

# T1 PAYMENTS - CARD PAYMENT PROCESSING AGREEMENT

This **Card Payment Processing Agreement** together with the **Merchant Services Application** (defined below) and **Merchant Terms Acknowledgement** (collectively, the “**Agreement**”) is made on \_\_\_\_\_, 20\_\_\_\_ (“**Effective Date**”), between T1 Payments LLC, a Nevada limited liability company with its principal business office at the address set forth below in this Agreement (“**T1 Payments**”), and \_\_\_\_\_ (“**Merchant**”), a company duly organized/incorporated in \_\_\_\_\_ under registration number \_\_\_\_\_

\_\_\_\_\_, with its registered office located at \_\_\_\_\_, T1 Payments provides, among other things, Card payment processing services which allows T1 Payments to clear payments for purchases of Merchant’s products and services via Cards. Merchant requests to have such payment processing services provided to it and T1 Payments agrees to provide such services subject to the terms and conditions contained in this Agreement. In consideration of the mutual covenants herein contained and intending to be legally bound by the provisions of this Agreement, the parties agree as follows:

**1. Definitions.** When used in this Agreement, each of the following terms will have the meanings set forth in this Section:

“**Affiliate**” means a Person that, directly or indirectly, (i) owns or controls a party to this Agreement or (ii) is under common ownership or control with a party to this Agreement.

“**Card**” means (i) a valid credit card or debit card in the form issued under license from a Payment Brand; or (ii) any other valid payment card or other payment device offered by the Payment Brands and accepted by Merchant.

“**Card Issuer**” means the financial institution or company which has provided a Card to a Cardholder.

“**Cardholder**” (sometimes referred to as “Card Member” in certain Payment Brand materials) shall mean any person authorized to use the Cards or the accounts established in connection with the Cards.

“**Cardholder Charge**” means the amount to be charged to the Cardholder’s account for the purchase of Merchant’s products and services. “**Chargeback**” means a reversal of a Cardholder Charge that Merchant previously submitted which the Card Issuer has identified as being invalid or non-collectible after initial acceptance on account of fraud, lost, canceled, non-issued, invalid account identification, an unresolved Cardholder complaint, or other cause which results in the deduction of the Cardholder Charge from amounts otherwise payable to T1 Payments.

“**Guarantor**” has the meaning set forth on the Merchant Services Application.

“**Merchant’s Operating Account**” means the means a commercial checking or demand deposit account maintained by Merchant as set forth on the ACH Authorization Form attached to the Merchant Services Application, for the crediting of collected funds and the debiting of fees and charges under this Agreement.

“**Merchant Services Application**” means the Merchant Services Application executed by Merchant and incorporated herein by this reference as though set forth in full to form this integrated Agreement.

“**Merchant Terms Acknowledgement**” means the Merchant Terms Acknowledgement agreement executed by Merchant and incorporated herein by this reference as though set forth in full to form this integrated Agreement.

“**Monthly CB Threshold**” means the maximum limit of Chargebacks/Retrievals allowed per month by Merchant as established by the Payment Brand Rules. This limit changes from

Chargeback thresholds are reached when Visa notifies the acquirer that the Merchant’s Chargebacks/Retrievals equal one (1%) percent of the month’s aggregate transactions.

“**Payment Brands**” means Visa U.S.A., Inc., MasterCard International, Inc., American Express Travel Related Services Company, Inc., DFS Services LLC (the owner of Discover) and their Affiliates, or any other payment networks offered by T1 Payments and accepted by Merchant.

“**Payment Brand Rules**” means all rules, regulations, by-laws, standards and procedures adopted and/or amended from time to

time to time. For example, at present, the current Visa monthly time by the Payment Brands (including, without limitation, the Payment Card Industry Data Security Standard), and each relevant bank and Card Issuer.

“**Penalties**” means such penalties, fines and other charges as may be assessed by the Payment Brands, applicable bank, third party processors and/or T1 Payments as set forth in this Agreement.

“**Person**” means an individual, corporation, partnership, sole proprietorship, trust, association or any other legally recognized entity or organization, other than Merchant or T1 Processing.

“**Pre-Arbitration**” means a second Chargeback initiated by a Cardholder after the Merchant successfully challenges a first Chargeback through the Representation process.

“**Refund**” means a payment initiated by the Merchant to a Cardholder for returned goods or services, for a price adjustment or reasons related to the initial sale of goods and services.

“**Representation**” means the process that allows a Merchant to dispute a Chargeback by presenting evidence to the Card Issuer that a Chargeback is not warranted.

“**Retrieval**” means a dispute initiated by a Cardholder with Card Issuer that is considered, for purposes of this Agreement, to be a Chargeback.

“**Reserve**” or “**Reserve Account**” means the accumulation of funds held in an account at a financial institution specified by T1 Payments as security against the risk of loss to T1 Payments associated with Merchant or Merchant’s processing activities under this Agreement, which may be used by T1 Payments and its processing partners, in their sole discretion, through instructions to such financial institution, to pay for Chargebacks, Refunds, fees, fines, penalties, Merchant’s indemnification obligations hereunder, or any other obligations owed by Merchant to T1 Payments under this Agreement.

“**Service**” or “**Services**” means the T1 Payments Card payment processing services and any related products and services provided pursuant to this Agreement.

“**Service Fees**” means the charges, fees and prices for the Services as further set out on the Merchant Services Application and Merchant Terms Acknowledgement, as amended from time to time upon notice to Merchant and Merchant’s acceptance of such changes by the continued use of Service.

“**Software**” means the software products and related documentation provided by T1 Payments to Merchant in connection with the Service.

“**Total Revenue**” means Merchant’s gross revenues from the Services, before the deduction of applicable Reserve, Service Fees, Refunds, Chargebacks and any other charges or obligations owed by Merchant under this Agreement.

“**Trademarks**” means all trademarks and logos of T1 Payments that exist now or in the future, both registered and non-registered, in addition to their associated commercial goodwill, all as may be specified by T1 Payments from time to time.

“**US\$**” means the currency to be used to settle all transactions

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between Merchant and T1 Payments contemplated in this Agreement, the dollar of the United States of America.

**2. Subject of the Agreement.** Merchant agrees that T1 Payments in providing the Services does not act as principal but acts as facilitator on behalf of Merchant to enable Merchant to enter into transactions with its customers. Merchant further agrees to allow T1 Payments to act as facilitator on behalf of Merchant for the purpose of processing payments.

**3. Merchant Verification Procedures.** To help the government fight the funding of terrorism and money laundering activities, best practice requires all financial institutions to obtain, verify, and record information to identify each Merchant that opens an account. Such verification procedures may include credit checks (such as by obtaining a credit report from a credit bureau) on Merchant's owner(s), partners and/or principal shareholders, as well as background investigations and reference checks; validating business address, licenses, permits and other information; and investigation of Merchant's previous processing relationships, if any. Recipients of such associated personal data may include T1 Payments, the applicable bank, T1 Payments' third party processors, the Payment Brands, and/or each of their agents and employees, and such other persons as it may be reasonably necessary to disclose and transfer personal data to (for example credit reference agencies, fraud monitoring agencies, central banks), and any other persons as otherwise required or permitted by applicable law and/or regulations. Such transfer and disclosure of personal data may take place worldwide consistent with T1 Payments' obligations under applicable law. Merchant hereby authorizes T1 Payments and any of its agents to conduct such verification and investigation procedures regarding Merchant and any other person owing financial obligations to T1 Payments hereunder.

