



STADIUM 1 SOFTWARE, LLC. MASTER SUBSCRIPTION AGREEMENT (MSA)

The MSA is effective as of the date of Licensee's Acceptance of the Order Form

PLEASE SCROLL DOWN AND CAREFULLY READ THE STADIUM 1 SOFTWARE LLC MASTER SUBSCRIPTION AGREEMENT ("MSA" or "AGREEMENT") TERMS AND CONDITIONS CONTAINED HEREIN BEFORE SIGNING THE ORDER FORM TO IMPLEMENT THE AGREEMENT AND BEFORE USING THE SOFTWARE AND HARDWARE ("PRODUCT").

BY PERFORMING ANY OF THE FOLLOWING:

- DOWNLOADING OR USING THE PRODUCT; OR
- SIGNING AN ORDER FORM; OR
- PAYING AN INVOICE WITH THESE TERMS

YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS GOVERNING YOUR USE OF THE SERVICE (DEFINED BELOW) OFFERED BY STADIUM 1 SOFTWARE, LLC ("COMPANY") AND YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT, IN WHICH CASE THE TERM "LICENSEE" SHALL REFER TO SUCH ENTITY. IF LICENSEE DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, LICENSEE MUST NOT SIGN THE ORDER FORM AND NOT INSTALL OR USE THE SERVICE. THIS AGREEMENT IS EFFECTIVE WHEN LICENSEE SIGNS THE ORDER FORM WHICH WILL BECOME THE **SIGNING DATE**.

A. Definitions - As used in this MSA, the following terms shall mean:

- "**Affiliate**" means any entity (now existing or hereafter formed or acquired), which, directly or through one or more intermediaries, controls, is controlled by, or is under common control with, another entity. Ownership of fifty percent (50%) or more of the voting stock, value, membership interests, partnership interests, or other equity of an entity shall be deemed to be in control over such entity.
- "**Agreement**" means this MSA, together with associated Order Form, Exhibits, Addendums, and Invoices comprises the entire agreement between Licensee and Company and supersedes all prior or contemporaneous negotiations, discussions, or agreements, whether written or oral, between the parties regarding the subject matter contained herein.
- "**Agreement Term**" means Length of Agreement as defined in the Order Form starting on the **Commencement Date**.
- "**Appropriate Security Measures**" means commercially reasonable technical, physical, and procedural controls to (i) protect Licensee Data, Templates, and User Details against destruction, loss, alteration, unauthorized disclosure to third parties, and (ii) prevent the introduction of Malicious Code into the Product and Content.
- "**Billing Frequency**" means the Frequency the Company will invoice the Licensee as stated on the Order Form.
- "**Commencement Date**" means the date of the first Licensee Customer Transaction on Company Product or Ninety (90) days from the Signing Date whichever comes first.
- "**Company**" means Stadium 1 Software LLC.
- "**Licensee**" means authorized Customer.
- "**Licensee Data**" means any information (including without limitation personally identifiable information) provided, made available, or submitted by Licensee to the Product or retrieved by the Product from another source as directed by Licensee other than User Details and Licensee Templates.
- "**Documentation**" means Company published documentation, knowledge base articles and other content, and technotes that are generally made available by Company to all customers, including without limitation the materials located at <https://stadium1.com/support>.
- "**EMV Gateway Services**" defines the Product, Fees, Payment Terms and Billing Frequency that provides the Licensee the ability to process both Credit and Debit Card EMV Transactions pursuant to the EMV Gateway Services Section of the Order Form. EMV Gateway Service Fees are invoiced starting on the Commencement Date and continuing for the Agreement Term.
- "**Errors**" means malicious code, bugs, defects, or the failure of the Product to confirm or perform in accordance with its specifications, Documentation and service levels.
- "**Fees**" means the amount invoiced or due by Licensee payable to Company for all Products listed within the Order Form and in accordance with this Agreement, starting on the Signing Date and continuing for the Agreement Term. Fees are payable based on defined Payment Terms and Billing Frequency detailed within the Order Form.
- "**Force Majeure**" means events or circumstances beyond a party's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, pandemic, strikes or other labor problems, telecommunications or network failures or delays, service or computer failures involving services, hardware, or software not within Company possession or reasonable control, and acts of vandalism (including network intrusions and denial of service attacks).
- "**Hardware**" means the Products, Fees, Payment Terms and Billing Frequency defined in the Hardware Section of the Order Form. The Hardware Section of the Order form details the Licensee purchases of Hardware, Peripherals, EMV Hardware Terminals and Customer or Employee Cards required for operation of Company's Software Subscription Services. Hardware is invoiced immediately upon Signing Date.
- "**Infrastructure Services**" defines the Products, Fees, Payment Terms and Billing Frequency that provide the Licensee with partial or full access to; Telephone Support, Remote Trouble Shooting, Version and Update Control, Server Hosting, Data Backup, OEM Limited Depot Warranty [see, **OEM STANDARD WARRANTY TERMS DISCLOSURE**] [Product Specifications](#). Operating System Software, Pre-loading of Company Software Subscription Services and Initial Installation and Training pursuant to the Infrastructure Services Section of the Order Form. Infrastructure Service Fees are invoiced starting on the Commencement Date and continuing for the Agreement Term.
- "**Intellectual Property Rights**" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.

