

**CANTALOUPE, INC.**  
**MASTER SERVICES AGREEMENT**

<b>Operator Name ("Operator")</b>	
<b>Agreement No.</b>	
<b>Effective Date</b>	

Cantaloupe, Inc. ("**Cantaloupe**"), a Pennsylvania corporation, located at 100 Deerfield Lane, Suite 300, Malvern, Pennsylvania 19355, offers point-of-sale and other payment processing solutions (together with any other services provided by or on behalf of Cantaloupe in connection with this Agreement, the "**Services**") through which an Operator can sell its products and services through point-of-sale kiosks and similar devices in combination with other hardware, such as telemeters, antennas and accessories, made available by Cantaloupe or otherwise interoperating with the Services (the "**Hardware**"). Cantaloupe will be responsible for all order processing, payment processing and other services agreed to by Cantaloupe and Operator. Operator may manage orders, manage revenues, track delivery and otherwise monitor sales of their products and services using an application or online dashboard provided by Cantaloupe (the "**Dashboard**"). In addition, Cantaloupe offers optional integration, implementation, and other professional services (the "**Professional Services**").

This Master Services Agreement ("**Agreement**") permits Operator (as identified above) to purchase Services, Hardware, and Professional Services from Cantaloupe pursuant to Cantaloupe order forms referencing this Agreement ("**Order Form(s)**") and sets forth the terms and conditions under which those services will be delivered. To the extent any payments for sales transactions that are payable to Operator are received by Cantaloupe, Operator hereby appoints Cantaloupe as its authorized agent and representative to receive such payments in accordance with this Agreement. This Agreement shall govern Operator's initial purchase of services from Cantaloupe as well as any future purchases made by Operator that reference this Agreement. This Agreement incorporates any and all attachments, Statement of Works and Order Forms executed by the parties.

**1. SERVICES**

**1.1. Provision of Services.** Cantaloupe will make the Services available to Operator during the term of this Agreement, as further described in the applicable Order Form and on the Cantaloupe website(s) (the "**Cantaloupe Website**"), and Cantaloupe hereby grants to Operator a non-exclusive, limited license to use the Services on the terms set forth herein. The Services include provision of the Dashboard and may include such other services as Operator elects to receive on the applicable Order Form or over the Cantaloupe Website. Cantaloupe shall have the right, from time to time in its sole and absolute discretion, to add to, modify, discontinue or withdraw any one or more of the services that are contained in the Services should Cantaloupe deem it necessary to do so. Each change will be an amendment to Operator's Services, shall be done in the ordinary course of business with notice to Operator through the Dashboard or by email, newsletter or notice on the Cantaloupe Website, and shall be implemented in accordance with Cantaloupe's current policies and procedures.

**1.2. Access to Dashboard.** During the term of this Agreement, Operator may access and use the Dashboard solely for its own benefit and in accordance with the terms and conditions of this Agreement. Use of and access to the Dashboard is permitted only by (i) Operator's employees and (ii) independent contractors and consultants who are not competitors of Cantaloupe ("**Contractors**"), in each case who are made aware of the terms and conditions of this Agreement and agree to comply with the terms and conditions hereof ("**Permitted Users**"). If Operator is given passwords to access the Dashboard or any other Cantaloupe systems, Operator shall require that all Permitted Users keep user ID and password information strictly confidential and not share such information with any unauthorized person. Operator shall be responsible for any and all actions that are taken by any party using Operator's accounts and passwords, including all actions and use by the Permitted Users. Operator shall immediately notify Cantaloupe if there is any unauthorized access to Operator's accounts or passwords.

**1.3. General Restrictions.** Operator shall not (and shall not permit any third party to): (i) rent, lease, copy, provide access to or sublicense the Services to a third party; (ii) use any Service to provide services to, or incorporate any Service into any product or service provided to, a third party, (iii) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or non-public APIs to the Services, except to the extent expressly permitted by applicable law (and then only upon advance notice to Cantaloupe), (iv) modify any Service or create any derivative product from any of the foregoing, (v) remove or obscure any proprietary or other notices contained in any Service (including any reports or data printed from the Dashboard), or (vi) publicly disseminate information regarding the performance of the Services.

**1.4. Processing Agreement and Operator Agreements with Processor; Compliance with Laws, Rules and Regulations; Prohibited Activities.**

**1.4.1. Processing Agreement and Operator Agreements with Processor.** Cantaloupe is a payment facilitator or submitter under a

processing agreement ("**Processing Agreement**") with a payment processor (the "**Processor**") who is a member of the Card Organizations. In order for Cantaloupe to process Operator's transactions, Operator may be required to enter into certain agreements with the Processor that may allow Operator to be in privity of contract with the Processor and to be a sub-merchant of Cantaloupe under the Processing Agreement so that Operator's transactions can be submitted to the Processor. Operator agrees to enter into the additional agreements with Cantaloupe and the Processor (the "**Operator Processing Agreements**") that are required by the Processor and to provide Processor with any information that it requests in connection therewith. Operator acknowledges and agrees that it shall not be able to sell the Operator Products through the Hardware or use the Services, and Cantaloupe shall not be required to provide the Services, until Operator has been approved by Processor as a sub-merchant of Cantaloupe under the Processing Agreement. Cantaloupe may from time to time transfer Operator's transactions to a different payment processor, and in such event, Operator agrees to enter into any required agreements with, and to provide any requested information to, such new processor.

**1.4.2. Compliance with Laws, Rules and Regulations.** Operator acknowledges and agrees that sales of Operator Products through the Hardware or otherwise in connection with the Services are subject to (i) applicable laws, rules and regulations (collectively, "**Applicable Laws**") of the United States and other relevant jurisdictions, including laws, rules and regulations (a) that prohibit unfair, deceptive and/or abusive practices (UDAAP laws) that apply to Operator's marketing and sale of the Operator Products, (b) relating to anti-money laundering regulations and Office of Foreign Assets Control regulations, and (c) relating to privacy and data security, including the Gramm-Leach-Bliley Act, General Data Protection Regulation (GDPR) and state data privacy statutes such as the California Consumer Privacy Act (CCPA); (ii) the standards, bylaws, rules, regulations, releases, interpretations and other requirements (whether contractual or otherwise) (collectively, the "**Card Organization Rules**") imposed or adopted by any entity formed to administer and promote credit, debit and other cards, including MasterCard International, Inc., Visa, Inc., Discover Financial Services, LLC and any applicable debit networks (the "**Card Organizations**"), and other authorities that govern the payments industry generally, including the PCI Security Standards Council ("**PCI SSC**"); (iii) the rules, guidelines and policies of Cantaloupe that Cantaloupe may notify Operator of from time to time in order for Cantaloupe to meet its obligations with respect to Applicable Laws, the Card Organizations Rules, the PCI SSC Data Security Standards and the rules, policies and guidelines of its third party payment processors (collectively, the "**Cantaloupe Policies**"); and (iv) the Operator Processing Agreements. Operator covenants and agrees that it shall conduct its business at all times in compliance with all Applicable Laws, Card Organization Rules, PCI SSC Data Security Standards, Cantaloupe Policies and the Operator Processing Agreements and in accordance with best industry practices. Operator acknowledges and agrees that it may not use the Services to sell Operator Products or process transactions that are in and of themselves illegal or which involve illegal or prohibited products, including the products that are prohibited by the Card