#### **4. Merchant Obligations.**

**4.1 Honor All Cards.** Merchant's payment transactions will be processed by T1 Payments pursuant to the terms of this Agreement, Payment Brand Rules, program rules and policies of its third party processors, and all applicable laws and regulations. Merchant, whether dealing with the public or otherwise, shall honor all valid Cards (as permitted under this Agreement) when properly presented as payment in connection with a legitimate business transaction.

**4.2 Prohibited Transactions.** Merchant will not engage in any of the following prohibited conduct or Card transactions: (i) accept Cardholder payments for previous Card charges incurred at the Merchant location; (ii) establish minimum or maximum amounts for Card charges or credit vouchers unless required or permitted by the Payment Brand Rules; (iii) impose any surcharge or convenience fee on Card charges or transactions as prohibited by the Payment Brand Rules; (iv) request or use a Cardholder account number for any purpose other than as payment for Merchant's goods or services; (v) disburse funds in the form of travelers cheques or other non-cash media, if the sole purpose is to allow a Cardholder to make a cash purchase of goods or services from Merchant; (vi) require a Cardholder to provide fingerprints or other personal information, such as address, license, telephone number or social security number as a condition for honoring a Card unless required by the Payment Brand Rules; (vii) accept Cards for transactions that are classified as "Quasi-Cash Transactions" including, but not limited to, the sale of casino gaming chips, money orders, opening deposits on financial or other accounts, wire transfer money orders, or the issuance of scrip; (viii) accept a Card to collect or refinance an existing debt including any debt that has been deemed

uncollectible by Merchant; (ix) accept a Card that represents collection of a dishonored check; (x) require a Cardholder, as a condition of honoring a Card, to sign a statement that waives the Cardholder's rights to dispute the transaction with the Card Issuer; (xi) submit a Card transaction for a Card bearing the account number of an account issued to Merchant or to a Merchant related entity or individual; (xii) conduct any continuity or recurring billing of a Card without satisfying the complete requirements of the Payment Brand Rules and/or all other laws, rules and regulations regarding negative option billing applicable in the jurisdiction where Merchant is located, or where the Cardholder submitting the Card for payment is located or resides; (xiii) engage in any unfair or deceptive business practice related to any Card transaction that would violate any consumer protection law applicable in the jurisdiction where Merchant is located, or where the Cardholder submitting the Card for payment is located or resides; (xiv) engage in fraud; or (xv) engage in any other business practice related to a Card transaction that is illegal, or may reflect negatively upon and/or damage the goodwill of T1 Payments and/or the Payment Brands, as determined by any of them in their sole discretion. Merchant acknowledges that Merchant shall be fully responsible for any violation of this Section by any employee, agent or representative of Merchant.

SHOULD MERCHANT ENGAGE IN ANY OF THE ABOVE-IDENTIFIED PROHIBITED TRANSACTIONS, MERCHANT ACKNOWLEDGES AND AUTHORIZES T1 PAYMENTS TO COLLECT AND RETAIN THE ENTIRETY OF ITS FUNDS AND RELINQUISHES ANY AND ALL CLAIMS TO ANY FUNDS, HELD ON RESERVE AND OTHERWISE, CURRENT OR DUE IN THE FUTURE, TO T1 PAYMENTS. MERCHANT AND T1 PAYMENTS AGREE THAT, TO THE EXTENT REQUIRED BY APPLICABLE LEGAL REQUIREMENTS TO BE EFFECTIVE, THE LANGUAGE CONTAINED IN THIS SECTION ARE "CONSPICUOUS" FOR THE PURPOSES OF ANY APPLICABLE LEGAL REQUIREMENT.

**4.3 Authorization.** Before honoring any Card, Merchant shall request authorization from T1 Payments via the T1 Payments' API or the T1 Payments control panel, as designated by T1 Payments. If authorization is denied, Merchant shall not complete the transaction. Merchant may request but must not require a Cardholder to provide additional identification information as a condition of Card acceptance, unless such information is required to complete the transaction, such as for shipping purposes, or T1 Payments or Payment Brand Rules specifically permit or require such information to be collected. Merchant may require the Cardholder's ZIP or postal code to complete a transaction where Address Verification Service (AVS) is available for the transaction.

**4.4 Cardholder Disputes.** Merchant must respond to Cardholder disputes and handle Chargebacks in accordance with the Payment Brand Rules. All disputes between Merchant and any Cardholder relating to any Card transaction shall be settled between Merchant and such Cardholder. Merchant acknowledges that T1 Payments has no legal relationship with the Cardholders and shall not enter into any negotiations, correspondence or disputes with Cardholders with regards to any transaction processed under this Agreement. Cardholder complaints, inquiries, Refunds and Chargebacks

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regarding Merchant's services may be cause for termination of this Agreement by T1 Payments if such events occur with unacceptable frequency as determined in T1 Payments' sole discretion.

**4.5 Merchant URLs.** Merchant must provide T1 Payments a complete list of all marketing and advertising URLs used by Merchant at the time of completing the Merchant Services Application for compliance review by T1 Payments, and thereafter promptly upon any request by T1 Payments. It is Merchant's responsibility to update these initial disclosures on an ongoing basis and notify T1 Payments of any new URLs for compliance review prior to accepting live transactions. Merchant acknowledges and agrees that T1 Payments may require any changes to Merchant URLs or otherwise as T1 Payments deems necessary or appropriate to ensure that the Merchant remains in compliance with Payment Brand Rules and applicable law. Notwithstanding any prior approval of any Merchant URL, T1 Payments reserves the right to require a Merchant to make changes to a previously approved URL if T1 Payments subsequently determines that any portion thereof may or does violate the Business Risk Assessment Mitigation ("**BRAM**") program, or any other provision of the Payment Brand Rules or applicable law. Merchant shall not submit any transaction flowing from a non-approved URL to T1 Payments for processing under any (including any change or addition to the content to a URL, even if the URL is offline and inactive) shall be a material breach hereunder, and may result in immediate suspension of Services and/or termination of this Agreement by T1 Payments.