- r. **"Malicious Code"** means code, files, scripts, malware, agents or programs in any form intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.
- s. **"Master Subscription Agreement" or "MSA"** comprises of this document between the parties regarding the subject matter hereof which supersedes all prior proposals, quotes, understandings, oral and written communications between the parties. Any changes or modifications hereto will not be valid unless in writing and signed by each party hereto.
- t. **"Order Form"** means the fully executed agreement by authorized representatives of each party describing all Fees, Products and additional Terms and Conditions to the MSA. The Order Form is governed by the MSA. Licensee acknowledges that Shipping, Taxes and Company Associated Travel Fees are additional costs to Licensee and are not explicitly listed in the Order Form. The Order Form details ALL Hardware, Professional Services, Software Subscription Services, Infrastructure Services, and EMV Gateway Services purchased by the Licensee which includes the Company's proprietary software, hardware, custom programming, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information. In the Event of a Conflict between the Order Form and MSA the Terms of the Order Form shall prevail.
- u. **"Order Summary"** means the Summary of all Fees for all Products listed in the Order Form.
- v. **"Payment Terms"** means invoice due date (net Terms) as stated within the Order Form.
- w. **"Product(s)"** means all Equipment, Professional Services, Software Subscription Services, Infrastructure Services and EMV Gateway Services pursuant to the Order Form and with additional information available at [Product Specifications](#).
- x. **"Professional Services"** means the Products, Pricing, Payment Terms and Billing Frequency detailed in the Professional Services Section of the Order Form. The Professional Services Section of the Order form details the Licensee purchases of Setup Fees and Custom Programming required for setup and operation of Company's Software Subscription Services. Professional Services is invoiced immediately upon Signing Date.
- y. **"Software Subscription Services"** means the Products, Fees, Payment Terms and Billing Frequency detailed in the Software Subscription Services Section of the Order Form. The Software Subscription Services Section of the Order form details the Licensee Software Subscription Service purchases utilized for certain operations of the Product. Software Subscription Service Fees are invoiced starting on the Commencement Date and continuing for the Agreement Term.
- z. **"Signing Date"** means date the Order Form is accepted and fully signed by both the Licensee and Company AND Licensee agrees to all Terms and Conditions set-forth in the Agreement.
- aa. **"Updates"** means all bug fixes, patches, and maintenance releases.
- bb. **"User(s)"** means Licensee's named employees, representatives, consultants, contractors, partners, customers or agents who are authorized to use the Software by Licensee through the user management facility of the Company's Software Service.
- cc. **"User Details"** means basic information collected by Company about Licensee's Users authorized by Licensee to use the Software, which is used for subscription management, activity logging, communications to Users by Company, and technical support purposes.
- dd. **"Version Release"** means a subsequent release of the Service. Version Releases may include, but not be limited to, correction of a malfunction in the Product that degrades the use of the Product or major changes to existing functionality, features, or options. Version Releases shall not include any release, option or future product which Company makes available as a separately named, priced, or licensed product.

