

UNION MERCHANT AGREEMENT



This MERCHANT AGREEMENT (the “Merchant Agreement”) is entered into by and between ATX Innovation, Inc., A Delaware corporation, with its principal place of business at 1214 W. 6th Street, Suite 220, Austin, Texas 78703 (“Company”), and the other undersigned party (“Merchant”). This Merchant Agreement is effective as of the date accepted and countersigned by Company following Merchant’s acceptance and signature (the “Effective Date”). This Merchant Agreement is comprised of this Cover Page, the POS Order Form, the ACH Authorization Form, and the Merchant Terms and Conditions (attached hereto), and any exhibits attached thereto. The individual agreeing to this Merchant Agreement on behalf of Merchant represents and warrants that he/she: (a) has full legal authority to bind Merchant to this Merchant Agreement, (b) has read and understands this Merchant Agreement, and (c) agrees, on behalf of Merchant, to this Merchant Agreement.

SPECIFIC MERCHANT TERMS

Company will provide the Platform (as defined in the Merchant Terms and Conditions below), subject to the terms of this agreement. Merchant agrees to A) pay a \$1,000 down payment upon signing of the Merchant Agreement, and the remaining hardware total in full on Installation Date, B) pay monthly recurring software fees beginning on the date of installation of the Hardware (the “Installation Date”), and C) a one-year minimum commitment beginning on the Installation Date (the “Term Commitment”).

MERCHANT INFORMATION

Legal Name & any DBAs			
Entity Information	Type of Entity:	State of Incorporation (if applicable):	
Address	Address Line 1: Address Line 2:		
	City:	State:	Zip:
Merchant Representative Contact Information	Name:	Phone:	
	Email:	Fax:	

Merchant: _____

Merchant Rep Signature: _____

Merchant Rep Printed Name: _____

Merchant Rep Title: _____

Effective Date: _____

HARDWARE & INSTALLATION



Terminal Hardware

	QUANTITY	PRICE	SUBTOTAL
12.9" UNION Terminal <input type="checkbox"/> Counter Stand <input type="checkbox"/> Wall Mount		\$1599	
10.2" UNION Terminal <input type="checkbox"/> Counter Stand <input type="checkbox"/> Wall Mount		\$1099	
UNION Mini Handheld Terminal		\$849	

Additional Hardware

	QUANTITY	PRICE	SUBTOTAL
Manual Entry Device <i>(1 required)</i>		\$399	
Epson TM-U220B Kitchen Printer		\$299	
Epson TM-M30 Thermal Printer		\$299	
APG1313 - Cash Drawer		\$125	

ON-SITE SURVEY - An inspection of your venue will allow us to test the strength of your network and Internet and ensure that we have everything needed for your installation date.

Merchant must meet UNION network certification standards before install. Costs for services performed or additional hardware needed to meet network certification requirements will be the responsibility of the Merchant. Merchant acknowledges that Merchant is required to use UNION specified networking equipment. Merchant will notify UNION in advance of any and all changes made to the Merchant network. In the event that UNION is required to provide network support due to network changes, this support will be billed at \$175/hr.

CONFIGURATION, TRAINING & INSTALLATION - Our one-time flat fee includes configuration of your menu/venue details, training for management. Prices are subject to change based on the number of hours determined for installation.

ADDITIONAL NOTES:

Shipping:
\$40 flat per terminal

Subtotal:

Sales Tax:

Total:

PRINTED NAME _____

SIGNATURE _____

DATE _____



Software Fees

UNION charges a monthly software fee that includes all feature updates and 24/7/365 software support. NO upfront license costs and NO upgrade fees ever.

QUANTITY	PRICE	MONTHLY FEE
_____	\$69	_____

**applicable sales tax may apply*

PRINTED NAME _____ SIGNATURE _____ DATE _____

ACH PAYMENT INFORMATION



I, _____ (Full Name) authorize ATX Innovation, Inc. dba UNION Point of Sale to charge my bank account indicated below for any and all transactions due. This authority will remain in effect until written notification is received.