**4.6 Other Merchant Information.** Merchant is responsible for providing information that is timely, complete, truthful, and not misleading. If Merchant provides any false or misleading information, or misrepresents its business, ownership, number of employees, address, products or services to T1 Payments in anyway in connection with this Agreement or the Services provided hereunder, such conduct may constitute a criminal offense, and shall constitute a material breach and good cause for immediate termination of this Agreement by T1 Payments, and may also result in the withholding of payments otherwise due to Merchant as additional Reserves in an amount sufficient to cover the anticipated risk of loss to T1 Payments arising from the misrepresentation(s). Merchant agrees to notify T1 Payments within two (2) business days of any changes in Merchant's ownership, address, financial condition, or business activities (including any change in the products or services offered by Merchant), and any other changes or developments related to Merchant or Merchant's business (including any regulatory investigation or action) that could materially affect T1 Payments' rights under this Agreement. Merchant further agrees that, if at any time, Merchant learns that it is the subject of any civil or criminal investigation or action regarding Merchant's business, products, services or other activities, by local, state or federal authorities, or has violated any local, state or federal laws, rules or regulations, Merchant shall inform T1 Payments within two (2) business days of the date that Merchant learns about said investigation or violation. Any failure by Merchant to so inform T1 Payments within such timeframe shall be a material breach and good cause for the immediate termination of this Agreement by T1 Payments.

**4.7 Confidentiality of Cardholder Information and Data Security Standard Compliance.** Except as otherwise required by law, Merchant shall not, without the Cardholder's and T1 Payment's prior written consent, sell, purchase, provide, or otherwise disclose the Cardholder's account information or other Cardholder information to any third party other than T1 Payments, Merchant's agents and

processing organizations for the purpose of assisting Merchant in its business, or in response to a valid government demand. Merchant shall comply with all applicable Payment Card Industry Data Security Standards (PCI-DSS) and Payment Application Data Security Standards (PA-DSS), the Visa Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be mandated by the Payment Brands at all times. This Section shall survive termination of this Agreement.

## **5. Fees Payable by Merchant.**

**5.1 Service Fees.** T1 Payments may modify the Service Fees at any time during the term of this Agreement upon thirty (30) days prior written notice to Merchant, and Merchant shall have fifteen (15) days from its receipt of such notice to terminate this Agreement as of the effective date of the proposed amendment by providing written notice to T1 Payments of such decision; provided, however, that Merchant's continued use of the Services without notifying T1 Payments of Merchant's decision to terminate the Agreement within fifteen (15) days receipt thereof shall be deemed acceptance of the modified Service Fees.

**5.2 Penalties by Payment Brands.** Merchant shall be responsible for paying any and all Penalties assessed by the Payment Brands and a p p l i c a b l e bank against T1 Payments related to Merchant's activities or the processing of Merchant's Card transactions, plus 20% of such Penalties as an administrative fee in communicating with the Payment Brands and managing the delivery of documents and other information related to the Merchant as may be requested by the Payment Brands. Merchant acknowledges and agrees that T1 Payments may refuse to share any documentation, correspondence, or other information received by T1 Payments from the Payment Brands relating to such Penalties that T1 Payments, in its sole and absolute discretion, deems confidential.

## **5.3 Liquidated Damages for Violation of Monthly CB Threshold.**

Merchant's Chargeback activity must remain below the Monthly CB Threshold, and Merchant acknowledges and agrees that any Chargeback activity in excess of the Monthly CB Threshold shall be deemed excessive, may cause T1 Payments and Merchant to incur Penalties, and shall constitute good cause for immediate termination of this Agreement by T1 Payments. If Merchant violates the Monthly CB Threshold in a given month, Merchant shall be subject to liquidated damages calculated at the rate of US\$100 per Chargeback and/or Retrieval accrued by Merchant during the applicable month, which shall be in addition to any Penalties assessed by the Payment Brands or applicable bank and any other Service Fees including Chargeback fees.

**5.4 Liquidated Damages for Breach.** Any breach by Merchant of any representation, warranty, covenant or obligation of Merchant under this Agreement, including violating the Monthly CB Threshold, committing fraud or breaching any Payment Brand Rules or applicable laws, that causes T1 Payments or its Affiliates to, directly or indirectly, lose a customer account, lose any Payment Brand relationship or any relationship with its third party processors or cause T1 Payments or its Affiliates to get listed on the Terminated Merchant File and/or the Merchant Alert to Control High Risk Merchants File, then Merchant agrees to pay T1 Payments, within three (3) calendar days of written demand by T1 Payments, liquidated damages equal to US\$1,000,000, which shall be in addition to any Penalties assessed by the Payment Brands, applicable bank or third party processors, any other Services Fees including Chargeback fees, and any other damages or losses which T1 Payments may be able to prove. Merchant and T1 Payments agree that the actual damages to T1 Payments resulting from Merchant's actions that would impose

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this US\$1,000,000 liquidated damages amount would be extremely difficult to calculate with precision, and would likely exceed such liquidated damages amount, wherefore the parties hereto agree that the liquidated damages calculation provided for herein represents a good faith, reasonable estimate of the potential actual damages to T1 Payments for such a violation, and does not constitute a penalty.

**5.5 Liquidated Damages for Aggregating Transactions.** Merchant is strictly prohibited from submitting to T1 Payments for processing any Card transaction other than a bona fide Card transaction between the Cardholder and Merchant or from submitting Card transactions from any URL that is not approved by T1 Payments in writing. Merchant shall not submit, directly or indirectly, any Card transaction to T1 Payments on behalf of another person or business, or which is not a bona fide Card transaction between the Cardholder and Merchant for Cardholder's purchase of products or services directly from Merchant. Any violation of this Section shall constitute a material breach and may result in immediate termination of this Agreement. In the event Merchant violates this Section, Merchant agrees to pay T1 Payments, within three (3) calendar days of written demand by T1 Payments, liquidated damages to be determined by multiplying either (a) the total monthly Service Fees paid by Merchant in the month preceding the violation, or (b) the average monthly Services Fees paid by Merchant in the three (3) month period preceding the violation, whichever is greater, by (c) six (6), or the number of months remaining in the active term of the Agreement, whichever is greater, and US\$200,000 per URL that Merchant has not submitted to and received approval from T1 Payments in writing. Merchant and T1 Payments agree that the actual damages to T1 Payments resulting from Merchant's non-compliance by aggregating transactions or submitting transactions from URLs not approved by T1 Payments in writing would be extremely difficult to calculate with precision, and would likely exceed such liquidated damages amount, wherefore the parties hereto agree that the liquidated damages calculation provided for herein represents a good faith, reasonable estimate of the potential actual damages to T1 Payments for such a violation, and does not constitute a penalty. Such liquidated damages are in addition to and separate from any Penalties that may be assessed by the Payment Brands, applicable bank or third party processors related to violation of this Section and any other Service Fees including Chargeback fees.

**5.6 Technical Assistance from T1 Payments.** In the event Merchant requires technical assistance (including but not limited to phone and email support) from T1 Payments' technicians that is outside the normal scope of technical support provided in connection with the Services, T1 Payments may elect in its sole discretion to bill Merchant for such technical support services on an hourly basis at its then-standard hourly rate for such services as part of the monthly Services invoice to Merchant.

**5.7 Monthly Maintenance Fee.** Each month, T1 Payments shall deduct a service maintenance fee from the Merchant's Operating Account, and is payable regardless of Merchant's processing volume. This monthly service maintenance fee shall commence on the date the Merchant Services Application is approved, even if the Merchant's account is not activated at the time of the application's approval.

