request for Testing Services; or (c) Visa's demand, Vendor shall promptly return to Visa all Visa property and all Confidential Information. Alternatively, if so directed by Visa, Vendor shall destroy all Confidential Information, and all copies thereof, in Vendor's possession or control, and shall provide a certificate signed by an officer of Vendor that certifies such destruction in detail acceptable to Visa.

## **7 Warranties and Disclaimers**

**7.1** **Warranties and Covenants.** Vendor represents, warrants and covenants, on behalf of itself and each of its Personnel, as follows:

**7.1.1** Vendor is duly organized and in good standing in the jurisdiction of its organization and is qualified to do business in each jurisdiction in which the Services are performed;

**7.1.2** Vendor has duly authorized the execution and performance of this Agreement;

**7.1.3** Vendor has obtained all necessary permits and licenses to perform its obligations under this Agreement;

**7.1.4** Vendor's execution and performance of this Agreement does not and will not violate or conflict with any agreement between Vendor and any third party;

**7.1.5** Vendor's performance of this Agreement shall not violate any applicable law or regulation, including without limitation any law or regulation concerning export or import controls; and

**7.1.6** Vendor shall pay all of its debts, obligations and liabilities in any way related to this Agreement as they become due.

**7.2** **General Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING

WITHOUT LIMITATION WARRANTIES OF MERCHANT ABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

## **8 Indemnities**

**8.1 Indemnities by Vendor.** Vendor shall, at its sole expense, indemnify, defend and hold Visa, Visa Affiliates, Visa Europe, and each of their respective directors, officers, employees, agents and affiliates (collectively, "Indemnified Visa Parties") harmless from and against all claims, suits, actions, damages, settlements, losses, liabilities, costs and expenses, including without reasonable attorneys' fees, arising out of or in connection with:

**8.1.1** Facts, or alleged facts which, if proven, would constitute a breach by Vendor of any of the representations, warranties and/or covenants set forth in Section 7 above; or

**8.1.2** Any other breach by Vendor and/or any of its Personnel of any of Vendor's obligations under this Agreement.

## **9 Limitations of Liability; No Damages**

**9.1 Exclusion of Consequential Damages.** EXCEPT WITH RESPECT TO BREACH OF THE CONFIDENTIALITY PROVISIONS OF THIS AGREEMENT, INNO EVENT SHALL EITHER PARTY OR ANY OF THE VISA AFFILIATES BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR EXEMPLARY DAMAGES ARISING IN CONNECTION WITH THIS AGREEMENT AND/OR ITS SUBJECT MATTER, REGARDLESS OF THE THEORY OF LIABILITY GIVING RISE TO SUCH DAMAGES, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, AND REGARDLESS OF WHETHER SUCH PARTY WAS ADVISED OR AWARE OF THE POSSIBILITY OR SUCH DAMAGES.

**9.2** To the extent permitted by applicable law, Visa shall not be liable to Vendor or any third party for any damages in excess of the fees paid by Vendor hereunder under any theory of law, including, without limitations, any special, consequential, incidental, or punitive damages, nor any damages for loss of business profits, business interruption, loss of business information, or other monetary loss, nor any damages arising out of third-party claims (including claims of intellectual property infringement) arising out of this Agreement or any services or products provided by Visa hereunder, even if Visa has been advised of the possibility of such damages.

## **10 Term and Termination**

**10.1 Term.** Unless earlier terminated in accordance with its provisions, this Agreement shall continue of the term set forth on the cover page. The provisions of this Agreement shall continue in effect for any Request for Testing Service that is entered into by the parties prior to the expiration of the terms of this Agreement.

**10.2 Termination.** Either party may terminate this Agreement and/or any Request for Testing Services: (a) for any or no reason by providing Vendor not less than thirty (30) days' prior written notice; (b) immediately upon written notice in the event of Vendor's voluntary or involuntary bankruptcy, receivership, reorganization, dissolution or liquidation under applicable state, federal or foreign law; and (c) immediately upon written notice in the event of any breach by Vendor of any representation, warranty or covenant set forth in Section 7.1 above. Any right of termination by Vendor of this Agreement shall be in addition to, and not in lieu of, any other rights and remedies that Vendor may have under this Agreement, at law and/or in equity.