Complete these fields and send a copy or picture of voided check

Venue Name _____

ACH: BANK NAME _____

TYPE OF ACCOUNT Savings Checking

ROUTING NUMBER _____ BANK ACCOUNT _____

Merchant authorizes UNION Point of Sale and its agents and representatives to initiate debits and credits, as applicable, to the bank account listed above or substitute account designated by Merchant through the Automated Clearing House network. Additional information included in the UNION Merchant Terms and Conditions.

Signature

Date

MERCHANT TERMS & CONDITIONS



Effective: November 1, 2019

These Merchant Terms and Conditions (these “Terms”) apply to Merchant’s access to and use of: (1) our point-of-sale software (the “Software”) that, among other things, includes our customer relationship management solution (“CRM Solution”) and also enables users (“Customers”) of our mobile application (“App”) to open, review, and pay their bar or restaurant tab with their compatible mobile device (the “Mobile Payment Solution”); (2) our point-of-sale hardware loaded with the Software (“Hardware”); and (3) any other services, technology, content, data, and features made available by us pursuant to these Terms (together with the Software and Hardware, the “Platform”). In these Terms, “Company,” “we,” “us,” and “our” refer to ATX Innovation, Inc. and our affiliates, successors, and assigns, and “Merchant” refers to the merchant that accepts and agrees to these Terms. Company and Merchant are individually referred to in these Terms as a “Party” and collectively as the “Parties.”

1. Merchant’s Acceptance of these Terms.

By accessing or using the Platform in any way, Merchant agrees to be bound by these Terms. If Merchant does not agree to all the terms and conditions of these Terms, Merchant may not access or use the Platform. These Terms are incorporated by reference in any Merchant Agreement between Merchant and Company for the Platform that refers to or links to these Terms (the “Merchant Agreement”). In the event of a conflict between these Terms and the Merchant Agreement, the Merchant Agreement will control.

2. Additional Terms.

In conjunction with Merchant’s access to and use of the Platform, Merchant may be subject to additional terms, rules, policies, and conditions, including, but not limited to, purchase orders, platform specifications, and end user license agreements for the Platform (“Additional Terms”), which are hereby incorporated by reference in these Terms. In the event of a conflict between these Terms and any Additional Terms, the Additional Terms will control, unless otherwise agreed in writing by the Parties.

3. Changes to these Terms and the Platform.

We may, without prior notice or liability to Merchant, modify the Platform by adding or removing features and functionalities. We may also revise these Terms from time to time in our sole discretion, subject to Applicable Law (as defined below). When we revise these Terms, we will notify Merchant via email, the Platform, our website, or any other method we deem to be reasonable in the circumstances. Except as otherwise expressly stated by us, all changes to these Terms are effective immediately and apply to Merchant’s access to and use of the Platform

thereafter. Merchant is free to decide whether or not to accept a revised version of these Terms, but accepting these Terms, as revised, is required for Merchant to continue accessing or using the Platform. If Merchant does not agree to these Terms or any revised version of these Terms, Merchant’s sole recourse is to terminate its access to or and use of the Platform. Except as otherwise expressly stated by us, Merchant’s access to and use of the Platform are subject to, and constitute Merchant’s acceptance of, the version of these Terms in effect at the time of

Merchant’s access or use. For purposes of these Terms, “Applicable Law” means any law, rule, regulation, ordinance, code, or order to which a Party may be subject or under which a Party may exercise rights.

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4. Requirements.

In order to access or use the Platform, Merchant must: (a) be an entity formed or incorporated in the United States or an individual sole proprietor 18 years of age or older residing in the United States; (b) accept, agree to, and comply with these Terms; and (c) provide all information requested by us, such as Merchant's legal name, email address, mailing address, phone number, and such other information as we may request from time to time. Merchant represents and warrants that all such information Merchant provides to us from time to time is truthful, accurate, current, and complete. Merchant must immediately notify us upon cessation or suspension of its business operations or intent to do so.