B. Term of Agreement: Licensee agrees to the Agreement Term as defined in the Order Form and acknowledges that the Agreement cannot be terminated, except as herein provided.

C. Fee Payment: Licensee agrees to promptly pay when due, or upon receipt of any invoice from Company, any amounts due under the terms of this Agreement. Licensee is responsible to pay all Shipping Charges and applicable Sales or Use taxes associated with or arising out of this Agreement. Licensee shall pay all amounts due in full without any set-off or deduction as and when due along with all applicable Sales, Use or other taxes, fees, and/or charges, payable with respect to, related to, arising out of or in connection with this Agreement. Licensee shall receive the Product(s) listed within the Order Form and agrees to be responsible for full payment of Fee(s) charged by the Company to Licensee or Licensee's concessionaire partner(s) in accordance with the Payment Term(s) contained in the Order Form. Failure by Licensee to pay any amounts due in full in accordance with this Agreement shall make Licensee liable to pay Company interest at the rate of One and One-Half (1.5%) Percent per month on the remaining amount due, or otherwise at the highest amount permitted by applicable law, such interest to accrue on a daily basis both after and before any judgment relating to collection thereof.

1. **Hardware Fee Payments:** Licensee agrees to pay the Company all Fees referenced in the Hardware Section of the Order Form. Upon Payment in Full, Licensee will be provided the listed Products within the Hardware Section of the Order Form per the Agreement; (i.) POS Units (ii.) Peripherals; (iii.) EMV Terminals. Licensee hereby agrees to maintain the Product(s) at the Licensee Location. Subject to the terms of this Agreement, Licensee may purchase additional Product(s) after the Commencement Date by specific email request to a Company Sales or Service representative. As of the Delivery Date of the Product(s) detailed in the Hardware Section of the Order Form, the Agreement shall be complete and is non-refundable. Hardware is invoiced immediately upon Signing Date.
2. **Professional Service Fee Payments:** Licensee agrees to pay the Company all Fees detailed in the Professional Services Section of the Order Form. Professional Service Fee Payments are invoiced immediately upon Signing Date.
3. **Software Subscription Service Fee Payments:** Licensee agrees to pay the Company all Fees detailed in the Software Subscription Service Section of the Order Form starting on the Commencement Date and continuing for the Agreement Term, for the right to connect to the Company's Software Subscriptions Services. Software Subscription Service Fee Payments are due to the Company per the Payment Term and Billing Frequency detailed within the Order Form.
4. **Infrastructure Service Fee Payments:** Licensee agrees to pay the Company all Fees detailed in the Infrastructure Service Section of the Order Form starting on the Commencement Date and continuing for the Agreement Term. Infrastructure Service Fee Payments are due to the Company per the Payment Term and Billing Frequency detailed within the Order Form.
5. **EMV Gateway Service Fee Payments:** Licensee agrees to pay the Company all Fees detailed in the EMV Gateway Service Section of the Order Form starting on the Commencement Date and continuing for the Agreement Term for each Credit and Debit Card transaction processed through the EMV Gateway provider. Usage of Company approved EMV Gateway Software and Terminals are required. EMV Gateway Service Fee Payments are due to the Company per the Payment Term and Billing Frequency detailed within the Order Form.