Organizations, the Processor or the Cantaloupe Policies from time to time. Cantaloupe shall conduct its business at all times in compliance with all Applicable Laws, Card Organization Rules and PCI SSC Data Security Standards. Information regarding the Card Organization Rules for VISA can be found at <http://usa.visa.com/merchants/merchant-support/international-operating-regulations.jsp>, and for MasterCard at [http://www.mastercard.com/us/merchant/pdf/BM-Entire\\_Manual\\_public.pdf](http://www.mastercard.com/us/merchant/pdf/BM-Entire_Manual_public.pdf) and for Discover at [www.discovernetwork.com](http://www.discovernetwork.com), in each case as amended or modified during the term of this Agreement and at such other replacement site created by the Card Organizations during the term of this Agreement.

### 1.5. Operator Products, Appointment as Payment Facilitator and Licenses by Operator.

1.5.1. *Operator Products.* “Operator Products” means any assets, goods and/or services of Operator that are sold by Operator through the Hardware or otherwise using the Services.

1.5.2. *Appointment as Payment Facilitator.* Operator hereby appoints Cantaloupe, and Cantaloupe hereby accepts such appointment, as the payment facilitator or submitter of Operator’s transactions under the Processing Agreement. Any collection or receipt of Operator’s payments by Cantaloupe from end users is done at the express direction of Operator, and Operator hereby directs Cantaloupe to collect and process payments on Operator’s behalf in accordance with this Agreement and the Processing Agreement. The parties acknowledge and agree that receipt by Cantaloupe of monies or payments that are due to Operator from end users for the sale of Operator Products through the Services shall satisfy the end user’s obligation to Operator up to the amount of monies or payments received by Cantaloupe.

1.5.3. *License to Use Operator Intellectual Property.* Operator hereby grants to Cantaloupe, during the term of this Agreement, a worldwide, non-exclusive, irrevocable, royalty-free limited license to use those trademarks, service marks and tradenames owned or held by Operator (“Operator Intellectual Property”) that are useful to Cantaloupe in the provision of the services to Operator under this Agreement, including Operator’s name and applicable Operator Product trademarks.

### 1.6. Operator Product Obligations.

1.6.1. *End User Agreements; Warranty, Support and Maintenance Obligations.* Operator shall be solely responsible for providing and entering into the applicable terms with end users for use of the Operator Products (each, an “End User Agreement”), if necessary or applicable. Operator shall be solely responsible for providing all warranty, support, maintenance or any other after-sales obligations to end users of the Operator Products.

1.6.2. *Export Controls.* In its use of the Services, Operator agrees to comply with all export and import laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, (a) Operator represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a “terrorist supporting” country, (b) Operator shall not (and shall not permit any of its users to) access or use the Services in violation of any U.S. export embargo, prohibition or restriction, and (c) Operator shall not submit to the Services any information that is controlled under the U.S. International Traffic in Arms Regulations.

1.7. *Suspension of Services.* Subject to Cantaloupe’s right to terminate this Agreement pursuant to Section 7.2 below, Cantaloupe reserves the right to suspend provision of the Services at any time and with or without prior notice to Operator (although written notification will be provided) with respect to any or all of the Operator Products: (i) if Operator breaches any representation, warranty, covenant or obligation in this Agreement or the Operator Processing Agreements; (ii) if Operator violates or is charged with violating any Applicable Law or breaches or violates any Card Organization Rule, PCI SSC Data Security Standard, Cantaloupe Policy or Processing Agreement; (iii) if Cantaloupe reasonably believes that any such breach or violation has occurred; (iv) if Cantaloupe is notified of any claim regarding Operator or the Operator Products or believes such a claim to be likely; (v) if Cantaloupe receives material complaints regarding Operator from any of its

payment processors, Card Organizations or other partners (including for excessive Refunds or Chargebacks); (vi) if Cantaloupe reasonably determines suspension is necessary to avoid material harm to Cantaloupe or its business for any reason; or (vii) for inactivity if no transactions involving Operator Products have occurred in a consecutive three (3) month period.

1.8. **Downloadable Software.** If the Services contemplated hereunder or on any applicable Order Form include access to software that the Operator may download onto any Hardware (the “Downloadable Software”), in addition to those terms and conditions contained herein, the terms and conditions attached hereto as “Schedule 1” (which are hereby referenced and incorporated into this Agreement) shall also apply.

2. **PROFESSIONAL SERVICES.** Cantaloupe shall provide the Professional Services purchased by Operator in the applicable Order Form. The scope of Professional Services shall be as set forth in a Statement of Work (“SOW”) executed by both parties describing the work to be performed, fees and any applicable milestones, dependencies and other technical specifications or related information. Unless Professional Services are provided on a fixed-fee basis, Operator shall pay Cantaloupe at the per-hour rates set forth in the Order Form (or, if not specified, at Cantaloupe’s then-standard rates) for such Professional Services. Operator will reimburse Cantaloupe for reasonable travel and lodging expenses as incurred by Cantaloupe in the provision of the Professional Services. Notwithstanding anything to the contrary in the applicable SOW and subject to the terms set forth in the SOW and this Section 2, during the term of this Agreement, Operator shall have a limited, non-exclusive, non-transferable, non-sublicensable, royalty-free license to use, solely in connection with the Services, the work product, code or deliverables, and any derivative, enhancement or modification thereof created by Cantaloupe (or its agents), that are delivered to Operator by Cantaloupe as part of the Professional Services. Cantaloupe shall retain all rights, title and interest in and to any such work product, code or deliverables and any derivative, enhancement or modification thereof created by Cantaloupe (or its agents), including any (i) copyrights, patents, know how, database rights and rights in software, trademark, trade names, service marks, domain names, designs (whether registered or unregistered) and trade secrets, (ii) applications for registration, and the right to apply for registration, for any of the same and (iii) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world (collectively, “Cantaloupe Intellectual Property Rights”).