5. Limited License.

5.1 Subject to, and except as otherwise expressly provided by, these Terms, we hereby grant Merchant a limited, non-exclusive, non-transferable, non-sublicensable, and revocable right and license to access and use the Platform, including all updates, upgrades, and modifications thereto made available by us, via download or otherwise, from time to time, solely for its intended purposes in accordance with these Terms and any Additional Terms. Merchant must follow our instructions with respect to the Platform. We may host elements of the Platform using our own infrastructure or we may engage a third party to host the Platform on our behalf. Merchant is responsible for making all arrangements necessary for Merchant to access and use the Platform (other than Hardware), including obtaining and maintaining network infrastructure and for paying all third-party fee incurred to access and use the Platform.

5.2 Merchant acknowledges that (a) the Platform may contain other software or components that are either owned by a third party or in the public domain ("Third-Party Software"), including but not limited to mobile device management software, and (b) we have no proprietary interest in Third-Party Software and, as such, cannot grant Merchant a license to use Third-Party Software. We will provide a listing of Third-Party Software to Merchant upon Merchant's written request. Merchant's rights in Third-Party Software are governed by and subject to the terms and conditions set forth in the applicable licenses for Third-Party Software. Merchant acknowledges and agrees to fully comply with such terms and conditions. IN ADDITION TO ANY DISCLAIMERS SET FORTH IN SUCH TERMS AND CONDITIONS, THE DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH IN THESE TERMS APPLY TO COMPANY AND OUR LICENSORS WITH RESPECT TO ANY THIRD-PARTY SOFTWARE. WE ARE NOT OBLIGATED TO PROVIDE SUPPORT SERVICES FOR THIRD-PARTY SOFTWARE UNLESS EXPRESSLY AGREED TO IN WRITING BY US.

6. Hardware.

To enable Merchant's access to and use of the Platform, Merchant agrees to provide any and all assistance to Company and our employees and representatives to perform Platform installation, updates, and maintenance. Merchant acknowledges and agrees that Company may perform certain updates, troubleshooting and maintenance, through the use of features such as device management software. Company will pass through to Merchant any end-user warranties for the Hardware to the extent received by Company from any third-party manufacturer or distributor of the Hardware. Merchant may not allow anyone other than Company or one of our agents or other designees to service or repair the Hardware without our prior written consent. Merchant agrees that at all times during which the Software is accessed or used on the Hardware, Merchant shall only use the Hardware for such access and use of the Software.

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7. Fees and Taxes.

7.1 In consideration for Merchant's access to and use of the Platform, Merchant agrees to pay the fees, if any, specified in the Merchant Agreement ("Fees"). All Fees are due and payable in U.S. dollars and are non-refundable.

7.2 All Fees are exclusive of any applicable sales, excise, use, or similar taxes. Merchant must pay all such taxes either directly or to Company or as otherwise required by Applicable Law. Merchant acknowledges and agrees that it is responsible for determining, paying, withholding, filing, and reporting all taxes, duties, and other governmental assessments associated with Merchant's access to and use of the Platform. We are not responsible for determining whether Merchant owes taxes in connection with Merchant's access to or use of the Platform or for collecting, reporting, or remitting taxes arising from Merchant's access to or use of the Platform, except for our own income taxes. Merchant agrees to reimburse and indemnify Company for any taxes, penalties, and interest assessed by any taxing authority regarding amounts owed by Merchant in connection with these Terms.

8. Future Platform Developments

8.1 All future platform developments discussed by Company to Merchant are all made in good faith. However, Merchant acknowledges they are accepting Platform as is, as of the date of execution of this agreement. Company will not be liable if platform developments discussed do not come to fruition for any reason.