D. Additional Terms & Conditions: The undersigned Licensee unconditionally and irrevocably agrees to the terms of this Agreement, all of which shall remain in full force and effect throughout the Agreement Term, and beyond if applicable. Company grants Licensee a non-exclusive, non-transferable license to (1) use the Software and any related Documentation solely for its internal operations at and on the Location, and (2) copy the Software and any Documentation for archival

or backup purposes only, provided that all titles, trademarks, and copyright, proprietary and restricted rights notices shall be reproduced in all such copies, and that all copies shall be subject to the terms of this Agreement. Except as explicitly provided herein, Licensee shall not: (1) make available or distribute all or part of the Software or any Documentation to any third party by assignment, sublicense or by any otherwise; (2) copy, adapt, reverse engineer, decompile, disassemble, or modify, in whole or in part, any of the Software or any Documentation; or (3) use the Software to operate in or as a time-sharing, outsourcing, or service bureau environment, or in any way allow third party access to the Software. The Software is licensed, not sold. This Agreement only gives some rights to use the Software. The Company reserves all other rights. Unless applicable law gives more rights despite this limitation, Licensee may use the Software and only as expressly permitted herein. In doing so, Licensee must comply with any technical limitations that only allow use in certain ways. Licensee may not work around any technical limitations; reverse engineer, decompile or disassemble the Software, except and only to the extent that applicable law expressly permits, despite this limitation; use the Software's files and components within another operating system or application running on another operating system; make more copies of the Software than specified in this Agreement or allowed by applicable law, despite this limitation; publish the Software for others to copy; rent, lease or lend the Software; or use the Software for commercial software hosting services. Rights to access the Software on any device do not give any right to implement the Company's patents, trademarks, copyrights or other intellectual property in Software or devices that access that device. Company may provide Internet-based services with the Software, which it may change at any time. The Software features connect to Company or service provider computer systems over the Internet. In some cases, Licensee will not receive a separate notice when they connect. By using these features, Licensee consents to the transmission of information. Company does not generally, but may, use the information to identify or contact anyone. The Product may utilize one or more features which use Internet protocols and which may send computer information to the appropriate systems, such as Internet protocol addresses, the type of operating system, browser and name and version of the Software being used, and the language code of the device where running the Software or other information about Licensee's computer. Company may use this information to make the Internet-based services available. Company may use the computer information it receives from Licensee or any other party to improve its Software and Service and may also share it with others, such as hardware and software vendors, who may also use the information to improve how their products run with Company software. Licensee may not use these Products in any way that could harm them or impair anyone else's use of them and may not use the Software to try to gain unauthorized access to any service, data, computer, website, account, or network by any means. The Software includes data storage technology to store data. Licensee may not otherwise use or access this data storage technology under this Agreement. The Product may allow or facilitate the capture or use of one or more components of information given by, or related to, patrons or certain customers served in Licensee's business, including cellular telephone numbers and electronic mail addresses and other information. Licensee agrees the Company may freely retrieve, process, or utilize such customer data or information that provides functionality or usage of Products detailed in the Software Subscription Services Section of the Order Form, including necessary marketing, sales, distribution, advertising, or other similar purposes. To run the Company Product(s), Licensee agrees to utilize ONLY Hardware provided by the Company.