### 3. HARDWARE

3.1. **Generally.** Operator may use Hardware in connection with the Services. Operator may purchase Hardware from third parties or may purchase, lease or otherwise obtain Hardware from or through Cantaloupe as provided in an applicable Order Form. Operator shall follow any and all reasonable instructions in relation to the operation of the Hardware. Cantaloupe shall not be responsible for any misuse, neglect or abuse of, tampering with or any external forces affecting the Hardware. Operator shall be responsible for the purchase, installation and maintenance of any and all Hardware necessary for the provision of Services. The Hardware may be subject to a manufacturer’s warranty as between Operator and the device manufacturer as administered by the manufacturer. Except as provided in an applicable Order Form, Cantaloupe does not provide any warranties of any kind for the Hardware. To the extent applicable, Cantaloupe shall assign to Operator any third party warranties for the Hardware. Operator’s sole and exclusive remedy for the breach of any such third party obligations shall be against the applicable third party manufacturer or Operator, and not against Cantaloupe. The procurement of Hardware from Cantaloupe may be subject to additional terms included in the applicable Order Form.

3.2. **Risk of Loss.** If purchased or leased from or through Cantaloupe, title and risk of loss of the Hardware shall pass to Operator upon shipment (FOB) or such Hardware being available for Operator pick-up, as applicable. Operator shall be responsible for all costs of insurance, taxes, storage, and transportation.

3.3. **Returns.** All returns of unused Hardware purchased or leased from Cantaloupe are subject to a twenty (20%) restocking fee and must be initiated within ninety (90) days of ship date of the order.

**3.4. End of Life.** Operator acknowledges that Cantaloupe may sunset or otherwise discontinue the provision of certain Hardware (“**Retired Hardware**”) from time to time, provided that Cantaloupe will use commercially reasonable efforts to give at least twelve (12) months advance written notice prior to doing so with respect to the applicable Retired Hardware. Cantaloupe’s obligations to support the operating systems, firmware or other software relating to Retired Hardware shall only continue for a period of twelve (12) months following the date the Retired Hardware is no longer made available, at which time Cantaloupe shall have no responsibility for or obligation relating to the Retired Hardware or the operating systems, firmware or other software relating thereto.

#### **4. OPERATOR DATA**

**4.1. Generally.** “**Operator Data**” means any business information or other content or data of any type that is (a) provided by Operator to Cantaloupe in connection with the Services, including information input by Operator, or provided to Cantaloupe for inputting, into the Services and (b) all information that Operator or Cantaloupe, on Operator’s behalf, collects from end users, including contact information and payment information. Operator shall ensure that Operator’s use of the Services and all Operator Data (and the collection, storage, disposal, transfer and other use thereof) is at all times compliant with Operator’s privacy policies, all Applicable Laws, the Card Organization Rules and the PCI SSC Data Security Standards, including those rules, regulations and policies related to data privacy and transfer, international communications, and the exportation of technical or personal data. Operator is solely responsible for the accuracy, content and legality of all Operator Data. Operator represents and warrants to Cantaloupe that Operator has all necessary rights in the Operator Data to grant the rights granted to Cantaloupe in Section 4.2 below and that the Operator Data does not infringe or violate the intellectual property, publicity, privacy or other rights of any third party.

**4.2. Rights in Operator Data.** As between the parties, Operator shall retain all right, title and interest (including any and all intellectual property rights) in and to the Operator Data as provided to Cantaloupe. Subject to the terms of this Agreement, Operator hereby grants to Cantaloupe a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, modify, create derivative works of and otherwise utilize the Operator Data solely to provide the Services to Operator and for any other lawful purpose.

**4.3. Storage of Operator Data.** Operator acknowledges that Cantaloupe does not provide an archiving service. Cantaloupe expressly disclaims all obligations with respect to storage of the Operator Data.

**4.4. Support provided by Cantaloupe related to Operator’s Duty to reply to Consumer Inquiries.** Cantaloupe will comply with all reasonable instructions from Operator related to (i) questions or complaints received from Consumers regarding their Personal Information (each, a “Privacy Inquiry”) and (ii) any requests from Consumers exercising their rights in their Personal Information granted to them under applicable data protection laws (“Privacy Request”). If Cantaloupe is directly contacted with a Privacy Inquiry or Privacy Request, Cantaloupe will forward such inquiry to Operator. Unless otherwise permitted by applicable data protection laws, Cantaloupe will only take actions regarding a Privacy Inquiry or a Privacy Request pursuant to its legal obligations and Operator’s lawful and commercially reasonable instructions. At Operator’s written request, Cantaloupe will assist Operator at Operator’s expense in answering or complying with any Privacy Inquiry or Privacy Request within thirty (30) days of Operator’s written request. If Operator’s instructions to Cantaloupe contradict instructions or requests that Cantaloupe receives from an applicable Consumer, Operator will indemnify and defend Cantaloupe in respect of any applicable losses, costs and expenses resulting from Operator’s instructions.

**4.5. Support Procedure.** Operator may place a request for warranty repair by contacting Cantaloupe customer service and submitting a request. Cantaloupe’s customer support representative will validate the warranty and issue a return material authorization (“RMA”) number. Cantaloupe may, in its discretion, provide Operator with a replacement device before it receives the returned device from Operator. Operator will pay Cantaloupe for the purchase price of the new device if Cantaloupe does not receive the returned device within ninety (90) days of issuing the RMA number.

#### **5. OWNERSHIP.**

**5.1. Operator Products.** Operator retains all right, title and interest (including all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Operator Products. To the extent Operator Products consist of physical goods, title and risk of loss shall transfer to the end user upon delivery to the end user.

**5.2. Cantaloupe Technology.** Operator acknowledges and agrees that this Agreement is a subscription agreement for use of the Services. Operator acknowledges that it is obtaining only a limited license to use the Services on the terms set forth herein and that, irrespective of any use of the words “purchase”, “sale” or like terms in this Agreement, no ownership rights to the Services are being conveyed by Cantaloupe to Operator under this Agreement. Operator agrees that Cantaloupe or its licensors retain all rights, title and interest in and to all Cantaloupe Intellectual Property Rights, the Services (excluding any Operator Intellectual Property or the Operator Products offered therein), the Dashboard, any Professional Services deliverables, and any and all related and underlying technology and documentation and any derivative works, modifications or improvements of any of the foregoing, including as may incorporate Feedback or Aggregated Anonymous Data (collectively, the “**Cantaloupe Technology**”). Further, Operator acknowledges that the Services are offered as an on-line, hosted solution and that Operator has no right to obtain a copy of any underlying software or other technology itself. Cantaloupe will use commercially reasonable efforts to ensure the Cantaloupe are operating and available to Operator in accordance with their specifications and documentation in all material respects.

**5.3. Feedback.** Operator, from time to time, may submit comments, information, questions, suggestions or other information or feedback to Cantaloupe (collectively, “**Feedback**”). Cantaloupe may freely use, copy, disclose, license, distribute and exploit any Feedback in any manner without any obligation, royalty or restriction based on intellectual property rights or otherwise.