9. Platform Support, Maintenance, Availability, and Training.

9.1 We will provide Merchant with reasonable support to help resolve issues related to the Platform. Merchant is solely responsible for providing customer service for any and all issues related to the goods and services it provides Customers. Merchant must promptly: (a) refer all inquiries and complaints from Customers concerning the App and the Mobile Payment Solution to us; (b) provide any written documentation related to such inquiries and complaints to us; and (c) cooperate with us to resolve Customers' inquiries and complaints to the extent necessary.

9.2 We may need to carry out routine or urgent maintenance for the Platform from time to time. We will use commercially reasonable efforts to inform Merchant of any downtime that we anticipate will affect the platform and to restore the Platform as soon as reasonably practicable; provided, however, that we will not be liable if any or all of the Platform is unavailable at any time or for a period of time for any reason.

9.3 We, in our discretion, may provide written and/or electronic materials to Merchant to train its staff on the Platform. In addition, we, in our discretion, and subject to Merchant's approval, may provide in-person, telephonic, and online training on the Platform to Merchant's staff.

10. Additional Terms for the Mobile Payment Solution and CRM Solution.

10.1 Merchant must accept Customers' payments using the Mobile Payment Solution in accordance with our standard operating instructions and these Terms.

10.2 Merchant must provide Customers with transaction receipts as required by Card Network Rules and Applicable Law. For purposes of these Terms, "Card Network Rules" mean the bylaws, rules, and other published operational and technical requirements of any payment network (e.g., Visa®, MasterCard®, American Express®, and Discover®) applicable to the Platform, Merchant's acceptance of payment cards, and a Party's obligations under these Terms.

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10.3 Merchant may not impose any additional restrictions, conditions, or fees on Customers' use of the App or the Mobile Payment Solution or engage in any practices that discriminate against or discourage Customers' use of the App.

10.4 The Mobile Payment Solution may allow Merchant to select a minimum and/or default tip or gratuity that will be presented to Customers in the App. Merchant is solely responsible for determining its tax withholding and payment obligations relating to gratuities added to or included in Customers' payments.

10.5 Merchant acknowledges and agrees that Company: (a) is not a financial institution and does not provide banking or payment processing services; (b) is not a party to the payment transactions performed by Merchant and Customers using the Platform; (c) does not hold or transmit any funds belonging to Customers or Merchants; (d) is not liable for delays in delivery of Customers' payments for any reason, including, but not limited to, as a result of the actions or inactions any banks, processors, card networks, or other third parties; (e) is not liable for any Customers' payments that are not completed because: (i) a Customer's payment account does not contain sufficient funds to complete the transaction or the transaction would exceed the credit limit or overdraft protection of Customer's payment account; (ii) a Customer has not provided us with correct or updated payment account information; or (iii) a Customer's payment account has expired.

10.6 We are not responsible for any overcharges, chargebacks, reversals, or other payment disputes relating to payment transactions facilitated by the Platform. We will use commercially reasonable efforts to assist Merchant in disputing and resolving any chargebacks or reversals of Customers' payments.

10.7 Merchant acknowledges that promotional offer campaigns facilitated through the CRM solution ("Offers") are subject to certain limitations established by Company from time to time, including, but not limited to, Customers' eligibility for, and redemption of, Offers.

11. Intellectual Property Rights.

11.1 Merchant acknowledges and agrees that the Platform is protected by copyright, trademark, patent, and other intellectual property laws. Except as expressly provided in these Terms, Company does not grant Merchant any licenses, express or implied, to the Platform or any of our other intellectual property. Company and its licensors retain all right, title, and interest in and to the Platform, including any updates, upgrades, and modifications thereto, and any associated patents, trademarks, copyrights, mask work rights, trade secrets, and other intellectual property rights.