**5.8 Other Services.** From time to time, T1 Payments may wish to offer additional services to Merchant. T1 Payments will provide Merchant with written notice of such additional services at least thirty (30) days before their implementation, and Merchant hereby agrees that Merchant's continued use of the Services without terminating this

Agreement as of the effective date of the proposed additional services within fifteen (15) days after Merchant's receipt thereof shall be deemed acceptance by Merchant of such additional services and related Service Fees.

## **6. Payment to Merchant.**

**6.1 Account Activation.** Merchant must fully comply with T1 Payments' set up requirements, including proper configuration and troubleshooting of the Application Program Interface ("API") prescribed for Merchant's use by T1 Payments, in order to enable the activation of Merchant's processing by T1 Payments.

**6.2 Timing and Calculation of Payment.** T1 Payments will deliver payment of amounts owing to Merchant as promptly as is practicable after processing, subject to T1 Payments' rights to offset and holdback sums due to Merchant or collected from Merchant's sales as set forth in this Agreement. The payment due to Merchant is equal to the sum of Merchant's Total Revenues during the specified time period along with any Reserve due to be released minus the sum of: (a) the sum of all Chargebacks/Retrievals processed during the period, (b) the sum of all Refunds processed and requested during the period, (c) the applicable Reserve and any increases in the Reserved, (d) the applicable Service Fee, and (e) all other fees, fines, Penalties, taxes and other items reimbursable hereunder or otherwise occurring during the period, including but not limited to any offsets and holdbacks permitted hereunder as determined solely by T1 Payments.

**6.3 Method of Payment.** T1 Payments may make payment to Merchant via ACH or wire transfer to Merchant's Operating Account, and shall issue a charge against Merchant's Operating Account for such ACH or wire transfer fee. T1 Payments shall have no obligation to issue payment if the amount due Merchant for the applicable billing cycle is less than the amount specified in the Merchant Services Application. Any outstanding balance not credited to Merchant shall roll over to Merchant's next billing cycle, if appropriate. Merchant authorizes T1 Payments to deposit amounts owed Merchant by initiating credit entries to Merchant's financial institution indicated on the form submitted to T1 Payments. Merchant further authorizes Merchant's financial institution to accept and credit any entries indicated by T1 Payments to Merchant's Operating Account. In the event that T1 Payments erroneously deposits funds into Merchant's Operating Account, including as payment for transactions that subsequently result in Chargebacks/Retrievals or are otherwise subsequently contested, Merchant authorizes T1 Payments to debit Merchant's Operating Account for an amount not to exceed the original amount of the erroneous credit, and Merchant shall be liable for any deficit in the amount available for debit. This authorization shall remain in full force and effect until Merchant has satisfied all payment obligations due to T1 Payments under this Agreement, and provided both T1 Payments and Merchant's financial institution with proper notice of the termination of this Agreement.

**6.4 To Whom Payment May Be Made.** T1 Payments will only direct payments due to Merchant hereunder to accounts held in the name of Merchant, the owner or parent company of Merchant, or Merchant's registered fictitious name (also known as "Doing Business As" ("DBA") name).

**6.5 Set-Off Rights.** Merchant acknowledges and agrees that T1 Payments shall have the right in its sole discretion to offset any amounts owed by Merchant to T1 Payments under this Agreement against amounts otherwise payable to Merchant. Merchant shall have no right to withhold or offset payments against any amounts owed by Merchant to T1 Payments under this Agreement.

**6.6 Tax Identification Number.** A valid social security number, Employer Identification Number, or International Taxpayer

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Identification Number will be required in the enrollment process as a condition of making payment to any individual citizen or resident of the United States, domestic corporation, partnership, or limited liability company, or foreign company doing business in the United States.

**6.7 Anti-Money Laundering Controls.** T1 Payments reserves the right to require Merchant to furnish T1 Payments with such additional information concerning Merchant's business or its ownership as may be necessary to assure T1 Payments' compliance with the laws of any state or the United States or any other applicable jurisdiction concerning money transfer, money laundering, or similar subject. T1 Payments may refuse to provide Services, or withhold payments to Merchant, without liability, if Merchant does not promptly furnish T1 Payments with information requested hereunder or if T1 Payments reasonably suspects that such conduct may be in violation of relevant law.

**6.8 Insecurity Acknowledgement.** T1 Payments may withhold payment to Merchant or prohibit Merchant's withdrawal of funds then on deposit with T1 Payments and increase the Reserve percentage and holding times for Reserves for any reason in its sole discretion, including but not limited to any of the following reasons:

(A) T1 Payments is suspicious of any transaction records;

(B) Merchant's volume of sales exceeds a stipulated amount, during a particular period. To avoid this, Merchant must promptly notify T1 Payments of such an increase in volume so that T1 Payments may confirm the acceptable limits;

(C) Merchant's average ticket amount exceeds a stipulated amount;

(D) Merchant fails to authorize a transaction;

(E) Excessive Chargeback activity by Merchant;

(F) Inconsistent processing as determined in T1 Payments' sole discretion;

(G) Any dispute or issue regarding Merchant resulting in T1 Payments' involvement of an attorney(s);

(H) For any other reason, including but not limited to Penalties that T1 Payments anticipates may be, assessed against T1 Payments based on Merchant's violation of Payment Brand Rules and/or breach of this Agreement.

**7. Security Interest.** To secure all obligations of Merchant to T1 Payments arising from this Agreement, Merchant hereby grants T1 Payments a first lien security interest in all deposits, regardless of source, to Merchant's Operating Account, and all amounts related to Merchant's processing activity in the possession or control of T1 Payments or the applicable bank, including Merchant receivables and Reserves held by such bank in connection with this Agreement. T1 Payments may exercise its rights under this security interest without notice or demand of any kind by making an immediate withdrawal from such operating account, the processing proceeds otherwise due Merchant, and/or the Reserve Account, upon T1 Payments' determination that Merchant has breached any obligation to T1 Payments, and such rights shall be in addition to all other rights of T1 Payments under this Agreement. Merchant agrees to execute any control agreements or other documents, and to perform any other action, required in order to comply with and perfect the security interest. Anytime there is an obligation owing from Merchant to T1 Payments, T1 Payments may offset any such amounts against any deposit balances or other money now or hereafter owed Merchant by

T1 Payments without notice or demand of any kind. The security interests granted under this Agreement shall survive termination of this Agreement until Merchant satisfies all obligations to T1 Payments.