- E. Installation.** Company shall use reasonable efforts to deliver and install the Products to the Location(s) prior to or on the Commencement Date. Licensee agrees to reimburse Company for all travel, lodging and food expenses incurred by Company for installation and training.
- F. Information Technology.** Licensee will provide IT support on demand and at no cost to Company with regards to Installation, Setup, Support and all future troubleshooting requests for the company Products at the Location.
- G. Term End Renewal.** Upon expiration of the Agreement Term or any renewal or extension of this Agreement, the Term shall automatically extend for an additional twelve (12) month term at the then current Software Subscription Service Fees. If Licensee fails to give Company Thirty (30) days prior written notice, the Term shall automatically be extended without notice to Licensee and may be terminated thereafter in accordance with this paragraph. The Company's right to collect any amount due under this Agreement shall survive termination.
- H. Proprietary Rights.** Licensee acknowledges and agrees that the copyright, patent, trademark, trade secret, and all other intellectual property rights of whatever nature in the Software, Documentation and Specifications and the name or logo of Stadium 1 Software, LLC are and shall remain the property of the Company, and nothing in this Agreement should be construed as transferring any aspects of such rights to Licensee or any third party.
- I. Confidentiality.** "Confidential Information," shall mean the Service, Documentation and Specifications, terms and conditions of this Agreement, and also the Licensee's written statements about the Company or its reputation, products, Service, management or employees. Licensee acknowledges the confidential and proprietary nature of the Confidential Information and agrees that it shall not reveal or disclose any Confidential Information for any purpose to any other person, firm, corporation or other entity, other than Licensee's employees with a need to know such Confidential Information to perform employment responsibilities consistent with Licensee's rights under this Agreement, and shall not take any action that negatively impacts the Company or its reputation, products, Service, management or employees. Licensee shall safeguard and protect the Confidential Information from theft, piracy or unauthorized access in a manner at least consistent with the protections Licensee uses to protect its own most confidential information. Licensee shall inform its employees of their obligations under this Agreement and shall take such steps as may be reasonable in the circumstances, or as may be reasonably requested by Company, to prevent any unauthorized disclosure, copying or use of the Confidential Information. Licensee acknowledges and agrees that in the event of the Licensee's breach of this Agreement, Company will suffer irreparable injuries not compensated by money damages and therefore shall not have an adequate remedy at law. Accordingly, Company shall be entitled to a preliminary and final injunction without the necessity of posting any bond or undertaking in connection therewith to prevent any further breach of these confidentiality obligations or further unauthorized use of Confidential Information. This remedy is separate and apart from any other remedy Company may have. Licensee shall notify Company immediately upon discovery of any prohibited use or disclosure of the Confidential Information, or any other breach of these confidentiality obligations by Licensee, and shall fully cooperate with Company to help Licensee regain possession of the Confidential Information and prevent the further prohibited use or disclosure of the Confidential Information.
- J. Software Warranty.** As long as Licensee uses the Product as intended by this Agreement, then the Company represents to Licensee that: (i.) the Product shall operate without Errors for Licensee's use; and (ii.) upon notification to Company of Errors, Company will, during its normal business hours and at no cost to Licensee, use reasonable efforts to correct such Errors which are reproducible and verifiable by Company, excluding any Errors caused by uses of the Product not in accordance with the Specifications. In the event, that Licensee notifies Company of an Error, Company's sole liability, and Licensee's sole remedy, will be Company's use of reasonable efforts to correct such Errors or, in Company's sole discretion, to refund the portion of the prepaid Price applicable to the portion of the Software which is defective. THE WARRANTY SET FORTH HERE IS A LIMITED WARRANTY AND IT IS THE ONLY WARRANTY MADE BY COMPANY. COMPANY EXPRESSLY DISCLAIMS, AND LICENSEE HEREBY EXPRESSLY WAIVES, ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. COMPANY DOES NOT WARRANT THAT THE PRODUCT WILL MEET LICENSEE'S REQUIREMENTS OR THAT THE OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ERRORS IN THE PRODUCT WILL BE CORRECTED. COMPANY'S LIMITED WARRANTY IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF COMPANY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE INSTALLATION, OPERATION OR PERFORMANCE OF THE SOFTWARE. THE PARTIES AGREE THAT THE PRODUCT'S FAILURE TO PERFORM IN ACCORDANCE WITH THE SPECIFICATIONS SHALL NOT BE CONSIDERED A

FAILURE OF THE ESSENTIAL PURPOSE OF THE REMEDIES CONTAINED HEREIN. EXCEPT FOR THE ABOVE LIMITED WARRANTY, THE ENTIRE RISK OF THE PRODUCT'S QUALITY AND PERFORMANCE IS WITH LICENSEE.