11.2 Except as expressly provided by these Terms or with our prior written consent, Merchant may not use, modify, disassemble, decompile, reverse engineer, reproduce, distribute, rent, sell, license, publish, display, download, transmit, or otherwise exploit the Platform in any form by any means. Without limiting the foregoing, Merchant may not, and may not permit any third party to: (a) use any robot, spider, scraper, or other automatic or manual device, process, or means to access or copy the Platform; (b) take any action that imposes or may impose (in our sole determination) an unreasonable or disproportionately large load on the Platform or our infrastructure; (c) utilize any device, software, or routine that will interfere or attempt to interfere with the functionality of the Platform; (d) rent, lease, copy, provide access to, or sublicense any portion of the Platform to a third party; (e) use any portion of the Platform to provide, or incorporate any portion of the Platform into, any product or service provided to a third party; (f) copy, reproduce, modify, translate, prepare derivative works of, de-compile, reverse engineer, disassemble, or otherwise attempt to derive the source code of the Platform; (g) remove, obscure, or alter any copyright notice, trademarks, logos, trade names, or other proprietary rights notices contained in the Platform; (h) use the Platform in

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violation of these Terms or any Applicable Law; or (i) use the Hardware for any purpose other than accessing and using the Platform. We may, but are not obligated to, monitor Merchant's use of the Platform.

12. Marketing and Publicity.

12.1 Merchant hereby grants Company a non-exclusive, non-transferable, limited, and revocable license to use Merchant's name, logos, trademarks, service marks, and graphics in general listings of Merchants in the App, on Company's website and social media accounts, and in other print and electronic marketing materials solely to provide information about the Platform, subject to any usage guidelines provided by Merchant.

12.2 We hereby grant Merchant a non-exclusive, non-transferable, limited, and revocable license to use Company's name, logos, trademarks, service marks, and graphics on our website and other marketing materials solely to provide information about the Mobile Payment Solution to Customers, subject to any usage guidelines provided by us.

12.3 Except as otherwise expressly permitted by these Terms, neither Party may use, copy, or modify any of the other Party's name, logos, trademarks, service marks, and graphics without such other Party's prior written approval. Each Party acknowledges that the other Party's name, logos, trademarks, service marks, and graphics are and will remain the exclusive property of such other Party.

12.4 Each Party must cease using the other Party's name, logos, trademarks, service marks, and graphics upon termination of these Terms or if otherwise directed to do so by such other Party.

13. POS Data.

To the maximum extent permitted by Applicable Law, Merchant hereby grants Company and our affiliates, successors, and assigns an irrevocable, non-exclusive, transferable, and assignable license and right to collect certain transaction data in connection with Merchant's access to and use of the Platform ("POS Data"). POS Data includes information.

14. App Data.

14.1 We exclusively own all right, title, and interest in and to any and all data that is provided to or obtained by us in connection with the App ("App Data"), including, but not limited to, data regarding Customers and their use of the App, and, subject to our Privacy Policy and Applicable Law, may use App Data for any lawful purpose. To the extent Merchant receives App Data in connection with its access to or use of the Platform, Merchant may only use App Data as necessary to perform its obligations under these Terms, except as expressly provided in Section 14.2, or as otherwise expressly required by Applicable Law. Without limiting the foregoing, Merchant may not use App Data for any other purpose, including, but not limited to, marketing to or communicating with Customers other than through the Platform.

14.2 Notwithstanding Section 14.1 and except as otherwise provided in any applicable Additional Terms, we, in our sole discretion, may from time to time grant, convey, sell, or otherwise transfer to Merchant a non-exclusive limited license to use certain aggregate, statistical, and/or anonymous data derived from App Data.

14.3 Merchant must: (a) restrict disclosure of App Data to its employees, officers, directors, and agents solely on a "need to know" basis in accordance with these Terms; (b) advise its employees, officers, directors, and agents of their confidentiality obligations; (c) require its employees, officers, directors, and agents to protect and restrict the

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use of App Data; (d) use the same degree of care to protect App Data as it uses to safeguard its own confidential information of similar importance, but in no event less than a reasonable degree of care; and (e) establish procedural, physical, and electronic safeguards to prevent the compromise or unauthorized disclosure of App Data. In the event there is a breach of security of Merchant that results or may result in unauthorized disclosure of App Data, Merchant must immediately notify us of such breach, the nature of such breach, and the corrective action taken to respond to such breach and must take all steps, at its own expense, to immediately limit, stop, or otherwise remedy such misappropriation, disclosure, or use. Merchant is solely responsible for any App Data in its possession or under its control and must bear the risk of loss resulting from its possession, storage, transmission, and use of such App Data.