**5.4. Aggregated Anonymous Data.** Notwithstanding anything to the contrary herein and without limiting Cantaloupe’s other rights herein, Operator agrees that Cantaloupe may obtain and aggregate technical and other data about Operator’s use of the Services that is non-personally identifiable with respect to Operator (“**Aggregated Anonymous Data**”), and Cantaloupe may use the Aggregated Anonymous Data to improve, support and operate the Services and for any other lawful purpose during and after the term of this Agreement.

#### **6. FEES & PAYMENT**

##### **6.1. Fees and Invoices.**

**6.1.1. Fees; Payments for Services.** Operator shall be responsible for paying Cantaloupe all fees and other amounts contemplated in any Order Form or otherwise arising under this Agreement. To the extent any payments for Services that are payable to Operator are received by Cantaloupe, subject to the Cantaloupe’s rights to offset pursuant to Section 6.4, Cantaloupe will remit such amounts to Operator less amounts for (i) all Refunds and Chargebacks incurred (including any payment processing fees in connection with such Refunds or Chargebacks); and (ii) all foreign exchange and other fees, fines, assessments, penalties and other charges or any additional amounts charged by any Card Organization that are incurred. Unless otherwise contemplated in an Order Form, such amounts will be remitted to Operator weekly. Operator acknowledges and agrees that the foreign exchange and other fees, fines, assessments, penalties and other charges or any additional amounts charged by any Card Organization that may be charged by Cantaloupe in connection with the Services are subject to change from time to time and that Cantaloupe will include any changes to these fees, fines, assessments, penalties and other charges and amounts in accordance with Section 6.1.3 below. Cantaloupe will make available such information via the Dashboard where it can be retrieved by Operator, and Operator must notify Cantaloupe in writing of any suspected errors in the amounts owed to Operator within three (3) months of Operator’s receipt of the corresponding payment for any such error to be subject to adjustment, and any such errors outside of the foregoing three (3) month window shall not be subject to adjustment and are hereby waived. Such notice must include: (i) Operator’s name; (ii) the dollar amount of the asserted error; (iii) a description of the asserted error; and (iv) an explanation of why an error exists and the cause of it, if known.

6.1.2. *Payment Delays.* Cantaloupe reserves the right to delay payments to Operator as follows up to fourteen (14) days if exceptional events occur, including material fluctuations over ordinary sales volumes or any new data requiring considerable modifications.

6.1.3. *Changes in Fees.* Cantaloupe may, from time to time in its sole discretion and without the consent of Operator, modify the foreign exchange and other fees, fines, assessments, penalties and other charges or any additional amounts charged by any Card Organization to be paid by Operator for sales of Operator Products in connection with the Services to reflect changes in such fees, fines, assessments, penalties and other charges and amounts that are charged to Cantaloupe by its third party processors and other third parties, for example, changes in interchange fees, foreign currency fees and the like. Cantaloupe will give notice to Operator of the changes in these fees, fines, assessments, penalties and other charges and amounts (a) in writing, or (b) through the Dashboard or (c) by email to Operator. Additionally, Cantaloupe may increase fees for the Services upon at least thirty (30) days advance written notice following the first year of service and at any time thereafter.

6.1.4. *Other Fees & Payment.* All other fees, including fees for Professional Services or Hardware, if applicable, set forth in the applicable Order Form shall be paid by Operator within thirty (30) days from receipt of Cantaloupe's invoice, unless otherwise specified in the applicable Order Form. Invoices may be made available via the Dashboard, where Operator will directly access those invoices, or may be sent to Operator electronically to the email address(es) provided by Operator, which Operator shall provide upon entering into this Agreement. Unless otherwise expressly stated in an applicable Order Form, all orders are non-cancellable and non-refundable. Billing for such other fees, with the exception noted as follows, commences upon the earlier of Hardware activation or ninety (90) days from the purchase of Services. Exceptions are: a) Hardware will be billed at the ship date, b) Seed Markets Software will be billed when a market is first restocked in Seed, and c) Seed Delivery will be billed on the first active delivery of the specific delivery point.

6.2. Except as expressly set forth in this Agreement, all fees are non-refundable. Operator is required to pay any sales, use, GST, value-added, withholding, or similar taxes or levies, whether domestic or foreign, other than taxes based on the income of Cantaloupe. Cantaloupe may add the appropriate amount to Operator's payment obligation hereunder, and Operator shall pay such amount unless Operator provides Cantaloupe with a valid tax exemption certificate authorized by the appropriate taxing authority. Any late payments shall be subject to a service charge equal to 1.5% per month of the amount due or the maximum amount allowed by law, whichever is less.

### 6.3. Refunds and Chargebacks.

6.3.1. *Refunds.* "Refund" means (a) any amount paid by Operator or Cantaloupe, on behalf of Operator, to an end user or (b) any amount Operator or Cantaloupe, on behalf of Operator, is required to return to any third party system or Processor as a result of a refund event in accordance with this Agreement. If an end user of an Operator Product purchased through the Services requests a Refund of the fees paid by the end user, Cantaloupe will make available such information via the Dashboard where it can be retrieved by Operator. Notwithstanding the foregoing, Cantaloupe reserves the right to refund fees to an end user in the following situations: (i) an order is fraudulent; (ii) the end user has introduced a duplicate order or has placed a new and correct order for the desired Operator Product and confirms that the previous order was incorrect and should be cancelled; (iii) the end user has requested a Refund prior to confirmation and delivery of the Operator Product; (iv) if Operator does not reply in five (5) business days from receipt of (A) a Refund request or (B) a technical support request that was received from an end user and forwarded to Operator by Cantaloupe; (v) if the request from the end user is made in accordance with Operator's refund policy and within the return period limit; (vi) the Refund is required by law; (vii) Cantaloupe determines a refund is necessary to avoid liability or to be consistent with best business practices or to comply with the Card Organization Rules or any rules or requirements of the Processor; or (viii) Operator fails to comply with its obligations under this Agreement or the Operator Processing Agreements. In the event of a Refund, Cantaloupe has the right to retain the respective amount for the

Refund or to recover the amount directly from Operator by direct reimbursement. In the event of any Refund, Cantaloupe reserves the right to deduct its margin and fees.

6.3.2. *Chargebacks.* "Chargeback" means (i) any failure of any third party system or Processor to pay Operator or Cantaloupe, on behalf of Operator, for any end user transaction through the Services and (ii) any retrieval request by a third party system or Processor with respect to any end user transaction. In the event of a Chargeback, Cantaloupe has the right to retain the respective amount for the Chargeback and any fees, fines, assessments, penalties and other charges or any additional amounts charged by a Card Organization with respect to such Chargeback from the moment the Chargeback request is received by Cantaloupe until the issue giving rise to a Chargeback is resolved (including by payment to the end user) or to recover the amount directly from Operator by direct reimbursement. In the event of any Chargeback, Cantaloupe reserves the right to deduct its margin and any fees, fines, assessments, penalties and other charges or any additional amounts charged by a Card Organization with respect to such Chargeback. Operator assumes full risk of payment refusal related to a Chargeback.