## **8. Merchant Reserves.**

**8.1 Reserve Account.** T1 Payments will withhold a percentage of Merchant's Total Revenue as a Reserve as set forth on the Merchant Services Application or otherwise agreed to by the parties. The Reserve shall be applied towards Chargebacks, Retrievals and Refunds related to the Services, and other amounts owed to T1 Payments, including Service Fees, Penalties, liquidated damages, indemnification obligations, and other charges. Merchant authorizes T1 Payments to debit the Merchant's Operating Account to replenish or maintain Reserves. Additionally, T1 Payments may withhold funds it would otherwise be obligated to pay to Merchant for the purpose of replenishing or maintaining the Reserves. Merchant acknowledges and agrees that funds deposited by or on behalf of Merchant into the Reserve Account will remain identifiable to Merchant, but may be commingled with reserve funds attributable to other merchants. The Reserve Account will be maintained for a minimum of nine (9) months after the last Card sales, Refund or Chargeback processed under this Agreement, plus the period of any warranty, guarantee, and/or return policy on goods and/or services sold, or until such time as T1 Payments determines that the release of the funds to Merchant is prudent, in the best interest of T1 Payments, as determined by T1 Payments, and commercially reasonable based on anticipated risk of loss to T1 Payments, the applicable bank, its third party processors and the Payment Brands. The provisions of this Agreement relating to account debits and credits apply to the Reserve Account and survive this Agreement's termination until T1 Payments terminates the Reserve Account. Any balance remaining after Chargeback rights have expired and all of T1 Payments' other anticipated expenses, losses and damages have been paid will be disbursed to Merchant.

**8.2 Authorization; Reserve Deficiency.** T1 Payments may, without notice to Merchant, apply Merchant Reserves against any outstanding amounts Merchant owes under this Agreement or any other agreement between Merchant and T1 Payments. T1 Payments may exercise its rights under this Agreement to collect any amounts due to T1 Payments including, without limitation, rights of set-off and recoupment. Merchant will deposit any deficiency in Reserves into the Reserve Account within three (3) business days after receiving T1 Payments' oral or written request for replenishment of Reserves. Without limiting T1 Payments' remedies, Merchant's failure to deposit any deficiency on time will permit T1 Payments, without advance notice, to suspend or cease processing additional charges or refunds.

**8.3 Reserve Increase.** T1 Payments may increase the Reserve at any time for any reason in its sole discretion, including but not limited to any determination by T1 Payments that Merchant's processing activity is outside of the risk parameters indicated by Merchant on the Merchant Services Application, and/or based on any other factor, in order to protect T1 Payments and its agents against potential claims, liabilities, losses and/or expenditures associated with Merchant or Merchant's activities. Notwithstanding the foregoing, T1 Payments shall not be obligated to apply deposits from the Reserve Account to satisfy such amounts, and may instead require prompt payment, indemnity and/or contribution directly from Merchant. Merchant's obligations under this Section shall survive termination of this Agreement.

**8.4 Reserves After Termination.** T1 PAYMENTS MAY

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CONTINUE TO HOLD OR DEPOSIT FUNDS AS RESERVES INTO THE RESERVE ACCOUNT AFTER TERMINATION OF THIS AGREEMENT. UPON TERMINATION OF THIS AGREEMENT (WHETHER BY MERCHANT OR T1 PAYMENTS), T1 PAYMENTS MAY RETAIN SUFFICIENT FUNDS TO SATISFY ANY AND ALL AMOUNTS THEN OWED, OR THAT MAY BE OWED IN THE FUTURE, BY MERCHANT TO T1 PAYMENTS UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO SERVICE FEES, CHARGEBACKS, REFUNDS, CREDITS, PENALTIES, LIQUIDATED DAMAGES PURSUANT TO SECTIONS 5.3, 5.4 OR 5.5, INDEMNIFICATION OBLIGATIONS, ATTORNEY'S FEES, AND ANY OTHER CHARGES. T1 PAYMENTS MAY WITHHOLD OR REQUIRE MERCHANT TO DEPOSIT ADDITIONAL FUNDS INTO THE RESERVE ACCOUNT UPON TERMINATION OF THIS AGREEMENT, AND MERCHANT'S OBLIGATION TO REPLENISH RESERVES UPON REQUEST BY T1 PAYMENTS SHALL SURVIVE TERMINATION OF THIS AGREEMENT. IN THE EVENT OF A CONFLICT OR INCONSISTENCY BETWEEN THIS SECTION AND ANY OTHER SECTION, THIS SECTION SHALL CONTROL AND GOVERN THE RIGHTS AND OBLIGATIONS OF THE PARTIES. MERCHANT AND T1 PAYMENTS AGREE THAT, TO THE EXTENT REQUIRED BY APPLICABLE LEGAL REQUIREMENTS TO BE EFFECTIVE, THE LANGUAGE CONTAINED IN THIS SECTION ARE "CONSPICUOUS" FOR THE PURPOSES OF ANY APPLICABLE LEGAL REQUIREMENT.

**9. Representations and Warranties.** Merchant represents and warrants to T1 Payments at the time of execution and throughout the term of this Agreement that:

(A) All information contained in the Merchant Services Application and any other documents delivered to T1 Payments in connection therewith is true and complete and properly reflects Merchant's business, address, financial condition and principal partners, owners or officers;

(B) Merchant has the power to execute, deliver and perform this Agreement, and this Agreement is duly authorized and does not and will not violate any provisions of any applicable law or regulation to which Merchant is subject;

(C) Merchant has all licenses required to conduct its business and is qualified to do business in every jurisdiction where it is required to do so, and does not sell any goods or services prohibited under the laws of the jurisdiction in which Merchant is located, or any jurisdiction in which Merchant offers goods or services to consumers;

(D) Merchant fully complies with the personal data protection

laws of the jurisdiction in which Merchant is located and every jurisdiction in which Merchant markets its goods and services to consumers, and covenants to implement appropriate technical and organizational measures as necessary to ensure protection of personal data and remain in compliance with applicable personal data protection laws at all times during the term of this Agreement;

(E) Merchant provides consumers with all disclosures and other information required by consumer protection laws applicable in the jurisdiction in which Merchant is located and in which Merchant offers goods or services to consumers;

(F) Merchant respects the intellectual property rights of third parties and does not and will not infringe such rights in any way and upon becoming aware of any infringement of such rights will immediately terminate such infringement;

(G) There is no action, suit or proceeding now pending or to Merchant's knowledge, threatened by or against or affecting Merchant that would substantially impair its right to continue its business or adversely affect its financial condition or operations;

(H) Each transaction presented to T1 Payments for collection is genuine, is the result of a bona fide Card transaction for the purchase of goods or services by the Cardholder in the total amount stated on the sales draft, and is not the result of any fraudulent transaction, or being deposited on behalf of any business other than Merchant;

(I) Merchant has performed or will perform all of its obligations to the Cardholder in connection with the Card transaction, including but not limited to accepting responsibility for the acceptance of a Cardholder order, its fulfillment in an agreed upon manner, and all material warranties, guarantees and order commitments;

(J) Merchant has complied with T1 Payments' procedures for accepting cards and the Card transaction does not involve any element of credit or debit for any purpose other than as set forth in this Agreement and shall not be subject to any defense, dispute, offset or counter claim which may be raised by any Cardholder;

(K) Any Credit that Merchant issues represents a bona fide refund or adjustment on a Card sale by Merchant with respect to a transaction that has been accepted;

(L) Unless Merchant notifies T1 Payments in writing (either on the Merchant Services Application or otherwise), no other processing relationship exists between Merchant and another Card payment processing institution for this or any other business run or owned by Merchant;

(M) With respect to all Card transactions that Merchant requests T1 Payments to originate, Merchant continuously represents and warrants to T1 Payments that: (i) each customer has authorized the debiting and/or crediting of its account; (ii) each entry is for an amount the customer has agreed to; and (iii) each entry is in all other respects properly authorized; and

(N) Merchant fully complies with all applicable data security standards including but not limited to any industry standards, Payment Card Industry Data Security Standards (PCI-DSS) and Payment Application Data Security Standards (PA-DSS), the Visa Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be mandated by the Payment Brands; and

(O) Merchant fully complies with any and all anti-money laundering laws and regulations, including but not limited to the Bank Secrecy Act, the US Treasury's Office of Foreign Assets and Control (OFAC).