14.4 Within 30 days of the termination of these Terms or at any time upon our request, Merchant must return to us (or destroy if so directed by us) all App Data in its possession or in the possession of any employee or agent of Merchant, as directed by us.

15. Representations and Warranties.

In addition to any other representations and warranties set forth in these Terms, Merchant represents and warrants to Company that: (a) if applicable, Merchant is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation or incorporation; (b) if applicable, Merchant is qualified to transact business and in good standing in each jurisdiction in which it operates; (c) Merchant has all requisite right, power, and authority to accept and agree to these Terms and perform its obligations and grant the rights, licenses, and authorizations granted by Merchant hereunder; (d) Merchant's employees, officers, directors, and agents accessing or using the Platform are duly authorized to access and use the Platform and legally bind Merchant to these Terms; and (e) Merchant and all of its employees, officers, directors, and agents will comply with these Terms, all Applicable Law, and applicable payment industry standards, including, but not limited to, the PCI DSS and Card Network Rules, as such standards may be amended from time to time, in the performance of Merchant's obligations and exercise of Merchant's rights under these Terms.

16. Term, Suspension and Termination.

16.1 The initial term of the Merchant Agreement shall commence on the Effective Date set forth in the Cover Page and shall continue in effect for the duration of the Term Commitment (as stated in the Cover Page). AFTER THE TERM COMMITMENT, THE MERCHANT AGREEMENT SHALL AUTOMATICALLY RENEW ON A MONTH-TO-MONTH BASIS UNTIL EITHER PARTY GIVES NOTICE PURSUANT TO THE TERMINATION PROVISION BELOW.

16.2 Merchant agrees that Merchant's obligations to pay fees incurred prior to the effective date of termination (including all outstanding Hardware Balances and any monthly Software Fees for the remainder of the Term Commitment) shall continue in full force and effect notwithstanding expiration or termination of the Merchant Agreement and shall be immediately due and payable in full upon expiration or termination. Merchant hereby authorizes Company to charge all such amounts as and when due through ACH or any other payment method on file for Merchant.

16.3 We may, in our sole discretion, suspend, limit, or terminate Merchant's access to or use of the Platform for any conduct that violates these Terms, the Merchant Agreement, or any Additional Terms, or if we believe Merchant's

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credit has deteriorated and Merchant refuses to pay any requested advance payment or deposit. Merchant may stop using the Platform by providing 30 days' prior written notice via email to support@union-pos.com, subject to Section 16.2. Upon the termination of these Terms, Merchant must cease all use of the Platform.

16.4 Termination of Merchant's access to and use of the Platform will not affect any of our rights or Merchant's obligations arising under these Terms prior to such termination. Provisions of these Terms that, by their nature, should survive termination of Merchant's access to and use of the Platform will survive such termination.

17. Disclaimers.

17.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PLATFORM IS PROVIDED TO MERCHANT HEREUNDER STRICTLY ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY WARRANTY OF ANY KIND, AND COMPANY HEREBY DISCLAIMS ANY AND ALL CONDITIONS, REPRESENTATIONS, AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, TITLE, ACCURACY OF DATA, NON-INFRINGEMENT, NON-INTERFERENCE, AND FITNESS FOR A PARTICULAR PURPOSE.

17.2 WITHOUT LIMITING THE FOREGOING, COMPANY MAKES NO WARRANTY THAT (A) THE PLATFORM WILL MEET MERCHANT'S REQUIREMENTS; (B) THE PLATFORM WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (C) THE RESULTS THAT MAY BE OBTAINED FROM ACCESS TO OR USE OF THE PLATFORM WILL BE ACCURATE OR RELIABLE; OR (D) ANY ERRORS IN THE PLATFORM WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY COMPANY OR ANY OF OUR AUTHORIZED REPRESENTATIVES WILL CREATE ANY WARRANTY.