6.3.3. *Reserve.* Operator acknowledges and agrees that Cantaloupe may establish a reserve account (the "Reserve") in the amount mentioned in the applicable Order Form or as subsequently determined by Cantaloupe. The Reserve shall be funded directly by Operator, if requested by Cantaloupe, or by Cantaloupe retaining amounts necessary to fund the Reserve from the amounts due to Operator hereunder. Cantaloupe may adjust the size of the Reserve, if necessary, in proportion to the volume of Operator's Refunds and Chargebacks. The Reserve less (a) any Refunds or Chargebacks (including any payment processing fees in connection with such Refunds or Chargebacks) that may appear after termination of the Agreement and (b) other outstanding payments of any kind to be made to Cantaloupe hereunder will be returned to Operator six (6) months after the effective date of termination of this Agreement.

6.4. *Offset.* Cantaloupe will have the right to offset amounts owed by Operator to Cantaloupe against amounts payable under this Agreement.

6.5. *Invoice Disputes.* In the event of a good faith dispute regarding an item on an invoice, Operator has the right to withhold such disputed amount while the parties attempt to resolve the dispute. Operator must notify Cantaloupe within ten (10) business days of receipt of an invoice in question of the discrepancy leading to dispute, and Operator's withholding of such payment shall not constitute a breach of this Agreement so long as Operator pays on a timely basis those amounts that are undisputed and owing.

6.6. *Taxes for Operator Products.* Operator shall be solely responsible for collection and payment of all sales taxes for sales of the Operator Products in accordance with any and all Applicable Laws. Operator will indemnify, defend and hold Cantaloupe harmless from and against any tax, penalty and interest resulting from Operator's failure to meet its obligations under this Section 6.6.

## 7. TERM AND TERMINATION

7.1. *Term.* This Agreement is effective as of the Effective Date and its initial term shall expire on the date the last Order Form executed under this Agreement has expired or terminated, or if the Order Form does not set forth a term for the applicable Services, the initial term shall be deemed to be three (3) years. After the initial term, this Agreement will automatically renew for additional one (1) year terms unless either party provides written notice of non-renewal at least thirty (30) days prior to the end of the then-current term. In case of early termination by Operator, Operator shall pay all outstanding payments and/or the balance of the Hardware lease or rental to Cantaloupe at the time of termination in addition to any early termination fee set forth in the Order Form.

7.2. *Termination for Suspension of Services.* If Cantaloupe suspends the Services under Section 1.7, Cantaloupe may also, in addition to any other rights it may have hereunder, terminate this Agreement with or without prior notice to Operator and such termination will be effective (i) immediately if such termination is required by Applicable Law, the Card Organization Rules, the Cantaloupe Policies or Cantaloupe's acquiring bank or the Processor or (ii) five (5) days after notice to Operator of such

precipitating breach, violation or event if such breach, violation or event is not cured by Operator to Cantaloupe's satisfaction, as determined in its sole discretion, within five (5) days of notice thereof.

**7.3. Other Terminations.** Either party may terminate this Agreement (including all related Order Forms) (i) upon written notice to the other party if the other party ceases operation without a successor or seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within sixty (60) days thereafter) or (ii) for any reason upon thirty (30) days prior written notice to the other party (provided, however, that if Customer is terminating the Agreement Customer may owe early termination fees). In addition, Operator may terminate this Agreement (including all related Order Forms) upon written notice to Cantaloupe if Cantaloupe fails to cure any material breach of this Agreement within thirty (30) days after written notice of such breach.

**7.4. Effect of Termination.** Upon any expiration or termination of this Agreement, (i) Operator shall immediately cease any and all use of and access to the Services (including any and all related Cantaloupe Technology) and, upon the request of Cantaloupe, any other Confidential Information of Cantaloupe in accordance with Section 12 below and (ii) with respect to any sales to end users, Refunds, Chargebacks or other transactions that occur through the Services after termination (the "Post-Termination Services"), this Agreement shall continue and remain in full force and effect until such sales, Refunds, Chargebacks or other transactions have been processed and completed in accordance with the terms hereof. Operator acknowledges that following completion of all Post-Termination Services by Cantaloupe under this Agreement it shall have no further access to any Operator Data that has been inputted into the Services, and that Cantaloupe may destroy any such Operator Data as may have been stored by Cantaloupe at any time. Termination of this Agreement is not an exclusive remedy and the exercise of either party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise.

**7.5. Survival.** The following Sections shall survive any expiration or termination of this Agreement: 1.3 (General Restrictions), 1.4 (Processing Agreement and Operator Agreements with Processor; Compliance with Laws, Rules and Regulations; Prohibited Activities), 4.3 (Storage of Operator Data), 4.4 (Ownership), 6 (Fees and Payment), 7 (Term and Termination), 8 (Warranty Disclaimer), 10 (Limitation of Remedies and Damages), 11 (Indemnification), 12 (Confidential Information), and 13 (General Terms).

## **8. WARRANTIES AND COVENANTS.**

**8.1. Warranties and Covenants of Operator.** In addition to the other representations, warranties and covenants of Operator in this Agreement, Operator represents, warrants and covenants to Cantaloupe as follows:

**8.1.1. Due Authority.** Operator has the requisite power and authority to carry on its business as currently conducted and to enter into and carry out the terms of this Agreement and the Operator Processing Agreements. There are no authorizations, consents or approvals required in connection with the validity and enforceability of this Agreement or the Operator Processing Agreements or Operator's execution, delivery and performance of this Agreement or the Operator Processing Agreements. Operator has, and will continue to have during the term of this Agreement, the right and power to grant the licenses and rights granted to Cantaloupe hereunder without the consent of any third party, and Operator's performance under this Agreement and the Operator Processing Agreements will not conflict with any other obligation Operator may have to any other party.

**8.1.2. All Necessary Rights.** Operator owns or otherwise has the full right and authority to use and disseminate the Operator Products. The Operator Products have been and will be independently created by Operator's employees or Contractors, or Operator has procured all necessary rights and licenses from the owners of such rights to enter into and carry out the terms of this Agreement, and in either case the exercise of Cantaloupe's rights under this Agreement will not require the acquisition of rights from any third party. Operator is legally authorized to sell the Operator Products, and Operator has obtained all necessary regulatory approvals, permits and certificates related thereto.

**8.1.3. Non-Infringement.** Neither the Operator Products nor the exercise by Cantaloupe of any of the licenses granted hereunder will infringe or misappropriate any intellectual property right of any third party or be subject to any restrictions or to any mortgages, liens, pledges, security interest, encumbrances or encroachments.