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**10. Spam.** “Spam” generally involves the sending of unsolicited commercial e-mail, and is restricted by the CAN-SPAM Act of the United States, and other state law regulations within the United States and other jurisdictions. The use of Spam to promote any Merchant URL, product or service is prohibited, and may result in the immediate termination of this Agreement.

**11. Cardholder Information.** Merchant acknowledges and agrees that any information T1 Payments accepts, collects, or receives from Cardholders or purchasers who enter into transactions with Merchant is and shall remain the sole and exclusive property of T1 Payments during the term and after termination of this Agreement.

**12. Merchant Transaction Limits.** T1 Payments shall have the right to set an overall transaction and sales limit for all transactions processed pursuant to this Agreement, which may be amended from time to time by T1 Payments upon notice to Merchant.

**13. Cardholder Transaction Limits.** In order to prevent the occurrence of fraudulent transactions, T1 Payments may impose reasonable limits on the amount or number of purchases that may be charged to an individual Cardholder account during any time period, or refuse to accept orders from Cardholders with a prior history of Chargebacks, fraudulent transactions or other activity that is prohibited by banks or the Payment Brands, or other questionable charges as determined in T1 Payments’ sole and absolute discretion. Merchant accepts and understands that T1 Payments shall impose these limits within its sole discretion, and such limits may be amended from time to time by T1 Payments upon notice to Merchant.

**14. Refund Policy.** T1 Payments shall use commercially reasonable efforts to direct Cardholders to utilize the Cardholder support services offered by Merchant in order to resolve all disputes and complaints; provided, however, that T1 Payments reserves the right in its sole discretion to issue a Refund without Merchant’s knowledge or consent in appropriate cases. T1 Payments will cancel and Refund any suspicious transaction that cannot be verified as valid to T1 Payments’ satisfaction, and may Refund any transaction reported by the Payment Brands or the banks in order to avoid Chargebacks. Merchant acknowledges and agrees that such determinations by T1 Payments shall be fully and finally binding on Merchant, and Refunds shall be deducted from the Total Revenue of the Merchant.

**15. Request for Documents.** T1 Payments may request shipping documents for tangible goods and/or proof of services provided by Merchant in order to investigate processing activity, dispute Chargebacks and the Merchant’s obligations pursuant to this Agreement; and Merchant shall provide such documentation to T1 Payments within two (2) business days of any such request. Merchant’s failure to provide such documents within that timeframe may result in a fine of US\$150 per day for each day Merchant fails to provide such documents, up to a maximum fine of US\$1,000, and may be cause for termination of the Agreement by T1 Payments.

**16. Password Security.** Merchant acknowledges that the security of Merchant’s activities pursuant to this Agreement depends in part upon Merchant maintaining the confidentiality of Merchant’s password and account information. Merchant shall be wholly responsible for maintaining the confidentiality of Merchant’s password and account information, and for all activities that occur pursuant to this Agreement. T1 Payments shall not be responsible for any unauthorized activity associated with Merchant’s processing, and Merchant shall indemnify T1 Payments for any losses T1 Payments may incur as a result of any such unauthorized activity.

**17. Merchant e-Mail and Account Changes.** Merchant must

provide a valid, working administrative email address upon enrollment, and any changes to Merchant’s processing pursuant to this Agreement via email may only be made using that email address. The security of Merchant’s activities depends in part upon Merchant maintaining the security of the administrative email address provided to T1 Payments by Merchant, and T1 Payments shall not be responsible for any unauthorized changes made to Merchant’s processing using such email address.

**18. Confidential Information.** The parties shall treat all information that comes to their knowledge or is processed in connection with this Agreement as confidential and shall not disclose such information unless required for the purposes of carrying out their obligation under this Agreement or as required by law. The parties may also become aware of the other party’s trade secrets and shall treat such information as confidential. Notwithstanding anything in this Agreement to the contrary, either party may disclose to third parties the fact that Merchant is using the Services of T1 Payments. Merchant acknowledges and agrees that the Services and the documentation provided to Merchant under this Agreement are and contain the valuable, confidential and trade secret information of T1 Payments.

**19. Intellectual Property.** T1 Payments hereby grants Merchant a royalty-free, non-transferable and non-exclusive right for the term of this Agreement to use the Trademarks on Merchant’s websites and in any off-line promotional materials for the sole purpose of designating Merchant’s use of the Services, and Merchant hereby grants T1 Payments and its affiliated companies an irrevocable, royalty-free and non-exclusive right for the term of this Agreement to use Merchant’s trademarks and logos on T1 Payments’ websites and in off-line publications for promotional purposes. Merchant shall use such Trademarks in accordance with T1 Payments’ directions for the use of such Trademarks. Merchant does not have a right of sub-license. T1 Payments may apply limitations to rights granted to Merchant under this paragraph at any time in T1 Payments’ sole discretion. Merchant will refrain from using the Trademarks in any manner that might create a composite mark with its own trademarks or logos. Merchant acknowledges that its use of the Trademarks does not create for itself any rights in the Trademarks other than those explicitly granted in this Agreement. All proprietary rights in the equipment, software (such as interfaces) and other materials used or made available by T1 Payments in the performance of this Agreement, whether or not supplied to Merchant, shall remain with T1 Payments or its licensors, and Merchant’s rights of use with respect to such equipment, software or materials shall expire or terminate upon the termination of this Agreement. Upon termination of this Agreement, Merchant will immediately withdraw any reference to T1 Payments from its websites and promotional materials and cease all use of the Trademarks, and T1 Payments and its affiliated companies will immediately withdraw any reference to Merchant from its websites and promotional materials and cease all use of Merchant’s trademarks and logos.