- K. Hardware Warranty:** Upon Payment in Full, Company provides as listed in the Infrastructure Services Section of the Order Form; (i.) the OEM Limited Depot Warranty coverage starting on the Commencement Date; (ii.) Company agrees to transfer said warranty to Licensee, but subject to this Agreement and to the OEM's Warranty Terms, Limitations and Conditions; (iii.) EMV Units come with an OEM Limited Warranty for One (1) year; (iv.) Licensee understands it is responsible for all shipping costs associated with Limited Depot Warranty. For further information, please see [\[OEM STANDARD WARRANTY TERMS DISCLOSURE\]](#) posted at [Product Specifications](#).
- L. EMV Gateway Service Fee:** Fee for each Credit and Debit Card Transaction processed through the EMV Gateway Provider, [i.e. Payment Card Industry ("PCI"), Europay-Mastercard-Visa ("EMV") Mobile Device Payment Systems ("MDPS")]: Licensee agrees to utilize exclusively the Company's Euro-pay, MasterCard, Visa ("EMV") Solution (i.e., EMV Processing Gateway and/or EMV Card Readers) for each; (i.) POS Credit and Debit Card Transaction; (ii.) Customer and Employee Mobile App Credit and Debit Card Transactions; (iii.) Donation Module Credit and Debit Card Transactions and (iv.) Ticket Module Credit and Debit Card Transaction and to accept and comply with any terms required thereby, and to pay the Company a Fee in the amount specified in the Order Form. For further information, please see [Credit and Debit Card Transaction Processing Terms Disclosure](#), or [\[EMV CREDIT AND DEBIT CARD TRANSACTION PROCESSING TERMS DISCLOSURE\]](#) posted at [Product Specifications](#).
- M. Telephone Technical Support:** As long as Licensee uses the Product(s) as intended by this Agreement, then Company provides (i.) Telephone Support and Remote login Trouble Shooting for Service (ii.) Software maintenance and Updates; (iii.) Software server hosting; and (iv.) and Software data backup. Licensee agrees the Telephone Technical Support is an Infrastructure Service Fee and cannot be removed or terminated during the Agreement.
- N. Indemnity.** The parties hereby mutually indemnify each other from any and all claims or losses arising out of this Agreement or the activities contemplated herein. Neither party shall be under any liability for any loss or for any failure to perform any obligation hereunder due to causes beyond its control including without limitation industrial disputes of whatever nature, power loss, telecommunications failure, internet connectivity failure, acts of God, *Force Majeure* or any other cause beyond its control.
- O. Limitation of Liability.** NEITHER PARTY SHALL HAVE ANY LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE LIABILITY OF EITHER PARTY FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE AMOUNT PAID TO COMPANY BY LICENSEE UNDER THIS AGREEMENT. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING WITHOUT LIMITATION TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. BOTH PARTIES UNDERSTAND AND AGREE THAT THE REMEDIES AND LIMITATIONS HEREIN ALLOCATE THE RISKS OF PRODUCT AND SERVICE NONCONFORMITY BETWEEN THE PARTIES AS AUTHORIZED BY APPLICABLE LAWS. THE FEES HEREIN REFLECT, AND ARE SET IN RELIANCE UPON, THIS ALLOCATION OF RISK AND THE EXCLUSION OF CONSEQUENTIAL DAMAGES SET FORTH IN THIS AGREEMENT.
- P. License Term & Termination.** The License granted herein shall remain in effect for the Agreement Term unless terminated as provided for herein. Company may terminate this Agreement, without prejudice to any other remedy Company may have, immediately without further obligation to Licensee, in the event of (1) any breach by Licensee of any section of this Agreement which cannot be remedied within fourteen (14) days of Company's notice to Licensee of the breach and Company's intent to terminate the License; or (2) Licensee's making an assignment for the benefit of its creditors, the filing under any voluntary bankruptcy or insolvency law, under the reorganization or arrangement provisions of the United States Bankruptcy Code, or under the provisions of any law of like import in connection with Licensee, or the appointment of a trustee or receiver for Licensee or its property. Termination shall not relieve Licensee's obligation to pay all amounts which are due and payable or which Licensee has agreed to pay. Upon termination of this Agreement for any reason, Licensee shall cease using the Product and Documentation and promptly return all copies of the Product, Documentation and all other Confidential Information in its possession or control. Licensee shall delete all copies of such materials residing in any computer memory and destroy all copies of such materials which also incorporate Licensee's Confidential Information. Company shall be entitled to enter the Location(s) to repossess and remove the Product, Documentation, and any other Confidential Information. Licensee shall, within ten (10) days from the effective date of the termination, certify to Company in writing by an officer or director of Licensee that all copies of the Software and Documentation have been returned, deleted and destroyed. In the event of a breach of the Agreement by Company or a service provider of Company, including but not limited to a breach of the FreedomPay services as identified in the EMV Credit and Debit Card Transaction Processing Terms Disclosure (the "[FreedomPay Disclosure](#)") incorporated by reference in the Order Form, which breach is not cured within fourteen (14) days after Company's receipt of written notice of the breach, then Licensee may, in addition to all other rights and remedies available to Licensee under the Agreement, at law or in equity, terminate the Agreement by giving Company written notice of termination.
- Q. Headings & Validity.** The headings used in this Agreement are for convenience only and are not intended to be used as an aid to interpretation. If any part of this Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected. This Agreement will be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns. Licensee may not assign its rights or obligations under this Agreement without the prior written consent of Company which consent shall not be unreasonably withheld or delayed.
- R. No Waiver & No Solicitation.** Failure by either party to exercise any right or remedy under this Agreement does not signify acceptance of the event giving rise to such right or remedy. Licensee shall not solicit the employment of nor employ any Company personnel who has been involved in the development, sale, installation, or support of the Software for a period of five (5) years from the later of the termination of such individual's employment at Company or the last date of Acceptance of any Software.
- S. Governing Law/Jurisdiction.** This Agreement shall be deemed to have been executed in the State of Florida and will be exclusively governed by and construed in accordance with the laws of the State of Florida, without regard to its conflict of law provisions. The parties hereby consent exclusively to the jurisdiction of the federal or state courts of the State of Florida for the purpose of any action or proceeding brought by either of them in connection with or arising out of this Agreement.
- T. Notice.** Unless otherwise agreed to by the parties, any notice required or permitted to be given or delivered under this Agreement shall be delivered to the address set forth in the Order Form. Notice shall be deemed to have been received by any party, and shall be effective, (i) on the day given, if personally delivered or if sent by confirmed facsimile transmission, receipt verified or (ii) on the third day after which such notice is deposited, if mailed by certified, first class, postage prepaid, return receipt requested mail.