**8.1.4. No Litigation.** Operator is not aware of any pending or threatened claims, suits, actions, or charges pertaining to the Operator Products, including any claims or allegations that any of the Operator Products infringes, violates, or misappropriates the intellectual property rights of any third party. Operator agrees that it will notify Cantaloupe immediately if Operator becomes aware of any actual or potential claims, suits, actions, allegations or charges that could affect either party's ability to perform its duties or to exercise its rights under the Agreement.

**8.1.5. Truthful Information.** All Operator Data provided to Cantaloupe hereunder is complete, truthful, accurate, valid and Operator's lawful property, and Operator has the right to communicate such Operator Data to Cantaloupe hereunder. All email addresses, physical addresses, telephone numbers and other identifying information provided by Operator to Cantaloupe hereunder is complete, current and correct. Operator agrees promptly to inform Cantaloupe of any change in this information. Operator is not doing business under a name or style that was not previously disclosed to Cantaloupe.

**8.2. Warranties and Covenants of Cantaloupe.** In addition to the other representations, warranties and covenants of Cantaloupe in this Agreement, Cantaloupe represents, warrants and covenants to Operator as follows:

**8.2.1. Due Authority.** Cantaloupe has the requisite power and authority to carry on its business as currently conducted and to enter into and carry out the terms of this Agreement. There are no authorizations, consents or approvals required in connection with the validity and enforceability of this Agreement or Cantaloupe's execution, delivery and performance of this Agreement. Cantaloupe has, and will continue to have during the term of this Agreement, the right and power to grant the licenses and rights granted to Operator hereunder without the consent of any third party, and Cantaloupe's performance under this Agreement will not conflict with any other obligation Cantaloupe may have to any other party.

**8.2.2. No Litigation.** Cantaloupe is not aware of any pending or threatened claims, suits, actions, or charges pertaining to the Cantaloupe Technology, including any claims or allegations that any or all of the Cantaloupe Technology infringes, violates, or misappropriates the intellectual property rights of any third party.

**9. WARRANTY DISCLAIMER.** THE CANTALOUPE TECHNOLOGY (INCLUDING THE SERVICES AND PROFESSIONAL SERVICES) AND HARDWARE ARE PROVIDED "AS IS". EXCEPT AS EXPRESSLY SET FORTH HEREIN, CANTALOUPE DOES NOT MAKE ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SUITABILITY OR QUALITY, WITH RESPECT TO THE CANTALOUPE TECHNOLOGY OR HARDWARE PROVIDED HEREUNDER OR ANY GOODS PROVIDED INCIDENTAL TO THE FOREGOING PROVIDED HEREUNDER, INCLUDING ANY SERVICES OR ANY GOODS PROVIDED BY A THIRD PARTY, INCLUDING ANY BANK, PROCESSOR OR CARD ORGANIZATION. CANTALOUPE SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES AND OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF CANTALOUPE, INCLUDING THE UPTIME OR AVAILABILITY OF OPERATOR'S WEBSITE.

## **10. LIMITATION OF REMEDIES AND DAMAGES**

**10.1. LIMITATIONS OF CLAIMS AND DAMAGES.** IN NO EVENT MAY OPERATOR BRING ANY CLAIM OR CAUSE OF ACTION MORE THAN ONE (1) YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION ARISES. EXCEPT AS SET FORTH IN SECTION 10.3 BELOW, NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF USE, LOST OR INACCURATE DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, COSTS OF DELAY OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT

(INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

**10.2. LIABILITY LIMITATIONS.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE MAXIMUM AGGREGATE LIABILITY OF CANTALOUPE AND ITS SUPPLIERS TO OPERATOR SHALL NOT EXCEED THE AMOUNTS ACTUALLY PAID BY OPERATOR TO CANTALOUPE DURING THE PRIOR SIX (6) MONTHS UNDER THIS AGREEMENT.

**10.3. EXCLUDED CLAIMS.** THIS SECTION 10 SHALL NOT APPLY TO THE EXTENT PROHIBITED BY LAW AND SHALL NOT LIMIT OPERATOR'S LIABILITY WITH RESPECT TO ANY CLAIM ARISING UNDER THE SECTIONS TITLED "GENERAL RESTRICTIONS," "PROCESSING AGREEMENT AND OPERATOR AGREEMENTS WITH PROCESSOR; COMPLIANCE WITH LAWS, RULES AND REGULATIONS; PROHIBITED ACTIVITIES," "OPERATOR DATA", "WARRANTIES AND COVENANTS," "INDEMNIFICATION," "LIMITATION OF REMEDIES AND DAMAGES" OR "CONFIDENTIAL INFORMATION."

**10.4. Survival.** The parties agree that the limitations specified in this Section 10 will survive and apply even if any limited remedy specified in this Agreement is found to have failed its essential purpose.

## **11. INDEMNIFICATION.**

**11.1. Indemnification by Operator.** Operator hereby agrees to defend, indemnify and hold harmless Cantaloupe, its parent companies, subsidiaries and affiliated entities and each of their respective officers, shareholders, equity owners, directors, employees, representatives, licensees and agents (each, an "Cantaloupe Indemnified Party"), from and against and in respect of any and all claims, demands, actions, losses, liabilities, costs, expenses and damages of any kind or nature (including reasonable attorneys' fees) arising out of: (i) a breach of any representation, warranty or covenant in this Agreement or the Operator Processing Agreements by Operator; (ii) any breach or violation by Operator of any Applicable Law, Card Organization Rule, PCI SSC Data Security Standard or Cantaloupe Policy; (iii) any claim with respect to the Operator Products or the Operator Data, including any claim of infringement of any intellectual property right with respect to the Operator Products, the Operator Data or Cantaloupe' exercise of the rights granted in this Agreement; (iv) any claim with respect to the End User Agreements or any claim arising from Operator's failure to implement and perform its obligations under an End User Agreement, including its obligations to provide the required warranties, maintenance and support thereunder; (v) any failure by Operator to obtain applicable export licenses for resale of the Operator Products or to notify Cantaloupe of the export classification of the Operator Products; (vi) any tax, penalty and interest arising from Operator's obligations with respect to taxes hereunder; (vii) Operator's fraud, gross negligence or willful misconduct hereunder or under any End User Agreement; (viii) any claims of third parties arising out of or resulting from, or in connection with, the Operator Products and Operator's services, messages, programs, promotions, advertising, infringement or any claim for libel or slander; or (ix) death, personal injury, or property damage caused by the Operator Products, Operator or any Operator personnel. An Cantaloupe Indemnified Party may participate in the defense of any such claims by counsel of its own choosing, at its cost and expense. Operator shall not settle any claim without an Cantaloupe Indemnified Party's prior written consent if the settlement requires the Cantaloupe Indemnified Party to take any action, refrain from taking any action, or admit any liability.