**10.3 Effect of Termination and Survival.** The expiration or termination of any single Exhibit A shall not affect the term or validity of any other Exhibit A. Upon expiration or any termination of this

Agreement: (a) Vendor shall return to Visa or destroy all Confidential Information in accordance with Section 6.3 and (b) the provisions of the following sections of this Agreement shall survive: 6, 7, 8, 9, 10 and 11.

## **11 General**

**11.1 Governing Law, Jurisdiction and Venue.** This Agreement shall be governed by and construed in accordance with applicable U.S. federal law and the laws of the State of California, without regard to its conflicts of law principles. Each party consents to the exclusive jurisdiction and venue of the U.S. federal and California state courts located in and serving the City and County of San Francisco, California, in connection with any dispute or controversy arising out of or in connection with this Agreement and/or its subject matter.

**11.2 Assignment.** This Agreement will be binding on and inure to the benefit of each of the parties, their successors and assigns. It may not be assigned or transferred, in whole or in part, without the written consent of the other party. Any such assignment or transfer without consent will be void. Notwithstanding the foregoing, by providing Vendor written notice, Visa may assign all or part of this Agreement to: (a) any entity which is a successor to Visa either by merger or consolidation, (b) a purchaser of all or substantially all of Visa's assets, or (c) any entity which shall directly or indirectly control, be under the control of, or be under common control with Visa Inc., Visa International Service Association, Visa U.S.A., Visa Canada Inc. or Inovant LLC.

**11.3 Agency.** This Agreement does not create any agency or partnership relationship.

**11.4 Non-Exclusivity.** Nothing in this Agreement shall restrict the right of a party to procure or market products or services which may be competitive with those offered by the other party, nor obligate a party to obtain any services from any other party, nor prevent a party from entering into similar agreements with other companies or individuals, nor obligate either party to disclose any information to the other.

**11.5 Excusable Delay.** Neither party shall be held responsible for delays caused by acts beyond its control, such as acts of God or public enemies, public acts, utility or communications delays or failures not caused by such party's negligence or fault, accidents not caused by such party's negligence or fault, labor disputes, war, or failure of the other party to provide data that it is required to provide under this Agreement. Vendor shall be responsible for delays and restrictions caused by its Personnel's failure to comply with the provisions of this Agreement that result in exclusion from facilities or access to Confidential Information or systems.

**11.6 Notice.** All notices under this Agreement shall be in writing and shall be deemed given when delivered personally, by overnight delivery upon written verification of receipt, by facsimile transmission upon electronic acknowledgement of delivery or receipt, or by certified or registered mail, return receipt requested, upon verification of receipt. Notices shall be sent to the applicable address/facsimile number for notice set forth on the cover page or to such other address/facsimile number as a party may designate by giving notice in accordance with this section.

**11.7 Attorneys' Fees.** In the event of a dispute arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

**11.8 No Intellectual Property Grants.** It is understood that neither party hereby grants to the other rights under existing or future patents or in connection with proprietary information.

**11.9 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, invalid or illegal, it shall be severed and the remainder of this Agreement in full force and effect.

**11.10 No Publicity/Trademarks.** Nothing in this agreement grants either party any rights in the trademarks, trade names or service marks of the other party. Neither party shall make any use of the trademarks, trade names or service marks of the other party without such other party's prior express written consent. Vendor shall not issue any press release or make any other public disclosure relating to this Agreement without Visa's prior express written consent in each instance.

**11.11 No Implied Waiver.** No waiver of any right under, or breach of, this Agreement shall be effective unless in writing and signed by an authorized representative of the party against whom the waiver is sought to be enforced (which in the case of Visa, shall be an officer at the Visa President level or higher).

**11.12 Entire Agreement, Order of Precedence and Modification.** This Agreement, including its exhibits, annexes, Testing Requirements, agreed Request for Testing Services, constitutes the entire Agreement of the parties with respect to the subject matter hereof, and supersedes any and all prior agreements and understandings of the parties, whether written or oral, with respect to such subject matter. In the event of a conflict between any provision set forth in the Exhibit B and a Request for Testing Services or other portion of this Agreement, the relevant provisions of this Exhibit B shall govern. Any preprinted or other standard terms set for on any Vendor order acknowledgement or other form shall be deemed void and of no force or effect, irrespective of whether such form is countersigned by a representative of Visa. Subject to the foregoing, any modification, extension or amendment of this Agreement must be in writing and signed by a duly authorized representative of each of the parties (which, in the case of Visa, shall be an officer at the Vice President level or higher).

**11.13 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

(End of Exhibit B)