**20. Limited Use License for Software and Services.** All Software, Services and related products provided to Merchant under this Agreement are provided on an “as-is” basis. Merchant understands, acknowledges and agrees that processing outages are normal and may occur from time to time due to service interruption by banks, failed servers or the storage facility. Merchant agrees that T1 Payments shall not be liable for any loss of business or other damages caused by such outages. In consideration for Merchant’s payment of any applicable fees, T1 Payments hereby grants Merchant a personal, non-exclusive, non-transferable license to use the Software, in object code form only, solely in connection with the Service. Merchant shall not: (a) attempt to reverse engineer, decompile, disassemble or

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otherwise translate or modify the Software in any manner; or (b) sell, assign, license, sublicense or otherwise transfer, transmit or convey Software, or any copies or modifications thereof, or any interest therein, to any third party. All rights in the Software, including without limitation any patents, copyrights and any other intellectual property rights therein, shall remain the exclusive property of T1 Payments and/or its licensors. Merchant agrees that the Software is the proprietary and confidential information of T1 Payments and/or its licensors. Any rights of use licensed by T1 Payments to Merchant shall immediately terminate upon the earlier of: (i) termination or expiration of this Agreement; (ii) termination of the Services with which the Software is intended for use; or (iii) failure of Merchant to comply with any provisions of this Agreement.

**21. Taxes.** Merchant is solely responsible for and agrees to pay all taxes and other charges imposed by any government authority on the Services provided under this Agreement and on any transactions processed pursuant to this Agreement.

**22. Limitation of Liability.** T1 PAYMENTS' TOTAL LIABILITY TO MERCHANT OR TO ANY PARTY CLAIMING BY, THROUGH OR UNDER MERCHANT, SHALL BE LIMITED IN THE AGGREGATE FOR THE TERM OF THIS AGREEMENT TO THE SUM OF THE FEES PAID BY MERCHANT DURING THE ONE (1) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM FOR DAMAGES, OR FIVE-THOUSAND DOLLARS (US\$5,000), WHICHEVER IS LESS. T1 PAYMENTS SHALL IN NO EVENT BE LIABLE FOR ANY INCIDENTAL, EXEMPLARY, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. T1 PAYMENTS IS NOT LIABLE TO MERCHANT FOR ACCOUNT NUMBER VERIFICATION SERVICE ERRORS, AND SHALL NOT BE LIABLE TO MERCHANT OR ANY THIRD PARTY FOR ANY LOSS AND/OR DAMAGE CAUSED OR SUFFERED BY THE MERCHANT AND/OR SUCH THIRD PARTY IN CONNECTION WITH ANY UNAVAILABILITY OF THE SERVICES CONTEMPLATED BY THIS AGREEMENT. T1 PAYMENTS ASSUMES NO LIABILITY FOR DISRUPTIONS OR IMPROPER OPERATION OF THE SERVICE FOR ANY REASON, INCLUDING, BUT NOT LIMITED TO, VANDALISM, THEFT, ACTIONS OF THIRD PARTY SERVICE PROVIDERS, PHONE SERVICE OUTAGES, INTERNET DISRUPTIONS, EXTREME OR SEVERE WEATHER CONDITIONS OR ANY OTHER CAUSES IN THE NATURE OF "ACTS OF GOD" OR

FORCE MAJEURE. MERCHANT AND T1 PAYMENTS AGREE THAT, TO THE EXTENT REQUIRED BY APPLICABLE LEGAL REQUIREMENTS TO BE EFFECTIVE, THE LANGUAGE CONTAINED IN THIS SECTION ARE "CONSPICUOUS" FOR THE PURPOSES OF ANY APPLICABLE LEGAL REQUIREMENT.

**23. Disclaimer of Warranties.** THIS AGREEMENT IS A SERVICES AGREEMENT. T1 PAYMENTS DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES MADE TO MERCHANT OR TO ANY OTHER PERSON. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, T1 PAYMENTS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY OF THE T1 PAYMENTS SERVICES, RELATED PRODUCTS, SOFTWARE OR DOCUMENTATION. T1 PAYMENTS SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. MERCHANT AND T1 PAYMENTS AGREE THAT, TO THE EXTENT REQUIRED BY APPLICABLE LEGAL REQUIREMENTS TO BE EFFECTIVE, THE LANGUAGE CONTAINED IN THIS SECTION ARE "CONSPICUOUS" FOR THE PURPOSES OF ANY APPLICABLE LEGAL REQUIREMENT.

**24. Indemnification.** Merchant shall defend, indemnify and hold harmless T1 Payments, the applicable bank, its third party processors, and each of their officers, directors, agents, and employees (each an "*Indemnitee*") from and against any and all claims, demands, actions, losses, liabilities, damages, recoveries, settlements, costs or expenses (including but not limited to those arising from fraud or similar activities, whether or not Merchant participated in any way), including but not limited to investigation expenses, research time, attorney's fees, accountant and expert witness fees and costs, and other costs of defense, whether or not provided by T1 Payments', such bank's or such third party processors' personnel or others (collectively "*Claim*"), known or unknown, contingent or otherwise, arising directly or indirectly out of or in connection with this Agreement, the duties to be performed by Merchant pursuant to this Agreement, any transactions that Merchant submits to T1 Payments, or Merchant's violation of the Payment Brand Rules or any applicable law. In the event that T1 Payments, the applicable bank or T1 Payments' third party processors shall be made a party to any litigation, proceeding, arbitration, bankruptcy proceeding, or other legal process (collectively "*Actions*") commenced by any third party arising out of or resulting from or in connection with Merchant's business activities, products or services, contractual relationships, promotions, or advertising, and/or any alleged act of libel, slander, infringement or other violation of any third party's copyright, trademark or other intellectual property rights by Merchant or any subcontractor or agent of Merchant, Merchant shall defend, indemnify and hold harmless T1 Payments, such bank and/or such third party processors from and with respect to the Actions



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and shall pay all costs, expenses, and attorney's fees incurred or paid in connection with the Action, together with any judgments rendered. Merchant shall defend, indemnify and hold harmless T1 Payments, the applicable bank and T1 Payments' third party processors for any hacking, infiltration, or compromise of Merchant's systems or the systems of Merchant's servicers, designated representatives, or other agents. Merchant will pay any and all Penalties assessed against T1 Payments, the applicable bank and T1 Payments' third party processors by the Payment Brands in connection with Merchant or Merchant's activities.

**25. *Personal and Cross-Corporate Guaranty.*** As an express condition precedent to this Agreement, and prior to furnishing any service or benefit to Merchant hereunder, T1 Payments shall require an independent personal guaranty of Merchant's performance and obligations under this Agreement to be provided by one of Merchant's owners or principals, or another individual acceptable to T1 Payments in its sole discretion. T1 Payments may also require an additional Cross-Corporate Guaranty from Merchant's parent company or an affiliated entity. Merchant must provide T1 Payments with the fully executed Cross-Corporate Guaranty (and Addendum for any Cross-Corporate Guaranty), attached as Appendices to this Agreement and incorporated herein by this reference as though set forth in full, prior to this Agreement taking effect.