**11.2. Indemnification by Cantaloupe.** Cantaloupe hereby agrees to defend, indemnify and hold harmless Operator from and against and in respect of any and all claims, demands, actions, losses, liabilities, costs, expenses and damages of any kind or nature (including reasonable attorneys' fees) arising out of any claim of infringement of any intellectual property right with respect to the Cantaloupe Technology, including Cantaloupe's provision of the Services. Operator may participate in the defense of any such claims by counsel of its own choosing, at its cost and expense. Cantaloupe shall not settle any claim without Operator's prior written consent if the settlement requires Operator to take any action, refrain from taking any action, or admit any liability.

**12. CONFIDENTIAL INFORMATION.** Each party acknowledges that, from time to time, such party may be exposed to certain information that is not generally known to the public and would be considered confidential and

proprietary by the other party ("Confidential Information"). Confidential Information includes all competitively sensitive or secret business, marketing, codes, inventions, know-how and technical and financial information, including pricing, disclosed by one party ("Disclosing Party") to another party ("Receiving Party"). Further, Operator agrees that any performance information relating to the Cantaloupe Technology and the terms and conditions of this Agreement shall be deemed Confidential Information of Cantaloupe without any marking or further designation. Confidential Information shall not include information that (i) was already known to the Receiving Party prior to the time that it is disclosed by the Disclosing Party; (ii) is or has entered the public domain through no breach of this Agreement or other wrongful act of the Receiving Party; (iii) has been rightfully received by the Receiving Party from a third party without breach of any confidentiality obligations; (iv) has been approved for release by written authorization of the Disclosing Party; or (v) is required to be disclosed pursuant to the final binding order of a court of competent jurisdiction, provided that the Disclosing Party has been given reasonable notice in advance of the pendency of such an order and the Receiving Party cooperates in any effort by Disclosing Party to obtain confidential treatment. The Receiving Party agrees that in the event such party is exposed to the other party's Confidential Information, the Receiving Party (a) shall protect such Confidential Information from unauthorized use and disclosure in the same manner that it protects its own Confidential Information (but, in any event, using a commercially reasonable standard of care), (b) will not disclose such Confidential Information to any third party and (c) will not use such Confidential Information other than for performance of its obligations or exercising its rights under this Agreement without the prior written consent of the Disclosing Party. The Receiving Party may disclose Confidential Information to its employees, agents, contractors and other representatives having a legitimate need to know (including, for Cantaloupe, its third party payment processors, subcontractors and third party providers) (collectively, for each party, its "Representatives"), provided that such Representatives are bound to confidentiality obligations no less protective of the Disclosing Party than this Section 12 and that the Receiving Party remains responsible for compliance by any such Representative with the terms of this Section 12. These mutual obligations with respect to Confidential Information shall continue for the shorter of five (5) years from the date of termination of this Agreement, or until such information becomes publicly known other than by breach of this Agreement by the Receiving Party, provided that such obligations shall continue with respect to trade secrets for so long as the same remain trade secrets under applicable law. Within five (5) calendar days after a party's request, all materials or media containing any Confidential Information will be either returned to the Disclosing Party or destroyed by the Receiving Party, at the Disclosing Party's sole discretion, and each party agrees to certify its compliance with such obligation upon the request of the other party. The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

## **13. GENERAL TERMS**

**14.1. Assignment.** This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign this Agreement except upon the advance written consent of the other party, except that either party may assign this Agreement in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of such party's assets or voting securities. Any attempt to transfer or assign this Agreement except as expressly authorized, and permission shall not be unreasonably withheld, under this Section 14.1 will be null and void.

**14.2. Severability.** If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.

### **14.3. Governing Law; Jurisdiction and Venue; Waiver of Jury Trial.**

**14.3.1** This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of

Pennsylvania, without giving effect to any conflict of laws provisions, and the application of the United Nations Convention on Contracts for the International Sale of Goods to this Agreement is expressly excluded. The exclusive jurisdiction and venue for all legal actions arising out of this Agreement shall be in state and United States federal courts located in Philadelphia, Pennsylvania, both parties hereby submit to the personal jurisdiction and venue of such courts, and each party expressly waives any rights to contest the jurisdiction, venue or convenience of any such state or federal court.

**14.3.2 Equitable and Other Remedies.** Operator agrees and acknowledges that any breach or threatened breach by Operator of this Agreement may cause Cantaloupe irreparable injury for which the recovery of money damages would be inadequate. Therefore, in addition to any other remedies that may be available at law, in equity, or otherwise, Cantaloupe shall be entitled to obtain injunctive relief against the breach or threatened breach of this Agreement, without the necessity of proving actual damages, or posting a bond, even if otherwise normally required.

**14.3.3 WAIVER OF JURY TRIAL.** THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT.

**14.4. Attorneys' Fees and Costs.** The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action.

**14.5. Notice.** Any notice or communication required or permitted under this Agreement shall be in writing to the parties at the addresses set forth on the Order Form or at such other address as may be given in writing by either party to the other in accordance with this Section 14.5 and shall be deemed to have been received by the addressee (i) if given by hand, immediately upon receipt; (ii) if given by overnight courier service, the first business day following dispatch or (iii) if given by registered or certified mail, postage prepaid and return receipt requested, the fifth business day after such notice is deposited in the mail.

**14.6. Communications.** Operator consents to receive electronic communications, including phone, email and SMS text communications, in connection with the services and related services. Operator agrees to maintain current contact information with Cantaloupe. If Operator does not wish to receive calls or texts from Cantaloupe, Operator agrees to notify Cantaloupe in writing. Cantaloupe is not responsible for any fees for such calls, texts, or email charged to Operator by its mobile phone service provider.

**14.7. Amendments; Waivers.** Except as otherwise contemplated herein, no supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other business form employed by Operator will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement shall be for administrative purposes only and shall have no legal effect.

**14.8. Entire Agreement.** This Agreement, together with any applicable Order Forms or SOWs, contains the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. In the event of an inconsistency or conflict between the provisions of the Agreement and any Order Form, the inconsistency or conflict will be resolved by giving precedence to this Agreement.

**14.9. Force Majeure.** Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events which occur after the signing of this Agreement and which are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or telecommunications or data networks or services, or refusal of a license by a government agency.

**14.10. Subcontractors and Third Party Providers.** Cantaloupe may use the services of subcontractors and third party providers, and permit them to exercise the rights granted to Cantaloupe hereunder, in order to provide the services to Operator under this Agreement, provided that Cantaloupe remains responsible for compliance of any such subcontractor or third party provider with the terms of this Agreement and for the overall performance of the services hereunder. Operator may not use subcontractors or third party providers without the prior written consent of Cantaloupe.