17.3 MERCHANT HEREBY RELEASES COMPANY (AND OUR EMPLOYEES, OFFICERS, DIRECTORS, AND AGENTS) FROM ALL CLAIMS, DEMANDS, AND DAMAGES OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, SUSPECTED AND UNSUSPECTED, DISCLOSED AND UNDISCLOSED, ARISING OUT OF OR IN ANY WAY CONNECTED WITH ANY DISPUTE BETWEEN MERCHANT AND A CUSTOMER.

18. Limitation of Liability.

18.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL COMPANY, OUR AFFILIATES, OR OUR OR THEIR EMPLOYEES, OFFICERS, DIRECTORS, OR AGENTS BE LIABLE TO MERCHANT OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND, WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE, INCLUDING DAMAGES OR COSTS INCURRED AS A RESULT OF A LOSS OF TIME, SAVINGS, PROPERTY, PROFITS, BUSINESS, CONTRACTS, REVENUE, ANTICIPATED SAVINGS, DATA, OR GOODWILL, ARISING OUT OF OR RELATED TO THESE TERMS OR THE PLATFORM, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

18.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, COMPANY'S AGGREGATE LIABILITY TO MERCHANT FOR ANY CLAIM WHATSOEVER AND REGARDLESS OF THE FORM OF ACTION WILL BE LIMITED TO THE GREATER OF: (A) THE TOTAL AMOUNT OF FEES (IF ANY) ACTUALLY PAID BY MERCHANT UNDER THESE TERMS FOR THE 12-MONTH PERIOD PRIOR TO WHEN THE CLAIM WAS BROUGHT OR (B) \$1,000.

18.3 IN ADDITION TO AND WITHOUT LIMITING ANY OF THE FOREGOING, COMPANY WILL HAVE NO LIABILITY FOR ANY FAILURE OR DELAY RESULTING FROM ANY CONDITION BEYOND OUR REASONABLE CONTROL,

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INCLUDING, WITHOUT LIMITATION, ACTS OF GOD, ACTS OF TERRORISM, LABOR CONDITIONS, POWER FAILURES, INTERNET DISTURBANCES, OR SERVICES OR SYSTEMS CONTROLLED BY THIRD PARTIES.

18.4 THE PARTIES AGREE THAT THE DISCLAIMERS, EXCLUSIONS, AND LIMITATIONS IN THESE TERMS ARE ESSENTIAL ELEMENTS OF THESE TERMS AND REPRESENT A REASONABLE ALLOCATION OF RISK BETWEEN THE PARTIES. IN PARTICULAR, MERCHANT UNDERSTANDS THAT WE WOULD BE UNABLE TO PROVIDE THE PLATFORM TO MERCHANT EXCEPT ON THESE TERMS AND AGREES THAT THESE TERMS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THESE TERMS IS FOUND TO HAVE FAILED ITS ESSENTIAL PURPOSE.

19. Indemnity.

Merchant must indemnify, hold harmless, and (at our request) defend Company, our affiliates, and our and their respective employees, officers, directors, and agents from and against all damages, claims, suits, costs, fines, penalties, liabilities, and expenses (including reasonable attorneys' fees) that arise from a third party's claim arising out of or on account of or resulting from: (a) Merchant's breach or alleged breach of these Terms; (b) violation of Applicable Law, PCI DSS, or the Card Network Rules by Merchant or its employees, officers, directors, or agents; (c) infringement of any thirdparty intellectual property rights by Merchant or its employees, officers, directors, or agents; (d) Merchant's tax obligations; and (e) the gross negligence, fraud, or willful misconduct of Merchant or its employees, officers, directors, or agents or any other actions or omissions resulting in liability to us. Company reserves the right to assume the exclusive defense and control of any matter subject to indemnification by Merchant, in which event Merchant will cooperate in asserting any available defenses.