**26. *Term.*** The initial term of this Agreement shall be for twelve (12) months beginning upon the Effective Date, and shall automatically renew at the end of each consecutive twelve (12) month period unless T1 Payments receives written notice of non-renewal from Merchant no less than thirty (30) days prior to the expiration of such twelve (12) month period, or unless otherwise terminated as provided for in this Agreement. T1 Payments may terminate, suspend or limit this Agreement at any time for any reason, at its discretion or at the direction of the applicable bank and/or the Payment Brands with or without cause or prior notice to Merchant. In the event Merchant terminates this Agreement prior to expiration of the Agreement, Merchant agrees to pay T1 Payments, within three (3) calendar days of the date of such violation, an early termination fee to be determined by *multiplying* either (a) the total monthly Service Fees paid by Merchant in the month preceding the violation, or (b) the average monthly Services Fees and Prices paid by Merchant in the three (3) month period preceding the violation, whichever is greater, by the number of months remaining in the active term of the Agreement. Such an early termination fee would be in addition to any liquidated damages for breaching this Agreement.

**27. *Shortened One-Year Limitation Period On All Claims Arising Under This Agreement.*** MERCHANT SHALL HAVE NINETY (90) DAYS FROM MERCHANT'S RECEIPT OF PAYMENT TO CHALLENGE THE PROPRIETY OR DISPUTE THE CALCULATION OF ANY AMOUNT PAID TO MERCHANT UNDER THIS AGREEMENT. ANY OTHER CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT MUST BE BROUGHT NO LATER THAN ONE YEAR AFTER IT HAS ACCRUED, REGARDLESS OF ANY STATUTORILY-PRESCRIBED LIMITATIONS PERIOD FOR THE CLAIM.

**28. *Severability.*** Should any provision of this Agreement violate any law or valid regulation or rule of any regulatory agency or self-regulatory body having jurisdiction over either party, or should any provision of this Agreement otherwise be held invalid or

unenforceable by a court of law, then each such provision shall be automatically removed and any associated performance by the parties waived, and all other provisions of this Agreement shall remain in full force and effect.

**29. *Account Claims, Disputes, and Attorneys' Fees.*** If another person or entity makes a claim against funds due Merchant including the Reserve, or if T1 Payments has reason to believe there is or may be a dispute relating to this Agreement, Merchant's activities or over matters such as ownership of any proceeds related to this Agreement or the authority to receive payment, or make changes to the account, T1 Payments may, in its sole discretion: (a) continue to rely upon current T1 Payments documents; (b) honor the competing claim upon receipt of evidence T1 Payments deems satisfactory to justify such claim; (c) freeze all or part of the Merchant's funds until the dispute is resolved to T1 Payments' satisfaction; or (d) pay the funds to an appropriate court of law for resolution. In the event of a dispute between T1 Payments and the Merchant relating to the subject matter of this Agreement, it is agreed that the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs in enforcing its rights hereunder.

**30. *Choice of Law; Venue.*** This Agreement shall be construed and enforced in accordance with the laws of the State of Nevada, without regard to its conflicts of law provisions, in the United States, and the exclusive venue for any action, dispute or proceeding with respect to this Agreement shall be in the state or federal district court of Clark County, Nevada, and each of the parties hereby consents, and expressly waives any objections, to jurisdiction and venue including the doctrine of *forum non conveniens*. The parties specifically waive the right to a jury trial in connection with any dispute arising out of this Agreement, or between the parties for any reason.

**31. *Amendments and Modifications.*** Except as otherwise set forth in this Agreement, no amendment or modification of this Agreement shall be valid unless it is made in writing and signed by all parties hereto. T1 Payments may amend this Agreement to take into account changes in Payment Brand Rules, law or regulations or industry mandates and to accommodate changes imposed on T1 Payments, and to make other changes deemed necessary by T1 Payments, by sending Merchant an amendment to the Agreement, or making the amendment to the Agreement available upon a webpage located on the Internet in a manner that manifests Merchant's signature or other assent to the amendment as part of this Agreement. T1 Payments will provide Merchant with written notice of such proposed amendment(s) or modification(s) at least thirty (30) days before their implementation, and Merchant hereby agrees that Merchant's continued use of the Services without terminating the Agreement as of the effective date of the proposed amendment(s) or modification(s) within fifteen (15) days after Merchant's receipt thereof shall be deemed acceptance by Merchant of such amendment(s) or modification(s).

**32. *Notices.*** All notices or other communications shall be in writing or email and shall be effective when hand delivered or sent by first class mail, postage prepaid or verification of electronic receipt and shall be deemed to be delivered at that time. Notices shall be addressed to the Merchant at the address listed on the Merchant Services Application, or to the administrative email provided by Merchant on enrollment with T1 Payments. Notices to T1 Payments shall be addressed to: T1 Payments, 10161 Park Run Drive, Suite 150, Las Vegas, NV 89145; and via email: [legal@t1payments.com](mailto:legal@t1payments.com).

**33. *Survival of Obligations.*** All agreements that by their context are intended to survive the termination of this Agreement shall survive the

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termination of this Agreement for any reason, specifically including but not limited to Sections 4, 5, 6, 7, 8, 9, 15, 16, 17, 18, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39.

**34. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns; provided that Merchant may not sell, assign or transfer any of its rights or obligations under this Agreement without the prior written consent of T1 Payments, and any unauthorized assignment, sale or transfer shall be null and void. T1 Payments shall be free to sell, assign, or transfer any of their rights and obligations under this Agreement in their sole discretion, without any prior notice to the Merchant.

**35. Independent Contractors.** T1 Payments and Merchant acknowledge and agree that their relationship is one of independent contractors and independent organizations, and this Agreement does not represent a partnership of any kind.

**36. Interpretation.** Headings in this Agreement are for convenience only and shall not affect the Agreement's construction. Headings shall not be used in interpreting, construing, performing or enforcing this Agreement. Any obligations given or entered into by more than one party are given to or entered into jointly and severally by T1 Payments and Merchant unless otherwise specified. Any reference in this Agreement to a paragraph, section, schedule, or appendix, is a reference to a portion of, or an exhibit or appendix to, this Agreement.

**37. Integrated Agreement.** This Agreement, along with the Merchant Services Application and other supporting documents, is an integrated document that represents the complete terms of the parties' agreement in their entirety, and supersedes any other agreements, written or oral, instruments or writings related to its subject matter.

**38. Authorization; Counterparts.** The persons signing or otherwise accepting this Agreement on behalf of Merchant represent and warrant that they have the authority to enter into this Agreement on behalf of Merchant. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument. The signatures to this Agreement may be evidenced by facsimile copies, PDF copies or other electronic copies reflecting the party's signature, and any such facsimile copy, PDF copy or other electronic copy shall be sufficient to evidence the signature of such party as if it were an original signature.

**39. Acceptance.** By signing this Agreement, the signing party manifests his/her consent and agreement to these terms and conditions. Merchant hereby affirms that Merchant has read, understands, and agrees to abide by this Agreement, and any documents incorporated by reference into this Agreement. Merchant agrees that Merchant intends to form a legally binding contract and that this Agreement constitutes "a writing signed by Merchant" under any applicable law or regulation. Any rights not expressly granted herein are reserved by T1 Payments.

IN WITNESS WHEREOF, the parties have executed this Agreement.

\_\_\_\_\_

**Merchant Name**

**By:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Guarantor:**

**By:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**T1 PAYMENTS**

**By:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_