**14.11. Independent Contractors.** Except for the agency rights granted to Cantaloupe by Operator hereunder, (i) the parties to this Agreement are independent contractors, (ii) there is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties and (iii) neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

**14.12. Publicity.** Operator agrees to the following publicity activities: (i) Cantaloupe' public use of Operator's name and logo on Cantaloupe' website and in Cantaloupe marketing materials and customer lists; and (ii) issuance of a joint press release on a mutually agreed upon date or the "go live date" for the Hardware, whichever is earlier, provided that each party will have the right to approve such press release in advance. Neither party shall publicize or disclose the terms of this Agreement to any third party without the prior written consent of the other, except as may be required by law.

**14.13. Interpretation.** The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include", "includes" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation." The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement. The word "extent" in the phrase "to the extent" means the degree to which a subject or thing extends, and such phrase shall not simply mean "if." Any agreement, instrument, statute or Card Organization Rule defined or referred to herein means such agreement, instrument, statute or Card Organization Rule as from time to time amended, modified or supplemented. References to a party or person are also to its permitted successors and assigns. Whenever a party hereto is allowed or required to provide a consent, approval or waiver or to take any discretionary action or make any discretionary determination with respect to any matter, unless the applicable provision explicitly states to the contrary, such consent, approval, waiver action or determination may be given, taken, made or withheld in such party's sole, complete and absolute discretion.

**14.14. Counterparts; Signatures.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

## SCHEDULE 1

### DOWNLOADABLE SOFTWARE LICENSE AND TERMS

#### 1. DOWNLOADABLE SOFTWARE LICENSE

- 1.1. *LICENSE GRANT.* Cantaloupe hereby grants to Operator, subject to the terms of this Agreement and any relevant Order Form, as well as the payment of any fees required by this Agreement or relevant Order Form, a non-exclusive, right and license to access, execute, install, load, host, store, run and use the Downloadable Software for those purposes contemplated by this Agreement and any accompanying Order Form.
- 1.2. *TERM.* The Operator's license to use the Downloadable Software will commence on the Effective Date and continue indefinitely until the Master Services Agreement is terminated in accordance with its terms.
- 1.3. *APPROVED USES.* Operator may use the Downloadable Software only in the manner contemplated by the Parties to the Agreement or in any relevant Order Form (the "Approved Uses"). Operator may not use the Downloadable Software in any other manner which has not been previously approved by Cantaloupe.
- 1.4. *OWNERSHIP.* All right, title, and interest in and to the Downloadable Software shall be solely owned by Cantaloupe or its third party suppliers. Operator will execute any assignments of intellectual property rights and other documents reasonably requested by Cantaloupe to perfect and protect Cantaloupe's right, title, and interest in the Downloadable Software.

#### 2. LIMITED DOWNLOADABLE SOFTWARE WARRANTY

- 2.1. *LIMITED WARRANTY.* Cantaloupe represents and warrants that the Downloadable Software will perform as intended for ninety (90) days after the date of installation. Operator's sole and exclusive remedy, and Cantaloupe's sole obligation, for breach of the foregoing warranties shall be for Cantaloupe, at its option, to correct, repair or replace and re-install the copy of the Downloadable Software.
- 2.2. *WARRANTY EXCLUSIONS.* The warranties provided in this Section will not apply to (i) Downloadable Software that is modified by Operator or its employees or agents (other than a modification authorized or approved in writing by Cantaloupe), (ii) Downloadable Software that is damaged after acceptance by Operator by any cause other than a failure that results from a breach of warranty by Cantaloupe, (iii) Downloadable Software that is damaged by Operator, (iv) Downloadable Software that is damaged by abuse, misuse, or operation other than in accordance with applicable documentation or through Operator's failure to perform routine or required maintenance, or (v) any failure of the Downloadable Software to be compatible with any other systems or operating environment unless such compatibility was set forth as an applicable requirement on the relevant Order Form.

#### 3. CLIENT RESPONSIBILITIES

- 3.1. *3RD PARTY SOFTWARE.* Cantaloupe shall not be responsible for any misuse, neglect or abuse of, tampering with, or any external forces (such as any 3rd party software) which may negatively affect the performance of the Downloadable Software. Cantaloupe shall not be responsible in any way for any result of the Downloadable Software's interaction with any 3rd Party services or software which may be negatively affected by the Downloadable Software (such as Internet speed loss) which may occur as a result of said interaction.
- 3.2. *LOGINS AND PASSWORDS.* During the term of this Agreement, Operator may access and use the Downloadable Software solely for its own benefit and in accordance with the terms and conditions of this Agreement. Use of and access to the Downloadable Software is permitted only by (i) Operator's employees and (ii) Contractors; and in any case, such individuals must be Permitted Users. If Operator is given passwords to access the Downloadable Software, Operator shall require that all Permitted Users keep user ID and password information strictly confidential and not share such information with any unauthorized person. Operator shall be responsible for any actions taken by any party using Operator's accounts and passwords. Operator must immediately notify Cantaloupe if there is any unauthorized access to Operator's accounts or passwords.
- 3.3. *HARDWARE.* Operator may only install the Downloadable Software on Hardware provided by Cantaloupe as part of this Agreement or otherwise approved thereby. Any installation of Downloadable Software on any machine or platform that does not comply with this paragraph shall void any warranties contained in the above Section 2 – Limited Downloadable Software Warranty.
- 3.4. *EXPORT RESTRICTIONS.* In its use of the Downloadable Software, Operator agrees to comply with all export and import laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, (a) Operator represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a "terrorist supporting" country, (b) Operator shall not (and shall not permit any of its users to) access or use the Services in violation of any U.S. export embargo, prohibition or restriction, and (c) Operator shall not submit to the Services any information that is controlled under the U.S. International Traffic in Arms Regulations.
- 3.5. *MODIFICATION OR REVERSE ENGINEERING.* Operator shall not (and shall not permit any third party to): (i) rent, lease, copy, provide access to or sublicense the Downloadable Software to a third party; (ii) use any Downloadable Software to provide services to, or incorporate any Downloadable Software into any product or service provided to, a third party, (iii) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or non-public information related to the Downloadable Software, except to the extent expressly permitted by applicable law (and then only upon advance notice to Cantaloupe), (iv) modify any Downloadable Software or create any derivative product from any of the foregoing, (v) remove or obscure any proprietary or other notices contained in any Downloadable Software.
- 3.6. *CONFIDENTIAL INFORMATION.* For the avoidance of doubt, any Confidential Information (as that term is defined in the attached agreement) obtained or disclosed through the Downloadable Software shall be subject to those same terms and conditions listed in the Section 12 (Confidential Information) of the above attached Agreement.