20. General.

20.1 Third-Party Payment Processors and POS Companies. Certain third parties, including, without limitation, Merchant's payment processor, may present these Terms and a Merchant Agreement to Merchant for Merchant's review and acceptance. Such third parties are independent contractors and have no power to bind Company or incur obligations on our behalf.

20.2 Export. Merchant may not export, re-export, import, or transfer any Software or other technology or materials related to the Platform, either directly or indirectly, in violation of Applicable Law, and Merchant will not assist or facilitate others in doing any of the foregoing. Merchant represents and warrants that it is not located in, a resident of, or a citizen of any country to which the United States has embargoed goods.

20.3 Audit. Upon reasonable notice to Merchant, we may, either ourselves or through a third-party auditor, enter Merchant's premises during Merchant's normal business hours to inspect and audit the Hardware and Merchant's computer systems, network, and records solely to verify Merchant's compliance with these Terms.

20.4 Governing Law and Jurisdiction. The validity, interpretation, construction, and performance of these Terms will be governed by the laws of the State of Texas, without giving effect to the principles of conflict of laws and without reference to rules of arbitration or statutory arbitration. The federal and state courts located in Travis County, Texas will be the exclusive venue for any dispute or claim between the Parties, or against any agent, employee, successor, or assign thereof, arising out of or in connection with these Terms, and the Parties hereby consent to the personal jurisdiction of those courts for such purposes.

20.5 Relationship of Parties. No agency, joint venture, partnership, trust, or employment relationship is created

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between Company and Merchant by way of these Terms. Neither Party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

20.6 Assignment. Merchant may not transfer or assign these Terms or any license set forth herein, in whole or in part, without our prior written consent. We may assign these Terms without restriction and without Merchant's prior consent. Any attempted transfer or assignment by Merchant without our prior written consent will be null and void. These Terms will be binding on all permitted assignees.

20.7 Severability. The invalidity or unenforceability of any provision of these Terms will not affect the validity of these Terms as a whole, and any such provision should be enforced by authorities, and reconstructed if need be, to apply to the maximum extent allowable under Applicable Law.

20.8 Waiver. The failure by us to enforce at any time any of the provisions of these Terms, to exercise any election or option provided herein, to require at any time Merchant's performance of any of the provisions herein, or to enforce our rights under these Terms or Applicable Law will not in any way be construed as a waiver of such provisions or rights. The express waiver by us of any provision, condition, or requirement of these Terms will not constitute a waiver of any future obligation to comply with such provision, condition, or requirement.

20.9 Entire Agreement. These Terms, including the Merchant Agreement and any Additional Terms, constitute the entire agreement between Company and Merchant, and supersede and replace any prior representations, agreements, negotiations, and understandings between Company and Merchant, whether written or oral, relating to the Platform. No modification or amendment to these Terms will be binding upon Company unless approved in writing by a duly authorized representative of Company; provided, however, that, no representative may modify these Terms by email message.

20.10 Notices. We will send all notices and other communications regarding the Platform to Merchant at the email address Merchant provided in the Merchant Agreement, as may be updated by Merchant from time to time by contacting us at support@union-pos.com or (866) 626-8045. Merchant will be considered to have received a notice from us under these Terms when we send it to the email address we have in our records for Merchant or when we mail such notice to the mailing address provided in the Merchant Agreement, as may be updated by Merchant from time to time by emailing support@union-pos.com. Except as otherwise provided in these Terms, all notices to Company that are intended to have a legal effect must be in writing and delivered either (a) in person at the following address: 1214 W. 6th Street, Suite 220, Austin, Texas 78703; or (b) by a means evidenced by a delivery receipt, to the following address: 1214 W. 6th Street, Suite 220, Austin, Texas 78703. All such notices are deemed effective upon documented receipt by us.

Signature

Date