- U. Attorneys' Fees.** The non-prevailing party in any action shall be responsible for the prevailing party's reasonable attorney's fees and costs associated with the enforcement or defense to enforcement of the terms of this Agreement or the collection of amounts due under this Agreement.
- V. Survival & Severability.** The payment, governing law/jurisdiction, confidentiality, non-solicitation, license use and other terms of this Agreement shall all survive any termination of this Agreement. Any provision of this Agreement be held to be illegal, invalid or unenforceable shall be fully severable, and this Agreement shall remain in effect and be construed and enforced as if such provision had never comprised a part of this Agreement. In the event of any conflict or inconsistency between any Order Form and this MSA Agreement, the terms and conditions of such Order Form shall control.
- W. Export Restrictions.** The Software may be subject to United States export laws and regulations. Licensee must comply with all domestic and international export laws and regulations that apply to the software. These laws include restrictions on destinations, end users and end use. For additional information, consult a competent attorney.
- X. Entire Agreement.** This document between the parties regarding the subject matter hereof supersedes all prior proposals, quotes, understandings, oral and written communications between the parties. Any changes or modifications hereto will not be valid unless in writing and signed by each party hereto. Entire Agreement is comprised of the Order Form and MSA. In the event of conflict of documents, the terms of the MSA will prevail.

V.5.8